

statute or other documents ought not to be overruled except in rare and exceptional cases.

The High Court of Australia, the Highest Court in the Common Wealth, has reserved to itself the power to reconsider its own decisions but has laid down that the power should not be exercised upon a mere suggestion that some or all the

members of the later Court would arrive at a different conclusion if the matter were *res integra*.

The three Judges of Supreme Court Justice K. Rama Swamy, Justice Saghir Ahmad and Justice G.B. Pattanaik ought to have referred the matter to the Full Court or Constitution Bench in order to evolve the matter in controversy.

HISTORICAL BACK GROUND AND DEVELOPMENT OF THE LEGAL PROFESSION IN SOUTH INDIA AND ITS PRESENT POSITION

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1. The Legal Profession is an important limb of the machinery for administration of Justice. A well organised legal profession is always supported by a well equipped and efficient bar which incidentally provides the Bench.

2. According to ancient Smrities, persons well versed in the Nyaya Sastra *i.e.*, Smrities and Dharma Sastras and who knew the procedures of the Nyaya Sthana were appointed to represent a party and plead his case before the Nyaya Sthana during the ancient Hindu period. During the Medieval Muslim period the Legal profession manned by Legal experts flourished. These legal experts were Vakils, or Quadirs who maintained a very high standard of learning.

3. South India never knew a legal practitioner till the advent of the British. With the advent of British Rule, the institution of "Vakils" came into existence first in the mofussils and later in the presidency towns, because English Barristers were not available there. The qualification to become a Vakil was having high character and fluency in English language.

4. Organisation of Legal profession began in 1774 when the Supreme Court was established at Calcutta under Regulation VII of 1773. This Supreme Court framed Rules

of Procedures for the administration of justice as also admit and enrol advocates and Attorneys-at-law. These Advocates and Attorneys were only from England or Ireland or Scotland.

5. After the British established the Company's courts, a regular legal profession was created for the first time under the Bengal Regulation, VII of 1793. It was this Regulation that gave powers to The Sadar Diwany Adalats to enrol pleaders for all company's Courts. This step was taken as the Vakils appearing before the Moghul's Courts and Company's Courts were found not only to be ignorant but began betraying their clients in several ways. It is to overcome this, the Bengal Regulation of 1793 created the institution of Legal Profession which allowed persons with good knowledge of Hindu Law and Mohammedan Law and also of good character to practise.

6. This Bengal Regulation is adopted in Madras State by passing Madras Regulation X of 1802. This went on till 1805, but during all these years there was no thought given to the education of Vakils. If a Vakil was not found upto the Standard, the Zilla Judge who had vast powers had the power to send the Vakil for a re-test. Then the system of first grade pleaders and second grade pleaders was brought about. While the first grade pleaders

were entitled to practise in all Courts of a District and another neighbouring district, the second grade pleaders were allowed to practise only in the Subordinate Courts of the District.

7. The Present Law College of Madras originated in the year 1812 in Fort St. George only as an Institution to provide teaching of Administrative and Social subjects to the Junior Civil Servants from England. After some time teaching was provided to natives selected for posts of Law Officers and also to individuals desirous of becoming pleaders. In that college each individual was separately and thoroughly examined in Grammar, Logic and Law and then only they were allowed to practise, and the obtaining of a certificate from this institution was made a pre-requisite to take to the profession.

8. While the legal education was in an uncertain state like this, it was the great *George Norton* the Advocate-General of Madras, that gave thought for the Legal education after he came to Madras in 1840. After a study of the situation and making several innovations, the Legal Practitioners Act of 1846 was enacted. This Act permitted persons with the necessary qualification to practise law irrespective of nationality or religion. The classification of the profession as pleaders, Vakils, Attorneys or Solicitors, Advocates, Barristers, Mukthiars and Revenue Agents was brought about. Barristers were given precedence over Attorneys and Pleaders. Therefore Barristers from England, Ireland and Scotland began to practise not only in the Supreme Court but also in The Sadar Adalats. Zamindars, Commercial firms and other institutions of various kind were utilising the services of the Barristers.

9. From the year 1855, the Law classes began in the Presidency College and in the Elphinstone College at Madras. *John Bruce* was the first professor of Law with 15 students under him. A degree in Arts was compulsory for seeking admission into this Law Course.

10. The Madras University itself was established in 1857 and this University used to confer degrees in Law though there was no

Law College as such. Between 1857 and 1866, only 16 students graduated with a degree of law.

11. The Law course as a permanent part of each University was begun under The University Act of 1857 and it was this Act that gave scope for to-day's eventual development of the Legal education.

12. The High Courts in India were established in 1862, and one year later the High Courts stipulated that new entrants to the legal profession should possess a Bachelor's Degree in Law.

13. Advocates and Barristers only were permitted to practise in High Court on the original side. Vakils were permitted to practise on appellate side only. Later, in 1865, the Madras High Court removed this discrimination and permitted the Vakils also to practise on original side. This became an sore eye for the English and Scotch Barristers who were having a monopoly in the field and they questioned this rule. A Bench of The Madras High Court presided over by English Judges ruled in ILR (i) Madras page 24 in 1876 that the rule made by them, is not *ultra vires*. What a greatness was it!

14. From about 1870 the system the apprenticeship for one year was introduced.

15. Then came the Legal Practitioners Act of 1879 which brought all grades like Advocates, Attorneys, Vakils, Pleaders, *etc.*, into one system under the jurisdiction of the High Court. From 1884 the increase in the strength of Law students began and therefore the need was felt for establishment of a regular Law College. The Law College of Madras was established on 2-5-1891, and it was on 9-1-1899 it shifted into its own present magnificent Indo-Sarcenic type Red building.

16. Under The Legal Practitioners (Women) Act of 1923, the disqualification for practice based on sex was removed.

17. Then came The Indian Bar Councils Act of 1926 under which the Bar Councils came into existence which prepared the Rolls of Advocates of the High Courts, and provided various checks on the professionals.

18. India achieved Independence in 1947. According to a review and assessment by Harvard University, by 1947 the legal profession and legal teaching in India were not able to play the role they ought to have as compared by western standards. 78 Harv. LR 1180.

19. The All India Bar Committee was set up by the Central Government in 1957 to study the situation and give its recommendations. The committee suggested an uniform minimum qualification to become an Advocate, and to merge the different classes of Practitioners into a common category and have only one class as "Advocates". Taking these recommendations, the Advocates Act 1961 was enacted and it is under this Act the All India Bar Council is established. The Universities could lay down their own provisions regarding law course subject however to the control of the Bar Council. From 1967 the law degree course after graduation is made into a 3 years course. The apprentice system was withdrawn. It is with this wrong step, the inefficiency and mediocrity set in the profession. Great jurists and professors of Law felt that the legal education imparted to-day seems totally inadequate to the tasks of a lawyer. The abnormal increase of law colleges without any goal and probably functioning for commercial ends even on pials and sheds is only adding to the further deterioration of the standards of legal education. As a consequence, the quality of practice has also suffered. You are aware that a law degree is acquired merely by reading 30 questions books and even without attending to classes at all. What a Pity? Great Legal Acadamecians of Law like Professor *Anthony Kronmen* published books like "*The Lost Lawyer and Failing Ideals of the Legal Profession*", and observed that in the hands of to-day's Lawyers, the stewardship of the Institution of Law is extremely poor. About Judges the Professor said that under the pressure of case loads, they from bottom to top are becoming merely routine minded. In the present set up, thorough reformation towards professionalisation of legal education

is felt highly essential in order to overcome the several defects and strengthen the standards of legal education which is essential to produce persons fit for the Bench and the Bar.

20. It is with this object that the Bar Council of India and the U.G.C. took up the matter and established "*The National Law School of India University at Bangalore*" with an idea to advance and disseminate learning and knowledge of Law and Legal Procedure and their role in National development, to develop skills in regard to advocacy, legal services, legislation, Law Reforms *etc.*, and thereby to serve the Society in the field of law which is the guardian of a democracy. It is felt that in order to understand law in its full meaning it should be taught and also understood with reference to the social, economic and political contexts, with much emphasise on practical training also. The National Law School is doing very well and its products are found to be gems. There is also "*The Institute of Advanced Legal Studies at Pune*", and to get a seat in this Institute is very difficult and the qualification is either a Ph.D. in Law or a Master's Degree in Law.

The Hon'ble Justice Lord *Ershad* of the Privy Council paid a visit to the Madras High Court in 1960 and in his address there, the Lord said :

"Legal profession is a group of men and women pursuing a learned art as a common calling in a spirit of public service."

The great Sri *V.C. Gopalarathnam* of the Madras Law Weekly wrote in his book that these words of the Lord are words of wisdom which must be inscribed in letters of Gold and remembered not only by the members of the profession but also by those who have acquired the habit of cavilling at the legal profession in and out of season and indulging in cheap gibes and attacks on the administration of Justice by the Courts in the country.

Let us hope and wish that our youngsters will restore and reinforce the standards and bring back the lost glory of the profession.