

Unit-5: Legal Profession in India

A. Introduction

The modern legal profession in India has colonial roots, emerging with the advent of Mayor's Courts in Madras and Calcutta in 1726. However, it was not until 1846, through the Legal Practitioner's Act, that the doors of profession were thrown open to all those duly qualified, certified and of good character, irrespective of nationality or religion. Women were still excluded from the profession at this stage, to be thereafter admitted through the Legal Practitioner's (Women) Act, XXIII of 1923.

The legal profession in India, which includes both the practice of law as well as professional legal education, is regulated by the Advocates Act, 1961. The Bar Council of India (BCI) is envisaged under the Advocates Act as a body for regulating the minimum standards to be maintained by institutions imparting legal education in India. The reformation of legal education in India undertaken since the late 1980s at the initiative of the BCI, the University Grants Commission (UGC), the Law Commission of India and various state governments has led to the establishment of various national law schools in India in the last two decades. This movement which was pioneered by Professor N. R. Madhava Menon (who was instrumental in the setting up of the first National Law School in Bangalore) and other leading academicians in India has resulted in the establishment of around 17 national law schools and a few other new generation law schools in the public as well as the private sector.

India has the second largest population of lawyers in the world, second only to the United States. The number of persons admitted to practice law in India has increased from about 70,000 at time of Independence in 1947 to some 1.25 million in 2014.

B. History of the Legal Profession in India

The timeline given below provides an overview of the history of the legal profession in India leading upto the enactment of the Advocates Act in 1961:

- **1726 and later, 1753:** Mayor's Courts- There was no established legal profession until the establishment of the Mayor's Court. Those who practised law were devoid of legal training and some of the functionaries under the Mayor's courts were dismissed servants of the British East India Company.
- **1774:** Supreme Court of Judicature established by a Royal Charter at Calcutta-



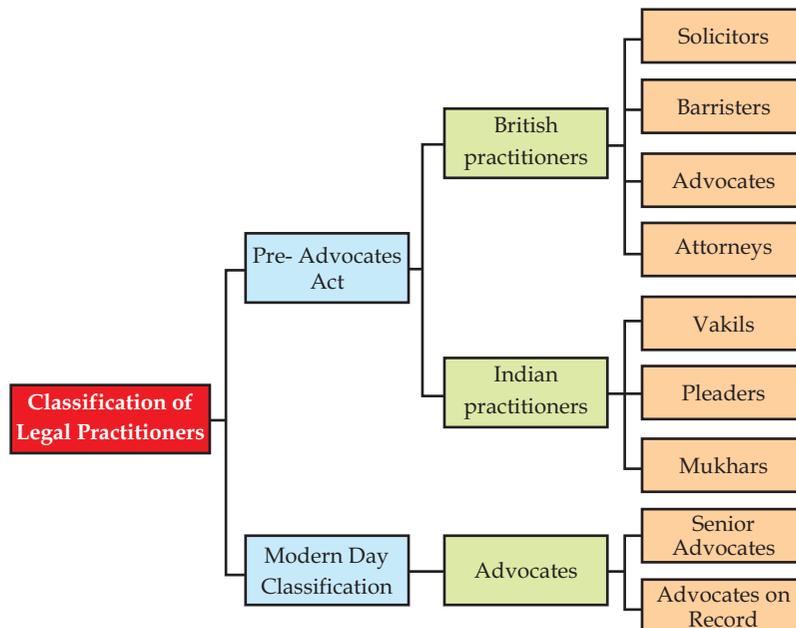
Similar courts were established in Madras (1801) and Bombay (1823). The Regulating Act of 1773 empowered the Supreme Court to "approve, admit and enrol" Advocates and Attorneys-at-Law. "Attorneys of Record" were authorized to "appear, plead and act for the suitors". Attorneys were not admitted without a recommendation from high officials in England or a Judge in India. The term "Advocate" at that time was extended only to the English and Irish Barristers and members of the Faculty of Advocates in Scotland. "Attorneys" similarly referred to British attorneys and solicitors only. The Calcutta Supreme Court therefore appeared to be the exclusive bastion of British Barristers, Advocates and Attorneys. The Charter introduced in India the British system of legal practice and profession. Indians had no right to appear before the Supreme Courts (this trend continued in Bombay and Madras as well although both these courts were established much later).

- **1793:** The Bengal Regulation VII of 1793 created for the first time, a regular legal profession in the Company's Courts. The Regulation was one "for the appointment of vakils or native pleaders in the Courts of Civil Judicature (Sadar Diwani Adalat) in Bengal, Bihar and Orissa. Only Muslims and Hindus could be enrolled as pleaders. The Regulation also provided for a Vakalatnama (a party would execute a Vakalatnama in favour of a pleader, authorizing him to represent the party, and act on his behalf in a matter). This was the genesis of the "Vakalatnama" as we know today. The Bengal Regulation XXVII of 1814 consolidated the law on the subject. The pleaders were empowered to act as arbitrators and to give legal opinions on payment of fees. Thereafter, in 1833, The Bengal Regulation XII modified the provisions of earlier regulations regarding selection, appointment and remuneration of these pleaders. It permitted any qualified persons of any nationality and religion to be enrolled as a pleader in the Sadar Diwani Adalat.
- **1846:** The Legal Practitioners Act of 1846, was the first pan-India law concerning the regulation of the Indian legal profession. A religious test for enrolment as a pleader was abolished, and persons of any nationality and religion could be enrolled as a pleader. Every Barrister enrolled in any of Her Majesty's Courts in India became eligible to plead in the Sadar Adalats subject to the rules of those Courts applicable to pleaders as regards language or any other matter. The Legal Practitioners Act also permitted Vakils to enter into agreements with their clients for their fees for professional services.

- 
- **1879:** The Legal Practitioners Act of 1879 repealed the Pleaders, Mukhtars and Revenue Agents Act, 1865. During this time in British India, there were six grades of practitioners- Advocates, Solicitors (Attorneys) and Vakils of the High Court and Pleaders, Mukhtars and Revenue agents in the lower courts. Vakils became a distinct grade above the Pleader. The Act brought all six grades of legal practitioners into one system. .
 - **1923:** Barristers of England had come to occupy a predominant position in the legal profession. The Government of India in 1923 appointed the Indian Bar Committee, popularly known as the Chamier Committee to address the existing disparities in the Legal profession. It was chaired by Sir Edward Chamier, a retired Chief Justice of the Patna High Court). The Committee in its report stated that it was not practical at that time to organize the Bar on an all-India basis. However, the Committee suggested the establishment of Bar Council for each of the High Courts. The Committee suggested that a Bar Council should have power to make rules in matters such as qualifications and admission of persons to be Advocates of the concerned High Court, legal education, discipline and professional conduct of Advocates, terms on which Advocates of another High Court could appear occasionally in the concerned High Court or any other matter prescribed by the High Court.
 - **1926:** Giving effect to the Chamier Committee recommendations, the Central Legislature enacted the Indian Bar Councils Act, 1926. The Act was to provide for the constitution and incorporation of Bar Councils, to confer powers and impose duties on the Bar Councils and to consolidate the regulations pertaining to the legal profession. The Bar Councils could, with the consent of the High Court, make rules for: a) the rights and duties of Advocates of High Court and professional conduct; and b) legal education and examinations. The Act eliminated the two grades of practitioners, the Vakils and the Pleaders by merging them in the class of Advocates who were "entitled as of right to practice" in the High Court in which they were enrolled and in any other Court in British India, subject to certain exceptions. The High Courts occupied considerable influence in these matters and the Legal Practitioners Act, 1879 remained intact. Pleaders, Mukhtars etc. who were practicing in mofussil courts remained out of the scope of the Act.

Classification of Lawyers: Roles and Functions

Legal practitioners in India were segregated into different categories under the British India. The following chart illustrates the different classes:



- ▣ **Attorneys:** Attorneys previously only referred to British attorneys or solicitors but now this definition is sometimes used to refer to advocates.
- ▣ **Solicitors:** Prior to the enactment of the Advocates Act, solicitors referred to British solicitors who were permitted to practise in the High Courts in pre-Independence India. Today, in the Bombay and Calcutta High Courts there is a separate class of legal practitioners, known as solicitors, who prepare the case, but do not argue in court.
- ▣ **Barristers:** Barristers of England had come to occupy a predominant position in the legal profession in the British India . On the Original Side of the Calcutta High Court, only Barristers could practice even though the distinction between Barristers and Vakils had been removed by other High Courts.
- ▣ **Pleaders:** Law graduates who did not possess the additional qualification for enrolment as vakil of the High Court and non- law graduates who could pass the pleadership examination held by the High Court were given certificates enabling them to act and plead as pleaders in the district and subordinate Courts. The pleaders had entry into the High Court only after gaining an experience of a



certain number of years as pleaders. There were different grades of pleaders as well. This class of practitioners also does not exist today in Indian courts.

- **Vakil:** Vakils were native practitioners who were qualified to appear and practise in the High Courts of pre- Independence India. The Legal Practitioners Act had laid down additional requirements for a law graduate to be eligible to qualify as a vakil. This class of practitioners does not exist now.
- **Mukhtars:** Mukhtars were another class of practitioners in the subordinate courts. They were persons who had after passing the Entrance Examination corresponding to the Matriculation Examination of the later times passed the Mukhtarship Examination held by the High Court. Although their sanads or licences permitted them to practise in all subordinate courts, they were by reason of the High Court Rules and Orders, mainly confined to acting and pleading in the criminal courts in the mofussil. These mukhtars were not permitted to plead in any subordinate civil court.
- **Revenue Agents:** Revenue Agents were certificated and enrolled under rules made by the Chief Controlling Revenue Authority under section 17 of the Legal Practitioners Act, 1879. Their practise was confined to revenue offices mentioned in their certificates and other offices subordinate to them.
- **Advocates:** Prior to the enactment of the Advocates Act, the term "advocates" referred only to English and Irish barristers and members of the Faculty of Advocates in Scotland. This class was permitted to practise in the Supreme Court of Judicature in Bengal, to the exclusion of native practitioners. However, today this term is used to refer to lawyers qualified to practise in the Courts of India. An advocate is a person authorized to appear in a legal matter on behalf of a party. An advocate possesses a law degree and is enrolled with a Bar Council, as prescribed by the Advocates Act, 1961. Advocates are the only class of persons legally entitled to practise law or to provide legal advice. After being authorized to appear in a case by a client who has signed a vakalat, advocates prepare cases and argue them in Court. When appearing in a courtroom, an advocate usually dresses in black and white, and wears a band and gown.

Advocates will have to enrol with a state Bar Council. In addition to advocates, lawyers with special knowledge or ability are designated as Senior Advocates. A Senior Advocate, is an advocate who has been officially designated as such by



either the Supreme Court or the High Court. A Senior Advocate cannot file a vakalathnama, appear in the Court without another advocate or advocate-on-record, cannot directly accept an engagement to appear in a case or draft pleadings. A Senior Advocate argues cases in court upon instructions from another advocate. Senior Advocates wear gowns that have flaps on the shoulders. An Advocate on Record (AOR) is an advocate who has passed a qualifying examination conducted by the Supreme Court. The examination is taken by an advocate who has been enrolled with a Bar Council for at least five years and has completed one year training with an AOR of not less than five years standing. Only an AOR can file a vakalath, a petition, an affidavit or any other application on behalf of a party in the Supreme Court. All the procedural aspects of a case are dealt with by the AOR, with the assistance of a registered clerk. It is the AOR's name that appears on the cause list. The AOR is held accountable, by the Supreme Court, for the conduct of the case. Any notice and correspondence from the Supreme Court are sent to the AOR, and not to the party. AORs can argue matters, but frequently they serve in a solicitor like role.

Legal officers who act as advisors to the Central Government include the Attorney General of India, the Solicitor General of India and the Additional Solicitor General of India. The state government similarly has Advocate Generals. The office of the Attorney General for the Union of India and the Advocate General for the concerned States are Constitutional offices. The Constitution of India has also laid down the qualifications necessary for being considered for the position of the Attorney General and the Advocate General.

The Advocates Act, 1961

After the enactment of the Advocates Act, 1961 all the old categories of practitioners (vakils, barristers, pleaders of several grades, and mukhtars) were abolished and consolidated into a single category called "advocates" who enjoy the right to practice in courts throughout India. The Advocates Act also established an All India Bar Council for the first time, with the Attorney-General and Solicitor General of India as ex-officio members of the Bar Council. The All India Bar Council has one member elected to it by each State Bar Council and it elects its own Chairman and Vice Chairman. The Act has created a State Bar Council in each State with the Advocate General of the State as an ex-officio member, and 15-25



Advocates elected for a period of five years. The State Council's main functions include: admitting law graduates on its Roll, determining cases of misconduct against Advocates on the Roll and organizing legal aid, among other functions. Application for enrolment is therefore made to the State Bar Council. The Bar Council of India regulates the content, syllabus, duration of the law degree, subject to which every University can lay down its own provisions. The Council has a Legal Education Committee for this purpose. State Council rules need to be approved by the Bar Council, however the Central Government has overriding power to make rules.

In order to be eligible for enrolment, an Advocate must be: a citizen of India, at least 21 years of age and must have an LLB degree from an Indian University. A foreign national may be enrolled on a reciprocal basis with the country of his citizenship, and his foreign degree may be recognized by the Council for the purpose. In the absence of such reciprocity, foreign nationals cannot practice law in India. The Council has released a list of foreign degrees that it recognizes. There is an additional requirement of an All India Bar Examination since 2010, which Advocates must clear in order to be able to start practice.

The Act recognizes only one class of practitioners, that is, Advocates. An Advocate on the State Rolls is entitled to practice as of right before any tribunal, or authority of India, or any court including the Supreme Court. Advocates have been classified as Senior Advocates and other Advocates. The designation of an Advocate as a Senior Advocate is the responsibility of the Supreme Court or High Court based on the ability, experience and standing in the Bar of the Advocate in question. In 1977, the provisions relating to dual system (Advocates and Attorneys) in the Bombay and Calcutta High Courts were deleted. Any advocate enrolled in the State Rolls is entitled to practice in the Supreme Court. The Advocate- on- Record (AOR) is another category of Advocate in the Supreme Court.

The Bar Council of India

The Bar Council of India was established by Parliament under the Advocates Act, 1961. It performs the regulatory function by prescribing standards of professional conduct and etiquette and by exercising disciplinary jurisdiction over the bar. It also sets standards for legal education and grants recognition to Universities whose degree in law will serve as qualification for enrolment as an advocate.



In addition, it performs certain representative functions by protecting the rights, privileges and interests of advocates and through the creation of funds for providing financial assistance to organise welfare. The regulatory and representative mandate of the Bar Council for the legal profession and legal education in India is reflected by its statutory functions which are as follows -

- ▣ To lay down standards of professional conduct and etiquette for advocates.
- ▣ To lay down procedure to be followed by its disciplinary committee and the disciplinary committees of each State Bar Council.
- ▣ To safeguard the rights, privileges and interests of advocates.
- ▣ To promote and support law reform.
- ▣ To deal with and dispose of any matter which may be referred to it by a State Bar Council.
- ▣ To promote legal education and to lay down standards of legal education. This is done in consultation with the Universities in India imparting legal education and the State Bar Councils.
- ▣ To recognise Universities whose degree in law shall be a qualification for enrolment as an advocate. The Bar Council of India visits and inspects Universities, or directs the State Bar Councils to visit and inspect Universities for this purpose.
- ▣ To conduct seminars and talks on legal topics by eminent jurists and publish journals and papers of legal interest.
- ▣ To organise legal aid to the poor.
- ▣ To recognise on a reciprocal basis, the foreign qualifications in law obtained outside India for the purpose of admission as an advocate in India.
- ▣ To manage and invest the funds of the Bar Council.
- ▣ To provide for the election of its members who shall run the Bar Councils.

Lawyers and Professional Ethics

The Bar Council of India Rules encompass professional standards for lawyers, as laid down by the Bar Council. The key duties and responsibilities of an Advocate can be summarised as follows:

Professional Duties of an Advocate

An Advocate has a duty to act in a dignified manner, to respect the court, not to



communicate with a judge in private and impair impartiality, not to act in an illegal manner towards the opposition, to refuse to represent clients who insist on adopting unfair means. In addition, being an officer of the Court, an Advocate is expected to uphold and maintain the values of the profession.

Furthermore, an Advocate's duty towards the client include being bound to accept briefs, not to withdraw from service, not to appear in matters where he/she is a witness, not to suppress material or evidence. An Advocate also had to maintain client confidentiality and not to instigate litigation or to charge contingency fee (fee depending on success or favourable result of matters). There is a general duty to ensure that his/her duties do not conflict with the client's interests. An Advocate is also expected not to negotiate directly with the opposing party (only through the opposing advocate) and to carry out legitimate promises made. Breach of these rules and standards of conduct lead to disciplinary action against advocates which may result in suspension or debarment. *(Source: Bar Council of India)*

Advertising by Lawyers

The right of advocates to advertise their services or solicit clients has been a controversial issue in the field of legal ethics and professionalism. In India advertising by lawyers has been strictly restricted by the Bar Council of India. An advocate is prohibited from promoting himself through circulars, advertisements, touts, personal communications, interviews other than through personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned. An amendment to this rule allows advocates to furnish certain information on their websites after intimating and taking approval from the Bar Council of India. However, only 5 pieces of information can be put up on the internet, i.e., (i) the name of the advocate or the firm, (ii) the contact details, (iii) details of enrolment with the Bar, (iv) his professional and academic qualification and (v) the areas of practice. However, different countries across the world allow advertising by lawyers to varying degrees. The position in the USA is different from that in India, where lawyers have a right to advertise but subject to reasonable restrictions. There are different rules of professional ethics for different states and there is also the Model Rules of Professional Conduct which serves as an indicative reference point. Rule 7.1 of the Model Rules prohibits false and misleading communication about services, rule 7.2 addresses advertising and referrals, rule 7.3 articulates no- solicitation periods (e.g. families and victims of mass disasters are off



limits for 30-45 days). Lawyers in the US can provide information about class actions, can approach clients by handing out business cards and can advertise on internet forums. For class actions, solicitation through referrals is permissible, newspaper and magazine ads and even mass emails are permitted as long as they are not misleading, and no financial incentive is promised. Personal injury ads are commonplace in the USA. Often known as 'ambulance chasers', these personal injury lawyers are robust in their advertising- on billboards, newspapers, flyers, and even distasteful ads on the television. However, ambulance chasing is not representative of professional practice in India since these class of lawyers are the sort who solicit business by lurking around hospitals or by ads in newspapers and in Yellow Pages with toll free numbers and "free" consultations. However, it is a matter of debate whether the Victorian tradition (UK has itself done away with the prohibition) should be retained within which law was considered to be a noble profession and hence advertising was prohibited so as to not tarnish the image of lawyers. The issue of allowing advertising and solicitation by lawyers requires balancing the interest of the public which includes getting information on legal rights and services through advertisements and enhancement of access to justice and the legal profession on one hand and the possible misuse of advertising techniques by lawyers which may lead to a loss of credibility of the profession as a whole. Countries like USA, UK and France are more flexible with granting permission for legal ads whereas Hong Kong, Singapore and Malaysia are moving towards progressive relaxation. In Malaysia, for example, the Legal Profession (Publicity Rules), 2001, is a simple, comprehensive code that regulates ads in legal and non- legal directories, controls publication of journals, magazines, brochures and newsletters and interviews in the media, bars publicity through clients and even regulates greeting cards. In Hong Kong, lawyers are forbidden to advertise on television, radio and in the cinemas but are permitted to advertise in print media.

Opportunities for Law graduates

Law is an exciting and challenging profession. Law graduates in India have various options and opportunities open to them after their graduation. A law degree, in addition to being a professional degree, is now considered to be training in a discipline which trains the mind to think analytically and communicate systematically. Following are some of the opportunities available (and opted for by law graduates) to graduates after they obtain their degrees in law:

Legal Education in India

Legal education in India is regulated by the Bar Council of India. There are two ways to obtain a degree to practice law and enrol with the Bar Council: (1) a 3-year LL.B. program which requires a prior undergraduate degree and (2) a 5-year integrated B.A., LL.B./BBA.,LL.B./B.Sc., LL.B program which commences immediately after secondary school. Some universities offer both the five-year and the three-year degree programs. There are over 900 law colleges in India. However, not many match up to the standards required by a changing and increasingly competitive legal market. In 1987, the first National Law School- National Law School of India University (NLSIU) was set up in Bangalore. Its establishment marked the beginning of the reform of legal education in India. There are now 17 National Law Schools in India, with more being planned. 14 of these now have a common entrance test- CLAT (Common Law Admission Test) which tests logical reasoning, legal reasoning, English and comprehension, legal knowledge and general knowledge. Preparatory institutes for law entrances have also been set up such as the Law School Tutorials (LST). National Law School University, Delhi conducts a separate entrance test called the AILET- All India Law Entrance Test, while a number of others law schools in India have adopted the Law School Admission Test (LSAT) conducted by the Law School Admission Council (LSAC), USA. Some other institutions conduct their own separate entrance tests.

- ▣ **Litigation:** Graduates may practice as an advocate in a court of law. This can be achieved by working under experienced advocates or being attached to litigation departments of law firms or companies in order to practice in the Courts of India.
- ▣ **Law Firm Practice:** Law firms vary in size and practice areas. Law firms may range from boutique law firms specializing in specific areas of law (such as Intellectual Property Rights and Tax law), to mid- sized law firms as well as large law firms which are full service law firms with different practice groups such as general corporate, mergers and acquisitions, employment law, taxation, international trade, insurance, intellectual property, and project finance and infrastructure. Transactional law at law firms typically involves practicing in commercial and economic laws and advising on issues pertaining to a commercial transaction between two or parties. This would usually include advising on the laws applicable to the transaction, drafting contracts and other documents and helping clients with the commercial negotiations and the management and execution (i.e. successful completion) of the transaction. Corporate lawyers



would also advise on regulatory issues and legal compliance. Centres for Legal Process Outsourcing (LPOs) also have a lot of transnational transactional work.

- **Corporate Sector:** Large corporations often have an in-house legal practice. An in-house counsel will give legal advice to the company, have expertise in the business of the company and be responsible for ensuring that the business of the company is being run in compliance with applicable laws and when required will bring in external lawyers. Several organisations such as commercial banks, multinational companies, investment firms, insurance companies, e-commerce ventures, media houses are hiring law graduates for managing their legal departments.
- **Public Policy:** Lawyers have an important role in formulating and advising on public policy. Several organizations employ law graduates for policy making and have institutionalized fellowships where law graduates can be Research Assistants. For example, a law graduate interested in public policy can apply to serve as a Legislative Assistant under the Legislative Assistants to Members of Parliament (LAMP) Fellowship programme run by PRS Legislative Research. Institutions such as Competition Commission of India and Securities Exchange Board of India also employ law graduates for policy making in the respective fields. Law firms have established Government Policy Departments where they employ law graduates for policy research.
- **Legal Research and Academia:** Graduates may attach themselves with Research Centres and think tanks. Law graduates may take up teaching and research as a profession. At least a post graduate degree in Law or related disciplines is expected to build a career in academics. Universities employ postgraduates in law as lecturers/Assistant Professors at the beginning of their careers. Short term positions and opportunities as Visiting Professors/Adjunct professors are also available in academia.
- **Non-Governmental Organizations:** Not-for-profit organizations, especially organizations with a social justice orientation have positions for law graduates. These range from small grass-root level organizations to large well-funded organizations. They may be general in nature providing free legal aid, legal education and legal awareness to more specialist organizations involved in areas such as women and child right, environmental law, employment laws, consumer rights and public health.

- ▣ **Government Institutions:** Government departments, statutory authorities, public sector undertaking and regulatory bodies also provide interesting opportunities to lawyers. Graduates may opt for jobs in the government sector in institutions such as National Human Rights Commission, Law Commission of India, and National Commission for Women etc.
- ▣ **Further study:** Law is an interdisciplinary subject and graduates may opt for further studies in related disciplines such as Business, Economics, Anthropology and Sociology. Traditionally, law graduates pursue Master of Laws (LL.M) degree followed by research degrees such as M.Phil or Ph.D. A variety of opportunities are available in India and abroad for advanced studies in law.
- ▣ **Judicial Services/clerkships:** The court system provides several avenues to law graduates. The higher judiciary, that is judges of the High Courts and Supreme Courts have law clerks cum research assistants who assists a judge in researching for cases, maintaining paperwork etc. Judicial clerks often sit in court hearings with the judges. Graduates may write the All India Judicial Services Examination to avail of positions in the Indian Judiciary. Qualifying candidates start in subordinate courts and may then progress to hold offices in the High Courts and even the Supreme Court of India.
- ▣ **Other avenues:** Law graduates may opt for different career paths such as politics, journalism (legal journalism at places such as Bar and Bench and Legally India as well as in media houses), legal publishing, Fellowships (such as the Teach for India Fellowship), civil services etc.

Liberalization of the Legal Profession

There is an ongoing debate about the issue of liberalization of legal service sector in a growing economy. Given that India had signed the WTO Treaty in the 1990s leading to economic liberalization, it is also expected to liberalize the legal services sector under the GATS (General Agreement on Trade and Services) and services negotiations under various free trade agreements/ economic partnership agreements. The Bar Council of India has consistently passed several resolutions between 2002 and 2007 opposing the opening up of the Indian legal profession to foreign lawyers or foreign law firms. In 2011, in a judgment delivered by the Bombay High Court on a public interest litigation (PIL) was filed by Lawyer's Collective, a non-profit organization, the High Court held that foreign law firms could not be permitted to set up liaison offices in India. Contrary to this position, the Madras High Court, in response to a PIL filed by



A.K. Balaji, permitted foreign lawyers to practice in India on a "fly in and fly out" basis. The Law Commission of India, in a working paper in 1999, raised pertinent issues and concerns while recommending amendments to the Advocates Act to prepare a level-playing field for Indian lawyers. There is no resolution in sight regarding this issue. (Source: Ministry of Commerce)

C. Legal Profession in other Jurisdictions

Globalisation of Legal Profession

As globalization increases the flow of people and information across borders, there are increasing opportunities for trained lawyers. Typically, the opportunities are available in Common Law based jurisdictions such as the United States and the United Kingdom and to an extent Australia and Canada. However, unlike many other professions, lawyers trained and licensed in one jurisdiction may not be licensed to practice in other jurisdictions. Lawyers trained in other jurisdictions will have to requalify in order to practice in the foreign jurisdictions. Given the globalisation of legal profession, a number of lawyers have dual qualifications.

▣ Legal Education in the United States

In the United States, students after completing a four- year undergraduate degree in any discipline, write the Law School Admission Test (LSAT) exam. Thereafter, they can apply to a law school and enrol in a three- year J.D. (Juris Doctor) programme. The pedagogical method adopted in law schools involves the case study method as well as the Socratic Method.

▣ Licensing Requirements

Each state in the United States separately administers a mandatory Bar Exam. Typical first- time passage rates are: 72% (New York, 2009), 50% (CA, 2010), and 88% (MA 2008). Bar applicants must also satisfy the character and fitness requirements of the state. Most states also have mandatory or minimum continuing legal education (CLE) requirements. CLE is professional education of lawyers that takes places after they are admitted to the Bar and entails minimum hourly commitments which lawyers must undertake in order to maintain their license.

Nearly all states require candidates to pass the Multistate Bar Examination (MBE) and the Multistate Professional Responsibility Examination (MPRE). Some states also require the passing of the Multistate Essay Examination (MEE) and/or the Multistate Performance Test (MPT).



■ **Foreign Lawyers and Practicing in the US**

As mentioned before, law graduates need to meet all requirements, including writing the Bar Examination of a particular State to be eligible to practice in that State. Foreign lawyers may appear for Bar Examinations in the US; however, laws from state- to state vary in this matter. Students who have completed an LLM may qualify to sit the bar exam in California, New Hampshire, New York, Virginia, North Carolina. The criteria for eligibility to take the bar examination or to otherwise qualify for bar admission are set by each state's bar association. Interestingly, some states may allow some foreign-educated lawyers to take the bar examination without earning their degree locally. In such a case, however, foreign-educated lawyers must begin the process by getting their law degree reviewed and analysed by the American Bar Association (ABA). Once reviewed, the application is either accepted or deferred. If accepted, foreign lawyers are allowed to sit for that state's bar exam in much the same way a domestic applicant would. In New York, one of the jurisdictions most open to foreign lawyers, this would allow foreign lawyers to sit for the bar without being required to complete any further law school study in the US. Even if deferred, applicants may be asked to complete course work at an ABA-approved college before sitting for the bar exam. This course work usually takes the form of a one-year LL.M program at an ABA accredited school.

New York and California are the most popular states for foreign lawyers to give the Bar Examination owing to the presence of large number of international law firms involving transnational work, for which an international lawyer's expertise is useful. These are also two of the most difficult bar Examinations to clear. Foreign Lawyers may also take up work as a Foreign Legal Consultant (FLC). As an FLC, it is possible to advise on home country law and international law but not to appear in court. FLCs are recognised in Alabama, Arizona, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Oregon, Texas and Washington. California does not allow FLCs.

■ **The American Bar Association (ABA)**

At a federal level, the American Bar Association acts as a voluntary professional body for US lawyers. With over 400,000 members it is the largest voluntary professional body in the world and has a significant international profile.



Members of the legal profession in other countries can become international associates of the ABA. Founded in 1878, the ABA supports the legal profession with practical resources for legal professionals while improving the administration of justice, accrediting law schools, establishing model ethical codes, and more. Membership is open to lawyers, law students, and others interested in the law and the legal profession. Its goals include, serving the members, improving the profession, eliminating bias and enhancing diversity and advancing the rule of law. One of its most important responsibilities is the creation and maintenance of a code of ethical standards for lawyers. The Model Code of Professional Responsibility, 1969 and the newer Model Rules of Professional Conduct, 1983 have been adopted in 49 states, D.C. and in the Virgin Islands. The only exception is state of California. The ABA has been accrediting schools since 1923 and even publishes the internationally reputed ABA Journal.

■ Regulation of Legal Profession by State Bar Associations

Lawyers are regulated at state, not federal, level by the state bar or the highest court. Bar associations in the US are divided into two categories: unified and non-unified:

- In states with a unified bar, the responsibilities of regulating lawyers (admission, discipline and so on) with activities to support their members as a professional body. Membership is mandatory in order to practice in such states. There are 32 states with unified bars, including California, Texas and Florida.
- In states with a non-unified bar, responsibility for admitting and regulating lawyers lies with the state Supreme Court or board of bar examiners. In such states, the state bar is a voluntary professional body with activities that can include professional development, lobbying, networking and charitable programmes. States with non-unified bars include New York, Washington D.C. and Illinois.

Legal Profession in the UK

■ Legal Education

Legal education in the UK consists of a three-year LL.B., directly after secondary school. Graduates from fields other than law and non-graduates can become solicitors, but the LL.B. is the most straightforward path. Clinical education



continues after the LL.B., through the Legal Practice Course (LPC) and training contracts.

To become a Barrister, graduates are required to complete the Bar Vocational Course (BVC) instead of the LPC and then seek a "pupillage" instead of a training contract. Though there are a number of differences between barristers and solicitors, the most significant one is that barristers can appear in all courts while solicitors can only appear in higher courts if they qualify to become solicitor-advocates.

Legal education in Scotland is slightly different than the rest of the UK, and LL.B. degrees awarded in other parts of the UK are not recognized as part of the qualification process in Scotland (and vice versa).

As stated, the most conventional route to becoming a lawyer is by reading law as an undergraduate. To qualify as a barrister or solicitor students are required to obtain a 'qualifying law degree'. For an LLB to meet the requirements of a 'qualifying law degree' the course must cover legal research skills and the seven foundation subjects:

- ▣ Obligations I (Contract Law)
- ▣ Obligations II (Tort Law)
- ▣ Foundations of Criminal Law
- ▣ Foundations of Equity & the Law of Trusts
- ▣ Foundations of the Law of the European Union
- ▣ Foundations of Property Law
- ▣ Foundations of Public Law

The requirement for completion of the academic stage is a lower second class UK Honours degree. Students who have not taken an undergraduate degree in law can still become lawyers. For students with undergraduate degrees in subjects besides law, it is possible to enrol in the Graduate Diploma in Law course (GDL), which is commonly known as Common Professional Examination (CPE) or a conversion course. This is a one year full-time or two years part-time course, which covers the seven foundation subjects, and results in an LLB on passing. Law firms do not look unfavourably on students with non-Law undergraduate degrees when recruiting trainees.



■ Solicitors

To become a solicitor, it is necessary to take the Legal Practice Course (LPC), which is a one year full-time or two years part-time course. In some cases, students may be fortunate enough to have a training contract offer from a law firm at this stage. The LPC is a vocational course tailored to prepare students for a career in a law firm. Customarily, students will have completed at least one vacation scheme at a solicitors' firm, during their academic or vocational training, prior to applying for a training contract. Following the LPC, students must obtain a training contract; this is two years spent in an authorised training establishment, usually a solicitors' firm, under the supervision of a training principal. Solicitors are organized through the Law Society of England and Wales. From negotiating with and lobbying the profession's regulators, government and others, to offering training and advice, the Society helps, protects and promotes solicitors across England and Wales.

■ Barristers

With far fewer spaces for potential barristers, this route is more competitive than that of a solicitor. Chambers often require first class degrees from students. All barristers must be a member of one of the four Inns of Court (Lincolns Inn, Gray's Inn, Middle Temple and Inner Temple) as one can only become a barrister if one has been 'called to the bar' by an Inn of Court. Before students can be 'called to the bar' by their Inn they are expected to complete 12 qualifying sessions at their Inn, which consist of collegiate and educational activities such as dinners, moots, lectures, and residential courses. The Inns can provide financial support through scholarships, as well as providing important help and advice to aspiring barristers. All students are expected to join an Inn before commencing their Bar Professional Training Course. Graduates must complete the Bar Professional Training Course (BPTC) - formerly the Bar Vocational Course (BVC) - which is a one year full-time or two years part-time course. Only 67% of applicants obtain a place at 'Bar School', while only 76% of enrolees were successful in passing the course in 2009. Customarily students will have completed a number of 'mini-pupillages' during their academic and vocational training, and possibly have carried out some marshalling (which involves shadowing a judge), prior to applying for pupillage. After successfully passing the BPTC, prospective barristers are expected obtain pupillage, which is one year spent in an authorised pupillage training organisation, usually a barristers' chambers, being trained by



their pupil master. Finally, one must obtain tenancy in a set of barristers' chambers, or go into employed practice with an organisation which employs barristers.

■ **Foreign Lawyers and Practicing in the UK**

For qualified lawyers coming from outside England and Wales, it is still possible to practice. The Solicitors Regulation Authority (SRA) does not impose any formal experience requirements in order to re-qualify as solicitors in England and Wales. Some law firms may express their own requirements which can differ from the SRA guidelines. Candidates can take the Qualified Lawyers Transfer Scheme in order to qualify under this jurisdiction. Lawyers coming from EU Member States can rely on EU Directive 77/249 in this area. European lawyers can practice to the same level as they could in their own country. However, it is not possible to be a barrister and solicitor simultaneously.

Legal Profession in other Countries

■ **France**

The French legal profession (advocates) includes over 51,800 lawyers as of 2010. Almost half of the profession practise in the Paris region. Notaries (civil law notaries) play an important role to play in the French legal system for conveyancing, probate and related family matters. Regulation of the profession lies with the 181 Barreaux (local bar associations). Registration is mandatory to be able to practice. The Paris Bar, with over 21,000 advocates, is by far the most influential bar association of all French bars. The 180 provincial bars have organised themselves into the representative Conférence des Bâtonniers to exert some influence on the evolution of the profession. The Conseil National des Barreaux, created in 1990, is the overarching national body for all French bars. Solicitors of England and Wales as well as European/EEA/Swiss lawyers may apply for registration as European lawyers. France implemented the Establishment Directive 98/5/EC. Establishment is permitted for EU, EEA and Swiss nationals who are qualified in these countries. It allows them to give advice in international law, the law of their home country as well as French law.

Foreign lawyers can requalify in France, under conditions of reciprocity, by sitting the relevant equivalence examination administered by the Conseil National des Barreaux.



■ Germany

German legal education consists of a four-year undergraduate degree completed following completion of secondary school and passage of the university entrance exam. Students then take the First Examination, a comprehensive set of exams that emphasizes academic knowledge of the law. This is followed by a two-year practical training period (Referendarzeit). Students then must pass the Second Examination, a comprehensive set of exams that emphasizes practical legal skills. Upon passage, students are entitled to work in any legal profession. German legal education has a strong practical emphasis. Students are qualified to work in any legal profession once they pass both the First Examination and the Second Examination. To practice as a private attorney (Rechtsanwalt), a student must apply to join a state branch of the Federal Chamber of Lawyers (Bundesrechtsanwaltskammer). However, there is no separate bar exam, and an applicant can only be rejected under a narrow set of circumstances (primarily ethical or criminal grounds). European attorneys may requalify either by continually practicing in Germany for three years, or by sitting the relevant equivalence exam.

■ Singapore

Singapore has a fused legal profession of 'advocates and solicitors'. Admission to the Singapore Bar is governed by the Legal Profession Act and determinations of admission are made by the Board of Legal Education. The Law Society of Singapore determines fitness of character for admission after applications have been filed. The Law Society is the representative body for lawyers in Singapore. Foreign lawyers practicing in Singapore are regulated by the Legal Profession (International Services) Secretariat of the Attorney-General's Chambers. Foreign lawyers may work as employees, partners or directors in one of the following practice vehicles:

- As a Qualifying Foreign Law Practice
- As a foreign law firm
- A Joint Law Venture
- A Formal Law Alliance
- As a foreign lawyer in a Singapore law firm



Registration in each case is required with the Attorney General's Chambers. In some cases, a non-Singapore citizen can qualify as Singapore advocate and solicitor, as long as he or she meets the requirements under the Legal Profession Act.

■ **People's Republic of China**

Students complete an integrated four-year bachelor of law (LL.B.) course directly after secondary school. Graduates holding bachelor's degrees in fields other than law may also sit for the PRC national judicial examination. The national core curriculum consists of 14 courses: legal theory, Chinese legal history, constitutional law, administrative law, criminal law, law of criminal procedure, civil procedure, civil law, commercial law, economic law, intellectual property, private international law, international law, and international economic law. Three additional degrees are offered, but the completion of an LL.B. is sufficient to become a practicing attorney. The Master of Law (L.L.M.) degree may be completed in two or three years, depending on the school. A three-year Juris Master (J.M.) course is also available for graduates who have obtained bachelor's degrees in other fields. Subject to the completion of an L.L.M or J.M., students may pursue a Juris Science Doctor degree (L.L.D.), which is completed in three to six years depending on the school. Since 2002, the PRC Ministry of Justice, in consultation with the Supreme People's Court and the Supreme People's Procuratorate, has administered a "uniform national judicial examination" on an annual basis. Anyone who wishes to become a judge, procurator, lawyer, or notary public must pass such examination. Average passage rate between 2002 and 2010 was 18.3%. Candidates must also be willing to uphold the constitution of the PRC, complete a one-year internship with a law firm, and be a person of good character and conduct. Generally, foreign nationals cannot be admitted to practice in the P.R.C. Mainland. However, foreign law firms can establish a representative office to provide legal advice concerning: the legislation in its admitted jurisdiction, and the application of international treaties and practices. They can also represent clients from their admitted jurisdiction in transnational cases, etc. According to the regulations, the chief representative, the representative and the resident foreign lawyers (a consecutive stay for at least 90 days) of the firm need to register with the All China Lawyers Association (ACLA).



■ Australia

Legal education in Australia first requires the completion of an integrated Bachelor of Laws (LL.B.) degree, often conferred along with a post-secondary degree. This degree requires a minimum of four years' coursework, although most students complete a five-year program including study of another discipline (such as business, engineering, or medicine). Some law schools have begun to offer a three-year J.D., available only to those with prior four-year university degrees. Some top schools, such as the University of Melbourne, have ceased offering the LL.B., and now offer only the J.D. Completion of the LL.B. is followed by a period of practical legal training (PLT) that may take the form of a practical training course at a law school, an apprenticeship with a legal practitioner (known as "articles of clerkship"), or a combination of the two. Licensing requirements are enacted by each state or territory, although the Law Council of Australia's model professional rules have been adopted by nearly every jurisdiction. There is general reciprocity throughout Australia (and often New Zealand). There is a two-step process for admission to practice. Graduates must first obtain admission as a lawyer in the state/territory, which requires both possession of a recognized law degree and good character, plus completion of a post-graduate PLT course. Lawyers then apply to the applicable state private legal organization for certificates of practice as either solicitors (requiring nothing further, beyond the application) or barristers (requiring a passing score on the state bar exam). Barristers, who are traditionally sole practitioners, serve as advocates for clients in court, and generally obtain work through references from solicitors. Solicitors may perform a wide variety of functions, from advising clients to negotiating, and may work in a range of settings, from large firms to government offices to solo practice. Although there is a nominal distinction between solicitors and barristers, today the professions are largely fused. Where the distinction persists in practice (e.g., New South Wales), solicitors who wish to appear in court must meet the same requirements as barristers. Initial admission is usually on a restricted basis, requiring supervision by a senior practitioner for up to 24 months. English law degrees are generally recognized in Australia; however, each state may have its own additional requirements.

Women and the Legal Profession in India

Legal practice in India, as in most other countries, is a male dominated profession. In 1916, the Calcutta High Court, and in 1922, the Patna High Court had held that



women otherwise qualified were not entitled to be enrolled as Vakil or Pleader. In the Patna High Court case, Ms. Hazra, the petitioner, secured a B.L. degree from Calcutta University. She was refused enrolment as a Pleader. She challenged this in the High Court of Patna. The Court rules that the sections of the Legal Practitioner's Act referred to males and not females. Since 1793, no woman had ever been admitted to the roll of pleaders. To remove doubts about the eligibility of women to be enrolled and to practise as legal practitioners, the Legal Practitioners (Women) Act, XXIII of 1923, was enacted to expressly provide that no woman would by reason only of her sex disqualified from being admitted or enrolled as a legal practitioner or from practising as such. The Allahabad High Court took the lead by enrolling Ms. Cornelia Sorabji as the first Indian lady Vakil of Allahabad High Court on 24 August, 1921 by a decision of the English Committee of the Court (as the Administrative Committee was then called), consisting of Chief Justice Sir Grim Wood Meers. Since then, although the number of women entering into the profession has increased gender bias still pervades the profession. A recent survey found that the percentage of successful women candidates for the Common Law Admission Test was 47%, however 36% of women lawyer in another survey stated that they had faced some sort of gender bias at work. There have been only 5 women Senior Advocates since 1962 of the 397 designated Senior Advocates. However, recent studies have indicated that gender-based disadvantages are gradually being eliminated, especially in the corporate law sector.

D. Exercise

I. Find Out

- ▣ Can you name any renowned senior advocates currently in practice? Do you know what leading cases they are associated with?
- ▣ Who is the current- Attorney General of India, Solicitor General of India and Additional Solicitor Generals of India?

II. Debate/Discuss

- ▣ Should lawyers in India be allowed to advertise? What is your general view in allowing professionals to advertise? What are the moral and ethical arguments involved in this debate?
- ▣ Should foreign law firms be allowed to establish offices and practice in India? How will that decision impact the legal profession in India?

III. Write short notes on the following

- ▣ Women and the Legal Profession
- ▣ Professional Ethics for lawyers
- ▣ Eligibility and qualification to practice as an Advocate in India
- ▣ Legal Education in India
- ▣ Difference between barrister and solicitor

IV. Fill in the blanks

- ▣ Ms. Hazra challenged the rules against enrolment of _____ as _____ in the High Court of _____
- ▣ Eligible graduates are enrolled in the Rolls of _____
- ▣ Bar Council of India lays down standards for _____
- ▣ Advocates are not permitted to _____ in _____, television and other media
- ▣ Person must be at least _____ years of age and a _____ of India to be able to practice as an advocate in India
- ▣ The _____ is the organization that represents and acts for solicitors in the UK.

V. Long Questions

- ▣ What changes did the Legal Practitioners Act and the Advocates Act bring about in India?
- ▣ What were the different classes of practitioners who were permitted to practice in Indian courts prior to the Advocates Act and after the Advocates Act?
- ▣ How is the Bar Council of India organized? What are its roles and functions? Trace the history of the Bar Council.
- ▣ Compare the rules regarding advertising by legal professionals in India and other countries.
- ▣ Compare the rules regarding entry of foreign lawyers in the United States and the UK.