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# JOINT/SELECT COMMITTEE REPORTS OF LEGISLATIVE ASSEMBLY - 1926

## **The Indian Bar Council Bills**

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Act & Bills section

FB-60, PLB

List of Reports of Select or Joint Committees  
presented in the Legislative Assembly in 1926.

Serial No.	Short title of the Bill.	Date of presentation.	Remarks.
1.	The Indian Naturalization (Amendment) Bill.	28.1.26.	
2.	The Insolvency (Amendment) Bill.	2.2.26.	
3.	The Indian Registration (Amendment) Bill by Dewan Bahadur T. Rangachariar.	9.2.26.	
4.	The Code of Civil Procedure (Amendment) Bill (Section 102 and 103).	9.2.26.	
5.	The Legal Practitioners (Amendment) Bill.	9.2.26.	
6.	The Hindu Religious and Charitable Trusts Bill by Dr. Hari Singh Gour.	10.2.26.	
7.	The Coparceners Liability Bill. by Dr. Hari Singh Gour.	19.2.26.	<i>Coparceners</i>
8.	The Indian Tariff (Amendment) Bill.	23.2.26.	
9.	The Transfer of Property (Amendment) Bill by Sir Hari Singh Gour.	4.3.26.	
10.	The Indian Factories (Amendment) Bill.	8.3.26.	
11.	The Indian Income-tax (Amendment) Bill.	8.3.26.	
12.	The Indian Bar Councils Bill.	18.8.26.	

## LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Select Committee to which the Bill to provide for the

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| 1. Paper No. I.   | constitution of Bar Councils in British India and |
| 2. Paper No. II.  | for other purposes was referred, have considered  |
| 3. Paper No. III. | the Bill and the papers noted in the margin, and  |
| 4. Paper No. IV.  | have now the honour to submit this our Report,    |

with the Bill as amended by us annexed thereto.

2. We have made a large number of alterations in the Bill, but we have not radically altered its scope in view of the fact that, although many of the opinions received are in favour of the conferment of much wider powers upon Bar Councils, many others, including some of great weight, reveal considerable opposition to the innovations already proposed. In these circumstances, we think it would be unwise to depart from the present scheme of the Bill as a more or less tentative measure which is intended to be the first step towards the unification and eventual autonomy of the legal profession. With these preliminary remarks we now proceed to refer in detail to the more important amendments which we have made.

*Clause 1.*—We wish to record a suggestion that the Local Government of the United Provinces and the Chief Judge of the Chief Court of Oudh might well be consulted as to the desirability of applying the provisions of the Act to that Court.

*Clause 4.*—We think it desirable to indicate clearly that Judges of the High Court may be represented on the Bar Council, and have provided that two out of the four persons nominated by the Court may be Judges.

*Sub-clause (3)* of this clause was intended to provide for the representation on the Bar Council of advocates entitled to practise on the Original Side of the two High Courts to which it refers, and more especially for the representation of the barrister element among them, an element which will no doubt tend to diminish with the course of time. We have accordingly provided definitely that at least one-half of the representation of Original Side advocates on the Bar Councils of these two High Courts shall be Barristers.

We think it is essential, in view of the status of the Advocates-General in the presidency-towns, that they should be made *ex-officio* Chairmen of the Bar Councils to which they respectively belong.

*Clause 6.*—The matters to be dealt with by rules made under this clause are, we think, matters which should ordinarily be dealt with by the Bar Councils themselves. We have accordingly provided that the rules should be made only in the first instance by the High Court and thereafter by the Bar Council with the previous sanction of the High Court. This involves the omission of sub-clause (c) of clause 7, which in the Bill as introduced was not altogether consistent with the provisions of clause 6.

*Clause 8.*—We have, in the first place, omitted the last part of the proviso to sub-clause (1) of this clause, as we are of opinion that it would not be possible to hold that a person appearing, pleading or acting on his own behalf or by his recognized agent could be held to be "practising".

We are also of opinion that the objection to sub-clause (2) which has been raised by several High Courts, namely, that the preparation and maintenance of the roll of advocates should be entrusted to the High Court instead of to the Bar Council, is well founded. We have accordingly provided for the maintenance of the roll by the High Court and for the maintenance of a copy of it by the Bar Council, principally in order that the election roll of persons entitled to elect members to the Bar Council may be kept up to date. In order to enable this to be done we lay upon the High Court the duty of furnishing a copy of the roll to the Bar Council and of communicating to it all alterations and additions as they are made.

Objection has been taken to the provision for the imposition of a fee in respect of enrolment of persons who are advocates, vakils or pleaders of the High Court at the time when the provisions of the Act come into force in respect thereof. We think that, if only for the purpose of starting the Bar Council in funds, some nominal fee should be payable by such persons and we have fixed this at the sum of Rs. 10. In cases of new entrants the fee payable will be that prescribed by rules made by the Bar Council under the next following clause. We desire to point out that persons who have once been enrolled in a High Court as advocates, vakils or pleaders will not, in view of the provisions of Article 30 in Schedule I to the Indian Stamp Act, 1899, be required to pay stamp duty again in respect of their enrolment under this Act.

We have added to this clause two sub-clauses providing respectively for the seniority of advocates *inter se* and their respective rights of pre-audience. Sub-clause (4) as drafted by us enables the High Court in individual cases to grant precedence to an advocate out of the order of his seniority. We think a provision of this kind might be used to the advantage not only of a rising and successful, but also of a senior and less successful, advocate.

Finally, in view of some of the opinions received, we consider it desirable to point out that clause 1 (3) of the Bill is designed to enable the various provisions of the Bill to be brought into

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force on different dates and thus to prevent the possibility of any period intervening between the operation of the prohibition contained in sub-clause (1) of clause 8 and the preparation of the new roll.

*Clause 9.*—Objections were raised to the provisions of sub-clause (2) of this clause in the Bill as introduced which was intended merely to preserve the existing powers of the Chartered High Courts under their Letters Patent to regulate the numbers of admissions and to refuse admission to individuals at their discretion. As, however, no High Court has, we believe, attempted to restrict in any way the numbers of new entrants, we think a provision enabling them to do so is unnecessary. But we do consider it essential that the High Court should have power to refuse admission to any person otherwise qualified if it considers that he would be on other grounds an undesirable addition to the Bar, and have made provision accordingly by means of a proviso to sub-clause (1).

We have added a new sub-clause (4) to this clause to meet a criticism advanced by the High Court of Judicature at Bombay that under the Bill as introduced, the powers of the High Court in respect of admissions to the Original Side were not sufficiently defined. The new sub-clause is intended to make it clear that the powers of the High Courts at Calcutta and Bombay to regulate absolutely the qualifications for admission to practise on the Original Side will remain unimpaired.

*Clause 10.*—It has been pointed out that the expression “unprofessional conduct” does not cover the whole range of cases in which it may be necessary to take disciplinary action against advocates, and we have made some drafting alterations in this clause to meet this point.

Some misunderstanding appears to have arisen as to the object of providing for a reference of cases of misconduct to Subordinate Courts. Such a provision is necessary as a Tribunal of the Bar Council will not in all cases be in a position to inquire satisfactorily into matters which have occurred in the mofussil. We think that the allocation of inquiries between Subordinate Courts and the Bar Council must be left to the discretion of the High Court, but we have provided that the High Courts shall be bound to consult the Bar Council in any case before referring it to such a Court; and we have further provided that Courts to which such reference may be made shall be the Courts of District Judges.

We have omitted the punishment of fine for which the Bill originally provided.

*Clause 12.*—The alterations which we have made in this clause provide, firstly, that the Advocate-General shall have notice of, and shall be entitled to appear at the hearing of, every case before the High Court, whether the inquiry has been made by a Tribunal of the Bar Council or by a District Court, and, secondly, that the High Court shall have the power to review its orders. This power will enable it to accept a belated apology, if it thinks fit, and remit or reduce the punishment.

*Clause 13.*—We have added a proviso to sub-clause (1) to give effect to a suggestion made by the High Court of Judicature at Bombay that the Tribunal should not have unrestricted power to enforce the attendance of judicial officers, a power which might result in dislocation of judicial business and inconvenience to the public. We, therefore, require the Tribunal to obtain the previous sanction of the High Court or of the Local Government, as the case may be, before issuing a summons to the presiding officer of any Court.

We have further thought it advisable to make definite provision as to the manner in which Tribunals may be enabled to utilise the powers conferred by this section.

*Clause 14.*—We think the provisions of the Bill as introduced were somewhat too stringent in refusing to allow an advocate of one High Court to appear before another unless rules had been made by the latter Court or by the Bar Council, where such exists, regulating the conditions of such appearances. We think it reasonable to give advocates the right of appearing in another High Court unconditionally unless conditions are imposed by such rules, and we have re-drafted the clause accordingly. We have also made an addition to sub-clause (1) to provide for certain cases which have been brought to our notice in which legal practitioners are at present entitled to appear before certain public officers or bodies not legally authorised to take evidence.

*Clause 15.*—We have given effect to a suggestion that provision should be made for rules to regulate the investment and general management of the funds of the Bar Council. We have also added a clause which will enable rules to be made in respect of other matters which experience may reveal as requiring regulation.

*Clause 17.*—We have inserted this clause in the usual form to provide indemnity for *bona-fide* action taken by Bar Councils and Committees, Tribunals and members of Bar Councils.

3. The Bill was published in the Gazette of India, dated the 2nd January, 1926.

4. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

A. P. MUDDIMAN.

L. GRAHAM.

K. AHMED.\*

T. RANGACHARIAR.\*

RAJ NARAIN.\*

MD. YAKUB.

K. C. NEOGY.\*

H. S. GOUR.\*

S. C. GHOSE.\*

P. S. SIVASWAMY AIYER.\*

*The 17th August 1926.*

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\* Subject to minute of dissent.

## MINUTES OF DISSENT.

This measure is welcomed by me as a modest beginning, but there are two points in the Bill on which I should record a separate minute. One of them is most important.

The Government of India have accepted the recommendations of the Bar Committee in respect of the following matters :—

- (a) The ideal to be kept in view should be the disappearance of different grades of legal practitioners so that ultimately there may be a single grade entitled to *appear* in all courts. At present the *largest* degree of unification *possible* should be effected.
- (b) In all High Courts a single grade of practitioners entitled to plead should be enrolled, etc., etc.
- (c) Where there is a compulsory system of dual agency at present, *i.e.*, the Original Sides of Bengal and Bombay High Courts, it should be allowed to continue as recommended, *vide* Statement of Objects and Reasons attached to the Bill.

In respect of clause (c) the Bar Committee while anxious to protect genuine vested interests were also anxious that the ultimate decision on the question should be left to the Bar Council and the High Court, and therefore made tentative proposals to modify the existing rigours in the system to be in force for seven years and after the expiry of that period gave liberty to the High Court and the Bar Council to make their own rules in that respect.

The present legislation does not carry out these recommendations, and by sub-clause (f) to section 9 and by the proviso to sub-clause (1) of section 14 retains and continues the powers vested in the High Courts. Having regard to the attitude taken up by those two High Courts all along I consider it will be most unsafe to leave the discretion entirely in their hands. They are brought up in traditions which tend to a strong bias in favour of continuing special procedure and practice for the Original Sides of the High Court and to prepossessions towards certain sections of the Bar. The Bengal High Court have been till very recently rigorously closing the door to its Original Sides to all but barristers notwithstanding continued protests from 1879 onwards, and but for the strong attitude taken up by the Bar Committee, I am doubtful if they would have liberalised the rules even to the small extent they did last year. In the opinions on the report of the Bar Committee and on this Bill both the High Courts still show signs of strong bias towards keeping up the distinctions. If the accepted object underlying the Bill, namely of ultimate disappearance of all distinctions and unification of the Bar is to be achieved, some provision may be made in the Bill compelling the High Courts to re-examine the position after a certain period as recommended by the Bar Committee. The Bar Councils are sure to be established for these two High Courts. They will have gained experience at the end of that period. Why should they not be given the power subject to previous sanction of the High Court to make rules in this respect also? We will not have eradicated the existing sources of irritation and annoyance if we do not make some provision to that effect. I therefore propose to add the words and figures "till the 1st January, 1935" in sub-clause (f) of section 9 of the Bill as amended by the Select Committee between the words "shall" and "be" in line 2 of that sub-clause.

The second point which I wish to discuss is the new provision introduced in the Select Committee—in section 8 giving the High Court the power to grant special individual warrants of precedence. This is said to be a provision to put it bluntly to enable unlucky nominal seniors to earn their living by instructing juniors. This is objectionable from my point of view. In a free profession every one takes his chance. The grave objection to it is that the High Court will be placed in an awkward position by having to make invidious distinctions. It is liable to be abused and misrepresented and misunderstood. I propose the omission of that addition, *vide* remarks of the Bar Committee in paragraph 36 of their report in regard to a similar power exercised by the Bombay High Court.

*The 16th August 1926.*

T. RANGACHARIAR.

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I regret to have to put down this note of my disagreement with such provisions of the Bill as affect the time respected right of pre-audience of the English bar. I maintain—

1. That a distinction does and will exist in the two classes of advocates.
2. That no necessity has been made out for this change inasmuch as it is conceded that this right is always and invariably waived in favour of superior practitioners.

The Bill on which opinions of High Courts were taken was very different from the Bill which goes out of the Select Committee, and it is only right that the Government should circulate it again before it is sent before the Assembly.

RAJ NARAIN.

I consider the Bill is absolutely unnecessary, since all that is contemplated by it can be done by the High Courts themselves. Under their Letters Patent the High Courts have powers to approve, admit and enroll advocates as they think fit and proper, and to make rules for the qualifications and admission of persons to be such advocates. This is no reason why their existing powers should be encroached on or interfered with. The High Court of Calcutta has already framed rules for the admission of advocates, and it has already admitted over 150 advocates from the vakils and attorneys. The Calcutta Bar, the Incorporated Law Society of Calcutta and the Calcutta High Court Judges support my views. The Bengal Chamber of Commerce and the British Indian Association are, I understand, against this Bill. The Calcutta Bar Library Club are of opinion (1) that the proposed Act is unnecessary and unworkable, (2) that the proposed Act if passed should have no application to Calcutta, and (3) that the barristers should be exempted from the operations of this Act.

I am fully in agreement with the Bengal Government which has observed that uniformity must come before complete Self-government, and that as the Bar is not yet homogeneous, it is undesirable to entrust the Bar Council with complete powers of control over the practitioners, and that in matters of discipline it is essential that full powers should be reserved to the High Court.

I beg to make the following observations regarding certain clauses of the proposed Bill.

*Section 9, clause (b).*—The powers to make rules prescribing the qualifications of persons applying for admission as advocates should be reserved to the High Court.

*Section 9, clause (d).*—The Bar Council should not be given the power to make rules for the hearing by the High Court of any objection preferred on behalf of the Bar Council. The High Court itself has the power to frame rules regulating its own procedure.

*Sections 10-13.*—Full powers should be reserved to the High Court in matters of discipline, and it may refer charges of unprofessional conduct to the Bar Council for their opinion. The Court should give notice to the Council of its intention to hold an inquiry into such charges, so that the Council may be represented at the hearing. The Bar Council should have power to bring cases of alleged unprofessional conduct to the notice of the High Court. I agree with the general opinion that the District Court should not have any power to hold any inquiry.

*Section 15.*—The rule-making power should be left to the High Court undisturbed.

S. C. GHOSE.

I have not had the advantage of attending the Select Committee meetings owing to unavoidable circumstances. I generally agree with the views expressed by my friend Mr. S. C. Ghose. At the same time I wish to make the following observations :—

It is rather a bold step taken by the Committee in ignoring the opinions expressed by the Government of Bengal, Calcutta High Court, Calcutta Bar, Incorporated Law Society, Calcutta, Chamber of Commerce, British Indian Association and many other public bodies all over the country. The views of the public and the majority of the people are against the Bill as framed. It is entirely an unnecessary piece of legislation as far as the Calcutta High Court is concerned.

In view of the fact that the principle hitherto adopted by the Government to follow Reforms gradually, it would be rather unwise to do away with the distinction of the English Barristers and the Vakil Advocates, at the present juncture. The Benchers of the Inns of Court have already sent their opinion through their Council in England, that the robe of the English Barristers cannot be worn by the Advocates of India, as it would amount to misrepresentation for the Indian Advocates to dress themselves as English Barristers and appear to be so before the litigant public. Imitation of a trade mark even is not allowed in any country as legal, and the adoption of a Barrister's gown and band by the Vakil Advocates would not only be improper but illegal. This Bill should have definitely decided about it.

I am of opinion that the right of pre-audience should not be taken away from Barristers and Advocates who do not act but plead only. If the Advocate who acts is engaged by clients to instruct an Advocate or Barrister who pleads only, it will be rather unprofessional and illegal for the said (acting) Advocate to claim his right of pre-audience, in case he happened to be a senior, or in other words, his date of enrolment be earlier than the date of call of the Barrister (or Advocate who pleads only). If this is not made clear, it will lower the standard and the dignity of the Bar. There are many Vakil Barristers already in the Calcutta High Court and else where in other provinces and their position will be very anomalous. Under the circumstances the profession will lose superiority and the status of the Bar will be very inferior in this country.

The Bill as it has been adopted by the Select Committee should be circulated broadcast for further and additional opinion as the Bill has been considerably amended and altered in many details, and unless that is done, the main object of legislation, I venture to think, will be frustrated, and we shall have to pass a Bill in a hurry against the voice of the country. I do not at all see why such speedy steps should be taken by the Government at this short session, when many Members of this Assembly will remain absent owing to fresh election which will be held very soon.

K. AHMED.

*The 17th August, 1926.*

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I agree with Mr. Rangachariar's note, and would add a few observations :—

- (1) *Clause 4, sub-clause (3).*—The idea underlying this provision is that non-Barrister Advocates should not have a preponderating representation on the Bar Councils in Calcutta and Bombay. I thought the power of nomination given to the High Court in sub-clause (1) of this clause was a sufficient safeguard against any such contingency. I cannot see my way to agree to this provision which will, in a manner, perpetuate the distinction between Barristers and Vakils that is sought to be removed. It may also in practice place the Vakils, at least in Calcutta, under an absolute domination of Barristers.
- (2) *Clause 9, sub-clause (4).*—I see no reason why the High Courts of Calcutta and Bombay should be left free to regulate absolutely the qualifications for admission to practise on their Original Sides. The rules so far framed by these two High Courts for the admission of Vakils, and other non-Barristers, as Advocates entitled to plead on the Original Side, fall short of the unanimous recommendations of the Indian Bar Committee. It is with great reluctance that I have to state that, so far as the Calcutta High Court is concerned, its attitude has been anything but friendly towards the just claims of Vakils, and that, unless the position of Advocates is precisely defined by legislation, the interests of the non-Barrister section are bound to suffer.

I am prepared to support the Indian Bar Committee's recommendations as a whole, though they are disappointing on the question of continuance of the dual system in Calcutta and Bombay. If, however, their recommendations are to be departed from in any material respect, in the interest of a section of the legal profession, I consider myself at liberty to urge the abolition of the dual system altogether.

K. C. NEOGY.

The Bill as referred to the Select Committee did not contain clause 8, sub-clauses (3) to (7). I am of opinion that these sub-clauses materially alter the Bill so as to require its republication. The question of seniority between members of the English Bar *inter se* and those enrolled as Advocates of a High Court is by no means an easy one. In England such seniority is governed by the date of call to the Bar. It has been entirely ignored even in the case of Advocates being members of the English Bar who may be presumed to carry with them the tradition and practice of their own Bar and should have, therefore, been permitted to regulate their own seniority *inter se*. I am not sure that the artificial rule now laid down will work even in the interests of the Vakil Advocates. Cases are known where a Vakil Advocate though classed as a senior would be glad to be treated as a junior for the purpose of practice, and cases have occurred where a junior member of the Bar has outstripped his senior by reason of his superior intelligence, greater popularity and larger clientele, in which case it is only fair that he should be accorded a place of seniority. I am glad that the Select Committee have recognized this fact. But in limiting the exception only to individual cases it has not taken note of the fact that there is a class of persons who are equally entitled to seniority. In England King's Counsel and others receiving a Warrant of Precedence and Doctors of Civil Law and Doctors of Laws are entitled to seniority over Barristers as such. I think the Universities should be consulted whether Doctors in the Faculty of Law should not be accorded a place of seniority over others. It will encourage the higher and more scientific study of law and would otherwise be in the interests of the profession. What I object to is the rigid crystallisation of the rule as to seniority which finds place in the clause under reference. I therefore think it necessary that the High Courts, the Universities and the public generally should be consulted on this added clause before the Bill is passed into law.

2. I have some doubt whether the proviso to clause 4 making the Advocates General of Bengal, Madras and Bombay *ex-officio* Chairmen of the Bar Councils would find favour with the Bar Associations directly affected by it. I would therefore consult the Presidency Bar before enacting this clause. As regards the seniority of the Advocate General I understand that it is limited to cases in which he represents the Government. I should like to have the opinions of the Bar Associations of the Presidency-towns whether they are in favour of giving the seniority to the Advocate General in all cases—that is to say, in cases other than those in which he represents Government. No such seniority has yet been statutorily conferred upon him and it is a departure which should not be hastily made without consulting the profession directly affected by it. On the whole the Bill has been very materially altered and requires republication, and I am, therefore, unable to concur in the recommendation of my honourable colleagues made in the concluding paragraphs of their report.

The 17th August, 1926.

H. S. GOUR.

*Clause 4, sub-clause 3 of the Bill.*—The amendment in this clause was introduced in the Select Committee at a rather late stage and on further consideration I think it is not apt. While I have no objection to the principle that for some time to come the Barrister element on the Original Side of the Calcutta and Bombay High Courts should as such be represented in the Bar Council, I do not think it right to lay down without any restriction of time any such rigid provision as that *not less than one-half* of the total representatives of the Original Side Advocates shall be Barristers. It is admitted in the report that the Barrister element will no doubt tend to diminish with the course of time. That a minimum representation of not less than one-half should be guaranteed by Statute to an element so bound to diminish is highly incongruous.

There is no reason why Barristers of Ireland should not be included in the amendment. It is necessary to insert the words "or Ireland" after "England".

*Clause 8, sub-clause 1.*—I do not agree to this clause which confers a power upon the High Courts to make special orders for pre-audience in *individual cases*. On further consideration I think our intention might be made clearer by substituting for them some such phrase as 'in respect of individual advocates'. If an advocate is to be lifted out of the order of seniority permanently, how is his position to be determined with reference to other advocates who do not wish to forego their seniority? The exercise of this power would evidently be based on personal grounds and not on principle. Any exercise of the power on personal grounds must necessarily partake of an arbitrary and invidious character. The object which the majority have in view will be best attained by providing for the creation of King's Counsel. The question of pre-audience as between several counsel appearing on the same side is best left to the mutual consent and understanding of the counsel engaged.

*Clause 9.*—I do not think the power to prescribe qualifications should be given to the High Courts in such large terms as to entitle them even to prescribe a call to the bar in the United Kingdom as a necessary qualification for practice on the Original Side. I would add a proviso to the effect that it shall not be open to the High Courts to prescribe as a qualification that the applicant should be a Barrister.

SIMLA ;

The 17th August, 1926.

P. S. SIVASWAMY AIYER.

[Words printed in italics indicate the amendments suggested by the Committee.]

A

BILL

TO

*Provide for the constitution of Bar Councils in British India and for other purposes.*

WHEREAS it is expedient to provide for the constitution and incorporation of Bar Councils for certain Courts in British India, to confer powers and impose duties on such Bar Councils, and to consolidate and amend the law relating to legal practitioners entitled to practise in such Courts; It is hereby enacted as follows:—

*Preliminary.*

1. (1) This Act may be called the Indian Bar Councils Act, 1926.  
Short title, extent, application and commencement.

(2) It extends to the whole of British India, and shall apply to the High Courts of Judicature at Fort William in Bengal, and at Madras, Bombay, Allahabad, Patna and Rangoon and to such other High Courts within the meaning of clause (24) of section 3 of the General Clauses Act, 1897, as the Governor General in Council may, by notification in the Gazette of India, declare to be High Courts to which this Act applies. X of 1897.

(3) This section and sections 2, 17, 18 and 19 shall come into force at once; and the Governor General in Council may, by notification in the Gazette of India, direct that the other provisions of this Act, or any provision thereof specified in the notification, shall come into force in respect of any High Court to which this Act applies on such date as he may by the notification appoint.

2. In this Act, unless there is anything repugnant in the subject or context,—

*Interpretation.*

- (a) "advocate" means an advocate entered in the roll of advocates of a High Court under the provisions of this Act;
- (b) "Advocate-General" includes, where there is no Advocate-General, the Government Advocate and, where there is no Advocate-General or Government Advocate, such officer as the Local Government may declare to be the Advocate-General for the purposes of this Act;
- (c) "High Court" means a High Court to which this Act applies; and
- (d) "prescribed" means prescribed by rules made under this Act.

*Constitution of Bar Councils.*

3. (1) For every High Court a Bar Council shall be constituted in the manner hereinafter provided.  
Constitution and incorporation of Bar Councils.

(2) Every Bar Council so constituted shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property, both moveable and immoveable, and to contract, and shall by the name of the Bar Council of the High Court for which it has been constituted sue and be sued.

4. (1) Every Bar Council shall consist of fifteen members, of whom—

- (a) one shall be the Advocate-General;  
 (b) four shall be persons nominated by the High Court, of whom not more than two may be Judges of that Court; and  
 (c) ten shall be elected by the advocates of the High Court from amongst their number.

(2) Of the elected members of every Bar Council, not less than five shall be persons who have for not less than ten years been entitled as of right to practise in the High Court for which the Bar Council has been constituted.

(3) Of the elected members of the Bar Councils to be constituted for the High Courts of Judicature at Fort William in Bengal and at Bombay, such proportion as the High Court may direct in each case shall be persons who have, for such minimum period as the High Court may determine, been entitled to practise in the High Court in the exercise of its original jurisdiction, and not less than one-half of the total number of such persons shall be barristers of England or members of the Faculty of Advocates in Scotland.

(4) There shall be a Chairman and Vice-Chairman of each Bar Council elected by the Council in such manner as may be prescribed:

*Provided that the Advocates-General of Bengal, Madras and Bombay shall be Chairmen ex-officio, respectively, of the Bar Councils constituted for the High Courts of Judicature at Fort William in Bengal, at Madras and at Bombay.*

5. (1) Notwithstanding anything contained in clause (c) of sub-section (1) of section 4, the elected members of the first Bar Council constituted under this Act for any High Court shall be elected by and from amongst the advocates, vakils and pleaders who are on the date of the election entitled as of right to practise in the High Court.

(2) The terms of office of the nominated and elected members of any such first Bar Council shall be three years from the date of the first meeting of the Council.

6. (1) Rules, consistent with this Act, may be made to provide for the following matters, namely:—

- (a) the manner in which elections of members of the Bar Council shall be held; the method of determining, in accordance with the provisions of sub-sections (2) and (3) of section 4, the candidates who shall be declared to have been elected; the manner in which the result of elections shall be published; and the manner in which and the authority by which doubts

- and disputes as to the validity of an election shall be finally decided ;
- (b) the terms of office of nominated and elected members of the Council ;
  - (c) the filling of casual vacancies in the Council ;
  - (d) the convening of meetings of the Council, and the quorum necessary for the transaction of business thereat ;
  - (e) the manner of election and the respective terms of office of the Chairman, in cases where the Chairman is to be elected, and of the Vice-Chairman ; and
  - (f) any matter incidental or ancillary to any of the foregoing matters.

(2) *The first rules under this section shall be made by the High Court, but the Bar Council may thereafter, with the previous sanction of the High Court, add to, amend or rescind any rules so made.*

(3) No election of a member or members to the Council shall be called in question on the ground that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date fixed for the election has, not less than thirty days before that date, been published in the local official Gazette of the province, or of each province, as the case may be, in which the High Court exercises jurisdiction.

(4) Rules made under clause (b) of sub-section (1) may provide for the retirement of members from office by rotation and for the manner in which the order of such retirement shall be determined.

7. *The Bar Council may make bye-laws consistent with this Act and any rules made thereunder to provide for any of the following matters, namely :—*

- (a) the appointment of such ministerial officers and servants as the Bar Council may deem necessary, and the pay and allowances and other conditions of service of such officers and servants ; and
- (b) the appointment and constitution of Committees of the Council, the procedure of such Committees, and the determination of the powers or duties of the Council which may be delegated to such Committees.

*Admission and enrolment of advocates.*

8. (1) No person shall be entitled as of right to practise in any High Court, unless his name is entered in the roll of the advocates of the High Court maintained under this Act :

Provided that nothing in this sub-section shall apply to any attorney of the High Court.

(2) *The High Court shall prepare and maintain a roll of advocates of the High Court in which shall be entered the names of—*

- (a) all persons who were, as advocates, vakils or pleaders, entitled as of right to

practise in the High Court immediately before the date on which this section comes into force in respect thereof; and

- (b) all other persons who have been admitted to be advocates of the High Court under this Act :

Provided that such persons shall have paid in respect of enrolment the stamp-duty, if any, chargeable under the Indian Stamp Act, 1899, <sup>II of 1899.</sup> and a fee, payable to the Bar Council, which shall be ten rupees in the case of the persons referred to in clause (a) and in other cases such amount as may be prescribed.

(3) Entries in the roll shall be made in the order of seniority, and the seniority of each advocate shall be determined by the date of his admission to be an advocate or, in the case of a person referred to in clause (a) of sub-section (2), by the date of his admission to be an advocate, vakil or leader, as the case may be, of the High Court.

(4) Subject to any special orders which the High Court may think fit to make in individual cases, the respective rights of pre-audience of advocates of the High Court shall be determined by seniority :

Provided that the Advocate-General shall have pre-audience over all other advocates, and King's Counsel shall have pre-audience over all advocates except the Advocate-General.

(5) The High Court shall issue a certificate of enrolment to every person enrolled under this section.

(6) The High Court shall send to the Bar Council a copy of the roll as prepared under this section, and shall thereafter communicate to the Bar Council all alterations in, and additions to, the roll as soon as the same have been made.

(7) The Bar Council shall enter in the copy of the roll all alterations and additions so communicated to it.

9. (1) The Bar Council may, with the previous sanction of the High Court, make rules to regulate the admission of persons to be advocates of the High Court :

Qualifications and admission of advocates.   
 Provided that such rules shall not limit or in any way affect the power of the High Court to refuse admission to any person at its discretion.

(2) In particular and without prejudice to the generality of the foregoing power, such rules shall provide for the following matters, namely :—

- (a) the qualifications to be possessed by persons applying for admission as advocates ;
- (b) the form and manner in which applications shall be made to the High Court for admission ;
- (c) the giving of notice by the High Court to the Bar Council of all such applications ;

(d) the hearing by the High Court of any objection preferred on behalf of the Bar Council to the admission of any applicant: and

(e) the charging of fees payable to the Bar Council in respect of enrolment.

(3) Rules made under this section shall provide that no woman shall be disqualified for admission to be an advocate by reason only of her sex.

(4) Nothing in this section or in any other provision of this Act shall be deemed to limit or in any way affect the powers of the High Courts of Judicature at Fort William in Bengal and at Bombay to prescribe the qualifications to be possessed by persons applying to practise in those High Courts respectively in the exercise of their original jurisdiction or the powers of those High Courts to grant or refuse, as they think fit, any such application.

#### Misconduct.

10. (1) The High Court may, in the manner hereinafter provided, reprimand, suspend or remove from practice any advocate of the High Court whom it finds guilty of professional or other misconduct.

(2) Upon receipt of a complaint made to it by any Court or by the Bar Council or by any other person that any such advocate has been guilty of misconduct, the High Court shall, if it does not summarily reject the complaint, refer the case for inquiry either to the Bar Council or, after consultation with the Bar Council, to the Court of a District Judge (hereinafter referred to as a District Court), and may of its own motion so refer any case in which it has otherwise reason to believe that any such advocate has been so guilty.

11. (1) Where any case is referred for inquiry to the Bar Council under section 10, the case shall be inquired into by a Committee of the Bar Council (hereinafter referred to as the Tribunal).

(2) The Tribunal shall consist of not less than three and not more than five members of the Bar Council appointed for the purpose of the inquiry by the Chief Justice or Chief Judge of the High Court, and one of the members so appointed shall be appointed to be the President of the Tribunal.

12. (1) The High Court shall make rules to prescribe the procedure to be followed by Tribunals and by District Courts, respectively, in the conduct of inquiries referred under section 10.

(2) The finding of a Tribunal on an inquiry referred to the Bar Council under section 10 shall be forwarded to the High Court through the Bar Council, and the finding of a District Court on such an inquiry shall be forwarded direct to the High Court which shall cause a copy thereof to be sent to the Bar Council.

(3) On receipt of the finding, the High Court shall fix a date for the hearing of the case and shall cause notice of the day so fixed to be

given to the advocate concerned and to the Bar Council and to the Advocate-General, and shall afford the advocate concerned and the Bar Council and the Advocate-General an opportunity of being heard before orders are passed in the case.

(4) The High Court may thereafter either pass such final orders in the case as it thinks fit or refer it back for further inquiry to the Tribunal through the Bar Council or to the District Court, as the case may be, and, upon receipt of the finding after such further inquiry, deal with the case in the manner provided in sub-section (3) and pass final orders thereon.

(5) In passing final orders the High Court may pass such order as regards the payment of the costs of the inquiry and of the hearing in the High Court as it thinks fit.

(6) The High Court may, of its own motion or on application made to it in this behalf, review any order passed under sub-section (4) or sub-section (5) and maintain, vary or rescind the same, as it thinks fit.

(7) When any advocate is reprimanded or suspended under this Act, a record of the punishment shall be entered against his name in the roll of advocates of the High Court, and when an advocate is removed from practice his name shall forthwith be struck off the roll; and the certificate of any advocate so suspended or removed shall be recalled.

V of 1908. 13. (1) For the purposes of any such inquiry as aforesaid, a Tribunal or Powers of the Tribunal and Courts in inquiries. shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him upon oath,
- (b) compelling the production of documents, and
- (c) issuing commissions for the examination of witnesses:

*Provided that the Tribunal shall not have power to require the attendance of the presiding officer of any Court save with the previous sanction of the High Court or, in the case of an officer of a Criminal or Revenue Court, of the Local Government.*

XLV of 1898. (2) Every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code; and a Tribunal shall be deemed to be a Civil Court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898.

y of 1898. (3) For the purpose of enforcing the attendance of any person and examining him upon oath or of compelling the production of documents or of issuing commissions—

- (a) the local limits of the jurisdiction of a Tribunal shall be those of the jurisdiction of the High Court by which the Tribunal has been constituted; and
- (b) a Tribunal may send to any Civil Court having jurisdiction in the place where the Tribunal is sitting any summons or other

*process for the attendance of a witness or the production of a document required by the Tribunal, or any commission which it desires to issue, and the Civil Court shall serve such process or issue such commission, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.*

(4) Proceedings before a Tribunal or a District Court in any such inquiry shall be deemed to be civil proceedings for the purposes of section 132 of the Indian Evidence Act, 1872, and the provisions of that section shall apply accordingly. I of 1872.

*Miscellaneous.*

14. (1) An advocate shall be entitled as of Right of advocates to right to practise—  
practise.

- (a) *subject to the provisions of sub-section (4) of section 9, in the High Court of which he is an advocate, and*
- (b) *save as otherwise provided by sub-section (2) or by or under any other law for the time being in force, in any other Court in British India and before any other Tribunal or person legally authorised to take evidence, and*
- (c) *before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise.*

(2) *Where rules have been made by any High Court within the meaning of clause (24) of section 3 of the General Clauses Act 1897, or in the case of a High Court for which a Bar Council has been constituted under this Act, by such Bar Council under section 15, regulating the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court, such advocates shall not be entitled to practise therein otherwise than subject to such conditions.* X of 1897.

15. A Bar Council may, with the previous sanction of the High Court for which it is constituted, make rules consistent with this Act to provide for and regulate any of the following matters, namely :—  
General power of Bar Councils to make rules.

- (a) *the rights and duties of the advocates of the High Court and their discipline and professional conduct ;*
- (b) *the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court ;*
- (c) *the giving of facilities for legal education and training, and the holding and conduct of examinations by the Bar Council ;*
- (d) *the charging of fees payable to the Bar Council in respect of the enjoyment of educational facilities provided, or of the right to appear at examinations held, by the Bar Council ;*
- (e) *the investment and management of the funds of the Bar Council : and*

(f) any other matter in respect of which the High Court may require rules to be made under this section.

16. The High Court shall make rules for fixing and regulating by *Power to fix fees payable as costs.* *taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.*

17. No suit or other legal proceeding shall lie *Indemnity against legal proceedings.* *against a Bar Council or any Committee, Tribunal or member of a Bar Council for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule made thereunder.*

18. All rules made under this Act shall be *Publication of rules.* *published in the local official Gazette of the province, or of each province, as the case may be, in which the High Court by which or with whose sanction the rules are made exercises jurisdiction.*

19. (1) When sections 8 to 16 come into force in *Amendment of enactments, etc.* *respect of any High Court, any enactment mentioned in the first column of the Schedule which is in force in any province in which the High Court exercises jurisdiction shall, for the purpose of its application to that province, be amended to the extent and in the manner specified in the second column of the Schedule.*

(2) When sections 8 to 16 come into force in respect of any High Court of Judicature established by Letters Patent, this Act shall have effect in respect of such Court notwithstanding anything contained in such Letters Patent, and such Letters Patent shall, in so far as they are inconsistent with this Act or any rules made thereunder, be deemed to have been repealed.

Bom. Act  
XVII of  
1920.

(3) When sections 8 to 16 come into force in respect of the High Court of Judicature at Bombay, the Bombay Pleaders' Act, 1920, except section 7 thereof, shall cease to apply to or in respect of any person enrolled as an advocate of the High Court under this Act, and nothing in that Act shall be deemed to authorise the admission or enrolment of any person as a vakil or pleader of the High Court.

(4) When this Act has come into force in respect of any High Court, any provision of any other enactment or any order, scheme, rule, form or bye-law made thereunder, which was before that date applicable to advocates, vakils or pleaders entitled to practise in such High Court shall, unless such a construction is repugnant to the context or to any provision made by or under this Act, be construed as applying to advocates of the High Court enrolled under this Act.

## THE SCHEDULE.

(See section 19).

## AMENDMENT OF ENACTMENTS.

Enactments amended.	Extent and manner of amendment.
The Legal Practitioners Act, 1879.	<p>(1) In section 4, after the words "with the permission of the Court" the words and figures "or, in the case of a High Court in respect of which the Indian Bar Councils Act, 1926, is in force, subject to rules made under that Act" shall be inserted.</p> <p>(2) In section 6, clauses (a) and (b), after the words "Royal Charter" the words and figures "in respect of which the Indian Bar Councils Act, 1926, is not in force" shall be inserted.</p> <p>(3) To section 38 the following words and figures shall be added, namely :—  "and, except as provided by section 36, nothing in this Act applies to persons enrolled as advocates of any High Court under the Indian Bar Councils Act, 1926."</p> <p>(4) In section 41, sub-section (J), after the words "Royal Charter" the words and figures "in respect of which the Indian Bar Councils Act, 1926, is not in force" shall be inserted.</p>
The Indian Stamp Act, 1899.	In Article 30 of the First Schedule after the words "High Court", where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.
The Madras Stamp (Amendment) Act, 1922.	In Article 25 of Schedule 1A, after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.
The Bengal Stamp (Amendment) Act, 1922.	In Article 30 of Schedule 1A, after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.
The Indian Stamp (Punjab Amendment) Act, 1922.	In Article 30 of Schedule 1A, after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.
The Assam Stamp (Amendment) Act, 1922.	In Article 30 of Schedule 1A, after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.

GOVERNMENT OF INDIA.  
LEGISLATIVE DEPARTMENT.

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Report of the Select Committee on the  
Bill to provide for the constitution of  
Bar Councils in British India and for  
other purposes, with the Bill as amended.

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