

The Practitioner King – A Study of Legal Education and Practice in Pakistan

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Abstract

This dissertation is a study of legal education and practice in Pakistan and investigates the rise of the legal practitioner through a socio-historical examination. It seeks to determine the extent to which legal education in the country is bound by colonial norms of practice through a genealogy of the legal practitioner in South Asia where the practitioner emerges as a dominant actor in the Pakistani legal field.

This dissertation argues that the fields of legal education and practice cannot be studied separately because the two are intimately connected for three main reasons: firstly, the law degree serves as an entry requirement to legal practice, secondly, practitioners are preferred as faculty to teach law at universities and law colleges, and thirdly, the Pakistan Bar Council shares regulation of legal education with the Higher Education Commission. The curriculum for the LLB degree is decided by the Bar and Commission and has historically been pulled towards a practice-focus, which is reflected in the 2018 reforms.

The methodology adopted draws from the three disciplines of law, history and sociology. Archival sources at the British Library in London, UK, the Library of Congress in Washington DC, US, and the Sindh Archives in Karachi, Pakistan, provide the historical frame upon which this work is based (1800 – 1947). Legal method allows for a detailed study of the Supreme Court cases on legal education and statutory context (1998-2018). Focus groups and interviews with key members in the reform process help inform the current context in Pakistan and the Bourdieusian theoretical framing on fields and habitus serves as the glue that brings these seemingly separate components together.

During and following Independence in 1947, the fields of practice and politics have also been interconnected through the gains made by the practitioner in the national political field. These gains have continued in Pakistan where the practitioner has emerged as a King in the twenty-first century in the fields of education, practice, and politics. This study aims to fill the gap in the existing literature in the area in Pakistan and can help guide the reforms in the area.

Dedication

To my many mothers, Shahida, Mehjabeen, and Azra.

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CHAPTER 1

Introduction

“An independent, competent, honest and industrious Judicature requires an equally independent, dynamic, honest and dedicated Bar in order to effectively provide justice in accordance with law to all members of the society.”

[para 4, 2019 SCMR 389]

I. Context

A black and white uniformed lawyer enters a courtroom, pays respect to the Bench through a nod of the head, and approaches a colleague to inquire which number was currently proceeding before the Bench.¹ Reassured that her case in the cause list has not been called yet, she finds a seat and waits, thumbing through her notes in the case file. The language of the court in Pakistan is English but arguments are made in languages that the lawyers and judges prefer, either the national language which is Urdu, or any of the provincial languages.² She sits on one of the first few rows of benches reserved for advocates, keeping an eye out for any senior advocate

¹ The process of calling the case is as follows: the Reader of the Court calls the case number from the cause list of the day and the name of the advocate, and then proceeds to hand over the case file to the judge. It is not digitized, and every lawyer must follow the number proceeding in court by monitoring it periodically by asking other lawyers present in the courtroom.

² The 2017 Census reveals that of the 207,684,626 total population, about 7.08% speak Urdu (the national language); about 38.77% speak Punjabi (the language of the largest province Punjab); Sindhi is spoken by 14.56%; Pashto by 18.24%; 3.02% speak Baluchi; 0.17% speak Kashmiri; 12.19% speak Saraiki (a dialect of Punjabi but recognized as a separate language); 2.4% speak Hindko; 1.23% speak Brahvi; and 2.26% speak other languages. The English language doesn't feature in this table of the Census titled: Population by Mother Tongue, Sex and Rural/Urban, although the data is displayed in English. “Final Results of Census-2017 | Pakistan Bureau of Statistics”, online: <<https://www.pbs.gov.pk/content/final-results-census-2017-0>>.

for whom she will have to relinquish her seat as a mark of respect. Her case number is called, and she approaches the bench, standing behind the roster which signals the side she is appearing for, petitioner/appellant or respondent(s). She waits until the Reader of the court provides the judge with the file of the case under hearing, and following a greeting to the bench, referring to the judge as “Mi’Lord,” she “humbly submits” her client’s case before the Bench. All this was new to her just some years ago when she entered legal practice, but now having learnt “on the job,” and observed during her time in court, she performs her role in line with what is expected of an advocate in court.

This lived reality of the lawyer in a Pakistani court is rooted within the country’s colonial history and several self-evident truths emerge within this narrative which are explored in this thesis. The first is the expectation that a graduate of an LLB degree will enrol at the Bar and practice law in the courts, which impacts what is taught in law colleges in the country. The second is that practising lawyers and retired judges are the best suited to teach law. The third is that a foreign law degree, especially an English degree, is *better* than the Pakistani law degree. And lastly, the status of a barrister is higher than that of the locally qualified and trained advocate. These are truths that are accepted in the legal profession. Initially, I wanted to study the sociology of the Pakistani legal profession. As I started researching this topic I discovered that where one went to law college and more importantly, which kind of LLB degree (a local one or a foreign one) was obtained was a significant marker of distinction within the legal community. So I shifted my focus on the study legal education in Pakistan, but I found myself in a similar dilemma again, the kind of law degree or training impacted legal practice with privileges or prestige attached to some more so than others. I discovered that I could not divorce the study of legal practice from legal

education, and vice versa, because they are two mirrors that reflect each other – both are a product of British interventions in India in the mid-nineteenth century and thus, reflect the same colonial roots and ensuing post-colonial insecurities that have shaped the field of legal education over the past 150 years.

As analysed in this dissertation, the state of legal education in Pakistan has been under review over the past two decades, with the Pakistan Bar Council passing Rules for Affiliation of Law Colleges in 1998 in the hope that “the mushroom growth of law colleges” could be brought under check. Non-compliance of these Rules by the universities and their affiliated colleges led to the Bar petitioning the Supreme Court in 2005 for assistance in regulation of these institutions.³ Until 2018, the Supreme Court was involved in attempts at reforming legal education because justice, and its administration, depends not only on the quality of the judges but also on the lawyers who appear before them. If lawyers are unable to do justice to their clients, then the work of the judge increases, and the possibility of justice for the litigants becomes more difficult. The Supreme Court stressed the connection between the quality of lawyering and the standards of legal education imparted at law colleges and universities, and in its judgment (dated 31st August 2018) on legal education it provided a description of the current state of law colleges, the faculty, students, the law curriculum in Pakistan.⁴ It also offered a vision of how change can be affected. The Court accepted the Bar’s view that the perceived decline in quality of legal education was due to the “mushroom growth of sub-standard law colleges,” and therefore conducted a detailed exercise of reviewing the conditions in which universities, and its

³ *The Pakistan Bar Council v the Federation of Pakistan*, [2007] I Pakistan Law Digest 394.

⁴ *The Pakistan Bar Council v the Federation of Pakistan and Others*, [2019] I Supreme Court Monthly Review 389.

affiliated colleges, taught law.⁵ This identification of the problems in legal education was important to understand why the state of administration of justice in the country has been negatively affected. The judgment mandates extensive changes in the system, that have been broadly termed the *reforms of legal education*. It does this by clarifying the different responsibilities of the various actors within the field, especially in terms of regulation, from the moment of entry into university, until graduation and licensing with the Bar.

Graduates of law register with the Pakistan Bar Council, and the provincial Bars, and when licensed, are added to the Roll of Advocates. This advocate is also commonly referred to as a lawyer or a *vakil* and is essentially a licensed legal practitioner registered with the Bar governed by the Bar Council and Legal Practitioners Act, 1973. There is a societal expectation reinforced by the belief that the graduate of law will practice law, and this dissertation explores why the lawyer is imagined as such within the field? The Supreme Court stresses that lawyers provide a crucial social service, and an ethical and honest practitioner is the need for the hour. The question then becomes, how can this practitioner be achieved in Pakistan today? I argue that the description of this ideal as gleaned from the 2018 judgment of the Supreme Court on legal education falls short of the reality of the lawyer in Pakistan today, and deliberated reforms of legal education are the path to address these failings. Social perceptions reflect a negative image of lawyers as early as the nineteenth century in this couplet from the Urdu poet (and judge) Akbar Allahabadi,⁶ quoted to me (in jest, of course!) by my uncle after I joined the legal profession:

⁵ Universities provide the degrees through their own departments or a system of affiliated colleges which are independently run and managed but regulated by the university they are affiliated with.

⁶ Akbar Allahabadi (1846-1921) was a lawyer from the 1870s in India and retired as a judge in 1905. Aside from his legal background, he was also a poet, and this couplet provides an interesting perspective on the social perception of the lawyer in British India. "Akbar Allahabadi - Profile & Biography", online: *Rekhta* <<https://www.rekhta.org/poets/akbar-allahabadi/profile>>.

“paida hua wakil tow shaitaan ne kaha, lo aaj mein bhi sahib-e-aulaad ho gaya!”

“When the wakil was born, the Devil said, ‘Oh today I too have fathered an offspring!’”⁷

II. My Positionality

I have taught law for over decade at different law colleges in Karachi (Pakistan)⁸ and at York University in Toronto (Canada). My graduation in 2009 from a law degree with a liberal arts base through the five-year BA/LLB program, was the first of its kind in Pakistan introduced at the Lahore University of Management Sciences (LUMS).⁹ Upon graduation I joined practice and learnt that I loved the research part of litigation. Later I chose to focus on that and shared my legal research skills with others in the legal community in Karachi. This could be my contribution to the profession which can help improve the quality of lawyers in the country. Since 2015, I have been involved in some part in the reform of legal education, an area which I am studying along with its connection to legal practice in this dissertation. Five years into practice, during the years of 2015-2017, I attended conferences and meetings on legal education in the capacity of a legal educator before members of the legal education community, law colleges and one meeting organized by the Legal Education Committee of the Pakistan Bar Council. I noticed that the discussions at these meetings and conferences never focused on students who were the eventual recipients of legal education, and the only perspectives which were dominant were from a regulatory angle by the

⁷ Translation by author.

⁸ Hamdard School of Law (Hamdard University), Dadabhoy Institute of Higher Education – regulated by the Higher Education Commission of Pakistan and the Pakistan Bar Council. Registered centres of the University of London distance-learning LLB Degree at the Shaheed Zulfiqar Ali Bhutto Institute of Science and Technology and the Le’cole Institute of Advanced Studies.

⁹ The first batch of the Law School at LUMS entered in 2005 and graduated in 2008.

Bar and universities. My goal in participating in these sessions was to provide policy makers with the context/reality inside the law schools, and to substantiate this I conducted survey research in 2016 with 166 students from three law colleges in Pakistan (Le'cole School of Advanced Studies in Karachi, Lahore University of Management Sciences in Lahore, and The Institute of Legal Studies in Islamabad). By focusing on the lived experience of law students I invited feedback on their struggles with legal education: these included difficulty in reading/understanding/speaking the English language, limitations in access to reading and study materials, difficulty in understanding or reading required legal material, and the methods through which learning could be made effective for them. Further, I also conducted survey research with ninety-eight members of the legal community in Karachi asking them to recall how their experiences of legal education had prepared them for the legal profession. I specifically focused on teaching methods and the LLB curriculum to understand how different things were from when they were students to present day. I shared the findings from this research at these conferences and meetings, but also with my own students to help them understand the problems they face as a collective and come up with solutions that can facilitate learning. This exercise, though not part of this research, provided me with the groundwork on which I started my journey in the PhD program at Osgoode Hall Law School and has helped inform my work, and determine my own positionality in the process.

My experience as a teacher, litigator and public interest activist, played an instrumental role in developing my skills as a legal researcher. This exposure to a range of actors in, and connected to, the legal field in Pakistan, has allowed me to amass experience which has helped inform this study of legal education and practice. In 2015, I began conducting legal research for

small law firms in the country on legal propositions, or firms whose research teams were unable to find adequate precedents. But I soon found that this approach was not sustainable, as it did nothing to address the larger problem of poor quality of research, and I had to work differently to raise the standard of legal research for the law firms themselves. I was invited by the Karachi Bar Association in 2015 to conduct the seminar on the subject in their Civil Trial Advocacy Training Course and later in 2016 and 2017, I developed my own Legal Research and Thinking Workshops geared towards new associates of law firms in Karachi. I had found a gap and was trying my best to fill it, but this experience led me to question not only the degrees certifying graduates of their alleged legal competence, but also the curriculum through which legal education was being administered in the country. How was it that a graduate of law did not know how to conduct research? How is it that the LLB curriculum did not include a course on legal research?

This is how I found myself gravitating towards studying legal education and practice as an area at the PhD level. A graduate of two systems with a BA/LLB from a Pakistani university and an LLM from the University of London,¹⁰ and with teaching experience of both kinds of LLB degrees in Karachi, my journey had placed me in a unique position to study the area in Pakistan. By accepting the offer for scholarship in the PhD program, I became a researcher and a student all at once. I moved from being an active participant in legal education and its practice, to an observer of the very system of which I had been a part for seven years. This forced me to re-examine my position within my own research, and I recognized that there was no strict separation in roles – one could be a practitioner during the day and an educator in the evening

¹⁰ I have a BA/LLB from the Law School at Lahore University of Management Sciences earned in 2009, and an LL.M. in Law, Development and Governance from the School of Oriental and African Studies, London earned in 2012.

at one of the law colleges in the country, living within the intersections. This is true for many who teach at law colleges in Pakistan, and in the early stages of research for this PhD degree, I found myself struggling to split my identity into a “student of law,” and an “advocate of legal education.” This seemingly binary identity does not imply that they are separate from each other since both come into play depending on the situation – e.g. when I conducted interviews and focus groups for this thesis with young lawyers or law students, I deliberately chose not to wear the uniform of an advocate, which in Pakistan for women comprises a white *shalwar-qameez*¹¹ and a black coat, so as not to overtly identify as an “advocate,” but as a “student of law.” However, during my interviews with members of the legal profession, I realized that the participants (and myself!) were more comfortable when I was uniformed, and shared my litigation and/or teaching experience, since it made them feel I was an insider who knew the reality of the situation. Interestingly, I soon discovered that both sets of people, members of the profession and students of law, viewed me through the lens of a “reformer,” or a person who is going to help “fix the system,” even though I never intentionally identified myself as such. On a personal level, I still saw myself as a legal researcher, and this aspect of my identity was the most prominent when I conducted the archival research in different parts of the world, suppressing my persona as a practitioner or teacher.

Legal education in Pakistan is grounded in the assumption that it prepares future practitioners of law – practice in this sense is viewed through a *traditional* lens where lawyers represent their clients in court. This assumption results in a continuing reinforcement of expectations in society, and within the legal community, that a graduate of law will join the legal

¹¹ The word *shalwar* translates to loose pants and *qameez* is a long shirt. Translation by author.

profession and choose between the three main areas of practice: civil, criminal, and corporate. I study this assumption of practice through a study of the construct of a lawyer through time (1857-2022) with a focus on how legal education and legal practice influence each other to create this practitioner image of a lawyer.

III. Research Questions

This dissertation studies the lawyer as an actor within the Pakistani legal field from a socio-historical approach through the primary research question:

To what extent do colonial norms of legal practice guide legal education in Pakistan today?

This is explored through the following sub-research questions:

- i. How is the teaching and learning of law impacted by legal practice in Pakistani courts?
- ii. What are the roots of this traditional approach to legal practice?
- iii. How did the legal practitioners' role in legal education change due to their political adventures from the end of the nineteenth century till Partition in 1947?
- iv. Following Independence from the British, how did external influences shape legal education till the end of the century?
- v. How different are the aspirations of young legal practitioners and law students now from those a hundred years ago?
- vi. How can legal education in Pakistan be reformed to better serve its own people?

The main argument in this thesis is that the current construct of a lawyer as a legal practitioner is rooted in Pakistan's colonial history and this has impacted the way law is taught in colleges. The British imported their institutions into India in the mid-nineteenth century through two interventions: universities in 1857 and the higher judiciary in 1862. I explore how both legal transplants mirrored each other, and their import furthered the agenda for colonial rule, and protected imperial interests of the British in the administration of India. In answering these research questions, two interconnected themes emerge which tie the project together, firstly the seeming permanence of coloniality in legal practice that continues to control the legal field in Pakistan, and secondly, the evolution of the practitioner as King by the 21st century through gains from the political and legal fields.

The birth of the lawyer during the colonial Raj was that of practitioner in the courts, and this Indian *vakil* acquired his law education at the new universities imported into the country. Following acquisition of this degree, they acquired a license, or a certificate to practice, where they assisted the English barristers to facilitate the work of the new High Courts. This lens of practice guided the introduction of legal education and shaped the way law was taught and learnt at colleges in British India, and the archival research conducted for this project supports this. Through a historical study, I argue that following Partition in 1947 and independence from British rule, Pakistan continued in a similar practitioner vein in legal education. While some attempts were made to change this approach since Partition, the 2018 Supreme Court judgment on legal education represents the first significant step in the reform of legal education imparted in colleges today. This reform aims to improve the quality of legal services provided to clients and the courts and adopts a practitioner lens to the study of law. I argue that the goal of legal

education continues to be preparation of law students for legal practice, and this approach is now so embedded that it limits the image of the lawyer to that of practitioner. Resultingly, the content of the LLB curriculum, and those who teach it, remain in the tight grip of practice and few legal academics exist in Pakistan with much of the teaching conducted by practitioners or retired judges. This is also reflected in the limited academic literature that has developed around law and even specialized law publication houses, like the Pakistan Law House in Karachi, reveal the enormity of practitioner-focused material available.¹² Most are commentaries on various statutes and this literature generally focuses on case law as guides to interpretation with limited analysis. Any gaps are broadly addressed through reliance on foreign texts or treatises, most often from India or England.

IV. Methodology

The methodology for this project draws on three disciplines: law, history and sociology, and the dissertation comprises seven chapters, each of which adopts a different combination of the methods to answer the research question posed. Chapter 2 examines whether the twenty-first century developments in Pakistani legal education have the traditional practitioner-focus? If yes, then what kind of practitioner does the Court envision through the reforms proposed? This is investigated through two cases filed by the Bar Council before the Supreme Court – Constitutional Petition No.4 of 2005 whose judgment was delivered in 2007,¹³ and the

¹² Printed lists of books available at the Pakistan Law House are available with the author on file.

¹³ *The Pakistan Bar Council v. the Federation of Pakistan*, *supra* note 3.

Constitutional Petition No.134 of 2012, with a judgment delivered in 2018.¹⁴ Drawing chiefly on methodology from the legal discipline, this chapter studies the statutory framework under which legal education is regulated through a close study of three pieces of legislation: the Legal Practitioners and Bar Councils Act 1973, the Higher Education Commission Ordinance 2002, and the Rules for Affiliation of Law Colleges 1998. Perusal of the copies of the petitions, and their annexures as filed in Court supporting the claims, provide a valuable framework for this study and help build the context within which the reforms of legal education were proposed. The annexures include correspondence between different stakeholders, minutes of meetings, and copies of the relevant laws amongst others. The two judgments of the Court are available in the official digests (Pakistan Law Digest) where reported judgments are published. As part researching those decisions, I also conducted telephone interviews with key members who were part of the process of petitions filed namely Advocates Rasheed Razvi, Hamid Khan, and Zafar Kalanauri which lasted about an hour each. Informed consent forms were acquired to fulfil all ethics requirements.

Chapter 3 investigates the roots of this traditional legal practice, and education, in India and which are traced to the mid-nineteenth century through export of the High Courts and the University by the British from England. I argue firstly that *traditional* legal practice of adversarial litigation in the formal court hierarchies was created through the import of these two institutions which was *traditional* from an English perspective. These transplants mirrored each other, the needs in one reflected in the needs for the other. Secondly, I examine the historical process through which the Indian practitioner, i.e., *vakil*, was created, and argue that his birth created

¹⁴ *The Pakistan Bar Council v. the Federation of Pakistan and Others*, *supra* note 4.

tensions within the legal profession between the English barristers and the Indian *vakil*. The methodology adopted for this chapter is purely archival and was derived from three sources: the British Library in London UK, where I explored physical material at the India Office during a two-week period in February 2020, newspaper archives of the Times of India digitized archives were accessed at the British Library and at the Library of Congress in Washington DC, US. Lastly, a few Notifications collected from the Sindh Archives Department in Karachi, Sindh have also been relied upon. The information accessed from these archival sources served two main perspectives: piecing together the formal narrative through a study of handwritten manuscripts documenting the process of the import, and later institutionalization, of legal practice and education, and the more informal narrative as documented by opinions shared in the newspapers studied. Openly accessible archives online (like www.archive.com) were also helpful in collecting information which helped paint the picture as it stood from the mid-nineteenth century to the twentieth century.

Chapter 4 studies how the logics governing legal education and practice shifted in the early twentieth century, from serving imperial interests in the nineteenth century to ones that served Indians. The methodology adopted for this is also archival from the same resources that were used for the third chapter. I argue that Indianization of the legal profession began in the 1920s when Indian practitioners began to call for an All-India Bar and also questioned the duality in the legal profession that divided litigation between *vakils* and barristers. This rise in power was also seen in the political sense where Indian practitioners began to voice their identity at first as imperial subjects, and later as those independent from the British Raj. These developments are observed in both legal practice and education as the Indian practitioner began to gain more

importance in both fields. In 1926, a single class of Advocate was created through the Indian Bar Council's Act, and this can be argued as an attempt to level the playing field in the legal profession, but in reality distinctions and ensuing privileges continued.

Chapter 5 studies legal education and the emergence of the post-colonial practitioner in Pakistan and India following Independence in 1947 till the turn of the century. It explores how the logics governing the fields of legal education and practice changed following the creation of Pakistan, through a study of the LLB curriculum at Pakistani universities. This experience is then studied through a comparative approach with India, looking especially at the interventions of the United States in South Asian legal education. I argue that US interventions in the second half of the twentieth century in legal education were not as successful in Pakistan as they were in India because of Pakistan's turbulent relationship with democratic and authoritarian rule. The methodology used for this part is divided into two parts, the first investigates the Pakistani experience through a study of Reports of Law Commissions, Five Year Plans, newspaper archives, Policy Papers, and Reports by the Asia Foundation amongst others. The second part provides a comparative perspective to US interventions in India through the Ford Foundation and others, through Reports and literature documenting the same. A portion of this Indian part is studied through the wealth of research and literature that emerged from the 1970s onwards.

The sixth chapter studies the continuing coloniality in the legal field in Pakistan in the twenty-first century, tying it back to the second chapter which investigated the practice-focus approach in the 2018 reforms in legal education.¹⁵ I identify five themes which emerged through

¹⁵ Legal education in Pakistan is available through two sources: first, universities and their affiliated colleges that impart a curriculum that is regulated by the Pakistan Bar Council and the Higher Education Commission, and second, from centers registered with the University of London that teach an LLB curriculum from the English context.

this socio-historical research exercise when connected to the present day: the English law degree is *better* than the Pakistani one; the status of a barrister is higher than that of the *vakil*; knowledge of the English language is preferred over local equivalents; a practitioner-faculty is preferred for teaching law; and the graduate of law will practice in the courts. These themes tie the thesis together and were reflected in the focus group research conducted in 2019 in Karachi. The methodology adopted for this research divided the participants between law students and early practitioners. These were further divided into two main groups, those who study the Pakistani LLB, and those who study the University of London LLB Degree administered through distance-learning. The experiences of students and young practitioners from both LLB degrees was crucial to help understand how different types of education impacts legal practice and vice versa. Each group was designed to have six participants, and these were selected through snowball technique where I reached out to two registered centres for the London degree; and participants for the other three focus groups were selected after invitations to participate were posted on various social media, like WhatsApp and Facebook groups. One unfortunate limitation emerged when I was unable to conduct my focus group session with students of the Pakistani LLB due at first due to poor responses, and some months later, Covid-19 hampered all plans for in-person research completely. Therefore, I was only able to conduct three focus group sessions: two with young practitioners from both LLB degrees and one with students at the University of London program. There has been a rising preference of graduates of the Lahore University of Management Sciences by law firms, therefore interviews were also conducted with them. The reason why a focus group exercise was not adopted for this was because graduates were spread all over the country. The six graduates selected for these telephonic interviews which lasted forty-five

minutes on average – all were practising law, two in Karachi, one in Islamabad, one in Attock, and one in Abbottabad. These six were selected following invitations to participate which were sent through the LUMS Law Alumni network and no participant was known to me before this research exercise. Informed consent forms were obtained for all participants of the focus group and those interviewed.

The concluding chapter explores the path from resistance to reform and examines the impact of politicization of the Bar on the legal fields of education and practice. I argue that this politicization, without adequate or sufficient regulation, has led to the rule of lawyers where some segments of the legal profession exude an aura of untouchability and resist any attempts at regulation. Violent acts by *rogue* lawyers have occurred more often in the largest province of the country Punjab, and at times have even been supported by the Punjab Bar Council through strikes and suspension of court work in the province, holding justice hostage. The methodology adopted to study this resistance includes a study of newspaper reports from the Daily Dawn Newspapers and other online news sites, where the transgressions by legal practitioners are reported. Furthermore, this same Bar – the Punjab Bar Council – has been the only Council in the country that has resisted the Supreme Court’s 2018 attempts at reform. In contravention of the judgment the Punjab Bar had enrolled over 3000 lawyers without even taking the Bar examination in violation with the judgment and its own statutory mandate, and it was only when another petition was filed in 2020 before the Supreme Court that this violation was addressed. The methodology for this section therefore includes a review of the copies of the Petition and the Orders of the Court provided to me by the advocate who filed the case, Aneeq Khatana, and

is discussed in chapters 2 and 6. This chapter invites reforms based on the findings of this socio-historical investigation of legal education and legal practice.

V. Theoretical Frame

The research questions are investigated through methods from law, history, and sociology, with Bourdieu providing the frame upon which I start this project. During the research process, I discovered that any attempt to isolate legal education from legal practice (and vice versa) was an exercise in futility and I found it was better to fuse these two fields together. By way of analogy, if the university teaching law is reflected in one mirror, it casts its reflection on another mirror which is legal practice in the courts, and vice versa. The Bourdieusian lens has been very useful to help understand how legal education in Pakistan is geared towards practice, in as much as legal practice and legal education are both deeply entrenched within the colonial structures of both fields. I also study how this reflection is altered due to changes introduced in either mirror, and a socio-historical lens helps me see how the construct of the practitioner evolved from the introduction of higher education in law at universities in 1857, till the time of writing of this dissertation (four years after the judgment of the Supreme Court on legal education in 2018). This dissertation studies the legal field in Pakistan through the Bourdieusian framework, to understand how the habitus evolved from the early institutionalization of formal legal learning at universities which was geared for practice at the High Courts. This helps me understand why a gap exists between the Supreme Court's vision of the ideal practitioner through the 2018 judgment and the current reality of the Pakistani practitioner.

Bourdieu bases his understanding on the inextricable link between sociology and history – to understand the present one has to study the past.¹⁶ Viewing my work through the lens of a “historical sociologist” has helped me understand more intimately the connection between legal practice and legal education.¹⁷ The two mid-nineteenth century institutional transplants of the universities and high courts, introduced within five years of each other, resulted in the development of a unique habitus within the colonial legal profession at the time, one that I argue continues to influence the post-colonial habitus in 21st century Pakistan. This habitus continues/d to shape, and to be shaped by, the image of lawyer within the South Asian context over the past century and a half within a dynamic context.

Bourdieu argues that self-evident truths¹⁸ are socially constructed and internalized within a society, and these need to be unpacked through the identification of categories and boundaries so that their natural state can be ascertained, and later challenged. These “objective distinctions” need to be “understood in terms of the historical dynamic that establishes them.”¹⁹ I argue that the self-evident reality of legal education in Pakistan is that of practice – the lawyer is understood as a practitioner in the courts – and this influences or determines the reality of legal education, which is a product of the past. The acceptance of a reality as fact, and the resulting lack of questioning of the status quo, results in a state of lack of self-reflexivity where the hierarchies

¹⁶ Pierre Bourdieu, *The Sociologist and the Historian* (Cambridge, UK; Polity Press, 2015) at 5.

¹⁷ Philip S Gorski, *Bourdieu and Historical Analysis* (Durham [N.C: Duke University Press, 2013).

¹⁸ Bourdieu describes self-evident truths as, “The force of the pre-constructed resides in the fact that, being inscribed both in things and minds, it presents itself under the cloak of the self-evident which goes unnoticed because it is by definition taken for granted.” Pierre Bourdieu, *An Invitation to Reflexive Sociology* (Chicago: University of Chicago Press, 1992) at 251.

¹⁹ Bourdieu, *supra* note 16 at 11.

governing, or structuring a space (or society), are accepted as obvious.²⁰ Bourdieu employs objective techniques to see how this reality is socially constructed, and once unpacked and challenged, may be regarded by those who inhabit society as, “We knew this, it was obvious.”²¹ The ability to separate reality as an accepted fact from what can be possible requires the deployment of new ways of seeing, a “rupture” as proposed by Bourdieu, and this thesis attempts to accomplish this with regard to legal practice and education in Pakistan.²²

As a first step, I study the legal field in Pakistan, drawing on Bourdieu’s work²³ on field theory. He identifies a field as a social space, one which is not necessarily physical or geographic in nature,²⁴ where different actors engage in a struggle for control.²⁵ This competition is determined by the position each actor occupies within that structured space, and in relation to each other. These positions are determined by the possession of capital that each actor holds in the field which manifest in the levels or degrees of power they enjoy in relation to others in the field. This privilege of power results in one actor, or a group of actors, being more dominant in the field than the rest and while this is a dynamic relationship when studied within the present reality, these structures (and therefore the relations) are based on historical processes that gave, and continue to give, them legitimacy. As a result, the positions occupied by actors, and the

²⁰ Bourdieu identifies the crucial connection between history and sociology as: “All sociology should be historical and all history should be sociological” *supra* note 17 at 90.

²¹ Bourdieu, *supra* note 16 at 44.

²² Bourdieu, *supra* note 18 at 251.

²³ Pierre Bourdieu, “The Force of Law: Toward a Sociology of the Juridical Field” (1987) 38 *Hastings Law Journal* 805-853; Pierre Bourdieu, *An Invitation to Reflexive Sociology* (Chicago: University of Chicago Press, 1992); Pierre Bourdieu, *The Sociologist and the Historian* (Cambridge, UK: Polity Press, 2015); Pierre Bourdieu, “Social Space and Symbolic Power” (1989) 7:1 *Sociological Theory* 14–25; Pierre Bourdieu & Richard Nice, *Distinction: A Social Critique of the Judgement of Taste* (London, UK: Taylor & Francis Group, 2010); Pierre Bourdieu, “The Three Forms of Theoretical Knowledge” (1973) 12:1 *Social Science Information* 53–80.

²⁴ Sida Liu, “Between Social Spaces” (2021) 24:1 *European Journal of Social Theory* 123–139.

²⁵ Bourdieu, *supra* note 23.

resulting powers they wield through the capital they possess, are also historical in nature, and any study of the present reality of the legal field is devoid of meaning when not understood within its genealogical context.²⁶

For this dissertation, I define the legal field (unless specified otherwise) as the intersection of two seemingly separate fields, law and education. Law as a practice is greatly impacted by, and impacts, the education in law – reference to the earlier analogy of the two mirrors – thus legal practice and legal education emerge as part of the intersection of two seemingly separate fields. While Bourdieu conducts an extensive and impressive investigation of social spaces to construct the field theory, he does not account for the shifting or overlapping boundaries between different fields when they encounter each other.²⁷ Thus, the legal field in this dissertation refers to this intersecting space between the fields of legal practice and legal education in its structured social space setting. Its roots lie in British India when it was created through the export of two colonial transplants during the mid-nineteenth century as discussed in chapter 3 – the British transplanted the higher judiciary and the university as institutions to India in a spirit of experimentation. This export of two institutions resulted in the beginning of an intimate relationship of formal law with formal legal learning in the country. A higher education in law, through a degree, armed with the seal of approval from the university, became a form of symbolic capital that opened, and regulated entry to, the new high courts to this new law graduate in the 1860s. This access to the superior judiciary was through acquisition of a license to practice, another symbolic capital, but one which carried the power to impose several

²⁶ Bourdieu, *supra* note 23; Bourdieu & Nice, *supra* note 23.

²⁷ Liu, *supra* note 24.

distinctions within the thus far *new* system of dispute resolution.²⁸ Bourdieu proposes that these distinctions of, and within, symbolic capital play a part in the struggle in the field, and this is how the intersecting legal field under study acquired its own blend of practice norms.²⁹

Following the export of the High Courts to India, English barristers or solicitors followed suit to facilitate the functioning of these courts. These barristers were not subjected to the same regulations in practice. They arrived in the mid-nineteenth century legal field already in a dominant position, pre-determined by their *Britishness* – their education, training and generally the English way of life – in relation to their Indian counterparts, the *vakils*, who were far removed from that connection, and hence dominated. The legal field of practice was determined by a hierarchy of rights in practice, based on the jurisdictions of the High Courts, original and appellate. As a result, distinctions of education and/or training and rights of practice were immediately created between the dominant group, i.e., the barristers enjoying rights of access to the more lucrative and exciting original jurisdiction of the Higher Courts at the expense of the Indian practitioners. I argue that these historical distinctions have had a demonstrable impact on the reality of practice in the Pakistani legal field today, based on the positions of the actors in the field, and therefore, the habitus that developed in the different groups within the legal profession at the time has reflected the strain of those relations in legal education.

Bourdieu describes the habitus as “the mental structures through which they [actors] apprehend the social world, [which] are essentially the product of the internalization of the

²⁸ As discussed in much detail in chapter 3, the British replaced the indigenous system of dispute resolution in India with the English equivalent under the presumption that if it worked there why would it not be effective in the Indian sub-continent?

²⁹ Bourdieu & Nice, *supra* note 23.

structures of that world.”³⁰ Therefore, “habitus is both a system of schemes of perception and appreciation of practices...habitus produces practices and representations which are available for classification...[and] thus implies a ‘sense of one’s place’ but also a ‘sense of the place of others.’”³¹ The habitus of the legal profession in India from the mid-nineteenth century onwards was a product of the dynamic relations between the actors and their positions in the field. But this habitus cannot be described as a unified representation of the profession at the time – as mentioned earlier, the actors were divided through distinctions created by education and/or training, broadly between the barristers and Indian *vakils* or pleaders, and is discussed in detail in chapter 3. These barristers were at first solely British since access to the Inns of Court in England was accessible to them more so than the Indian practitioners. This group thus developed their own *English* habitus through the export of English legal practice: divided between solicitors who assisted the barristers. The new university-educated Indian practitioner had his own habitus based on his position in the field, which was one that served the English barrister, albeit in a different manner to the solicitor – he was the bridge between the English and the Indian languages, religions, and customs. As a result, the early habitus of the Indian legal field of practice in the mid-nineteenth century was based on distinctions of race, determined by the Indian’s subservient position in relation to the English barrister. The access to privileges by this English barrister is most evident when studying the field of practice – the original jurisdiction of the new High Courts was reserved exclusively for the English barrister and the appellate side was allocated to the Indian *vakil*. But what happens if the Indian becomes a barrister? The seemingly clear

³⁰ Bourdieu (1989), *supra* note 23 at 18.

³¹ *Ibid* at 19.

boundaries between race and title become blurred, and consequently the habitus of each group also changes in relation to each other and within itself.

The first Indian to *trespass* these boundaries and acquire the prestigious status of a barrister was Manmohun Ghose from Calcutta, who entered the Lincoln's Inn Bar in 1864 and was called to the Bar two years later in 1866.³² He registered with the Calcutta Bar on his return to India and began practice in the coveted original jurisdiction, successfully starting the process of boundary blurring within Indian legal practice.³³ The entry of Indians to the barrister class in the Indian legal profession resulted in the habitus of this group changing significantly where the dominant were not solely English any longer. In comparison, the Indian legal practitioner class of *vakils* and pleaders continued in their servile, dominated position but their habitus had also been affected by this boundary blurring. Until now the superiority of the English had been accepted, this dominance was through the century long work as discussed in chapter 3, but now when it was seen that an Indian could also be part of the prestigious barrister class, agitation arose with the designation of the appellate side to Indian vakils. By the turn of the twentieth century this led to the *vakil* class clamouring for eradication of the boundary between them and the barristers. As discussed in chapter 4, the 1926 Indian Bar Councils Act created a single category of practitioners called Advocates, but in reality, distinctions continued. Thus, the habitus of the

³² Joseph Foster, *Men-at-the-Bar : A Biographical Hand-List of the Members of the Various Inns of Court, including Her Majesty's Judges, etc.* (London: Printed for the author by Hazell, Watson, and Viney, 1885).

³³ Ghose along with nine others were the first ten Indian men who were called to the Bar in England from 1866-1870. Of these nine, the four from Calcutta were all trained at Middle Temple - Woomes Chunder Bonnerjee, Nawab Syud Ali Jung Ahmud, Bahadoor Khan, and Trak Nath Palit, while the five from Bombay all went to Lincoln's Inn – Govind Vithal Karkare, Phirozeshah Meherwanjee Mehta, Nowrojee Banaji Limjee, Cursetjee Monockjee, and Hormusjee Ardaseer Wadya. *Ibid.* Interesting to note the five from Bombay all belong to Zoroastrian faith i.e., *Parsis*, the merchant class dominant in India at the time. For more on Parsi legal culture refer to Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947*, Studies in Legal History (Cambridge: Cambridge University Press, 2014).

legal profession by the mid-20th century, while not as marked by race as it was earlier, still featured the social acceptance of the superiority of the title of the barrister.

The exit of the British from the India in 1947 was arguably not as significant for the legal profession because the legal field of practice was accessible to all actors called advocates, in the formal sense, but in the social hierarchical sense there was already replacement for the English barrister: the Indian/Pakistani barrister. The Pakistani *vakil*, or an Advocate,³⁴ though still in the majority, accepted the dominance of this capital wielded by the barrister – a symbol of prestige based on their *closer* tie to the English. This internalization of external hierarchies shaped human behaviour through an acceptance of those distinctions, and hence inadvertently granted it legitimacy, which then translated into the self-evident reality.³⁵ The inability/or lack of will to see the hierarchies, generates an environment where some truths are accepted as facts, and hence unchallengeable in the mind of a member of society – “the socialized biological individual” as a “part of the individualized social.”³⁶ The awe associated with this title, and the ensuing privileges, has persevered well into the 21st century in Pakistan, and in fact deepened the roots of the legal profession into its colonial heritage. Graduates of law continue to be drawn more to the power that the title of ‘barrister’ exerts in the profession, than the training that they receive at the Inns of Court, which is of course divorced from the reality of practice in Pakistan. Discussed in chapter 6, this fascination has resulted in the import of the Bar Practitioner Training Course to Lahore in Pakistan, further entrenching the Pakistani legal profession within its colonial narrative.

³⁴ While the term Advocate was introduced as an inclusive term for all kinds of legal practitioners, it is still considered the translation of a *vakil* in the socio-legal sense, and its use is very common in the Urdu language.

³⁵ Bourdieu, *supra* note 16.

³⁶ *Ibid* at 55.

While maintaining their individual habitus, the two groups of actors of the legal field ventured into the political field in the 20th century. The gains of the legal practitioner from the fight for Independence from British rule in the first half of the 20th century, resulted in the acquisition of a new form of capital which was political in nature and strengthened his position in the legal field through its connection with the larger field of power.³⁷ This changed the overall habitus of the legal field when some practitioners developed their positions based on their proximity to the political field, as turbulent as it was, of the newly created country Pakistan. The tensions in the national political field were due to military trespass into political space occupied by democratic institutions, and practitioners identifying their position as guardians of justice through the second half of the twentieth century played a part in resistance of these military interventions. These are discussed in chapter 5. For 50 years following Partition, these political machinations of the practitioner divided him between the legal and political fields, with his statutory duty to regulate the field of legal education all but forgotten. The result is that the colonial habitus of the profession was never renegotiated on Pakistani terms.

In the 1990s a *crisis* was identified – there had been a decline in the quality of advocates in the country. These were those who had studied the Pakistani LLB, which until 1992 still followed the structure as introduced by the British in India and entailed a two-year study of mostly statute. This decline can be argued as inevitable when one studies the developments in legal education following Partition in Pakistan and is discussed in chapter 5. As stated earlier in

³⁷ Bourdieu defines the field of power as, “By field of power, I mean the relations of force that obtain between the social positions which guarantee their occupants a quantum of social force, or of capital, such that they are able to enter into the struggles over the monopoly of power, of which struggles over the definition of the legitimate form of power are a crucial dimension...” Bourdieu, *supra* note 17 at 229–230.

this section, the legal field is defined as the intersection between two separate fields of legal practice and legal education. This field has three main actors with relative levels of power, the Pakistan Bar Council as a regulator of the legal profession and legal education, the Higher Education Commission which regulates higher education across disciplines (including law) in curricula design and monitoring universities and their affiliated colleges, and the universities that impart legal education through affiliated colleges. As analyzed in chapter 2, the power relations between these three are varied: the Bar and the Commission both regulate legal education and while one would expect there to be a tussle for power, the Commission's approach is one of recognition of the domination of the Bar since it is the expert on law, and legal education is *of course* geared to prepare students for practice. The universities are in an interesting position of power which can be observed in the resistance they pose to the Bar's introduction of Rules for regulation of colleges affiliated with different universities in 1998. Denouncing this as encroachment, the universities questioned the authority of the Bar in legal education, and this led to the beginning of the twenty-year battle (1998-2018) which is the subject of chapter 2.

In 2005, the Bar approached the Supreme Court for resolution of this struggle for dominance in the regulation of legal education in Pakistan. This choice of forum was almost natural for the Bar, and it was able to draw the universities into the legal (practice) field where it was in a position of dominance. Since the dispute was related to the quality of legal education at colleges, it was also a significant concern for the Court as well because of its impact on the legal field. Thus far, the Supreme Court had exercised its monopoly on the interpretation of law for the country but now also had been awarded the power to declare what legal education should entail since it had been petitioned by the Bar. The Court consequently also enters the field as an

actor.³⁸ Through the two cases on legal education, the Court became a mediator between two regulators, who share equal power to regulate legal education through statute, aiming to keep its focus on the primary issue: the fall in quality of legal education and its impact on practice. To facilitate this, it compelled the Bar to perform its statutory duties of inspection and identify the poor performing law colleges through inspections and ensuing derecognition.³⁹ Furthermore, through consultation with the Bar and Commission, the Court also declared a new LLB curriculum as well. The emphasis on this new curriculum in some part was also guided by the practitioners' logic of limiting entry into the profession by an increase in the length of time spent to acquire the LLB degree. One notable impact of the judgment was on graduates of foreign LLB degrees (who were identified as a sub-group of LLB degree holders) were subjected to an extra examination on Pakistani law in addition to the examination for entry for all LLB degree holders, including those from the *local* Pakistani LLB. But the lure of the English LLB available in Pakistan was not addressed.

The habitus of the legal profession where it was earlier divided between barristers and *vakils* has now become divided between those with the *local* Pakistani LLB degree and those with an *English* LLB from the University of London. The former is awarded a lower value socially in the legal field than the latter which is considered *better* even though it is a study of law from a solely English perspective, devoid of any connection to the Pakistani legal field. This is discussed in chapter 6 through the results of the focus groups conducted for this research project where the prestige associated with the English education and training for aspirants for legal practice

³⁸ Bourdieu, *supra* note 23.

³⁹ *The Pakistan Bar Council v. the Federation of Pakistan and Others*, *supra* note 4.

continues to be deeply entrenched in the habitus of the legal profession in Pakistan today. This is not to suggest that the habitus is stagnated along this duality in education and practice. Following the gains of the practitioners in the Independence struggles, they have emerged as a group with a prominent status in Pakistani society through the attainment of symbolic power with gains in political capital. These draw their power from their connection to the larger field of power in the country and is discussed in chapter 5 which covers the period from 1947-1999 and in chapter 6. While it is important to note that not all legal practitioners are invested in politics of the Bar or the country, political affiliation do play an important role in the life of a legal practitioner in Pakistan.

The country's tenuous relationship with democracy on one hand, and martial law on the other, has led to interesting developments in the larger field of politics. The unconstitutional removal of the Chief Justice of the country by the Chief of Army Staff during martial law under General Pervez Musharraf in 2007, sparked a resistance where the lawyers, joined by civil society, launched the famous Lawyers' Movement. This Movement was geared towards the reinstatement of the Chief Justice of Pakistan and ended in 2009 with the successful restitution of the Chief Justice to his constitutional office. The Movement, having no other agenda, came to its natural end, but I argue the gains from this on the political front added to the status of the Pakistani lawyer in the country, devoid of distinctions based on title or class.

The force of law pulls disputes to the legal field (broadly speaking) for resolution, and the 2018 judgment of the Supreme Court on legal education led to the Court's venture into the policy field of higher education in law, prescribing standards and limitations which went beyond the scope of the original petition as discussed in chapter 2. This expansion of the scope was due to

the direct impact of quality of education on the quality of lawyering, of which the judges as members of the legal field were acutely aware. The Full Bench chose this moment to resolve the main issue of poor-quality legal education and helped chart out a map for its reform. Bourdieu writes that the solutions offered by the court “are accepted as impartial because they have been defined according to the formal and logically coherent rules of a doctrine perceived as independent of the immediate antagonisms.”⁴⁰ This act of writing gains the status of the precedent and thus, carries the expectation that it shall be followed as if it were law – “Juridical ratification is the canonical form of all this social magic.”⁴¹ The judgment reaffirmed the supremacy of the practitioner in legal education not only in terms of the curriculum of the LLB degree but also how it would be imparted and by whom, identifying legal practitioners and retired judges as best suited to teaching law. I argue that this affirmation has further strengthened the position of the practitioner in the legal fields of education and practice. This is confirmed by the goal of legal education in Pakistan as gleaned from the judgment: to create *better* legal practitioners.⁴² Thus, the practitioner emerges a King, one that is blind to the existing distinctions within the legal profession that keep the habitus broadly speaking trapped in its colonial state. This is evidenced in two ways: the preservation and cementation of the practitioner-focus approach to legal education, and the internalized preference for an English legal education and training which allows for a continuing domination by the field’s colonial past. Over the past 75 years, the earlier orthodoxy has become part of the doxa of the current legal

⁴⁰ Bourdieu (1987), *supra* note 23 at 830.

⁴¹ *Ibid* at 840.

⁴² *The Pakistan Bar Council v. the Federation of Pakistan and Others*, *supra* note 4.

field in Pakistan, and a self-evident fact emerges that the student will learn law in preparation for *traditional* legal practice.⁴³

The use of Bourdieu's work has helped inform my ways of seeing the legal field, and my interest in the area was two-fold: as a practitioner and as a teacher. In both fields of education and practice, I could feel the ever-present pull to history, and is the main reason why I chose to draw on Bourdieu's theories on fields and habitus to help inform my work. His encouragement to "have fun!," question "rigidity" in method, and "get your hands dirty," were three pieces of advice that spoke to me the most.⁴⁴ The study of a social reality structured hierarchically within the historical context allowed me to explore the structure of the legal field and its habitus within its practice-based distinctions. As two mirrors, they reflect each other in a unique manner, and because this reflection is rooted in its colonial creation, it continues to exert its pull on the practitioner, or aspirant to the profession, standing between the two mirrors influencing the choices they make. Understanding these inherent tensions from a historical perspective helps one see the image of a legal practitioner in Pakistan better and help develop a response to that tension in the current reality.

Acceptance of the self-evident reality is inherently not reflexive, and this is how a Bourdieusian reflexive approach helps inform ways out of the current crisis. Reform is possible only through self-reflection of one's own role and place within a social field. This PhD is an exploration into this potential through a sociologically reflexive approach using history to understand how deep the roots of colonality run and suggest routes towards the potential

⁴³ Bourdieu, *supra* note 23.

⁴⁴ Loic J D Wacquant, "Towards a Reflexive Sociology: A Workshop with Pierre Bourdieu" (1989) 7:1 Sociological Theory 26 at 54.

indigenization of the profession and legal education in Pakistan for the 21st century. The invitation to explore reform from a reflexive approach is discussed in the concluding chapter.⁴⁵

This research project is such an effort to *see* [the] legal practitioners and not to attack them. Studying practitioners as a product of two institutional transplants allows one to observe how legal practice impacts legal education through a comparison over a 150-year period. Through this study with a reflexive lens, one can visualise that which is possible – “there is a place for a rational utopianism, in other words, that we have a right to a portion of utopia within the limits of the possible.”⁴⁶ It is in this rational utopia that reform is possible, and this research undertaking aims to understand what can be achieved. The 2018 Supreme Court judgment is an important moment that can herald significant changes if adopted, and developed further, to have a transformational impact on the quality of legal services provided, based on the quality of legal education attained and training received. But for this transformation to be possible, I propose that self-reflection and an openness to challenge the existing reality is necessary.

I considered using the concept of legal culture as a lens of study rather than Bourdieu because both these frames allow for an understanding of how practices and norms become entrenched in people’s minds and impact the legal framework and its administration. Upon study, I found that this concept is amorphous and carries varied interpretations depending on the discipline one ascribes to. This ambiguity in definition and interpretation of legal culture from different disciplines has been very skillfully explained by Nelken in his edited book which contains academic contributions in the area from different parts of the world.⁴⁷ He argues that legal

⁴⁵ Bourdieu, *supra* note 17; Wacquant, “Towards a Reflexive Sociology”, *supra* note 43.

⁴⁶ Bourdieu, *supra* note 16 at 33.

⁴⁷ David Nelken, *Using Legal Culture* (London: Wildy, Simmonds & Hill, 2012).

culture takes different shapes and forms depending on the lens used to study it: the social role of law; the pluralistic nature of law; comparative law; law within a globalized world; law as a legal system, amongst others.⁴⁸ It is this amorphous nature of legal culture that allows for flexibility and thus, can be applied in a myriad of ways: it can be used to understand identities produced on the basis of religion as used in Sharafi's work on Parsi legal culture;⁴⁹ Girard uses the concept in a dynamic sense to understand how it developed in British North America through a study of the work of Halifax lawyer Beamish Murdoch,⁵⁰ in their edited volume Backhouse and Swainger study legal culture by situating people and the places they occupy at the centre.⁵¹ This brief account of the literature on legal culture demonstrates its versatility, but I found the concept to lack a sustained engagement with power in the field. I found Bourdieu's field theory and habitus to be a more useful lens through which to view my work because it accounts for structured hierarchies which in turn influence power dynamics in the space under study.

The habitus itself as a concept does not imply a homogeneity of the entirety of the legal profession. Individual actors also have their own habitus and generate another structure of relations when they engage with others. So while the habitus of the legal profession is under study in this dissertation, this is not to state that there exists a singular habitus of the profession in British India or present-day Pakistan. Rather Bourdieu's notion of the habitus also accounts for differences within each group based on the individual positions of each of its members in relation to each other. Therefore, I found that Bourdieu's work on habitus and fields to be more helpful

⁴⁸ *Ibid* at 4–6.

⁴⁹ Sharafi, *supra* note 32.

⁵⁰ Philip Girard, *Lawyers and Legal Culture in British North America Beamish Murdoch of Halifax* (Toronto, Ont: Published for the Osgoode Society for Legal History by University of Toronto Press, 2011).

⁵¹ Constance Backhouse & Jonathan Scott Swainger, *People and Place Historical Influences on Legal Culture* (Vancouver, B.C: UBC Press, 2003).

than the concept of legal culture in understanding the distinctions in the legal profession born from legal education.

VI. Literature Review

One of the primary struggles in reviewing literature on legal education and practice in Pakistan was juggling with the two extremes of shallow and deep waters. While academic literature in law Pakistan is a growing field, and much material is available on the political and historical perspectives, there are limited articles and books in the area under research in this project, hence, the shallow waters. Other countries, especially India, on the other hand represent the deep end, with much having been written about legal education and practice in the past 50 odd years. Euphemistically referred to as “the Galanter Factor,” the social reality of the law in the lives of Indians has been explored to a great extent,⁵² and this interdisciplinary lens for the study of law in India from the 1960s onwards, is discussed in chapter 5 of this dissertation. This has allowed for the development of legal academic literature unique to the Indian context, one that Pakistan has unfortunately not experienced yet to that extent.

Books published on law in Pakistan, and available in the different law publishing houses in the country, focus more on statute and precedent, rather than academic or societal perspectives. Commentaries on statutory law are the most popular and most often contain

⁵² Robert Moog, “The Study of Law and India’s Society: The Galanter Factor” (2008) 71:2 Law and Contemporary Problems 129–137.

extracts of the most important cases on a section-by-section basis.⁵³ These are of course useful specifically for practitioners, and are most often written by practicing lawyers and retired judges.⁵⁴ While there are some notable exceptions that have emerged in the past two decades that employ a historical approach to law and institutions, these are few and far between, especially on the subject of this dissertation.⁵⁵ This gap in the literature, while exciting because it allows for a valuable socio-historical study on legal education and practice in Pakistan, is also daunting since it does not permit one to build on the work of others. Therefore, reliance on Indian literature and that from other post-colonial countries has been helpful in building the narrative around a gap within the Pakistani context that this project aims to fill.

About a decade ago, Siddique wrote a useful article on the topic where he argued that legal education in Pakistan has been “dominated” by practitioners, and there has been little to

⁵³ Lists of books from two law publishers in Karachi, the Pakistan Law House, and Pioneer Books, demonstrate this practice focus approach and are available with the author.

⁵⁴ “Rule of Law (A handbook for Bar & Bench)”, online: *Pakistan Law House* <<https://plh.com.pk/book/rule-of-law-a-handbook-for-bar-bench/>>; “Law of Bail”, online: *Pakistan Law House* <<https://plh.com.pk/book/law-of-bail/>>; “Companies Act, 2017”, online: *Pakistan Law House* <<https://plh.com.pk/book/companies-act-2017/>>; “Code of Criminal Procedure”, online: *Pakistan Law House* <<https://plh.com.pk/book/code-of-criminal-procedure/>>; “Code of Civil Procedure in 4 vols”, online: *Pakistan Law House* <<https://plh.com.pk/book/code-of-civil-procedure-in-4-vols/>>; “Law of Presumptions”, online: *Pakistan Law House* <<https://plh.com.pk/book/law-of-presumptions/>>; “Banking Law and Jurisprudence”, online: *Pakistan Law House* <<https://plh.com.pk/book/banking-law-and-jurisprudence/>>. Another example of a purely descriptive account of legal education in the country is provided by a retired judge of the High Court of Lahore Dr. Munir Ahmad Mughal. In his paper he provides a listing of relevant material on legal and judicial education in Pakistan which includes: laws, both statutory and judgments and powers of the various entities that regulate these areas. *Legal and Judicial Education Reforms in Pakistan: Role of Legislature, Judiciary and Executive*, SSRN Scholarly Paper, by Justice (R) Dr Munir Ahmad Mughal, papers.ssrn.com, SSRN Scholarly Paper ID 2362973 (Rochester, NY: Social Science Research Network, 2013).

⁵⁵ Hamid Khan, *A History of the Judiciary in Pakistan*, UK ed. (Karachi: Oxford Univ Pr, 2016); Hamid Khan, *Principles of Administrative law: a Comparative Study* (Karachi: Oxford University Press, 2012); Sadaf Aziz, *The Constitution of Pakistan: A Contextual Analysis*, 1st edition ed (Hart Publishing, 2018); Osama Siddique, *Pakistan’s Experience with Formal Law: An Alien Justice*, Cambridge studies in Law and Society (Cambridge : Cambridge University Press, 2013); Osama Siddique, *The Jurisprudence of Dissolutions: Presidential Power to Dissolve Assemblies Under the Pakistani Constitution and Its Discontents* (Pakistan Law House, 2008); Moeen Cheema & Ijaz Gilani, *The Politics and Jurisprudence of the Chaudhry Court, 2005-2013*, first edition. ed (Karachi, Pakistan: Oxford University Press, 2015); Muhammad Munir, *From Jinnah to Zia: Failure of Law of Necessity* (Vanguard Books, 1980); Sajjad Ali Shah, *Law Courts in a Glass House* (Karachi: Oxford University Press, 2001).

no space available for the development of legal academia.⁵⁶ He identifies legal academics in the country as a “critically endangered species” since teaching is predominantly conducted by practitioners, while curricula development, accreditation of law colleges and universities are duties that fall squarely within the domain of the Bar Council.⁵⁷ While valuable in its views, the article relied more on the author’s personal experiences in teaching and research, rather than on data that this project could work with, but another article by the same author conducted a more helpful review of the state of legal education.⁵⁸ Through a review of faculty of five law colleges in the country, Siddique shared his main findings: most colleges projected more faculty numbers than they possessed in reality, of these most were young with little to no post-LLB experience, and there was no emphasis on research and policy.⁵⁹ In terms of curriculum, he argued that the curriculum prior to the changes proposed in the early 2000s, where a five-year curriculum was proposed (the Lahore University of Management Sciences was the first university to introduce a liberal arts education in law in 2005), had been heavily focused on the study of statutory law.⁶⁰ He argues that there is limited learning of law from a theoretical and/or social, cultural, and political perspectives, and assessment of candidates’ learning is thus also devoid of any critical assessment, with heavy reliance on rote memorisation to acquire the grade required to graduate.⁶¹

⁵⁶ Osama Siddique, “Legal Education in Pakistan: The Domination of Practitioners and the Critically Endangered Academic” Symposium: Legal Education and Legal Reform in South Asia (2013) 63 J Legal Educ 499–511.

⁵⁷ *Ibid* at 499.

⁵⁸ Osama Siddique, “Martial Law and Lawyers: The Crisis of Legal Education in Pakistan and Key Areas of Reform” (2007) 5:1 Regent J Int’l L 95–122.

⁵⁹ *Ibid* at 102-103.

⁶⁰ This statute-focus is confirmed by findings of the research exercise conducted for this dissertation and discussed in chapter 5.

⁶¹ Siddique, “Legal Education in Pakistan”, *supra* note 56.

Shah et al, Khan, and Kalanauri, amongst others, identify the most common critique of quality legal education in Pakistan as a failure of regulation, even though (or because of) the existence of two regulators of the area: the Pakistan Bar Council and the Higher Education Commission.⁶² Both are empowered by their respective constituting statutes⁶³ to regulate legal education which is discussed in Chapter 2. Shah et al focus on regulatory systems in legal education and argue that the problems faced are due to the overlapping jurisdictions of the two regulators.⁶⁴ This overlap of jurisdiction results in a state of confusion on how quality can be determined and the reforms they suggest follow the assessment of the existing system for evaluation of quality of education imparted at institutions of higher education.⁶⁵ The authors propose that the practitioners control of legal education should be curbed, space awarded to legal academics, and prepare a trained part-time faculty. For this they propose ten modules which focus different areas including knowing the audience, use of technology to enhance learning, improvement in assessment criteria for students, amongst others.⁶⁶

The paucity of legal academic research is a serious problem for the development of law in the country. Prof. Ahmed Ali Khan, the Dean of the Faculty of Social Sciences at Peshawar

⁶² Sardar Ali Shah, Usharani Balasingam & Saroja Dhanapal, “Legal Education in Pakistan: An Overview” (2018) 26:2 1 401–401; Professor Ahmed Ali Khan, “Legal Education in Pakistan - A Review” 5; Zafar Iqbal Kalanauri, “Background Paper on the Review of Legal Education in Pakistan” 41.

⁶³ Legal Practitioners and Bar Council’s Act 1973, and Higher Education Commission Ordinance 2002.

⁶⁴ Shah, Balasingam & Dhanapal, “Legal Education in Pakistan”, *supra* note 61.

⁶⁵ The authors identify the eleven standards stated by the Higher Education Commission to evaluate performance of institutions of higher educations: Mission and goals; organization and governance; faculty; academic programs and curricula; student support services; assessment and quality assurance; public disclosure and transparency; institutional resources; students; integrity; planning and evaluation. *Ibid* at 415.

⁶⁶ The ten modules identified by the authors through a study of the Malayan experience are as follows: Teaching in Higher Education: Philosophical Perspective in Education & Creating Your Personal Philosophy; Know Your Learners; Reflective Practice; Planning Effective Curriculum and Instruction; Pedagogy and Instructional Strategies for Higher Education; Technology-embedded Teaching & Learning; Assessment Approach (Strategy and Method); Assessment of Outcomes (Student Performances); Feedback on Learning & Teaching (Continual Improvement); and Technological, Pedagogical Content Knowledge. *Ibid* at 427–428.

University, argues that legal research within the faculty and the students is “non-existent,” with only two universities in the public sector publishing legal journals.⁶⁷ He suggested the creation of a Legal Education Reform Commission, introduction of a five-year multidisciplinary LLB degree, and improvement of the conditions of service and employment for faculty as key areas where reform is needed.⁶⁸ Another legal practitioner who has also been involved in reform of legal education in Pakistan, Zafar Kalanauri, writes in an undated paper available on his website, that “sponsorship by Supreme Court of Pakistan would contribute greatly” to the sustainability of any reform of legal education in the country.⁶⁹ He endorses the decision of the Bar Council to petition the Supreme Court in 2005 for the reform of legal education. In an example of the purely practice-focus perspective of legal education, one that is only rational from the view of a practitioner himself, he proposes that, “The purpose of legal education is to prepare a law student for service in the legal profession, which branches into a range of areas including litigation, corporate, transactional, criminal, civil, access to justice, and international law.”⁷⁰ He identifies the failings of legal education in the country, and while the views he shares are in conformance with the dominant views on the subject, it appears that these are not assessed following an in-depth research study of the subject. While he suggests recommendations which are also representative of the prevailing narrative that has developed around legal education, his most pertinent observation relates to how the challenge to reform can be addressed: he identifies that this can

⁶⁷ Khan, *supra* note 62 at 4.

⁶⁸ Khan, *supra* note 62.

⁶⁹ Kalanauri, *supra* note 62 at 3.

⁷⁰ *Ibid.*

only be accomplished through a “collective effort of all stakeholders,” and no “resistance” by members of the legal community or the colleges should compromise the efforts undertaken.⁷¹

Iqbal and Ghawas discuss the attempts at reform of legal education by the Pakistan Bar Council and the Higher Education Commission during the decade between 2003-2013.⁷² The authors make two main arguments which demonstrate the unquestionable connection of a practice-focus approach to legal education: the first proposes that the curriculum for the LLB degree needs to be revised to make it relevant to “professional needs,” and the second states that the teaching methodology deployed in law colleges should focus on “professional training.”⁷³ Interestingly, the authors while speaking on reform of legal education suggest a *more* professional approach because the law graduate is ill-prepared for legal practice. They attribute this inadequacy not to the curriculum of the LLB but to the institutions providing legal education in the country.⁷⁴ A similar view has been certified by the Supreme Court, as discussed in Chapter 2, where law colleges and universities have been criticized for the fall in quality of legal education in the country. Arif *et al* reviews the changes in legal education in Pakistan through a study of the judgment of the Supreme Court on this issue and identifies the challenges that will need to be addressed for a successful implementation of the judgment.⁷⁵ These are: the regulators of legal education, Higher Education Commission and Pakistan Bar Council, need to be more diligent in monitoring law colleges and ensure that quality education is imparted; include more legal

⁷¹ *Ibid* at 40.

⁷² Anees Iqbal & Inayat Ullah Ghawas, “Handling Legal Education as Professional Training” (2013) 44:63 JL & Soc’y 197–208.

⁷³ *Ibid* at 201.

⁷⁴ *Ibid* at 202–205.

⁷⁵ Waqar Arif, Khan Muhammad & Bushra Bannian, “Changing Characteristics of Legal Education in Pakistan: Prospects and Challenges” (2019) 3:II PSSR 868–880.

academics in making policies that affect higher education in law; and curriculum drafting should be conducted by “legal experts.”⁷⁶ Unfortunately, the authors failed to specify what qualifications these legal experts would possess, would they be practitioners or academics, or both? One important suggestion that the authors do make implies two types of legal education – one for a higher education in law i.e., an LLB degree, and second, for an education in law for laypersons so that they understand their rights better. While this distinction is outside the scope of this PhD research project, it does lend credence to how some basic level of legal education is a need for all members of society.

While much of the literature available is based on reviewing existing laws regulating legal education, or interviews as primary sources, an article published by Talpur about a decade ago is a breath of fresh air because the author researched the area through interviews and focus groups as a methodological tool.⁷⁷ He argues that while stakeholders are working on the provision of quality legal education, this concept of “quality” is not easily defined since different people have different understandings of it. A general conception exists that law colleges must prepare its graduates for legal practice, and legal education is failing to do that – this idea also forms the basis of this current doctoral dissertation. Talpur studies this belief using focus groups and this research exercise aimed to uncover what lawyers as former students of law in Sindh believe this “quality” should look like. He argues that it is due to a lack of clarity on what quality means that Pakistani legal education is in the sad situation as it is.⁷⁸

⁷⁶ *Ibid* at 877.

⁷⁷ Zamin Hussain Talpur, “Study on the Reformation of Legal Education in Pakistan” (2013) 16:5 IOSR-JHSS 59–60.

⁷⁸ Further discussion into the findings of this research exercise is conducted within a comparative frame in Chapter 6 of this dissertation which also uses focus groups as a method, but the aim is different – the objective of the focus groups for this PhD study was to uncover the goal of legal education.

Sial writes about the need for viewing legal education as a tool for social innovation – he identified that at times it is “unpleasant to listen debates on legal issues at television programs that indicate range of ignorance of both participants and audience...Legal education has to be involved to stimulate public awareness programs on popular concept of fundamental public rights and obligations.”⁷⁹ The author states a perennial issue with the quality of admission requirements with the Bar, “Any person, having done simple graduation can get admission in law,” and as a result, “the profession is facing hardships in maintaining its professional legacy.”⁸⁰ The solution he offers (along with others related to quality of faculty, teaching pedagogy) is an invitation to learn from America which has incorporated clinical legal education in its law school curricula. This inclusion would allow for the study of law from a social justice perspective and formulate innovative solutions to help address the complex issues faced by Pakistani society today. The role of the United States in legal education reforms after Partition in Pakistan and India is discussed in chapter 5.

A comparative investigative study of legal education in Pakistan, India and China was conducted by Shu Hong et al. They argued for the necessity of trainings following attainment of a law degree, an option they state is available in Pakistan⁸¹ and China on similar grounds.⁸² However, all three jurisdictions fail to provide experiential education in the manner available in American law schools, even though the authority to tailor the LLB curriculum to suit the practical

⁷⁹ A Q Sial, “Designing Legal Education to Support Social Evolution in Pakistan” South Asian Studies 13 at 285.

⁸⁰ *Ibid* at 289.

⁸¹ From the Pakistani perspective, I make a distinction between the statutory requirement of providing trainings to law graduates and the reality of those trainings. The 1973 Act does mandate trainings, but they are not detailed or specified any where, senior training juniors while it appears so on paper, the quality of this engagement is questionable. This has also been stated in the Supreme Court judgment 2007, as discussed in chapter 2.

⁸² Yu ShuHong et al, “Cross-National Comparative Study on Legal Education and Admission to Practice Between China, India and Pakistan” (2018) 21:35 Journal of Legal Studies 16–37.

side of law is possible. The reality of learning provided in Chinese law school is very similar to the Pakistani experience – encouraging rote memorisation, the examinations are “designed to judge their ability to memorize and replicate the information in large quantity which was delivered in the class.”⁸³ The goal of Chinese legal education is “to produce better legal practitioners,”⁸⁴ and this goal is reflected in India and Pakistan as well, with the Bar Councils and Commissions responsible for regulating higher education in each country holding court over the curriculum. The authors further stressed the necessity of a competitive Bar exam which should be based on cases, rather than on statute, in all three countries under study.⁸⁵ Another article on the topic from a comparative perspective studies Pakistan with the Malaysian experience of the legal education by Khan et al deserves mention here.⁸⁶ Written just about a year after the 2018 judgment of the Supreme Court under discussion in this dissertation, this article seeks to understand the teaching methodology and assessment/examination mechanisms currently deployed in Pakistani law colleges through a comparative study of the Malaysian context. They propose that the vocational orientation of legal education in Malaysia that accounts for clinical legal education through compulsory mootings, legal drafting classes, internships and other forms of experiential learning needs to be adopted in Pakistan as well.⁸⁷

Comparative studies of Pakistani legal education with China and Malaysia are useful as they help situate Pakistan within the narrative of legal education from the perspective of the Global South in the twentieth century. I selected countries from the region for discussion on the

⁸³ *Ibid* at 21.

⁸⁴ *Ibid* at 22.

⁸⁵ *Ibid* at 33.

⁸⁶ Khan et al, “Reforming Legal Education in Pakistan by Introducing Clinical and Practical Aspect in the Existing Syllabus: a Key to Enhance Professionalism within Law Graduates” Research Gate (2019) 1-20.

⁸⁷ *Ibid* at 13–14.

subject based on their unique socio-political and historical context, and the literature reviewed also covers Bangladesh, Malaysia, Myanmar, Vietnam, and India in some part. All countries (except Vietnam) have been under British colonial rule at some stage in history. The reason why emphasis on India is limited in this part of the literature review is because Indian legal education is examined especially in chapter 5 through a comparative approach with Pakistan. This is of course due to the shared histories of the two countries under the British and later with US interventions. While Pakistan and Bangladesh also share similar historical narrative with the latter gaining independence from the former in 1971, their progress in legal education as the literature suggests has occurred in a fashion similar to Pakistan.⁸⁸ The Malaysian experience is especially useful due to three reasons: first, the codification of laws was exported from the Indian experiment by the British; second, they share Shariah law fusion in the colonial laws due to Islam being the dominant religion in both countries; and lastly, it is a pluralistic country like Pakistan with multiple languages being in vogue in the legal practice.⁸⁹ Myanmar is also a valuable Asian country to learn from since it shares authoritarian rule by the military complex with Pakistan which has impacted both countries in different ways. While in Pakistan, as discussed in Chapter 5, the legal profession has historically stood against the military's encroachment into democratic

⁸⁸ Mohammad Monirul Azam, "Reforming Legal Education in Bangladesh" (2005) 55:4 *Journal of Legal Education* 560–570; Cynthia Farid, "New Paths to Justice: a Tale of Social Justice Lawyering in Bangladesh" 31:3 41; Daud Hassan, "Educating Competent Lawyers - How, When and By Whom are the Skills of Practice Best Taught - A Discussion in Relation to Legal Education in Bangladesh Essay" (1997) 1 *J Prof Legal Educ* 63–76; K M Rakibul Islam, "Use of Technology in Legal Education of Bangladesh Challenges and Prospects" 03:01 18, *Green University Review of Social Sciences*.

⁸⁹ Shad Saleem Faruqi, "Western Intellectual Imperialism in Malaysian Legal Education" (2011) 46:46 *Economic and Political Weekly* 55–60; Ainul Maidin, "Clinical Legal Education Initiatives In The International Islamic University Malaysia" (2012) 7; Richard Powell & Tiong Guan Saw, "Multilingual Legal Practice and Law Student Internships in Malaysia" (2021) *World Englishes*, online: <<http://onlinelibrary.wiley.com/doi/10.1111/weng.12570>>; Richard Powell & Azirah Hashim, "Language Disadvantage in Malaysian Litigation and Arbitration" (2011) 30:1 *World Englishes* 92–105.

governance, in Myanmar, the military junta had shut down law schools and universities in fear of opposition or rebellion. Furthermore, while both countries have introduced the five-year interdisciplinary LLB degree, they continue to struggle with perennial problems of rote memorisation and poor assessment frameworks.⁹⁰ Vietnam's experience in legal education is helpful because their reforms in the area have been influenced by US interventions, and the LLB degree is interdisciplinary in nature.⁹¹ Nigeria also provides a very useful context from a post-colonial perspective – they have also struggled to indigenise legal education against the British practitioner-focused entrenchment, and fusion of British inherited laws with Shariah Law, since Islam is the dominant religion in the North of the country.⁹²

Bangladesh suffers from similar problems in legal education, and Azam identifies that “Legal education in Bangladesh regularly resists change of any sort.”⁹³ His analysis of the Bangladeshi experience reads almost as if it was written about Pakistan. I identify some of his observations that help one understand the Pakistani context: A higher education in law is unfortunately not connected with the reality of Bangladeshi society, and overseas universities award foreign degrees in Bangladesh, teaching a foreign law disconnected to the local legal system; lack of admission criteria to enter a law college results in degrees awarded to students who are not competent to receive them; poor accountability of faculty, including their

⁹⁰ Nicholas Ross et al, “Understanding Myanmar and the Way Forward for Legal Education: From Rote Learning to Community Engagement Through Clinical Legal Education” (2020) 7:2 Asian Journal of Legal Education 97–115; Jonathan Liljeblad, “Transnational Support and Legal Education Reform in Developing Countries: Findings and Lessons from Burma/Myanmar” (2016) 14:2 Loy U Chi Int'l L Rev 133–154.

⁹¹ Bui Thi Bich Lien, “Legal Education in Transitional Vietnam” in John Gillespie & Pip Nicholson, eds, *Asian Socialism and Legal Change The Dynamics of Vietnamese and Chinese Reform* (ANU Press, 2005) 135-158.

⁹² JO Fabunmi & AO Popoola, “Legal Education in Nigeria: Problems and Prospects” (1990) 23:1 *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 34–55; Bagoni Bukar, “Legal Education And Challenges Of Contemporary Developments In Nigeria” (2014) 20:2 *International Journal of Clinical Legal Education* 593–602.

⁹³ Azam, *supra* note 88 at 560.

appointments, and inadequate research facilities; limited practical skills in the outdated curriculum and a traditional teaching methodology; examination and assessment relies on rote memorisation; limited human rights emphasis; not sufficient employment of technology in learning; and continued reliance upon English as a medium of instruction.⁹⁴ He suggests the following paths for reform: curriculum should account for interdisciplinarity and social relevance; faculty should be innovative and research-oriented to facilitate better teaching methodologies; assessment criteria must change in examinations to allow for more critical thinking and legal reasoning; clinical legal education should be introduced with a mandatory practical skills training program; legal education should be geared towards people and justice in society; and the changing globalized world should be accounted for within the system.⁹⁵ These suggestions also resonate with the 1930s Indianization attempts of legal education and the profession in colonial India, as discussed in chapter 4, and will help inform reforms suggested for Pakistan.

Farid also writes about Bangladesh within its experience of public interest litigation which found root in the country in the 1970s and 1980s which was possible due to lawyers working with the aim of social justice.⁹⁶ She identifies two waves of public interest lawyering in Bangladesh, the first comprised of lawyers who were risk-takers and challenged the injustice meted out by the government on its people; and the second was a more targeted attack at injustices in society by younger lawyers. These later connected to the legal aid movement in the country, and Farid writes that consequently, public interest lawyering is intricately connected to social justice. I relate this to Pakistan which has also had a similar trajectory in this movement, but this has

⁹⁴ *Ibid* at 563–566.

⁹⁵ *Ibid* at 567–569.

⁹⁶ Farid, *supra* note 88.

unfortunately not been reflected in the LLB curriculum.⁹⁷ Farid recommends that legal education should now move away from black-letter law and towards clinical legal training and professional responsibilities which are necessary for achieving greater social justice. Furthermore, she stresses a drive to reject the colonial fantasies of the prestige of an English education and training through critical reflection.⁹⁸

Myanmar, formerly Burma, bordering India and Bangladesh was also a part of the British colonial empire from 1886 till 1948, gaining Independence a year after India and Pakistan. Prior to colonization, the country was under monarchical rule governed by its own common law traditions with some codification of laws in texts called *Dhammathats*.⁹⁹ The British re-transplanted the legal system from India (which at first was transplanted from the UK to India) in the erroneous expectation, or a continuing arrogance, that if it worked elsewhere it would work in Myanmar as well – “The British used India as a blueprint for how these institutions should run, ignoring local culture and customs to the detriment of the institutions.”¹⁰⁰ The consequence of this was the displacement of Myanmar’s indigenous common law tradition by British codification systems, exported from the Indian experiment across the border. Similar to the Pakistani context, just over a decade after Independence of the British Raj, Myanmar transitioned into an

⁹⁷ Menski and others write about the birth and growth of this area of litigation to improve access to justice by these affected by government transgressions of the rights of Pakistanis especially in the area of environmental law. Werner Menski, *Public Interest Litigation in Pakistan* (Platinum Publishing Limited, 2000); Jona Razzaque & Wolters Kluwer, “Public Interest Environmental Litigation in India, Pakistan and Bangladesh”, *Comparative Environmental Law & Policy Series 7* (Kluwer Law International in Alphen aan den Rijn, The Netherlands: Wolters Kluwer, 2004); Maryam S Khan, “Genesis and Evolution of Public Interest Litigation in the Supreme Court of Pakistan: Toward a Dynamic Theory of Judicialization” 75; Martin Lau, “The Right to Public Participation: Public Interest Litigation and Environmental Law in Pakistan” (1995) 4:1 *Review of European Community & International Environmental Law* 49–50.

⁹⁸ Farid, *supra* note 88 at 459.

⁹⁹ Ross et al, “Understanding Myanmar and the Way Forward for Legal Education”, *supra* note 90.

¹⁰⁰ *Ibid* at 99.

authoritarian military regime in 1962, and the military junta continues to hold power in the country. This country is a useful example for comparison with Pakistan because of the complex and tenuous relationship of martial law with democracy, one that continues to benefit the military elites that have entrenched power positions. Higher education in Myanmar is under the Higher Education Institution in the Ministry of Education, and the first university to teach law was established in 1920, Rangoon University now called University of Yangon.¹⁰¹ This was a two-year law degree but by 1964, the five-year BA/LLB degree was introduced where the graduate could become a lawyer after they completed a one-year apprenticeship with an advocate. After completion of this apprenticeship, the law graduate could apply for a license to practise as a High-Grade Pleader which entitled them to practice in any court, besides the Supreme Court. Following one-year experience as a Pleader, they could apply to become an advocate which did not have any jurisdictional limitations.¹⁰² In terms of teaching and learning at the universities, the medium of instruction is English (as in Pakistan), and court documents, judgments and court practice are in Myanmar. The clinical legal education wave of the 1960s and 1970s also impacted the country, “as the need for social justice grew to benefit both the community and law students.”¹⁰³ Through an investigative study, the authors (with assistance from the US) conducted a community-needs assessment in Taunggyi. The goal was to identify what kind of the legal aid was most needed by the community so that the university could address those through its clinics. The two main areas

¹⁰¹ “Law|University of Yangon”, online: <<https://www.uy.edu.mm/law/>>.

¹⁰² Ross et al, “Understanding Myanmar and the Way Forward for Legal Education”, *supra* note 90 at 101–102.

¹⁰³ *Ibid* at 103.

of law identified were drug-related offences and sexual harassment which were recommended as areas that the University could undertake in its legal clinics, preparing its students.¹⁰⁴

Liljeblad also analyses foreign assistance to Myanmar as a country in transition, connecting the improvement in legal education to equip future lawyers and jurists so that rule of law could prevail in society.¹⁰⁵ The problems of legal education in Myanmar in comparison to Pakistan are similar, memorisation by rote, poor assessment frameworks including release of answers to examinations prior to the date, inadequate infrastructure facilities, poor resources for reading and learning amongst others.¹⁰⁶ While law schools and universities in Myanmar have been ‘reformed’ during periods of military control to suppress potential dissent, in Pakistan legal education has been largely ignored, leading to a similar result, and suffers from “substantial deficiencies in research and teaching.”¹⁰⁷ Through an ethnographic study, the author assesses the nature of legal education development aid provided to law schools in Myanmar from Western donors. Within an aid program that spanned several years, a five-day workshop with seventy-five participants from eighteen law schools in the country was held in 2015. Its aim was to collect the experiences of teaching and learning at their respective institutions to help inform aid efforts in legal education. The findings revealed the following: foreign aid providers have an asymmetric relationship with the host country through control of resources and use the host country as “marketing tools” to generate more aid from other international donors; reform efforts while on the surface aiming to be long-term are in reality not focused on outcomes achieved; a limited

¹⁰⁴ *Ibid* at 109–111.

¹⁰⁵ Liljeblad, *supra* note 90.

¹⁰⁶ *Ibid* at 141.

¹⁰⁷ *Ibid*.

understanding of the unique realities of the host country when transplanting foreign solutions to its problems; a lack of transparency in selection of institutions for aid reform; receipt of aid from multiple donors result in divisions within the host country institutions which are supplemented by lack of coordination between the recipients; and finally it results in neo-colonialism where foreign aid workers are perceived as *better* than the recipients.¹⁰⁸

Ismatov and Makino also study the impact of international assistance in legal education through a focus on Japan's assistance to Myanmar to transition from socialist understandings of law into a country where the rule of law is promoted and protected.¹⁰⁹ Since the 1990s, Japan has provided foreign aid to Vietnam, Laos, Uzbekistan, Cambodia, and Mongolia, and the authors argue that Japan's approach to promote the rule of law is different from America's – "Western donors have demonstrated some aggressiveness towards the unconditional implementation of universal democratic and human rights standards."¹¹⁰ Japan on the other hand only ventures into these countries upon invitation and aims to assist them in human resource building so that they can be better equipped to work independently in the future. This approach is born of Japan's own history of multiple foreign interventions which were managed by adopting a comparative approach, and this is what Japanese assistance emphasizes. Asian jurists visit Japan, study Japanese law, and then see how they can use this new learning through a comparative study with their own countries.¹¹¹

¹⁰⁸ *Ibid* at 144–150.

¹⁰⁹ Aziz Ismatov & Emi Makino, "Japan's Legal Education Assistance in Asia: Building a Cohort of Jurists for Transition Reforms" (2021) 8:1 Asian Journal of Legal Education 19–33.

¹¹⁰ *Ibid* at 20.

¹¹¹ Ismatov & Makino, "Japan's Legal Education Assistance in Asia", *supra* note 109.

Malaysia (formerly called Malaya), another of the British crown colonies in the region, was also a recipient of Indian codification experiment export, like Myanmar – the Indian Contract Act and Indian-styled Procedures Codes for courts were transplanted there from India.¹¹² Upon Independence in 1957, Malaysia consisted of Malaya, Sabah, Sarawak and Singapore (though Singapore became an independent country two years later), and as a result was a pluralistic mix of different languages, religions and cultures. Powell and Saw study this pluralism in terms of languages in legal practice and education in the country, including Malaya, Tamil, Mandarin, and English.¹¹³ Considering the influence of British law and education in a former colony, the language that dominated was English though attempts at decolonisation of language in favour of Malay began soon after Independence through Parliamentary intervention, more so in the 1980s in East Malaysia than in the West. This was due to the difference in linguistic composition in the East which was more Malay speakers than the Western region.¹¹⁴ The result is a divide between English and Malay, the former holding the field in law schools, while the latter in the law firms and courts. Powell and Saw observe that this bilingualism in law is symptomatic of many former British colonies and conducted a study with law students at the University of Malaya to understand how language influences their experiences in law. This questionnaire-focused data collection exercise revealed the following findings: government law offices use Malay more, while private law firms, especially those in the corporate sector use English; lower court practice was mostly in Malay while higher court practice in English including documentation, communication etc.; and students preferred using English more than Malay because of the

¹¹² L A Sheridan, “Legal Education in Malaya” (1957) 4:1 J Soc’y Pub Tchrs L n.s 19–26.

¹¹³ Powell & Saw, *supra* note 89.

¹¹⁴ *Ibid* at 3.

difficulty in translating legal concepts in the local language.¹¹⁵ This study was informative as it provided a window into the gap that students experiences – in law school they learn in English but when they enter professional practice they are expected to use more Malay. Such a disconnect is also reflected with Pakistan where formally English is the medium of instruction in schooling and in the courts but the reality is a mix of languages, with English being the official and hence dominant language. In Malaysia, the authors argue that despite decades of attempts at indigenisation of law and practice, the decolonization process is still ongoing and suggest “multilingual lawyering as its own expression of legal decolonisation.”¹¹⁶ Powell has also studied bilingualism in legal practice in Malaysian courts and arbitration with Hashim¹¹⁷ – the Malaysian legal profession, one that was earlier dominated by English has been transformed in to a bilingual one, with court staff including interpreters of Malay and English, as well as Tamil and Chinese, facilitating this linguistic pluralism in the courts.¹¹⁸

Within the context of states part of the British empire, Nigeria also offers an interesting example. It declared its independence in 1960 and until then (also a few years thereafter) its lawyers had all acquired their formal legal education and/or training in the UK – “every prospective Nigerian lawyer had the same basic legal training as his English counterpart.”¹¹⁹ Different from colonial India, there was no university-level legal education introduced by the British in Nigeria.¹²⁰ Currently, however legal education and training is taught at universities in the country who have control over what is taught, while the Council of Legal Education is

¹¹⁵ *Ibid* at 6–10.

¹¹⁶ *Ibid* at 12.

¹¹⁷ Powell & Hashim, *supra* note 89.

¹¹⁸ *Ibid* at 95–98.

¹¹⁹ Fabunmi & Popoola, “Legal Education in Nigeria”, *supra* note 92 at 37.

¹²⁰ *Ibid* at 36–37.

empowered to recognise (or not) the degrees awarded. Further legal training on the practical aspect of law is also the duty of the Council. Fabunmi and Popoola argue that the goal of legal education in the country is on two levels: the first focuses on the production of an able and competent legal practitioner that helps facilitate disputes in the court, while the second looks at the role of law and lawyers within the context of the society where it, or they, function. It is important to note that “the overall objective of general education in Nigeria which is to effect national development” in the country.¹²¹ With clear admission requirements to universities, the uniform curriculum includes courses on sociology, psychology, economics, history, political science, amongst others, in addition to the formal law courses and practical subjects on procedure and ethics etc. Oko writes that the process for becoming a legal practitioner in Nigeria requires a student to complete an academic education in law from a Nigerian university, and then acquire practical training at the Nigerian Law School in Lagos.¹²² He argues that despite developments to indigenize the system of legal education and training, it remains bound by its colonial tradition disconnected from the current realities of Nigerian lawyering, over a half century after independence.¹²³ Interestingly, the university education in law in the country though arrived to Nigeria over a century after in India, has also failed to identify clear goals for legal education – “lack of clearly defined goals affects how law is taught, the curriculum, and the quality of training received by Nigerian lawyers” – and student learning is limited to formal or the traditional understanding of law, rather than law within its socio-political and economic

¹²¹ *Ibid* at 41.

¹²² Okechukwu Oko, “Legal Education and Training in Nigeria” (1994) 6:2 African Journal of International and Comparative Law 271–292.

¹²³ *Ibid* at 272.

context.¹²⁴ While Nigerian legal education is an undergraduate degree like in the United Kingdom, in 1987 a committee was set up by the Commission to address “widespread allegations of lawyers’ professional incompetence.”¹²⁵ They considered firstly, an increase in the duration of the law degree so as to include learning of other disciplines as well, and secondly, that the law degree should be a graduate degree as in the United States. Only the first proposal succeeded with traditional courses in law to be augmented with other non-law courses from the social sciences.¹²⁶ By 1989, a more liberal approach towards legal education was recommended by National Universities Commission and to achieve this, the author proposes that “legal education should seek to produce professionally competent and ethically sensitive lawyers who can appreciate and relate to the environment in which they live and practice.”¹²⁷

Oba also argues similarly that for legal education in Nigeria to improve, it must relate to the society that the law governs. Unfortunately, the curriculum fails to adequately address the unique pluralism which exists in the country which results in conflicts between the common law and Islamic law, as well as the variety of local customs and traditions that govern Nigerian society. Furthermore, Christian law students would object to learning Islamic law at the universities which is modelled along law faculties in North Africa and the Middle East. Such conflicts can make reform of legal education in the uniform sense difficult to achieve. The author suggests that the

¹²⁴ *Ibid* at 273.

¹²⁵ *Ibid* at 278.

¹²⁶ “Compulsory law subjects include Legal Methods, Constitutional Law, Contract Law, Criminal Law, Company Law, Commercial Law, Law of Equity and Trusts, Law of Evidence, Jurisprudence, Land Law, Nigerian Legal System, Law of Torts and a compulsory long essay in the final year. Compulsory non-law courses include English, History and Philosophy of Science (general studies), Logic and Philosophic thought (two separate courses, one for General studies and the other as a compulsory non-law course), Nigerian People and Culture (general studies), Introduction to Computers and Applications, Social Science, and English Literature. Optional law courses include Administrative Law, Revenue/ Taxation Law, Industrial or Labour Law, Oil and Gas Law, Public International Law, Conflict of Laws, Family Law, Conveyancing, Criminology, Islamic Law and Banking and Insurance law.” *Ibid* at 280.

¹²⁷ *Ibid* at 274.

common law, Islamic law, and other African culture must be reflected in the curriculum, with either the introduction of new courses or expansion of existing ones, and argues that this integration would help in the decolonization of law and legal education.¹²⁸

Another conflict emerges between composition of legal faculty, whether teaching should be conducted by practitioners or academics. Despite the professional training courses provided at the Nigerian Law School,¹²⁹ the expected result of competent legal practitioners has not been achieved and this the author argues is due to multiple factors: the School is the only source of training for the country and the resulting load on the institution which the infrastructure facilities cannot adequately support, and a lack of motivation on the part of both students and the lecturers.¹³⁰ As a consequence (similar to the Pakistani experience discussed in chapters 5 and 6) students rely on cramming guides to memorise the content necessary for assessment which results to little or no learning. Thus, the author proposes that this two-tier distinction between academic learning of law at university and practical training at the School does not work and argues that the practical training should also be part of the university curriculum for an indigenous perspective “to close the gap between the theory and practice of law.”¹³¹

Beca writes that while there will always be a tension between the professional and academic approaches in legal education, but one aspect that is crucial in both is ethics. She suggests that the law curriculum should include, “Ethical consciousness and the ability to act

¹²⁸ Abdulmumini A Oba, “Towards Rethinking Legal Education in Nigeria” (2008) 6:1 Journal of Commonwealth Law and Legal Education 97–114.

¹²⁹ Bukar’s investigation of the Nigerian Law School in 2014 reveals that the School has six campuses that serve graduates of the thirty-six faculties of law in the country, and the foreign law degree holders as well. Bukar, *supra* note 92 at 601.

¹³⁰ In 1993 there were 2300 students enrolled in the School being taught by just sixteen teachers, many of whom had limited practice experience in the courts. Oko, *supra* note 122 at 289.

¹³¹ *Ibid* at 291.

ethically” as a necessary component for competency in a graduate.¹³² Grounded in philosophy, ethics and its inclusion in the law school curriculum should be geared towards preparing law students (especially if ethics can be linked with clinical legal education) to address the future ethical dilemmas that they will experience upon entry into professional practice. Bliss in her study on Thailand also argues similarly to Beca, proposing that clinical legal education in the country can help enrich the lives of students to help them “become competent, ethical lawyers.”¹³³ The belief is that this form of experiential learning is another teaching method that has a unitary goal of social justice, and this also has an impact on the way the legal profession evolves, and the law develops in the country.

Tan et al conduct a comparative study of legal education in Asia looking at the following countries: Thailand, South Korea, Vietnam, India, Singapore, Indonesia, and China.¹³⁴ While they recognise that in Asia the law degree is generally geared towards legal practice, an investigation of the curriculum of the law degree reveals that most jurisdictions also include the study of non-law subjects. This they argue is understood along three models: the first permits its students to study non-law subjects, the second integrates these courses into the more traditional law curriculum, while the third, allows students to study for another specialisation along with law, e.g., law and business; law and economy.¹³⁵ The authors argue that the drive towards this inclusion of non-law courses in the law curriculum is to “create a better legal professional” by enabling students to see how law is connected with and reflective of the society of which they

¹³² Juan Beca, “Teaching Legal Ethics to Law Students: Why, What, How and Who Might Teach Essay” (2016) 3:1 Asian J Legal Educ 85–94 at 86.

¹³³ Lisa Bliss, “Lessons Learned from Teaching Clinical Legal Education in Thailand” (2014) 63:3 Journal of Legal Education 524–531 at 525.

¹³⁴ Cheng Han Tan et al, “Legal Education in Asia” (2006) 1 AsJCL [ii]-22.

¹³⁵ *Ibid* at 9.

are a part. They propose that this interdisciplinary approach addresses one major weakness of the traditional study of law where “there is an over-emphasis on knowledge and mastery of the technical aspects of legal rules without sufficient attention to the underlying reasons behind those rules.”¹³⁶ However, the authors also question the effectiveness of this interdisciplinary approach as the best way to teach law, suggesting that there is no clarity about “how students benefit from such exposure in practice.”¹³⁷ They propose that a better approach, which is being followed by the National University of Singapore, could be an integrative one, where law subjects are taught in a manner which integrates the historical, social and political context with the doctrine or area under study.

The review of this literature from a Global South perspective helps situate this contribution within the fields under study. While it is comforting to note that Pakistan is not alone in the problems it faces in legal education, it is more important to learn from the experiences of these countries to forge a better path ahead. A review of countries of the Global North like United Kingdom, United States of America, Canada, Australia has been incorporated later in this dissertation to help inform the Pakistani legal field from a comparative perspective.

VII. Conclusion

This chapter sets out the parameters of this research project with a discussion of the context of legal education and practice in Pakistan. The primary research question explores the

¹³⁶ *Ibid* at 10.

¹³⁷ *Ibid*.

extent to which colonial norms of legal practice guide legal education in Pakistan today, through methods drawn from law, sociology, and history. The Bourdieusian theoretical framing helps in broadening our vision of studying current society within a historical context, and his work on habitus and fields is useful for understanding the Pakistani experience of practice and legal learning. The norms in legal practice as created following the importing of the twin institutions of universities and high courts in the mid-nineteenth century as the starting point for this dissertation, I argue that the Pakistani legal field continues to be cast under the long shadow of coloniality on legal education in the country. The next chapter provides a discussion on the state of legal education in Pakistan through a study of the cases on legal education argued in the Supreme Court and the path to reform as laid out by the Court in 2018.

CHAPTER 2

The Fiction of the Ideal Lawyer and the Reality

*“Vakil tow woh hota hai jo court jata hai.”*¹³⁸

A lawyer is someone who goes to court.

I. Introduction

The lived reality of the lawyer as a practitioner in a Pakistani court is rooted within the country’s colonial history in the mid-nineteenth century. This chapter explores the twenty-first century goal of legal education in Pakistan through a study of two judgments by the Supreme Court (2007 and 2018)¹³⁹ that seek to address the declining quality of education imparted at law colleges and universities in the country. Through this investigation, the aim of this chapter is to unpack the practice-focus of legal education and the overwhelming expectation that a graduate of law will practice law.

This chapter explores the image of the practitioner as a guardian of justice as conceived by the Supreme Court through its 2018 judgment¹⁴⁰ on legal education which guides the reforms mandated. I propose that this ethical and justice-oriented image of the practitioner, as discussed in this chapter, as an ‘ideal archetype’ is a fiction which serves at best as an aspirational goal and can be observed through the three main stages that she goes through – as a student of law, as a

¹³⁸ “A lawyer is someone who goes to court,” Nabeeha Siddiqui, *State of Legal Education in Pakistan* (2020), translation by author.

¹³⁹ *The Pakistan Bar Council v. the Federation of Pakistan*, *supra* note 3; *The Pakistan Bar Council v. the Federation of Pakistan and Others*, *supra* note 4.

¹⁴⁰ *The Pakistan Bar Council v. the Federation of Pakistan and Others*, *supra* note 4.

law graduate and aspiring member of the Bar, and finally, as a legal practitioner registered to practice law with the Bar Councils. I contrast this fiction of the ideal practitioner with the current reality of the Pakistani practitioner as depicted in mainstream media in the country where lawyers host TV shows, appear as political analysts and in their most extreme form, resort to violence to protect personal interests. The aim is to understand why a gap exists between these two, relatively extreme, constructs, leaning on Bourdieu's work on field and habitus. A study of legal education and practice as two separate fields intersect to create a field of its own where both thrive in Pakistan. A study of this intersecting field is crucial to understand how the different actors in the field work with, or against each other, all with different stakes and capital that help them hold power.

This chapter is divided into five parts: in the following section, I detail the research methodology used which is heavily focused on legal method. The third section studies the conception of the ideal practitioner by the Supreme Court in its judgments on legal education in contrast with the reality of the violent practitioner as depicted in mainstream media. The next section details the two main actors in legal education focusing on the powers they wield derived from their constituting statutes. These are the regulators – the Pakistan Bar Council and the Higher Education Commission¹⁴¹ – which are both empowered to regulate the quality of education in law through monitoring of universities and their web of affiliated colleges. The fifth section explores the twenty-year battle that these actors engaged in, fifteen of which were before the Supreme Court (2005 to 2018) through two constitutional petitions filed in 2005 and

¹⁴¹ The Higher Education Commission was earlier called the University Grants Commission under its constitution statute called University Grants Commissions Act, 1974.

2012. This two-decade period began in 1998 when the Pakistan Bar Council passed the Rules for Affiliation of Law Colleges and a conflict emerged between the universities and the Bar, where the former resisted the implementation of these Rules because it awarded the latter more control of the affiliated colleges. Next, the cases before the Supreme Court are discussed in detail and while they focus on the declining quality of legal education provided, they were filed due to the emergence of the resistance by the universities to the control by the regulators. I analyse the judgment of the Court delivered in 2018 and propose that the Court declares the path to reform of legal education so that the fiction of the ideal practitioner can be made a reality.

II. Methodology

The research methodology for this chapter is heavily centred within the legal discipline through a close study of the two petitions on legal education and their related annexures, responses filed by the different stakeholders in the Supreme Court, and the judgments delivered on these two petitions and related statutes. Access to the petitions filed by the Pakistan Bar Council and related documentation was provided by two sources: the first was through the offices of the Advocate General of Sindh who shared their access to the files at the Supreme Court, and the second was through the offices of Advocate Rasheed Razvi in Karachi who had filed the cases on behalf of the Pakistan Bar Council. The judgment in the 2005 case was delivered by the Court in 2007 and the 2012 case with its judgment delivered in 2018 are both publicly

reported in the Pakistan Law Digests in 2007¹⁴² and 2019.¹⁴³ A study of the statutory context is also crucial to provide the legal frame upon which the issue of poor quality of legal services rests. The regulators of higher education in law derive their power from their constituting statutes – the Pakistan Bar Council through the Legal Practitioners and Bar Councils Act, 1973,¹⁴⁴ and the Higher Education Commission through the statute Higher Education Commission Ordinance, 2002.¹⁴⁵ Rules for Affiliation of Law Colleges 1998,¹⁴⁶ Pakistan Bar Council (Recognition of Universities) Rules 2005,¹⁴⁷ and Legal Education Rules 1978¹⁴⁸ and 2015,¹⁴⁹ passed by the Bar Council also provide the statutory context. These are available as reported statutes in the Pakistan Law Digests.

The source of the conflict, Affiliation of Law Colleges Rules 1998, is crucial in this inquiry and these were available through the annexures filed with the petitions in court. These annexures also include responses filed by the respondents in both cases, letters, reports, correspondence, minutes of meetings, memorandum of understanding, curricula etc. Interviews were also conducted with those members of the Bar who were involved in the cases before the court and ranged from 60 minutes to 90 minutes each. Justice (retired) Rasheed Razvi was a very important resource since he was granted authority to file the first case on legal education before the Supreme Court in 2005 and I was able to interview him in October 2020 for one hour on the topic.

¹⁴² *The Pakistan Bar Council v. the Federation of Pakistan*, *supra* note 3.

¹⁴³ *The Pakistan Bar Council v. the Federation of Pakistan and Others*, *supra* note 4.

¹⁴⁴ *Legal Practitioners & Bar Councils Act, 1973* (1973) Parliament of Pakistan 52.

¹⁴⁵ *Higher Education Commission Ordinance 2002* (Pakistan Law Digest, 2002).

¹⁴⁶ Affiliation of Law Colleges Rules (1998).

¹⁴⁷ Unknown, "Pakistan Bar Council (Recognition of Universities) Rules", (2005), online: *Pak Law* <<http://paklaws2014.blogspot.com/2014/12/pakistan-bar-council-recognition-of.html>>.

¹⁴⁸ Pakistan Bar Council Legal Education Rules, 1978, online: <<http://nasirlawsite.com/laws/edurules.htm>>.

¹⁴⁹ Legal Education Rules, Pakistan Law Digest 2015, Statutes volume.

Requests for a follow-up interview were denied. Advocate Hamid Khan was another important resource since he served as the Head of Committee on Legal Education of the Pakistan Bar Council in 2005, and also part of the 2012 petition at the request of the Supreme Court.¹⁵⁰ He was available for a 100-minute interview via telephone from Lahore, where he described the petition process. Advocate Azam Nazeer Tarar¹⁵¹ who has served as the Chairman of the Legal Education Committee of the Pakistan Bar Council from 2011-2015 was interviewed via telephone in June 2022 for a period of 75 minutes; and Advocate Zafar Kalanauri who teaches law in Lahore and has been involved in implementation of the judgment on legal education delivered in 2018, was interviewed in November 2020 via telephone for 45 minutes. Ethics protocol was followed, and informed consent forms were obtained by all persons interviewed for this dissertation. These interviews with these legal practitioners through their roles and respective spheres of influence help provide a crucial first-hand account of the cases as they unfolded before the Supreme Court. Finally, the last part of the chapter explores the legal practitioner within a violent context and the rise of *vuklagardi*.¹⁵² It does so through media reports, both print and online, especially the violence perpetrated from 2015 onwards.

¹⁵⁰ Hamid Khan, *State of Legal Education in Pakistan* (2021).

¹⁵¹ Advocate Tarar has most recently served as the Federal Law Minister and resigned from office in November 2022.

¹⁵² *Vuklaagardi* is a term that the media has coined and refers to practitioners who resort to violent acts when encountering opposition.

III. The Pakistani Legal Practitioner: Between Fiction and Reality

Through a deep reading of the 2018 judgment¹⁵³ on legal education I extract the image of an ideal practitioner: one who is dedicated to the enforcement of the rule of law and acts as a guardian of the Constitution of the country. This respectable and ethical lawyer speaks the languages of English and law fluently, and honourably assists the Court in the administration of the twin goals of guaranteeing the rule of law and access to justice. Her dedication to justice can be viewed by the quality of legal service she provides to her clients, and most importantly, her service to the Bench. The quality of justice administered by the court is directly connected to the quality of legal assistance provided by the lawyer to the court.

I argue that this ideal practitioner is a fiction because it represents an aspirational model to work towards and needs the support of three other sub-fictions for its creation: that of a dedicated law student; a competent graduate of law seeking entry to the Bar; and finally, that of an ethical member and conscientious member of the legal profession. Hence, the journey of this ideal lawyer starts as an ideal law student: one who enters the college through a competitive entrance exam (the Law Admission Test) and acquires the five-year law degree taught from a multi-disciplinary perspective by a dedicated faculty during the day. This ideal student should know the law both from an academic and practical lens – the inclusion of other disciplines is aimed to equip them with a strong “academic knowledge and skills of argument, legal analysis and linguistic communication.”¹⁵⁴ The skills of practical knowledge are to be imparted by a faculty which the Court specifies as practitioners and retired judges so that they can impart “the practical

¹⁵³ *The Pakistan Bar Council v. the Federation of Pakistan and Others*, *supra* note 4.

¹⁵⁴ *Ibid* at para 10.

requirements of law practice.”¹⁵⁵ Upon graduation, the law graduate must pass the Law Graduate Assessment Test, and if legal education was acquired through a foreign degree imparting institution, the graduate must pass the Special Equivalency Examination.¹⁵⁶ Both these tests, though fall squarely within the domain of the Pakistan Bar Council, have been awarded to the Higher Education Commission by the Supreme Court as an interim measure to ensure transparency in the process.

The expectation, or in Bourdieusian terms the self-evident truth, that emerges from the two judgments on legal education is that all graduates of law will enrol with the Bar Council and enter formal practice in the courts of the country. Following the successful completion of the Bar entry examinations, the ideal practitioner enters the ideal law firm where she is mentored by a devoted senior. This senior advocate will be dedicated to the grooming of the fresh graduate from learning how the law is practiced in court and how chamber work is conducted during the six-month pupillage period. This is mandated by the Pakistan Bar Council and Legal Practitioner’s Act 1973, under section 26(d) and Rules 108C of the Pakistan Legal Practitioners and Bar Council Rules, 1976.¹⁵⁷ Following the apprenticeship, the fresh graduate will undertake a two-week Vocational Training Course held by the Bar to prepare for enrolment as a registered advocate. This ideal practitioner can be achieved through this imagined grueling process, which can last from five-and-a-half to six years from enrolment at university till admission to the Bar. This practitioner possesses strong academic knowledge of law, coupled with skilful argument and

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid* at para 15. This Examination requires testing in five subjects: The Constitution of Pakistan 1973; the Civil Procedure Code 1908; The Criminal Procedure Code 1898; Qanun-e-Shahadat 1984 (Evidence Act); Specific Relief Act 1877.

¹⁵⁷ Pakistan Legal Practitioners and Bar Council Rules, 1976.

legal analysis.¹⁵⁸ I argue that for this fiction to be the goal of legal education, one needs to keep in mind the current reality of the Pakistani legal practitioner, which unfortunately is not as ethical and/or justice oriented as the judgment envisions.

Doctor aur Vakil se Allah bachai!
May God protect us from doctors and *vakils*!¹⁵⁹

This expression is an oft quoted one in Pakistani society and interestingly, it was an altercation in 2019 between doctors and *vakils* that led to the manifestation of the image a violent lawyer: the *vuklaagard*. While the Pakistani lawyer one sees in mainstream media is determined by the country's political context where lawyers appear as political analysts and hosts on news shows on television,¹⁶⁰ the 2019 incident in Lahore (Punjab) has been the most horrifying. In December 2019, lawyers stormed a public hospital in the city, destroyed equipment and attacked staff due to a perceived insult to the legal profession by some doctors at the public hospital. Advocate Azeem Sindhu's mother was admitted at a public hospital in the city, but it was believed that the doctors had been negligent in her care. A "small scuffle broke out between a group of lawyers and doctors in the hospital," with the result that both parties filed First Information Reports with the police, against each other. Protests were held in Lahore by both lawyers and doctors against this incident, and one video went viral on social media where a doctor was filmed mocking the legal profession.¹⁶¹ The seemingly peaceful protests turned violent

¹⁵⁸ *The Pakistan Bar Council v. the Federation of Pakistan and Others*, *supra* note 4 at para 10.

¹⁵⁹ This is another oft-quoted adage depicting the frustration of people with the services provided by doctors and lawyers in the country. Translation by author.

¹⁶⁰ "Haider Waheed Latest Talk Shows and Vlogs Videos", online: *PakShows.pk* <<https://www.pakshows.pk/tag/haider-waheed>>.

¹⁶¹ "Off The Record (Lahore Mein Wukla Ki Ghunda Gardi) - 11th December 2019", online: *UNewsTv* <<https://www.unewstv.com/164205/off-the-record-lahore-mein-wukla-ki-ghunda-gardi-11th-december-2019>>.

when lawyers stormed the hospital's emergency ward, causing damage to both life and property on the premises alleging that they had been forced to act because the state machinery was not investigating the matter. Videos of the attack were livestreamed by lawyers at the hospital and document more than one hundred of their own community storming the buildings leaving the wards of the hospital "littered with shards of glass and broken furniture."¹⁶² Arrival of the riot police ended the assault with the use of tear gas, water cannons and batons but this was one of the worst incidents of violence committed by lawyers in Pakistan's history and lasted several hours – nine patients in the emergency ward died.¹⁶³

Barrister Aitzaz Ahsan, one of the front-runners of the Lawyers' Movement (2007-2009), discussed later in this chapter and in chapter 6, described this incident as a moment of true sadness, where his head was bowed in shame.¹⁶⁴ Talk show hosts on popular new channels on TV grappled with this unbelievable, violent confrontation between two groups of professionals that are in their essence expected to provide essential social services.

¹⁶² Salman Masood, "In Pakistan Hospital, It Was Lawyers vs. Doctors. 3 Patients Died.", *The New York Times* (12 December 2019), online: <<https://www.nytimes.com/2019/12/12/world/asia/pakistan-lahore-lawyers-attack.html>>.

¹⁶³ News Desk, "When Rogue Blackcoats Wreaked Havoc On The Punjab Institute Of Cardiology", (11 December 2020), online: *Naya Daur* <<https://nayadaur.tv/2020/12/when-rogue-blackcoats-wreaked-havoc-on-the-punjab-institute-of-cardiology/>>. Masood, *supra* note 161.

¹⁶⁴ "Off The Record (Wukla Gardi Ke Baad Wukla Hatt Dharmi) - 12th December 2019", online: *UNewsTv* <<https://www.unewstv.com/164283/off-the-record-wukla-gardi-ke-baad-wukla-hatt-dharmi-12th-december-2019>>.



Image: Pakistan Protest: Patients die as lawyers ransack Lahore hospital.¹⁶⁵

This violent practitioner exudes an aura of untouchability,¹⁶⁶ which can be linked to the rising political power of the Bar. Though the role of a legal practitioner in politics is not the focus of this dissertation, the inclusion of a political practitioner is useful to understand the context within which lawyers operate on the national scale in Pakistan.

Members of the legal community with their unique understanding of law and national politics, have played a valuable part in resisting martial law¹⁶⁷ throughout Pakistan's history, most recently in 2007 through the iconic Lawyers' Movement. This civil resistance (2007-2009) was peaceful, where members of civil society joined the lawyers under one objective: restoration of

¹⁶⁵ "Title: Pakistan protest: Patients die as lawyers ransack Lahore hospital - BBC News", online: <<https://www.google.com/imgres>>.

¹⁶⁶ Editorial, "Violent lawyers", (13 December 2019), online: *dawn.com* <<https://www.dawn.com/news/1522018>>.

¹⁶⁷ The Constitution of Pakistan 1973 under Part X titled Emergency Provisions which permits the President to issue a Proclamation of Emergency if he deems that circumstances of internal or external aggression exist that threaten the security of the country, and allow the Army to step in and control the situation, Constitution of the Islamic Republic of Pakistan, 1973, National Assembly, Pakistan.

the then Chief Justice of Pakistan,¹⁶⁸ Muhammad Iftikhar Chaudhry, who had been unconstitutionally dismissed by the then Chief of Army Staff, General Musharraf. By adopting the role of guardians of the Constitution, the lawyers staged protests and with the help of civil society, successfully ended the decade long military government in 2009.¹⁶⁹

This image of the practitioner within current socio-political realities, either on TV or organizing as a form of resistance to non-democratic rule, is in stark contrast to the image of lawyers storming a major public hospital in Lahore, waving guns and sticks and harassing doctors, patients, and staff. The media has termed this unfortunate version as *vuklagardi*¹⁷⁰ where lawyers are the source of destruction who not only hold innocent civilians hostage, but also judges, and destroy public property including courtrooms and hospital emergency wards. The 2019 image of violent lawyer speaks volumes – a lawyer wearing a helmet is seen dancing on the hood of a burning police vehicle, a hypocritical inversion of his expected role as a guardian of justice.¹⁷¹

¹⁶⁸ The Chief Justice of Pakistan is the highest judicial office in the country and its holder is appointed as per Article 175A under Part VII of the Constitution of Pakistan, 1973, *supra* note 167.

¹⁶⁹ Zahid Shahab Ahmed & Maria J Stephan, "Fighting for the Rule of Law: Civil Resistance and the Lawyers' Movement in Pakistan" (2010) 17:3 *Democratization* 492–513; Sadaf Aziz, "Liberal Protagonists?: The Lawyers' Movement in Pakistan" in *Fates of Political Liberalism in the British Post-Colony* (Cambridge University Press, 2012) 305; Khan Faqir, Fakhrul Islam & Shahid Hassan Rizvi, "The Lawyers Movement for Judicial Independence in Pakistan: a Study of Musharraf Regime" (2013) 2:2 13; Usama Khilji, "Case study: The Lawyers Movement in Pakistan", (6 May 2011), online: *Usama Khilji* <<https://usamakhilji.com/2011/05/07/the-lawyers-movement-in-pakistan/>>; Daud Munir, "Struggling for the Rule of Law: The Pakistani Lawyers' Movement" (2009) 39:2 *Middle East Report* (New York, NY 1988) 37–41; "The Pakistani Lawyers' Movement and the Popular Currency of Judicial Power" (2010) 123:7 *Harvard Law Review* 1705–1726.

¹⁷⁰ *Vuklagardi* is a blanket term that refers to an unruly situation by lawyers. Translation by author.

¹⁷¹ The man in the image can be identified as a lawyer, or legal practitioner, through his uniform of a black suit with a black tie on a white shirt.



Source: Dawn News¹⁷²

It is important to note that actions of some cannot be attributed to that of the whole, and this incident was denounced by other members of the legal community who came out in protest of this tragic attack by practitioners in Lahore.¹⁷³ I propose that one must own this distasteful face of the Pakistani practitioner to effect reform, and this construct of the violent lawyer is further discussed in the concluding chapter of this dissertation where suggestions for reforms are proposed which can help bridge the gap between the two extremes of the ideal lawyer and the violent one.

The reality or the self-evident truth of the lawyer in Pakistan today is perceived as one who practices in court, i.e., a legal practitioner, but no one questioned the quality of this lawyer, one which was identified as inadequate, at best, over two decades ago. The Pakistan Bar Council had

¹⁷² Rana Bilal | Kinza Malik | Waseem Riaz, "3 patients die as lawyers' protest outside Lahore hospital turns violent", (11 December 2019), online: <<https://www.dawn.com/news/1521675>>.

¹⁷³ "Karachi lawyers protest at Do Talwar against PIC attack", online: <<https://www.thenews.com.pk/latest/583452-karachi-lawyers-condemn-pic-attack-by-holding-protest-at-do-talwar>>.

formulated Rules for the Affiliation of Law Colleges, 1998, to counter poor quality legal education through uniformity in the regulation of law colleges affiliated with different universities in the country. It was short-sightedly imagined that through stricter control over affiliation, the mushroom growth of private law colleges could be curbed, and hence, the standard of legal education improved. But due to the falling quality in the provision of legal education, the product of the sub-standard law college would of course be a sub-standard practitioner. The resistance of the universities, and their affiliated colleges, to adopt these 1998 Rules started the twenty-year battle for improvement of legal education.

The two separate fields of law and higher education intersect in legal education to carve out a separate field of its own where two actors i.e., the regulators Pakistan Bar Council and the Higher Education Commission are expected to work together to ensure quality legal education is imparted in universities and their affiliated law colleges. The Bar Council is responsible for the regulation of legal education through section 13 of the 1973 Act which lists the functions of the Bar – the relevant parts of this section entail two main objectives: firstly, that the Bar has “to promote legal education and provide standards for such education in consultation with universities in Pakistan and the Provincial Bar Councils” (through the Legal Education Committee constituted under section 15),¹⁷⁴ and secondly, recognize universities whose law degrees “shall be a qualification for enrolment as an advocate.”¹⁷⁵ The Higher Education Commission regulates

¹⁷⁴ The Act 1973 conceives of three Committees to help with the regulation of law: the first for disciplinary purposes, the second for enrolment to the Bar, another for human rights and lastly, one for legal education under section 15, *supra* note 144.

¹⁷⁵ Section 13 (j) and (k), *Legal Practitioners and Bar Councils Act 1973* reads as follows:

“Functions of the Pakistan Bar Council: (j) to promote legal education and prescribe standards of such education in consultation with the universities in Pakistan and the Provincial Bar Councils and Islamabad Bar Council; (k) to recognize universities whose degree in law shall be a qualification for enrolment as an advocate” *supra* note 144.

higher education which includes the review of the curriculum in each discipline through the National Curriculum Reform Committee under section 10(s) and (v) of the Higher Education Commission Ordinance 2002: section 10(s), “set up committees comprising of national and international experts in various disciplines to advise the Commission on its affairs”, and section 10(v) , “guide Institutions in designing curricula that provides a proper content of basic sciences, social sciences, humanities, engineering and technology in the curricula of each level and guide, and establish minimum standards for good governance and management of Institutions and advise the Chancellor of any institution on its statutes and regulations.”¹⁷⁶ The Bar is a powerful player in the field of legal education as per its constituting statute and in its 2005 Petition before the Supreme Court, declared that the fall in quality of lawyering was due to the mushroom-growth of sub-standard law colleges,¹⁷⁷ which was attributed solely to the failure of adequate regulation.

IV. The Actors and their Powers

The field of legal education in Pakistan consists of three actors – the Bar Council, the Commission, and the Universities – that occupy different positions in the field. The Bar is the regulator of the legal education and legal profession, with its close connection to the larger field of power in Pakistan, is in the most powerful position amongst the three. Further, it provides holders of the LLB degree with the symbolic capital of a license to practice in court, but also grants

¹⁷⁶ *Higher Education Commission Ordinance 2002, Section 10, supra* note 145.

¹⁷⁷ *The Pakistan Bar Council v. the Federation of Pakistan, supra* note 3.

recognition to the symbolic capital they already possess, the LLB degree. The Commission is the second most powerful actor as regulator of higher education in the country where universities in the country follow its directives to administer higher education in the country. However, the Commission accepts the superiority of the Bar in the higher education in law,¹⁷⁸ and I propose is therefore, not at a comparative level of power with the Bar. The universities are the institutions imparting legal education under the directives of the other two actors, and though one would expect them to be in the least powerful position in relation to the regulators, they emerge as a significant power, adduced from the resistance they posed to the 1998 Rules passed by the Bar. Viewed as an encroachment of the Bar in the realm of the universities, the universities and affiliated colleges potentially saw these Rules as an act of questioning the symbolic capital of the degrees in law that they grant. Their response was that the Bar should focus on improving the practice of law through continuing legal education and other trainings rather than trespassing on the domain of higher education in law. These actors occupy different positions in the field of legal education and wield power based on the capital they possess, and this chapter uses the Bourdieusian framework to understand how the intersecting field of legal education is structured and how the tensions between the actors unfold.

In 2005, when the Bar Council approached the Supreme Court – the highest forum for adjudication of disputes – to resolve the conflict of regulatory jurisdictions on legal education between the two actors/regulators, this led to the inclusion of an incredibly powerful actor, the Court, in the game. This is an actor before whom all others submit. This forum had the last say in

¹⁷⁸ This is evident in the various Minutes of the Meetings with representation of both and correspondence between the Bar Council and the Higher Education which attached to annexures in the Petitions on legal education discussed in detail in a later section of this chapter.

the fight for reform of the legal education system and the judgment delivered in 2018 detailed the roles of the three actors and their duties to the improvement of legal education in the country. The actors that inhabit this legal education field, all have separate but interconnected stakes in the game. The Bar needs a competent body of practitioners so that the people's access to justice is guaranteed, but also has a vested interest in law graduates because once enrolled with the Bar, they represent a voting bank that elect members for its functioning. So, not only is the value of a lawyer connected to their practice in court, but also the weight of voting capital the lawyer carries is important to the cycles of power within the Bar. The Commission needs university graduates to be educated in their chosen discipline by the universities it regulates, but the stakes for the university are different – universities, specifically their affiliated law colleges, are focused on private commercial interest rather than quality education. Each student represents a weighted value – more students generate more finance, and this situation arises when the running of an educational institution is supported predominantly through student fees without sufficient government financial support.¹⁷⁹ This is a form of the dynamism that Bourdieu speaks of in his different research contributions where different actors with different stakes in the game can lead to a conflict where if one actor does not accept the regulatory authority/power of another.¹⁸⁰ This is what occurred in 1998 when the Bar passed the Rules for Affiliation of Law Colleges to counter the production of ill-prepared/educated legal practitioners and the ensuing resistance of the universities and affiliated colleges.

¹⁷⁹ Moin Azhar Siddiqui, *The State of Legal Education in Pakistan* (2020).

¹⁸⁰ Bourdieu, *supra* note 23; Bourdieu, *supra* note 17.

I argue that while both regulators, the Bar, and the Commission, have failed to live up to their duties and functions under their parent statutes, the space shared between the two historically has not been focused on reform. There has been limited meaningful engagement in bringing the curriculum in line with the current needs of society. The universities, and their affiliated colleges, produced law graduates based on the curriculum decided by the Bar and the Commission without adequate inspection, surveillance, or review by the two powerful actors. The neglect of legal education over time led to the falling quality of legal education in the country, and while the reason is identified to be “the mushroom growth of sub-standard law colleges,”¹⁸¹ I propose that this fall in quality is the result of a shared institutional lethargy where both the regulators have been unwilling to make any material changes and continued to follow the approach to legal education based on imperial logics inherited at Partition in 1947.

The field of legal education from 1857 when the first universities were established in India, which is the focus of Chapter three, developed around the view that the university was a necessary institution to provide the symbolic capital of the law degree. The possession of this symbolic capital by a law graduate allowed access to the legal profession through the acquisition of another symbolic capital, the license to practice law issued by the Bar. When viewed only through such a functional lens, these two institutions can be viewed merely as rubber-stamping institutions, where the law student/ aspiring lawyer, follows procedure and does what is required to acquire the symbolic capital of the LLB degree. The lack of importance given to the area by the two regulators can permeate into the psyche of the universities¹⁸² who then deal with the law

¹⁸¹ *The Pakistan Bar Council v. the Federation of Pakistan and Others*, *supra* note 4.

¹⁸² Universities in Pakistan are both public sector and private sector universities and public universities can affiliate private colleges within their folds.

colleges and law departments in a manner similar to that of the regulators. In Pakistan the colleges that are created and run by legal practitioners, are heavily focused on the influence of practice on legal education and continue to impart higher education in law through this practice-orientation. The continued perseverance of this approach towards legal learning and teaching is in unfortunate contrast to the reality of legal practice where practitioners are incompetent and ill-equipped to serve the country. The Court needs a vibrant body of practitioners before it, not only to assist in the administration of justice, but also for selection of judges when vacancies arise. The fact that the Bar turns to the Supreme Court to resolve this conflict of jurisdictions pulls the other two actors, the Commission, and the universities, into the web of the legal field where the Bar is in a natural position of dominance. A twenty-year battle began in 2005.

V. A Twenty-year Battle

Over a twenty-year period, a battle which began in 1998 when the Rules for Affiliation of Law Colleges were formulated by the Bar, ended in 2018 through a judgment by the Supreme Court. The Court was embroiled in a battle for the creation of a *good*, competent lawyer when it was approached by the Bar in its original jurisdiction in 2004. This part focuses on the efforts made by the three actors in the legal field – the Bar, the Commission, and the Universities – before the Supreme Court to improve the state of legal education in the country.

a. The Bone of Contention: Affiliation of Law Colleges Rules 1998

The passing of the 1998 Rules represents a moment which brought together the three main actors in legal education – the Bar, the Commission, and universities. Prior to 1998, there were no formal rules that regulated affiliated colleges though the Pakistan Bar Council Legal Education Rules 1978 did specify certain requirements of each law college. These included limits on the number of students at one hundred for each year of the two-year LLB degree as it then was¹⁸³ with an aggregate pass percentage of 50%, requirements of faculty and that of the law library amongst others. Though these 1978 Rules also contained a section on the power of the Bar to inspect law colleges and faculties of law at universities, the issuance of specific rules for the regulating affiliated colleges two decades later became a bone of contention. Viewed as a trespass on the universities' control of their affiliated colleges, these Rules ventured into the functional realm of the universities and delineated requirements related to the structural facilities of each college like those related to the size of the building (2000 square yards),¹⁸⁴ the sizes of classrooms,¹⁸⁵ teaching facilities which specified that there must be at least two members of full-time faculty who would be responsible for 25% of the lectures delivered in the year, while part-time faculty could teach a maximum of eight lectures a week.¹⁸⁶ These structural limitations

¹⁸³ The two-year LLB degree as it existed during British India continued till 1992 when following the passage of the *Pakistan Bar Council Legal Education Rules, 1992*, the course of study for the LLB was increased to three years.

¹⁸⁴ Rule 5 of the *Rules for Affiliation of Law Colleges 1998* reads as follows: "The College shall be located in a spacious, separate and independent building on a plot of at least 2000 square yards, without any other institution or person sharing the premises" *supra* note 146.

¹⁸⁵ Rule 6 Classrooms etc.: "The College shall have at least three classrooms with one having seating capacity of 150 or more students, a common room, a ladies room and a separate staff room" *supra* note 146.

¹⁸⁶ Titles for the rules 8-11 of the *Rules for Affiliation of Law Colleges 1998*: rule 8 – Qualifications of Principal of Private Law College; rule 9 – Whole time Teachers; rule 10 – Number of Lectures; rule 11 – Number of Lectures, *supra* note 146.

were aimed to ensure a minimum standard in facilities available at each college. Inspection of these colleges would be conducted once a year by a committee with representatives of the different stakeholders including the universities, college, the Bar (on federal and provincial level) and the Commission.¹⁸⁷ Furthermore, the Governing Body must have the inclusion of a former judge of the High Court who would be nominated by the University syndicate.¹⁸⁸ This omnipresence of the practitioner within legal education is an important point to note because its an important thread throughout the dissertation.

The Rules 1998 were shared by the Bar with universities and their affiliated colleges through letters dated 22nd August 1998 with the expectation that they would adopt the same and adapt their practices accordingly.¹⁸⁹ However, this was far from the reality of the response. Over the next three years, repeated reminders were sent from the Bar to the Law Faculties of the different Universities, but the Rules 1998 remained non-functional.¹⁹⁰ Most universities in the country refused to implement them, which caused the then Chairman of the Legal Education Committee of the PBC, Advocate Hamid Khan, to approach the University Grants Commission (now Higher Education Commission) for assistance in the matter:

...it is imperative to have a strict check on (the) opening and functioning of private law colleges for improving and raising the already deteriorated standard of legal education

¹⁸⁷ Rule 26 of *Rules for Affiliation of Law Colleges 1998*: "Inspection – There shall be one inspection every academic year of the Law College by Inspection Committee comprising of Dean, Faculty of Law (in the absence of Dean of Law, Principal of Law College of the concerned University) as its Chairman, Governor Board of Studies in Law, Principal/Dean of University Law College from another province, a representative of University Grants Commission, a Member of the Pakistan Bar Council and a Member of the concerned Provincial Bar Council" *supra* note 146.

¹⁸⁸ Rule 28 of *Rules for Affiliation of Law Colleges 1998*: "Nominee on Governing Body – the Governing Body of the College shall also have a sitting or former Judge of the High Court nominated by the University syndicate" *supra* note 146.

¹⁸⁹ Letters dated 22nd August 1998 by PBC to all Faculties of Law in Pakistan, available at p.29 of the Constitutional Petition No. 9/2005 - *Pakistan Bar Council v Federation of Pakistan*, Supreme Court.

¹⁹⁰ Correspondence from PBC to Universities available at p.39-50 of the Constitutional Petition No. 9/2005.

in the country, and the said objective could only be achieved, to a great extent, by adopting and implementing Rules of Affiliation...¹⁹¹

The University Grants Commission as it then was, responded favourably to the request of the Chairman of the Legal Education Committee of the Bar, and stated that they had already written to the Universities and circulated a copy of the Rules 1998.¹⁹² This heralded a flurry of correspondence between the two regulators of legal education to resolve the issue of non-compliance.¹⁹³ The impact of the 1998 Rules was that the Bar would have more direct control of the colleges imparting legal education, in addition to the control of their affiliating university which had its own affiliation rules. Some universities in Sindh were more accepting of the 1998 Rules – Shah Abdul Latif University in Khairpur adopted the Rules by October 1999¹⁹⁴, and the University of Karachi followed suit in November 2001¹⁹⁵ – but Punjab represented a different ball game. Since Punjab is the largest province in the country, the Punjab Bar Council is the largest provincial Bar with over 100,000 licensed members,¹⁹⁶ if universities resist, the implications are significant.¹⁹⁷

The University of Punjab in Lahore is the oldest university in the country, established in 1882,¹⁹⁸ and also has the highest number of affiliated colleges across the Districts and Civil

¹⁹¹ Correspondence dated September 29, 2001 from Pakistan Bar Council to Universities Grant Commission available at p.30 of the Constitutional Petition No. 9/2005.

¹⁹² Correspondence dated April 8, 2002 from Universities Grant Commission to Pakistan Bar Council available at p.33 of the Constitutional Petition No. 9/2005.

¹⁹³ Correspondence between P Pakistan Bar Council BC and Universities Grant Commission available at p. 33-37 of the Constitutional Petition No. 9/2005.

¹⁹⁴ Notification dated 29th October 1999 from the Registrar of Shah Abdul Latif University, Khairpur available at page 72 of Constitutional Petition 9 of 2005, Pakistan Bar Council v. the Federation of Pakistan and Others.

¹⁹⁵ Letter dated 27th November 2001 from Secretary of University of Karachi to Secretary of Pakistan Bar Council, available at page 70 of Constitutional Petition 9 of 2005, Pakistan Bar Council v. the Federation of Pakistan and Others.

¹⁹⁶ Though the number provided by the Vice Chairman of the Punjab Bar Council in an interview on a TV show “Off the Record” was over 120,000 lawyers for the province. note 160.

¹⁹⁷ “About us”, online: *Punjab Bar Council* <<https://pbbarcouncil.com/about-us/>>.

¹⁹⁸ “University of the Punjab - Introduction”, online: <<http://pu.edu.pk/page>>.

Divisions of Lahore, Gujranwala, Sargodha, Faisalabad, Sahiwal and Rawalpindi.¹⁹⁹ This University resisted this control by the Bar in their field ferociously, and their primary argument was that the University already had its own rules of affiliation which were similar to those drafted by the Bar, and hence, it did not need to adopt the 1998 Rules. This University rejected these Rules 1998 by letter dated 23rd September 2004 declaring “the autonomous position of their University,”²⁰⁰ and this position was reiterated in other correspondence.²⁰¹ One college, the University Law College affiliated with Punjab University, through its Principal and Dean, wrote to Advocate Hamid Khan, Chairman Legal Education Committee of the PBC, on September 9, 2004 that they were following the affiliation rules provided by University of Punjab which were “generally in line with the Rules framed by the Pakistan Bar Council,” and “In fact, in some respects, are more stringent and quality-oriented as compared to the rules of the PBC.”²⁰² It was this outward rejection of the Rules that led to the development of a situation where the three actors rather than focusing on the problem – the falling standard of legal education in the country – became embroiled in a battle over whose authority must be followed. I propose that this authority is not just whether the 1998 Rules apply to universities, but has implications on who has the right to define what quality legal education is or should entail, is it the Bar or the Commission, or the universities?

¹⁹⁹ *The Pakistan Bar Council v. the Federation of Pakistan and Others*, *supra* note 4 at para 15.

²⁰⁰ Letters available in Extract from Minutes of Joint Meeting of Members of Legal Education Committee of the Pakistan Bar Council with representatives of the Provincial Bar Councils, Universities imparting Legal Education, and Higher Education Commission held of 19th June 2004 at Islamabad, available at p.23 of the annexure to the Constitutional Petition 9 of 2005 filed by the Pakistan Bar Council.

²⁰¹ Letters available in Extract from Minutes of Joint Meeting of Members of Legal Education Committee of the Pakistan Bar Council with representatives of the Provincial Bar Councils, Universities imparting Legal Education, and Higher Education Commission held of 19th June 2004 at Islamabad, available at p.18-23 of the annexure to the Constitutional Petition 9 of 2005 filed by the Pakistan Bar Council.

²⁰² Letter dated September 9, 2004 from University Law College Punjab University to Chairman Legal Education Committee Hamid Khan, available at p.55 of the Constitutional Petition 9/2005.

The non-compliance of the universities (barring a couple in Sindh) with the 1998 Rules made it to the National Curriculum Review Committee²⁰³ as Agenda Item 3 at the Preliminary Meeting held at the Higher Education Commission Islamabad on December 29-31, 2003.²⁰⁴ Justice (retired) Rasheed Razvi complained about the continuing failure of universities to adopt the Rules 1998²⁰⁵ and it was decided that the Commission's assistance was needed to help in the implementation process through an exercise of its power under section 10(d) of the HEC Ordinance 2002.²⁰⁶ The aim for this meeting was also to review the three-year LLB curriculum and in this regard, on the suggestion of Hamid Khan, it was decided that "Universities are requested to prepare a five-year law degree program and pass it on to the curriculum section of the HEC."²⁰⁷ This was the first time that a five-year degree in law was formally proposed, where Mr. Hamid Khan stated that a four-year degree after twelve years of education was not acceptable to the Bar any longer, and the degree should be spread over five years, either through a consolidated

²⁰³ The purpose of the National Curriculum Reform Committee is to bring together stakeholders imparting higher education to meet with the member so the HEC to review curriculum of respective disciplines under section 10(s) and (v) of the Higher Education Commission Ordinance 2002: section 10(s), "set up committees comprising of national and international experts in various disciplines to advise the Commission on its affairs" and section 10(v) "guide Institutions in designing curricula that provides a proper content of basic sciences, social sciences, humanities, engineering and technology in the curricula of each level and guide and establish minimum standards for good governance and management of Institutions and advise the Chancellor of any institution on its statutes and regulations."

²⁰⁴ Minutes of Meeting of the National Curriculum Reform Committee dated December 29-31, 2003 at Islamabad available at p.64 of the Constitutional Petition No. 9/2005.

²⁰⁵ The meeting was attended by: Prof. Ahmad Ali Khan, Dean Faculty of Law, University of Peshawar (Convener); Mr. Sami Uzair, Assistant Professor Faculty of Law University of Punjab (Secretary); Prof. Syed Mamoon Hasan, Dean Faculty of Law University of Karachi; Dr. Bahadur Shah, Principal University Law College, Gomal University; Mr. Abdul Qadoos Sial, Incharge Department of Law, Islamia University Bahawalpur; Prof. Ahmad Ali Shaikh, Dean Faculty of Law Sindh University Jamshoro; Mr. Muhammad Saleem Sheikh, Assistant Professor and Vice Principal University Gilani Law College, BZ University Multan; Mr. Hamid Khan, Chairman Legal Education Committee, Pakistan Bar Council Lahore, J. (r.) Rasheed A Razvi Member Legal Education Committee Pakistan Bar Council, Karachi; Mr. Hamid Raza Lecturer in Law Allama Iqbal Open University Islamabad, Mr. Mohammad Arshad Secretary PBC Islamabad.

²⁰⁶ Powers and functions of the Commission – (1) For the evaluation, improvement, and promotion of higher education, research and development, the Commission may...(d) prescribe conditions under which Institutions, including those that are not part of the State education system, may be opened and operated;"

²⁰⁷ Minutes of Meeting of the National Curriculum Reform Committee dated December 29-31, 2003 at Islamabad available at p.64 of the Constitutional Petition No. 9/2005, at page 66.

programme or another scheme of 12+2+3 years, to be worked out. The Committee also made revisions of the existing curriculum whereby some courses were added and others either replaced or omitted.²⁰⁸ Among the ten recommendations made by the Committee, some notable ones were related to the faculty imparting legal education in the colleges including a non-practising allowance to incentivise lawyers to work in academia (a recommendation proposed in the Justice Hamood-ur-Rehman Commission Report 1958-59);²⁰⁹ promote full-time faculty for law who are provided with facilities and scholarships to improve their qualifications and create a national Forum of Law Teachers, as well as the establishment of a Centre of Excellence in Law at the national level with a focus on quality research.²¹⁰ Hamid Khan stated that the state of legal education had not improved despite the efforts of the Bar and in fact continued to get worse. Universities continued to grant affiliation to law colleges and were not following the 1998 Rules, even though six years had passed since their introduction. This was attributed to the growing belief in the universities that they were not under the control of the Bar.²¹¹

²⁰⁸ "In Paper-IV of the LLB Part-1 the Partnership Act has been deleted and made part of the Company Law Paper-III of the LLB-II. Similarly, Law of Torts (Paper-V of Part-1) will be exclusively Law of Torts and the Easements Act has been deleted. However, Islamic Law concept of Torts has been included. In Paper-VI of Part-I Criminal Law the general principles of criminal law have been omitted. In LLB Part-II, Paper-1 the Constitutional Law-II will comprise of the Constitution of Pakistan and a separate paper of the Constitutional History of Pakistan has been added as Paper-VII. In Paper-II, the Law of Equity, the Trusts Act of 1882 has been omitted. In Paper-III Company Law, the Negotiable Instruments Act, 1881 has been omitted and placed in the optional course of Banking Laws in the LLB Part-III. Partnership Act, 1930 will now be part of the company law. In Paper-IV, the Law of Transfer of Property, the Succession Act and Land Acquisition Act will no longer be part of the paper. In Paper-V of the Muslim Personal Law, the Guardians and Wards Act has been omitted. In Paper-VI Public International Law, the option of Private International Law has been omitted. A new paper of Constitutional History of Pakistan will replace the old paper of Land Laws which will be one the Optional Papers in the LLB Part-III." Minutes of Meeting, p.67 of Constitutional Petition 9/2005.

²⁰⁹ Report of the Law Reform Commission 1958-59 (Management of Publications, Government of Pakistan, Karachi, 1959).

²¹⁰ Minutes of Meeting of the National Curriculum Reform Committee dated December 29-31, 2003 at Islamabad available at p.64 of the Constitutional Petition No. 9/2005.

²¹¹ Khan, *supra* note 150.

A joint meeting with members of the Legal Education Committee of the Bar Council, representatives of provincial Bar Councils, Universities imparting legal education and HEC was held in Islamabad on June 19, 2004.²¹² The Chair explained that the situation had still not changed, and a special mention was made of the University of Punjab, Bahauddin Zakariya University and Peshawar University, which had a large number of colleges affiliated with them. Rasheed Razvi who filed the 2005 Petition on legal education, described the circumstances at the time as: “It appeared that Charters to grant affiliation and start a law college under the Universities Act were being issued without any check. There were colleges that had no resources both in terms of facilities and faculty but had the right to start a law college. As a result, LLB degrees were being distributed very generously.”²¹³ This was why the Bar was forced to approach the Supreme Court in the hope that the universities could be brought in line with the Bar’s mission to improve the state of legal education in the country.²¹⁴ The first Constitutional Petition on legal education was filed in 2005.

²¹² Minutes of Meeting available at p.19 of the Constitutional Petition 9/2005, list of attendees: Mr. Hamid Khan(Chair) Chairman, Legal Education Committee PBC; Mr. Rasheed A Razvi Member LEC PBC; Mr. Malik Rab Nawaz Noon, Member LEC PBC; Mr. Mustafa Lakhani, Chairman LEC Sindh Bar Council; Mr. Kamran Murtaza Chairman LEC Baluchistan Bar Council; Mr. Zafar Iqbal Kalanauri, (Special Invitee) Member Punjab Bar Council; Dr. Dil Muhammad Malik, Principal University Law College, University of Punjab Lahore; Mr. Amad Ali, Dean Faculty of Law, Peshawar University; Prof. Dr. A Rashid, Principal University Law College, Bahauddin Zakariya University Multan; Prof Ahmad Ali Sheikh Dean Faculty of Law, University of Sindh Hyderabad; Prof. Syed Manoon Hasan, Dean Faculty of Law Karachi University Karachi; Mr. Syed Majid Raza Jafri, principal University Law College University of Baluchistan Quetta; Mr. Bahadur Shah, Principal University Law College, Gomal University DI Khan; Mr. Khurshid Hashmi, Principal SM Law College, Karachi; Prof. Dr. Altaf Ali G. Shaikh, Adviser (HRD) Higher Education Commission; Mr. Muhammad Ali Saif, Legal Reform Specialist Asian Development Bank (Observer) and Mr. Muhammad Arshad, Secretary Pakistan Bar Council.

²¹³ Rasheed Razvi, *Legal Education in Pakistan* (2020).

²¹⁴ Khan, *supra* note 149.

b. A Petition is Filed 2005

The Pakistan Bar Council filed a Constitutional Petition under Article 184(3)²¹⁵ of the Constitution of Pakistan, 1973 in the Supreme Court in its original jurisdiction.²¹⁶ The parties against whom it was filed were the Federal Government of Pakistan, the Higher Education Commission, the Provinces of Punjab, Sindh, Baluchistan and Khyber Pakhtunkhwa, University of Punjab (Lahore), Bahauddin Zakariya University (Multan), Peshawar University (Peshawar), Gomal University (D.I. Khan), and University of Baluchistan (Quetta). The main grounds²¹⁷ used to invoke the jurisdiction of the Supreme Court were based on the concept of *public interest* – a request that the Supreme Court intervene to address an issue that affected the public, hence, their interest had to be protected. The protection of public interest was based on the larger argument related to access to justice i.e., that the legal education system is directly connected

²¹⁵ Article 184: Original Jurisdiction of Supreme Court:

(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved have the power to make an order of the nature mentioned in the said Article.

²¹⁶ The jurisdiction of the SC is appellate, and original.

²¹⁷ “A. Whether concept of ‘access to justice’ is incomplete and ineffective without proper, organized legal education system?

B. Whether the mushroom growth of Law Colleges in Pakistan without satisfactory infrastructure and without proper control and organization, is causing deterioration in the healthy growth of the legal profession and judiciary?

C. Whether Law Colleges being profession colleges are liable to be governed under some rules and regulations in order to obtain satisfactory results for improvement and betterment of the legal profession and judiciary?

D. Whether the ‘Affiliation of Law Colleges Rules’ as framed by the Pakistan Bar Council are binding on all the Universities throughout Pakistan and whether the same are necessary for healthy and proper growth of the legal education system?

E. Whether this Honourable Court under its jurisdiction vide Article 184(3) is competent to issue directions in public interest regulating the legal education system in Pakistan?

F. Whether the failure of the Federal and Provincial Governments as well as the HEC to evolve and establish a proper and healthy legal education system in the country, extend authority upon the Pakistan Bar Council, which is the apex body of the lawyers community, to intervene and to act in furtherance of the Legal Practitioners and Bar Council Act, 1973?

G. The following decisions of tis Hon’ble Court requires consideration when deciding the above questions of public importance:- Government of Sindh versus Sharaf Faridi (PLD 1994 SC 105); Al Jihad Trust case (1996 SC 324); Shehla Zia case (PLD 1994 SC 693); Malik Asad case (PLD 1998 SC 161); Mehram Ali case (PLD 1998 SC 1445); Azizullah Memon case (PLD 1993 SC 341).

with the quality of legal services provided which in turn impacts the legal profession and the quality of justice imparted by the judiciary. Advocate Hamid Khan, the Head of the Legal Education Committee of the Pakistan Bar Council at the time, described the climate prior to the filing of the petition in 2005 as one which “was getting worse because universities kept granting affiliations to colleges that were not equipped to impart legal education. Universities believed themselves to be autonomous and resisted control by the PBC which is why we went to court.”²¹⁸

The 2005 Petition²¹⁹ stated that it is the “...Right of every citizen of Pakistan to have a good and better legal education if he chooses to join the profession of law...,”²²⁰ and the health of the judicial system depends on “good professional lawyers and able judges.”²²¹ To produce these legal professionals one needs quality legal education, which the Petition argues has unfortunately not been prioritised in Pakistan with the result that the study of law for the LLB has been reduced to a “part-time job.”²²² It was proposed that since the profession is a full-time vocation, its education must also be full-time – as a result, *inter alia*, the Rules 1998 have been introduced “to make the Law Colleges real professional colleges.”²²³ The Bar Council in its Petition placed this responsibility squarely on the Federal Government and the Higher Education Commission which grants the authority to law colleges affiliated with different universities to operate even though they do not have adequate facilities or faculty to impart the same. The Bar prayed to the Court for directions to the Federal Government and the Commission to get the various colleges affiliated with different universities to adopt/implement the Rules 1998 and restrain the Federal

²¹⁸ Khan, *supra* note 149.

²¹⁹ The Petition once filed received the following identification marker: Constitutional Petition No. 9/2005.

²²⁰ *Ibid* para 12 at 11.

²²¹ *Ibid* para 13 at 11-12.

²²² *Ibid*.

²²³ *Ibid* para 14 at 14.

Government and Higher Education Commission from accepting applications and granting Charters to colleges and universities without consultation and approval from the Pakistan Bar Council.

The Reply of the Higher Education Commission to the 2005 Petition recognised the collaborative role played by itself with the Pakistan Bar Council which was evidenced by a draft Agreement between the two entities regarding accreditation of institutes imparting legal education.²²⁴ Under Article 2 of this Memorandum, a Legal Education Accreditation Council was envisioned comprising eight members: three each from the Higher Education Commission and Pakistan Bar Council, and two eminent law educationists of which one educationist would be nominated by each of the two entities. The Legal Education Accreditation Council would be responsible for the execution of policies adopted by it based on the criteria decided between the two entities. The Commission, whilst recognising its own duties under the Ordinance 2002, clarified its position stating that it had already shared the Rules 1998 with all the universities and their respective law colleges, but it was the Pakistan Bar Council that had been failing in its duties under the Legal Practitioners' and Bar Councils Act, 1973 that clearly provide for the regulation of standards of legal education in the country. Section 13(j) of the 1973 Act identified that one of the functions of the Pakistan Bar Council is "to promote legal education and prescribe standards of such education in consultation with the universities in Pakistan and the Provincial Bar Councils [and Islamabad Bar Council]."²²⁵ Further, with reference to the Legal Education Rules, 1978, the Higher Education Commission stated that the Pakistan Bar Council had failed in its duties as

²²⁴ A copy of this Agreement is available in the Reply filed by the Higher Education Commission, *supra* note 219 at 25-28.

²²⁵ Section 13(j) *Legal Practitioner's and Bar Councils Act, 1973*. *supra* note 144.

prescribed by Rule 15 which required it to conduct regular inspections by formally constituted Inspection Teams.²²⁶ It was argued by the Commission in its reply that the failure of universities to comply with the standards of legal education imparted at their respective institutes could result in derecognition by the Pakistan Bar Council. The two regulators thus attributed the falling standards of legal education to the fault of the other, rather than accepting their complicit role in this situation.

The University of Punjab, impleaded as Respondent No. 7 in the Constitutional Petition No. 9/2005 filed by the Bar, reiterated their earlier position formally in Court stating that it follows its own affiliation rules which are “almost identical and that [those] of the University are more stringent and quality oriented as compared to Rules of Pakistan Bar Council.”²²⁷ The University argued that it was active in monitoring and inspecting the colleges affiliated with it, and just some years prior to the filing of the instant petition had de-affiliated six Law Colleges in 2002-2003.²²⁸ The University stated that the Petitioner (Pakistan Bar Council) should not “insist on the application of its Rules but should concentrate to improve the standards.”²²⁹ The University stressed that the Bar should focus on its role in the monitoring of the law graduates when they enter the profession, rather than venturing into the University’s domain.²³⁰

²²⁶ These Teams formed under rule 15 of the 1978 Rules shall comprise of Members of the Pakistan Bar Council, a judge of the High Court, and two Principals/Professors/Associate Professors of Law from the University *supra* note 148.

²²⁷ Para 2 of the Reply by Respondent 7, University of Punjab (filed in Constitutional Petition No.9/2005) available at page 4 of the Reply.

²²⁸ Annexure R-7/5, p.69, of the Reply by Respondent 7, University of Punjab, (filed in Constitutional Petition No.9/2005).

²²⁹ Para 3 of the Reply by Respondent 7, University of Punjab, (filed in Constitutional Petition No.9/2005) *supra* note 219.

²³⁰ Paragraph 16 Reply to Constitutional Petition No.9/2005 filed by the University of Punjab.

The judgment for Constitutional Petition No. 9/2005 was delivered on 10th of January 2007²³¹ by a Full Bench²³² comprising Justice Tassaduq Hussain Jilani, Nasir-ul-Mulk and Syed Jamshed Ali. The decision was authored by Mr. Justice Tassaduq Hussain Jilani²³³ where it was noted that the Advocates General of all the provinces, as well as the Federal Government supported the Rules 1998. The objection raised by the University of Punjab was also mentioned and the Court declared that “the University shall adopt these Rules in addition to the existing Affiliation Rules insofar as the law colleges are concerned.”²³⁴ The judgment agreed that there had been a “mushroom growth of substandard law colleges,”²³⁵ and detailed the problems in legal education in the country as a whole which were beyond the scope of the petition, namely: lack of eligibility criteria for admission which resulted in those who failed in other colleges to enrol in law; the poor quality of faculty who were mostly part-time, barring some exceptions; high numbers of enrolments of students in colleges fulfilled the commercial objectives of colleges which lacked the required basic facilities; a poor student-teacher ratio; failure to conduct a detailed study of the materials in courses without any stress on “moral issues and professional ethics,” poor ethics of the students themselves who enrol in courses but fail to attend classes getting their attendance marked by proxies; and preparation for examinations through subject guides and engaging in rote memorisation and cramming.²³⁶ These problems become evident when one looks at the poor quality of legal services provided which was “taking its toll on the

²³¹ *The Pakistan Bar Council v. the Federation of Pakistan*, *supra* note 3.

²³² A Full Bench in Pakistan is any Bench that comprises of more than two judges.

²³³ Justice Tassaduq Hussain Jilani was a judge elevated from the Lahore High Court to the Supreme Court of Pakistan where he served from 2004 till 2014 – he was sworn in as the 21st Chief Justice of Pakistan and served from 2013-2014.

²³⁴ *The Pakistan Bar Council v. the Federation of Pakistan*, *supra* note 3 at para 6.

²³⁵ *Ibid* at para 12.

²³⁶ *Ibid*.

Bench, Bar and ultimately the quality of justice.”²³⁷ As a result, thousands of law graduates are added to the Bar with poor legal skills. Even the apprenticeships training required under Chapter VII-A, of the Pakistan Bar Council Rules 1976,²³⁸ is seen as “a mere formality,” and the result is that “a young entrant is on his own sooner than is appropriate, i.e., before he has legal skills or is fully equipped to properly advise his client and assist the Court.”²³⁹ Retired Justice Rasheed Razvi described how the falling standards of legal education impacted the quality of assistance provided to the Bench – “My first agenda item as the Vice Chairman of the Pakistan Bar Council and a member of the Legal Education Committee, was to improve the standard of legal education. For this I visited three colleges in Karachi and was very disappointed. I asked the students some basic legal questions and they were totally blank. In part this was because they would enrol in the law college but only about 10% of the student body would attend classes, the rest would show up for the examinations and pass.”²⁴⁰

The 2007 judgment was also important because it noted that legal education was not limited only to those who wish to embark on legal careers as lawyers, but also for those who are academics and researchers because law is multifaceted and governs every aspect of social engagement. But while recognizing this social aspect of law, the practice-focused approach of

²³⁷ *Ibid* at para 13.

²³⁸ Rule 108C (1) Every apprentice...shall, before being admitted as an advocate have to undergo a comprehensive training regularly for a period of six months as a pupil in the chamber of an advocate, who has been entitled to practice as an Advocate for a period of not less than ten years. ... Rule 108C (2) provides as follows: “A pupil may take training with more than one advocate for a total of six months, which are substantially continuous. Intimation of joining each advocate shall be sent to the Secretary, Provincial Bar Council in accordance with this result. Provided that no advocate shall take more than three pupils at a time, that the advocate taking pupils was practising at the Bar during the whole period of pupillage and that a written intimation of a person joining the Provincial Bar Council within one month after commencement of pupillage. In case any advocate has more than three pupils at any particular regarded as under training” *supra* note 157.

²³⁹ *The Pakistan Bar Council v. the Federation of Pakistan*, *supra* note 3 at para 13.

²⁴⁰ Razvi, *supra* note 213.

the Court is evident when it states that students prior to joining a “professional law course, they need to have a multidisciplinary academic base”²⁴¹ with “sound language skills for reading, writing and communication.”²⁴² This reference to language is specific to the study of English because not only is English the official language of the Court but also the most “widely spoken language in the world.”²⁴³ To further a strong academic base before starting the LLB degree, the Court stated that the five-year LLB degree after Intermediate level of education would be a “step in the right direction,”²⁴⁴ and identified the three stages of legal education to facilitate the changes needed in the law degree: the first is the academic stage, the second comprises the professional stage in which trainings play a large role, and the last is continuing legal education.²⁴⁵ With regard to the academic stage, the stance taken by the Court recommended an approach to legal education which focused on the issues that Pakistani society faces today which is possible if the law schools follow more “ethical and purposive” approaches.²⁴⁶ These are necessary so that the “moral and intellectual challenges” faced by the Bench and the Bar, and society as a whole, can be addressed.²⁴⁷ The Court further went into a detailed discussion on the need for revamping the LLB curriculum to accommodate changes in society through advancements in science and technology, as well as newer areas of law that are still not taught as separate courses in the current curriculum, e.g., Alternate Dispute Resolution, Law of Arbitration etc.²⁴⁸ The judgment ended with directions to ensure that the Rules 1998 are implemented in all law colleges and

²⁴¹ Emphasis added.

²⁴² *The Pakistan Bar Council v. the Federation of Pakistan*, *supra* note 3 at para 14.

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid* at 15.

²⁴⁶ *Ibid* at para 18.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid* at para 19.

universities; and the constitution of a five-member Committee to review, “improve and update the syllabus prescribed for a professional degree in law....”²⁴⁹ The composition of this 5-member Committee was also detailed: Justice (retired) Nasir Aslam Zahid (Chair); The Vice-Chairman of the Pakistan Bar Council; Professor Ghafoor Ahmad, former Vice-Chancellor Peshawar University and Principle Khyber Medical College; Mr. Humayun Ehsan, Principal Pakistan Law College (Lahore); Mr. Mansoor Ali Shah, Advocate Supreme Court; and two members of the Higher Education Commission with necessary academic experience.

Hamid Khan, the Chair of the Legal Education Committee of the Pakistan Bar Council, stated that this 2007 judgment was “too generalised,” and therefore its limitation was related to its lack of enforceability.²⁵⁰ Advocate Zafar Kalanauri, who has served as the Chairman of the Punjab Legal Education Committee for five years from 2001-2005, shared that the “biggest benefit of the 2007 judgment was that now it was clear that there were two regulators of the legal education in the country, the HEC and the PBC. There was no direct role of the provincial bar in regulation, and they must follow the PBC.”²⁵¹ While the latter sees the judgment as useful in terms of the power struggle in the field, the former questions the enforceability of the judgment, and hence its usefulness in changing the rules of the game.

²⁴⁹ *Ibid* at para 21.

²⁵⁰ Khan, *supra* note 150.

²⁵¹ Zafar Kalanauri, *State of Legal Education in Pakistan* (2020).

c. Another Petition is Filed 2012

Though reported as a judgment of the Supreme Court in 2007, the case was kept on the roster for the Court for monitoring until final resolution. Numerous miscellaneous applications were filed by the parties to the suit, and several intervenor applications were also filed by various universities affected by the 2007 judgment. Following the 2007 judgment, the Higher Education Commission held a meeting with all affiliating Universities on August 28th 2007 which had a total of twenty-four attendees with representatives from the Higher Education Commission, the Pakistan Bar Council, and Universities from different parts of the country.²⁵² The parameters of the meeting were set by the Executive Director of the Higher Education Commission, Prof. Dr. Sohail Naqvi, declaring that the aim was to ensure that quality legal education was imparted in universities and their affiliated colleges. He also expressed the concerns of the National Judicial (Policy Making) Committee regarding the same and clarified that the role of the Pakistan Bar Council was to look at the “practical aspect and operational domain of academics in law,” while

²⁵² Prof. Dr. Sohail H Naqvi, Executive Director, Higher Education Commission (Islamabad); Prof. Dr. Azam Ali Khawaja, Managing Director, QAA Higher Education Commission (Islamabad); Ms. Fakiha Zafar, Program Coordinator QAA, Higher Education Commission (Islamabad); Ms. Tahreem Aslam, Training Coordinator QAA Higher Education Commission (Islamabad); Mr. Hamid Khan, Chairman Legal Education Committee, Pakistan Bar Council (Islamabad); Mr. Muhammad Arshad, Secretary, Pakistan Bar Council; Prof. Ahmed Ali Khan, Program Director, National Law University (Islamabad); Prof. Dr. Fayyaz-ur-Rehman, Chairman, Department of Law, Hazara University (Mansehra); Prof. Dr. M Asghar Hashmi, Member Affiliation Committee, Islamia University (Bahawalpur); Mr. Abdul Qudoos Sial, Head of Department of Law, Islamia University (Bahawalpur); Prof. Ahmed Ali Sheikh, Dean, Faculty of Law, University of Sindh (Jamshoro); Prof. GA Shahani, Dean, Faculty of Law, Shah Abdul Latif University (Khairpur); Mr. Abdul Latif, Deputy Registrar, Punjab University (Lahore); Prof. Dr. Naim-ur-Rehman Khattak, Dean, Faculty of Social Science, University of Peshawar (Peshawar); Dr. Misal Zada, Principal Law College, University of Peshawar (Peshawar); Mr. Abdul Malik, Principal Law College, Gomal University (DI Khan); Prof. Dr. Seemin Naghmana Tahir, University of Baluchistan (Quetta); Mr. Adnan Arbab Kassi, Principal Law Collage, University of Baluchistan (Quetta); Mr. Habib-ur-Rehman Sheikh, Member Syndicate, Federal Urdu University of Arts, Sciences and Technology (Islamabad); Mr. S. Amjad Mahmood, Head of Department Law, International Islamic University (Islamabad); Malik Sabir Deputy Registrar University of Sargodha, Sargodha; Prof. Dr. Ishtiaq Ahmad, Dean, Arts and Social Sciences, University of Sargodha, (Sargodha); Mr. M. Saleem Sheikh, In-charge University Law Colleges, Bahauddin Zakariya (Multan); and Prof. Dr. Salim Khan, University of Azad Jammu and Kashmir, (Muzaffarabad).

the Higher Education Commission is responsible for the “policies and standardization of academics at all levels.”²⁵³ The decisions reached by all parties present can be divided into two main parts: those related to the issue of affiliation and those related to LLB curricula. The former entailed a commitment to the 1998 Rules to ensure that the minimum requirements detailed therein have been met and that the inspections of the various affiliated colleges will be carried out to ensure adherence to the same. The Examination Committee will work to restructure the examination system in line with the Higher Education Commission’s policies, the law faculty would be protected through the tenure-track system, the medium of instruction would be standardized and special English language courses introduced, all LLB graduates would have to pass the English Language Test and an Entry Test would also be introduced, and finally the Federal Urdu University was tasked with the duty of translating all the statutes into Urdu.²⁵⁴

However, just two months after the release of the 2007 judgment, the country was faced with a constitutional crisis – the Chief of Army Staff at the time, General Pervez Musharraf, suspended the then Chief Justice of Pakistan, Muhammad Iftikhar Chaudhry, through unconstitutional means on March 9, 2007, and the legal community rose against his removal via the *Adliya Bachao Tehreek*,²⁵⁵ also referred to as the Lawyers’ Movement. By November 2007, General Pervez Musharraf declared a state of emergency under Part X of the Constitution of Pakistan, 1973, and the whole country became engulfed in a constitutional battle for

²⁵³ Para 1 Minutes of Meetings of All Affiliating Universities that Affiliate Law Colleges, held at 10:00 am August 28th, 2007 and available at page 30 of the Reply of the Higher Education Commission filed in Civil Miscellaneous Application 1864/2010 filed in Constitutional Petition No. 9/2005.

²⁵⁴ Para 1 Minutes of Meetings of All Affiliating Universities that Affiliate Law Colleges, held at 10:00 am August 28th, 2007 and available at page 31-33 of the Reply of the Higher Education Commission filed in Civil Miscellaneous Application 1864/2010 filed in Constitutional Petition No. 9/2005.

²⁵⁵ Translation in English – “Save the Judiciary Movement.”

independence of the judiciary.²⁵⁶ This Movement, and its impact on the construct of a lawyer as a Guardian of Justice, is discussed in greater detail in chapter 6, but in terms of its impact on the reform work on legal education it was disastrous. Hamid Khan identifies this constitutional crisis as one of the factors that slowed down the reform work over the past decade. The Emergency ended when general elections were held in February 2008, the Pakistan Peoples Party and Pakistan Muslim League Nawaz came out as the majority parties, but its impact resulted in a greater fusion of national politics with the Bar – the majority in the team working on the reforms of legal education in the Bar was broken – “I was replaced as the Chair of the Legal Education Committee of the Pakistan Bar Council by a person who was actually running a private law college in Multan at the time. How can one expect neutrality and fair play when the Chair of a Committee has a vested interest?”²⁵⁷ The result was that work on legal education reform went back into a suspended state only to be shocked into vigilance through public humiliation in the national English newspaper in 2010.

On June 27, 2010 an article in the *Daily Dawn* by one of Pakistan’s leading columnists, Ardeshir Cowasjee, titled “Looking to the Future” shamed the legal profession, describing the actions of some lawyers who physically assaulted not just a judge of the courts but also members of the police force, and this lack of ethical practices was the reason why the legal profession was in such “disrepute.”²⁵⁸ He stated that there was a “general deterioration in moral standards and ethics” which makes it increasingly difficult to “zero in on competent, intelligent, learned, well-

²⁵⁶ Sameen Daud Khan | Asad Farooq, “‘State of Emergency’: A timeline of the long-drawn high treason trial of General Pervez Musharraf”, (27 November 2019), online: *dawn.com* <<https://www.dawn.com/news/1517639>>.

²⁵⁷ Khan, *supra* note 150.

²⁵⁸ Ardeshir Cowasjee, “Looking to the future”, (27 June 2010), online: <<https://www.dawn.com/2010/06/27/looking-to-the-future/>>.

mannered members of the legal profession who are fit to be elevated to the benches of our superior courts.”²⁵⁹ With detailed references to the 2007 judgment, the article recommended that this judgment should be “read and digested by every single lawyer of the land and of course by any law student aspiring to the bar.”²⁶⁰ Recognising the efforts of the Bar in attempting to improve the state of legal education by introducing the Affiliation Rules 1998, he also mourned the Bar’s role which “allegedly has the habit of willy-nilly enrolling any person with an LLB” into its fold, hence this state of affairs.²⁶¹ This article was read by Justice Tassaduq Hussain Jillani, the author of the 2007 judgment, who took *suo moto* notice and ordered that a copy of this news report be added as evidence in the file pertaining to the implementation of the 2007 judgment.²⁶²

Following this news publication and the ensuing *suo moto* action by Justice Jillani, the recognition of the declining state of legal education in the country re-emerged as a critical issue and revived the 2005 Petition on legal education. The case was on heard 22nd July 2010 before the Supreme Court wherein the Court requested an update on the instructions issued in the 2007 judgment, specifically regarding the composition of the five-member Committee. This Committee had been ordered to submit its report within six months of the passing of the judgment in January 2007, three and a half years earlier, but no report had been submitted. The Secretary Law Commission and the Registrar of this Court reported that the Committee had never been able to work in the manner instructed by the Court. This failure was attributed to unforeseen circumstances related to two members of the Committee: the death of one of its

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² Order dated July 5, 2010 of CMA No.1864/2010 in Constitutional Petition No. 9/2005.

members – Professor Ghafoor Ahmed (former Vice Chancellor of Peshawar University); and the elevation to the High Court Bench of Advocate Mansoor Ali Shah. Unfortunately, there was no recognition, or explanation provided which accounted for the state of institutional lethargy that was holding reform of legal education hostage. The Court ordered the filing of a concise statement by the different parties involved on the legal education case.

The Bar in its comments to Civil Miscellaneous Application No. 1864/2010 in Constitutional Petition No. 9/2005 reiterated the same position it had stated for the past twelve years – failure of the Universities to implement the Rules 1998 and continued prioritization of commercial objectives over quality legal education, despite the 2007 judgment to the contrary.²⁶³ Law colleges that have a “disputed status”²⁶⁴ continue to operate with no regard to the consequences and creating hardships for those who graduate from them – reference was made to the Al-Mezan Law College in Rawalpindi.²⁶⁵ This is in spite of the 1998 Rules and the newer rules that the Bar had formulated in 2005, the Pakistan Bar Council (Recognition of Universities) Rules, 2005 which were along similar lines. Through these two statutes, the Bar recognised the national and foreign universities whose law degrees were considered valid.²⁶⁶ The Bar categorically stated that it will not recognise any University that does not furnish an undertaking

²⁶³ Paras 1-3 of Pakistan Bar Council’s comments filed Civil Miscellaneous Application Nil/2010, in Civil Miscellaneous Application 1864/2010 filed in Constitutional Petition No. 9/2005.

²⁶⁴ This “disputed status” includes those universities or colleges that are inadequate or failing to adhere to the requirements as provided for in the Rules 1998.

²⁶⁵ Para 12 of Pakistan Bar Council’s comments filed Civil Miscellaneous Application Nil/2010, in Civil Miscellaneous Application 1864/2010 filed in Constitutional Petition No. 9/2005.

²⁶⁶ As per the Rules 2005 Schedule 1, 11 Universities in Pakistan were recognised as degree awarding institutions as well as a number of foreign universities. 15 universities in Australia; 3 in Bangladesh; 8 in Canada; 2 in Egypt; 2 in France; 3 in Germany; 1 in Hong Kong; 22 in India; 1 in Lebanon; 2 in the Netherlands; 3 in Russia; 1 in Ukraine; 79 in the United Kingdom; 72 in the United States; 1 in Uzbekistan and 20 from other Commonwealth Nations. In Schedule 2, a list of Universities given recognition after 31-12-2005 is provided of which 6 Universities based out of Pakistan and 4 foreign universities, 1 each from the United States; Canada, Egypt and China.

to adhere to its regulations which included the following: any college that conducts classes on any other location besides its main campus; admits more than the limit of students in each academic year; imparts the syllabus as prescribed by the Higher Education Commission and the Pakistan Bar Council; and lastly, endeavours to teach only the five-year composite programme of the LLB as per the Higher Education Commission.²⁶⁷

This led to a new Constitutional Petition filed in 2012 by the Pakistan Bar Council, Constitutional Petition No. 134/2012, requesting the Court to order implementation of the 2007 judgment – this Petition was joined with the 2005 Petition since the subject matter of the earlier petition was the same and from then on, both cases were heard together. Advocate Hamid Khan describes this time between 2012-2017 as one in which the litigation was “dormant” – the petition was filed but not followed up sufficiently: “there was no will to improve the state of legal education and this was being compromised due to politicization of the Bar – I was not even invited to be part of the 2012 Petition because I belonged to a rival political group. It was only by chance that I was summoned by the Supreme Court to provide assistance in reforming the state of legal education in the country.”²⁶⁸

Bureaucratic delays continued. These were mostly institutional in nature, either on the part of the Higher Education Commission which was struggling to find a new Chairman until 2013 which had delayed the signing of the Agreement between the Bar and the Commission,²⁶⁹ or on the composition of the 2007 Committee tasked with a review the state of legal education in the

²⁶⁷ Paras 10 of Pakistan Bar Council’s comments filed Civil Miscellaneous Application Nil/2010, in Civil Miscellaneous Application 1864/2010 filed in Constitutional Petition No. 9/2005.

²⁶⁸ Khan, *supra* note 150.

²⁶⁹ Order dated January 15, 2014 in CMA No. 1864 of 2010 in Constitutional Petition No. 9/2005 and Constitutional Petition No. 134 of 2012 and CMA No. 5325 of 2013.

country.²⁷⁰ Until 2017, hearings in the Supreme Court continued with sluggish results and on January 21, 2018, the counsel for the Pakistan Bar Council, Anwar Kamal, argued before the Court regarding the constitution of another Committee – the Special Committee on Structural Reforms in Legal Education on the Federal and Provincial level. A list of the members of the Committees was also submitted with thirteen members on the Federal level and six members in each of the provincial Commissions. The Federal Committee was chaired by Mr. Hamid Khan with members from the Legal Education Committees of the Pakistan Bar Council, Chairmen of Law Colleges Commissions of each of the provinces and principals/deans of the Universities imparting legal education in Karachi, Peshawar, Quetta, and Bahawalpur. The provincial Commissions were headed by identified Chairs (who had representation in the Special Committee on the Federal level), and other members that included members of the provincial Bars, Higher Education Commission, and a nominee from the Advocate General’s office.²⁷¹

This was the biggest contribution of these two cases on legal education – the composition of these Committees on the federal and provincial level tasked with a detailed review of the state of legal education, and the institutions imparting the same. The first interim report by the Special Committee was submitted on March 6, 2018²⁷² and updated the Court over the actions taken over the past six weeks along six main areas: the first related to identification of universities and their affiliated law colleges, where the Special Committee submitted that eleven universities in the country had been identified as degree awarding institutions empowered to affiliate law

²⁷⁰ Order dated January 23, 2014 in CMA 1864/2010 in Constitutional Petition No. 9/2005 and Constitutional Petition No. 134/2012 and CMA No. 5325 of 2013.

²⁷¹ Order dated January 21, 2018 in CMA No. 1864 of 2010 in Constitutional Petition No. 9 of 2005 and in Constitutional Petition No. 134 of 2012 and CMA Nos 5325/2013 and 1939/2014 and 5959/2016.

²⁷² Order dated March 6, 2018 in CMA No. 1864 of 2010 in Constitutional Petition No. 9 of 2005 and in Constitutional Petition No. 134 of 2012 and CMA Nos 5325/2013 and 1939/2014 and 5959/2016.

colleges based on their territorial jurisdictions.²⁷³ It was stated that no other University can affiliate any private law college within its fold.²⁷⁴ The second concerned the introduction of an entry test to law colleges called the Law Admission Test – the Committee recommended introduction of this test throughout the country on a bi-annual basis conducted by the Higher Education Commission and only those who pass this Test will be entitled to apply for admission to any law college or department in Pakistan within a period of two years. The Committee also specified the break-up of the different components of this Test which are as follows:

Table 2.1: Law Admission Test Curriculum²⁷⁵

Division of Questions	Marks	Nature of Questions
Essay (either in English/Urdu)	15	200 words maximum
Personal Statement (either in English/Urdu)	10	200 words maximum
Multiple Choice Questions: English	20	Synonyms/Antonyms/Prepositions
Multiple Choice Questions: General Knowledge	20	
Multiple Choice Questions: Islamic Studies	10	
Multiple Choice Questions: Pakistan Studies	10	
Multiple Choice Questions: Urdu	10	Vocabulary
Multiple Choice Questions: Math	05	Basic Math
Total Marks	100	

The third point related to the introduction of the Bar Entrance Exam or the Law Graduates Assessment Test by the National Testing Service of Pakistan to ensure transparency in the

²⁷³ University of Baluchistan for law colleges in the province; University of Peshawar for colleges in Districts and Civil Divisions of Peshawar, Malakand and Mardan; Gomal University Dera Ismail Khan for Districts and Civil Divisions of DI Khan, Bannu and Kohat; University of Hazara in Masehra for the colleges in the District of Hazara Division; University of Punjab in Lahore for Districts and Civil Divisions of Lahore, Gujranwala, Sargodha, Sahiwal and Rawalpindi; Bahauddin Zakariya University in Multan for Districts and Civil Divisions of Multan and Dera Ghazi Khan; Islamia University in Bahawalpur for Districts and Civil Divisions of in Bahawalpur; Karachi University for Districts and Civil Divisions of Karachi; University of Sindh in Hyderabad for Districts of Hyderabad Division; Shah Abdul Latif University in Khairpur for Districts and Civil Divisions of Sukkur and Larkana; and Quaid-e-Azam University for Islamabad Capital Territory.

²⁷⁴ Order dated March 6, 2018 in CMA No. 1864 of 2010 in Constitutional Petition No. 9 of 2005 and in Constitutional Petition No. 134 of 2012 and CMA Nos 5325/2013 and 1939/2014 and 5959/2016.

²⁷⁵ Report available as Annexure 'B' in CMA 7397/2018 filed in Constitutional Petition No. 134/2012, pages 1-47.

process. However, since this Testing Service was under litigation, the Committee recommended also entrusting this to the Higher Education Commission, with the caveat that “...in order to maintain quality and standard of the Test the Pakistan Bar Council shall have a right under its Rules to change the executing agency, if so needed in the future.”²⁷⁶ The fourth update related to the Final Report submitted by the Provincial Commission of Khyber Pakhtunkhwa after visiting the twenty-one affiliated law colleges with the Universities of Peshawar, Gomal, and Hazara in the province. Of these twenty-one colleges, the Provincial Commission noted that only one college, the Law Department of Edwards College affiliated with the University of Peshawar, met the standards as laid down by the Pakistan Bar Council under its 2015 Rules. The other twenty colleges were issued show-cause notices to provide an explanation to the Provincial Commission as to why they should not be de-affiliated.

This Committee, after conducting inspections of each law college in the country, submitted a final report to the Court on the state of law legal education from a structural perspective: this included the nature of facilities, resources, faculty etc. available at the various colleges of law. The Higher Education Committee submitted a review of the curricular reform, with input from the Pakistan Bar Council, and a revised five-year curriculum was proposed which received sanction from the parties to the Petition and the Supreme Court. By 31st August 2018, the evidence provided to the Supreme Court had been reviewed, arguments heard from the different counsel, and a decision, authored by Justice Umar Ata Bandial, was issued. Certified copies of the judgment were sent to the President of Pakistan, Governors and Chief Secretaries

²⁷⁶ Para 5, Order dated March 6, 2018, in CMA No. 1864 of 2010 in Constitutional Petition No. 9 of 2005 and in Constitutional Petition No. 134 of 2012 and CMA Nos. 5325/2013, 1939/2014 and 5959/2016.

of the different provinces, the Secretaries of the Cabinet and Establishment Divisions, and the Secretaries of the Pakistan Bar Council and provincial Bars. By the time the case reached this stage, thirty universities and colleges imparting legal education, fourteen interested parties, the Pakistan Bar Council were parties to the Petition and a total of nine parties had been impleaded as necessary and proper parties. The scope of work of the Special Committee for Structural Reforms in Legal Education, as well as the Provincial Commissions appointed for the task of reforming legal education, covered five primary issues that were identified in the 2007 Judgment; they are

- (i) Eligibility for entry into law schools
- (ii) Preparation of a uniform Syllabi of LLB courses and their duration
- (iii) Permanent and visiting faculty members at Law Colleges
- (iv) Assessment/evaluation of examination, and
- (v) Eligibility for entry to the Bar.²⁷⁷

These five issues were the focus of reform of the process through which an aspirant becomes a lawyer, from entry to law college till entry to the Bar. The recommendations of this Special Committee on Structural Reforms in Legal Education had wide-reaching impact on colleges and universities, their faculty, their students, and the Pakistan Bar Council. These were perused by the Court which then issued directions that the recommendations be adopted in toto.²⁷⁸ In terms of the impact on the universities, the Special Committee recognized only eleven Universities in the country that could award law degrees through affiliated colleges,²⁷⁹ and

²⁷⁷ Para 3, Judgment dated 31.08.2018 in Constitutional Petition No. 134/2012, page 7-8, *supra* note 4.

²⁷⁸ Report available as Annexure 'B' in CMA 7397/2018 filed in Constitutional Petition No. 134/2012, pages 1-47.

²⁷⁹ University of Baluchistan, University of Peshawar, Gomal University (DI Khan), University of Hazara (Mansehra), University of Punjab (Lahore), Bahauddin Zakariya University (Multan), Islamia University (Bahawalpur), Karachi University, University of Sindh (Hyderabad) Shah Abdul Latif University (Khairpur) and Quaid-e-Azam University (Islamabad).

ordered the immediate closure of five law colleges whose facilities were found to be inadequate.²⁸⁰ Further, it ordered the disaffiliation of an astonishing ninety-six law colleges affiliated with nine universities. This disaffiliation was due to two broad reasons: the Special Committee found them to be “below the mark,” and/or they were outside the territorial jurisdiction of their affiliating university.²⁸¹ These colleges would be given a right to a hearing before the concerned university prior to disaffiliation. A further twenty-one colleges affiliated with seven universities were given six months to make the necessary changes and improvements in their weak areas; and affiliating universities were informed that they had to constitute separate Affiliating Committees for law colleges in their respective jurisdictions. No universities could continue with the three-year LLB program, and no further admissions were to be allowed in this program after December 31, 2018. The five-year LLB programme as designed by the HEC would be introduced in all colleges and universities. A total prohibition on conducting evening classes was proclaimed, along with a ban on imparting LLM and PhD classes at colleges not authorised to conduct LLB courses. And finally, there will be limits on the numbers of students admitted in LLM and PhD programmes in law which shall be prescribed by the HEC.²⁸²

The impact on the faculty entailed a listing of qualifications of both permanent and visiting faculty which included: the Head/Principal/Dean of any law college/department shall have either a PhD in law with eight years of teaching/practicing (High Court) law or an LLM with fifteen years of teaching/practice (High Court) experience, or be a retired judge of the superior courts or a

²⁸⁰ Leons College (Shaheed Benazirabad); Intelligentia Law College (Moro); Shaheed Benazir Bhutto Law College, (Naushero Feroze); Ali Law College (Sanghar) and Shah-e-Ali Law College (Tando Adam).

²⁸¹ Report available as Annexure ‘B’ in CMA 7397/2018 filed in Constitutional Petition No. 134/2012, pages 1-47.

²⁸² *Ibid.*

retired District and Sessions judge with five years judicial service; a minimum of five permanent faculty members who teach full time with an LLM and five years teaching/practice (High Court) experience or with an LLB and ten years teaching/practice (High Court) experience; a minimum of five visiting or part-time faculty with five years standing as advocates of the High Court; and these faculty requirements are the ratio to be followed for each set of one hundred students; there will be a provision of a non-practising allowance for permanent faculty members in addition to “a reasonable salary package;” and examinations will be conducted by faculty with assistance from the HEC if needed.²⁸³

In terms of the impact of the judgment on the students, an entry test into law colleges was to be introduced, conducted by the Higher Education Commission, called the Law Admission Test. This would test a student’s writing skills, general knowledge, Islamic knowledge, Pakistani geography and history, math, and language skills (English and Urdu). Those students affected by the disaffiliation of their colleges will be accommodated by their affiliating universities until the completion of their legal education. Upon graduation, there will be a Law Graduate Assessment Test (LAW-GAT) which shall be conducted by the Higher Education Commission for enrolment into the Bar on a quarterly basis; and lastly, the previously ignored holders of foreign degrees will be now required to pass an Special Equivalency Examination (SEE-LAW) which shall be conducted by the Higher Education Commission on a periodic basis covering the following five subjects – Constitution of Pakistan; Civil Procedure Code; Criminal Procedure Code; *Qanoon-e-Shahadat* Order (Law of Evidence); and Specific Relief Act. No student with a foreign degree can sit in the LAW-GAT without passing this SEE-LAW examination.

²⁸³ *Ibid.*

The Pakistan Bar Council will be entitled to an increase in funding in the Federal and Provincial budgets to help promote legal education in the country; there will be the creation of an independent Secretariat/Directorate of Legal Education in the Pakistan Bar Council to regulate legal education in the country; an Implementation/Monitoring Committee shall be established to ensure that the standards are maintained; and finally a Bar Vocational Course spread over two weeks during the six-month pupillage period, organised by the Provincial and Islamabad Bar Councils, shall be set up to facilitate the entry into practice of fresh law graduates. Any party adversely affected by these recommendations was allowed the opportunity to contest the same before the Supreme Court of Pakistan. These directions were the result of a detailed analysis of linking quality legal assistance in the courts with quality legal education that allowed the graduate of law/practitioner to work to uphold the principles of justice through the rule of law. This crucial link between the Bar and Court was highlighted in the judgment declaring that an “independent, competent, honest and industrious Judicature requires an equally independent, dynamic, honest and dedicated Bar in order to effectively provide justice in accordance with law to all members of society.”²⁸⁴ In recognition of the “actively evolving” state of the legal profession on the international scale, the Court also stressed the importance of the role of the Bar to help shape and regulate the profession and legal reform in the country.²⁸⁵ To achieve this, legal education had to made more effective through reviewing the curriculum for the LLB degree so that it can “impart academic knowledge and hone skills of argument, legal analysis and linguistic communication.”²⁸⁶ This is possible if the Pakistani LLB curriculum takes guidance from law

²⁸⁴ Para 4, Judgment dated 31.08.2018 in Constitutional Petition 134/2012, page 9, *supra* note 4.

²⁸⁵ *Ibid* para 5.

²⁸⁶ *Ibid* para 10.

schools on the international level and develop one for the country which is “multifaceted” including emphasis on “clinical legal education, mootings, mock trials, client interviewing, negotiation and mediation to provide students with an insight into the practical requirements of law practice.”²⁸⁷ A multidisciplinary approach to legal education to hone practical skills was declared to be the need of the hour. The suggested approach aimed to facilitate the students’ understanding of the various and continuously increasing ways that law intersects with other disciplines, and the five-year LLB curriculum as recommended by the HEC would help achieve this objective.

This new five-year curriculum entails six papers a year for the five-year period. The details of the courses are provided in the following table:

Table 2.2: Curriculum for the 5-year BA/LLB degree

Year	Subject/Course	Marks
FIRST		
Paper I	English-I	100
Paper II	Islamic Studies/Ethical Behaviour and Pakistan Studies	60/40
Paper III	Introduction to Sociology and Fundamentals of Economics	50/50
Paper IV	Introduction to Law and Legal System of Pakistan	50/50
Paper V	Principles of Political Science and History of South Asia	50/50
Paper VI	Introduction to Logic and Reasoning/Introduction to Psychology	50/50
SECOND		
Paper I	English-II	100
Paper II	Islamic Jurisprudence	100
Paper III	Constitutional Law-I (UK and US)	50/50
Paper IV	Jurisprudence	100
Paper V	Law of Contract	80/20
Paper VI	Human Rights and Skills Development	50/50
TOTAL		600

²⁸⁷ *Ibid.*

THIRD		
Paper I	Constitutional Law-II (Pakistan)/Constitutional Developments in Pakistan	60/40
Paper II	Law of Torts	100
Paper III	Islamic Personal Law	100
Paper IV	Criminal Law	100
Paper V	Law of Property and Land Laws	100
Paper VI	Law of Business Organizations	100
TOTAL		600
FOURTH		
Paper I	Public International Law	100
Paper II	Law of Equity and Specific Relief	100
Paper III	Civil Procedure	100
Paper IV	Criminal Procedure	100
Paper V	Law of Evidence and Professional Ethics	100
Paper VI	Legal Drafting	100
TOTAL		600
FIFTH		
Paper I	Administrative Law	100
Paper II	Minor Acts	100
Paper III	Interpretation of Statutes and Legislative Drafting	100
Paper IV	Elective 1	100
Paper V	Elective 2	100
Paper VI	Research Methodology and Project/Dissertation	100
TOTAL		600

Elective Courses:²⁸⁸

1.	Alternative Dispute Resolution	16.	Islamic Commercial Laws
2.	Banking Laws	17.	Labour Laws
3.	Conflict of Laws	18.	Law and Development
4.	Consumer Protection Laws	19.	Law and Energy
5.	Customs and Tariff Laws	20.	Law and Society in Pakistan
6.	E-Commerce Law	21.	Local and Special Laws
7.	Election Laws	22.	Media Laws
8.	Environmental Laws	23.	Medical and Forensic Law
9.	Gender and Law	24.	Merger and Acquisitions
10.	Insurance Laws	25.	Islamic Legal Maxims
11.	Intellectual Property Laws	26.	Public Interest Litigation
12.	International Economic Law	27.	Securities Regulation

²⁸⁸ *Ibid*, Annexure 1 at 27.

13.	International Humanitarian Law	28	Shipping and Admiralty Laws
14.	International Institutions	29.	Taxation Laws
15.	International Trade Law	30.	Telecommunication Laws

The two aspects from this list of courses that the Court stressed were the importance of legal ethics which is oddly coupled with Islamic Studies in the first year, and fluency in the English language which is Paper 1 in the first year as well. The former was crucial so that students are aware of their professional responsibilities to their clients and the court, while the latter is important because English is not only the language of the world, but also the language of the law in Pakistan. The Court further stressed the importance of necessary infrastructure and resources, both financial and academic, so that the faculty is able to teach students in an environment conducive to learning. The “instructors” should have the necessary academic credentials and experience to teach and the Court suggested here that “a faculty comprising of practising lawyers and retired judges is generally well placed to provide students with a realistic view of the practice of law.”²⁸⁹ Finally, the Court also emphasized the importance of continuing legal education and/or continuing professional development for lawyers after admission to the Bar, as is the practice in many jurisdictions around the world. This allows practitioners to be aware of legal developments and improve the quality of services provided to the Court. Here the Court quoted from a Canadian Supreme Court case where the Court opined that, “A lawyer’s professional education is a lifelong process. Legislation is amended, the common law evolves, and practice standards change as a result of technological advances and other developments. Lawyers must be vigilant in order to update their knowledge, strengthen their skills, and ensure that they adhere to accepted ethical

²⁸⁹ *Ibid* para 13 at 16.

and professional standards in their practice.”²⁹⁰ This observation by the Court was then connected to Pakistani legal practice to produce competent professionals. The Court also emphasized the role played by senior advocates to groom and train young entrants to the legal profession during the apprenticeship period, and this was only possible if the seniors themselves are well-equipped in their own knowledge. Hence, the importance of continuing legal education for senior advocates, and a more fruitful apprenticeship experience for junior advocates was highlighted.

The Court through this 2018 judgment disposed of the Constitutional Petition No. 134 of 2012 & Civil Miscellaneous Application 1864 in Constitutional Petition No. 9 of 2005, as well as all other miscellaneous applications filed in the above two petitions. The judgment was delivered, and the map was set for the actors to follow – the Bar came out as the most powerful in terms of the control it could exercise in all areas of legal education including the universities and its affiliated colleges with the least responsibilities. Many tasks like those for the entrance exam or the bar entry test were outsourced to the Commission whose duties increased and the Bar Council emerged triumphant. But this was just the end of a battle. The Court envisioned the goal of legal education, embodied in an ideal lawyer prepared for legal practice in an ethical and conscientious manner, dedicated to upholding the rule of law and access to justice, and this was in contradistinction to the reality of the highly politicized and unruly lawyer.

²⁹⁰ *Ibid* para 14 [Sidney Green v. the Law Society of Manitoba (2017 SCC 20 @p. 1)] at 17.

VI. Conclusion

The Supreme Court, through its two judgments of 2007 and 2018 on legal education laid down a road map of how the system could be improved. This chapter makes two main contributions: the first is a detailed picture of the state of legal education in Pakistan in the twenty-first century through a study of the court cases and identifies the embeddedness of practice within the area. The goal of legal education in the country as stressed in the two judgments on legal education under focus in this chapter, is therefore the production of legal practitioner, i.e., a lawyer who practices in courts and this is reflected not only in the curriculum, but also in teaching by a practitioner faculty in the universities and their affiliated colleges.

The other contribution of this chapter is the argument that despite the practice-focus of legal education, the product of these law colleges is an ill-prepared and poorly educated legal practitioner. This is attributed to the sub-standard quality of legal education imparted in these universities and affiliated law colleges and has been substantiated by evidence presented before the Supreme Court and in its judgments pronounced in 2007 and 2018. These judgments are crucial in creating an image of the ideal lawyer who is perceived as a legal practitioner, educated with a multi-disciplinary base, and trained by senior advocates of the Bar for practice. Through a discussion of the two judgments, the dynamics of the two players/regulators of legal education demonstrate the institutional lethargy that each suffers from. Even though the Bar cloaks itself in the garb of helplessness, attributing the fall in quality legal education solely to the failure of the Higher Education Commission, its own inadequacies need to be identified to address any reform. The shared jurisdiction of the two actors, the Bar, and the Commission, in regulation of

legal education has been attributed by many to be the reason for the mushroom growth of law colleges and the fall in quality. This has been noted in Shah et al,²⁹¹ and also Kalanauri who argues in a similar vein proposing that this conflict in duties of the HEC and PBC has occurred because this control had been given to the two “without any clarity, thought or suitability of either for the role” and no attempt was made to rationalize overlapping jurisdiction.”²⁹² However, perusal of the record available in the court files, demonstrates that the Commission generally plays a supportive role with the Bar and recognizes the Bar as the final authority in determining the curriculum and pedagogies in legal education. This chapter proposes that that the reason of the fall in quality is not a confusion of jurisdiction between the two actors, but is multifaceted: firstly, the lack of submission of the universities to the power of the Bar; secondly, the failure of the Bar to follow the functions detailed in its parent statute, the 1973 Act; thirdly, the submission of the Commission to the Bar; and lastly, a lack of will among all the players to ensure that the final legal product of a legal practitioner is not substandard.

A study of these Supreme Court judgments demonstrates the embeddedness of practice within the legal profession. However to explore why a law graduate is viewed as solely a court-based practitioner, a historical study of legal education in South Asia is necessary. The next chapter studies these roots within British colonial India in the mid-nineteenth century through the introduction of university legal education and the high courts.

²⁹¹ Shah, Balasingam & Dhanapal, “Legal Education in Pakistan”, *supra* note 62.

²⁹² Kalanauri, *supra* note 62 at 4.

Chapter 3

The Lawyer as a Colonial Creation

I. Introduction

A genealogy of the lawyer within the historical context is necessary to understand how the practitioner became institutionalized in legal education. This chapter focuses on this question, covering the period from 1857 till 1922, and makes three main arguments: firstly, the roots of this practice method to the study of law lie in the manner higher education in law was introduced in India by the British – through relatively informal means during the time of the East India Company (1600-1857), and more formally through universities when India became a part of the British Empire (1857-1947). Secondly, I argue that this practicing lawyer as conceived in the mid-nineteenth century British India is the result of two institutional interventions – the universities established in 1857 and the high courts in 1862 – serving imperial interests in the region. These two transplants mirrored each other: the universities imparted legal education (amongst other disciplines) and the hierarchy of courts needed graduates of law i.e., Indian practitioners, to facilitate court-room practice. While the aim of both these institutions helped the English make the unfamiliar Indian world familiar to them, these were guided by imperial logics that served the new colonial rulers. And thirdly, I examine the tensions produced within the Indian social context following the introduction of these two institutions, these were structural and social in nature. The former was due to the displacement of local indigenous knowledge systems by universities which promoted liberal education, and the traditional systems

of dispute resolution that had existed for centuries in India which were supplanted by the higher judiciary. From these structural tensions, the social tensions emerged between the legal community in colonial India at the time: the Indian *vakil* with a university degree in law that had been focused on preparation for legal practice in the courts and the imported English barristers – where the latter had privileges in legal practice at the new high courts, at the expense of the former. Later this tension transformed into another strain between the Indian *vakil* in the high courts – Indians travelled to obtain their bar-at-law and returned as barristers entitled to the practice privileges that had been only available to the English thus far. While both these institutional transplants created their own unique habitus within their separate fields, I am interested in exploring the field of legal education from a historical context.

I propose that this early habitus continues to impact the way law is taught and learnt in present day Pakistan. To develop the arguments in this chapter, a historical investigation is necessary, revealing that the different roles the Indian *vakil* took within the socio-political context from 1857-1922 – from one of servitude to the English barrister, to the symbol of resistance to British rule when calls for Indianization of the education and the legal profession were heard.

II. Methodology

The research method adopted for this section is grounded in history with material gathered from two archives: the India Office at the British Library in London, UK (February 2020) and the archive at the Library of Congress at Washington DC (May 2019). The selection of archives

was based on recognition of the worth of the material documented and ease of access. The India Office, housed in at the British Library is the largest archive on British India collected and preserved by the former colonial power. While a lot of material has been digitised, the original manuscripts and reports, legislative enactments etc. still exist in physical form and can be identified through the website of the India Office. Once selected, the box files are provided to researchers at their desk. I spent two weeks at this archive in February 2020, luckily returning just weeks before the global pandemic. The Library of Congress archive was accessed when I travelled to Washington DC for a conference on Law and Society in 2019. I discovered that they had digitized the newspaper *Times of India* and articles were available for download through a keyword search. I spent four days in the archive perusing the material which would help provide the socio-political context of the period under study.

Once these primary sources were photographed, and/or scanned, I sifted through them and prepared a word document containing relevant material from the original source to help identify a narrative which would guide this thesis. These primary sources are studied alongside a literature review to see how liberalism and utilitarianism were valuable tools in helping the British legitimize their presence and interventions in India. A study of the academic contributions of Pitts, Vasunia, Viswanathan, Galanter, Mukherjee and others, provides a crucial context in understanding the landscape in which the Indian lawyer was constituted and evolved.²⁹³

²⁹³ Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton: University Press, 2005); Phiroze Vasunia, "Greek, Latin and the Indian Civil Service" (2005) 51 *The Cambridge Classical Journal* 35–71; Gauri Viswanathan, "Currying Favor: The Politics of British Educational and Cultural Policy in India, 1813-1854" (1988) 19/20 *Social Text* 85–104; Marc Galanter & Rajeev Dhavan, *Law and Society in Modern India* (Delhi: Oxford University Press, 1989); Marc Galanter, "Introduction: The Study of the Indian Legal Profession" (1968) 3:2/3 *Law & Society Review* 201–217; Mithi Mukherjee, *India in the Shadows of Empire: A Legal and Political History, 1774-1950* (New Delhi: Oxford University Press, 2010); Alok K Mukherjee, *"This Gift of English": English Education and the Formation of Alternative Hegemonies in India* ProQuest Dissertations Publishing, 2003) [unpublished].

III. The English in India – 1600-1857

The English arrived on Indian shores in 1600 for trade during the reign of Queen Elizabeth I when the East India Company was created through a Royal Charter.²⁹⁴ The Company was “given the exclusive right to trade with all parts of Asia,”²⁹⁵ and India at the time was a land that covered a vast expanse of the South of Asia sharing borders with Iran and Afghanistan in the West, China, Nepal and Tibet in the North, and Burma in the East. The glorious shoreline with the Arabian Sea in the West and the Bay of Bengal in the East allowed ample opportunities for trade through the seaports along the coastline. As a result, European trading companies – which at the time included the Dutch, Portuguese, French and English – sought trade with India in products that were unique to the country, primarily, spices, sugar, salt, tea, cotton, silk, and indigo dyes. Under the rule of Mughals (1526-1857), these trading companies were allowed the use of seaports to conduct business with Indian producers of the goods in demand. This section of the chapter studies the Indian landscape before the formal interventions of the British in the two areas of dispute resolution and education in the mid-nineteenth century.

From 1600, the imperial approach the British adopted was less aggressive and geared more towards understanding the new field that they were playing in, but following the First War of Independence in 1857, the approach became more forceful when India formally became part of the British Empire. This is explored through two sections: the first investigates of the state of education in India prior to British interventions providing an overview of the traditional Indian

²⁹⁴ Charter Granted by Queen Elizabeth to the East India Company, 31 December 1600, available at <https://centralexcisehyderabad4.gov.in/documents/history/1600.PDF> accessed April 2018.

²⁹⁵ Harihar Prasad Dubey, *A Short History of the Judicial Systems of India and Some Foreign Countries* (Bombay: N. M. Tripathi, 1968) at 3.

education and how conflicts emerged following English interventions in *Native* education. The second section deals with dispute resolution as it was administered prior to English involvement, and how the traditional Indian mechanisms of adjudication were displaced by the imported formal court hierarchies in the nineteenth century. These two institutional transplants shaped the way the Indian legal practitioner emerged during the British Raj in the mid-nineteenth century.

a. Education in India pre-1857

Pre-colonial education was grounded in religious knowledge and medicine, astronomy, mathematics, jurisprudence were areas of scholarly study.²⁹⁶ The two dominant faiths were Hinduism and Islam – the former followed the gurukul system of education that had its roots in the Vedic period (about 1750 BCE), but by the early 19th century this form of education began to lose popularity and demands for another institution that satisfied “upper-caste sensibilities” emerged.²⁹⁷ Hindus in Bengal supported the creation of Hindu College in Calcutta in 1816 for Hindus who occupied “good social status”²⁹⁸ and thus, were more open to the educational interventions by the British in the 19th century in comparison to the Muslim population. Followers of Islam were not as keen to adopt Western forms of learning and education in India during this time. Through a system of schools that taught from an Islamic perspective i.e., *madrassahs* and

²⁹⁶ Frederick William Thomas, *The History and Prospects of British Education in India: Being the “Le Bas” Prize Essay for 1890* (Deighton Bell, 1891) at 24.

²⁹⁷ David Thomas Boven, *Patriots and Practical Men: British Educational Policy and the Responses of Colonial Subjects in India, 1880-1890* ProQuest Dissertations Publishing, 2017) [unpublished] at 26.

²⁹⁸ Thomas, *supra* note 296 at 25.

maktabs, education was provided to Muslim students²⁹⁹ from a religious context through a study of the *Quran* and other religious texts. The languages studied included Persian, Arabic and Urdu.³⁰⁰ There were other religions that also followed their own forms of schooling including Christian, Zoroastrians, Jains, Buddhists, and Sikhs to name a few. Though there were schools in India prior to the arrival of the British, they were not integrated or unified on a national or a provincial scale and this lack of integration suggested that there was no uniform system of education in India.

The British in India encountered a culture, languages, and systems of administration which were unfamiliar to them. As a result of this unfamiliarity, efforts were made to learn about the foreign peoples that the British were engaged with, while more crucially aiming at extension of British control of larger parts of India. With a rich cultural, literary and linguistic heritage, knowledge production in India at the time revolved around scholarship which was rooted in religion.³⁰¹ This encounter of the British with Indian knowledge is discussed in the following two sections: the first studies the friction that emerged in the mid-nineteenth century between an Oriental (Indian), and Anglicist (English) forms of education and knowledge production, and the second, conducts a historical review of pre-university education in law and how it was introduced by the British in a piecemeal manner.

²⁹⁹ Education was segregated in nature and access to schools for Muslim girls was more difficult due to *pardah* (veil) which restricted them to homeschooling. For more discussion on the kind of education available to girls during the 19th and 20th centuries in Bengal, see Sonia Amin, *The World of Muslim Women in Colonial Bengal, 1876-1939* (Leiden: EJBrill, 1996).

³⁰⁰ Kumar conducts a detailed study of the school-level education in Banaras and the politics of language, identity and the role of women as educators, see Nita Kumar, *Lessons From Schools: The History of Education in Banaras* (New Delhi ; Sage Publications, 2000).

³⁰¹ Thomas, *supra* note 296 at v.

i. An Oriental and Anglicist Education

Though education through a religious lens was not unknown to the British with the role of the Anglican Church in education, India represented a diverse religious landscape which was foreign to them. This unfamiliarity with Indian indigenous culture, languages, and traditions by the late 18th and 19th centuries, required an exercise not just to learn about these new histories and cultures, but also to make them familiar to the colonizer. This process of learning by the British by the 19th century became coloured by the assumption of the superiority of the European knowledge over the inferiority represented by Indian knowledge – an encounter of the civilized with the uncivilized or barbarians, coupled with the attempt to control the unknown.³⁰² This led to the infamous strategy of *civilizing* of the *natives* through education to serve British imperial objectives. Though initially space was allowed for the study of Oriental sources of knowledge, this was not a form of acceptance or admiration of the importance of this knowledge found in Indian literature, languages, and culture. Rather, it was more an exercise to understand the unfamiliar and then displace it with their own familiar systems.³⁰³ The assumption of superiority aimed to first criticize, and later delegitimize, Indian sources of knowledge production i.e., Orientalism, to justify imperial rule by the British.³⁰⁴

Pitts' critique of the European imperial expansion of the late 18th and early 19th centuries is crucial and serves as the framework on which this argument is built.³⁰⁵ Through a review of the

³⁰² This binary division is not just peculiar to colonial India, the English in their expansion of Empire employed similar strategies in other parts of the world like Canada, Africa etc.

³⁰³ Boven, *supra* note 297 at 46.

³⁰⁴ A very well-recognized and oft-quoted text on the topic is Orientalism by Edward Said describes this mis-reading and mis-representation of the East by the West for personal gain which in part has led to erasure of Eastern knowledge in favour of Western equivalents.

³⁰⁵ Pitts, *supra* note 293.

work of theorists Adam Smith, Bentham, Burke, Kant, Diderot and Condorcet, she argues that imperial liberalism in British India (and France) represented a conflict between the way liberalism was understood as political philosophy, which is based on the equality of all peoples, and the way it played out in the Indian continent where the British encountered the unfamiliar and thus, unequal – the non-Europeans. The impact of this encounter demonstrates the logic of imperial liberalism which was understood through the lens of superiority of the European or British way of administration of society, and governance of the “backward” non-Europeans who were “incapable of self-government, or self-improvement,” and needed to be civilized.³⁰⁶ Boucher studies this classical liberal view which emphasizes “freedom and liberty in political economy and social matters,” and how it took root in British India where the goal was to engage with the Indians as part of a civilizational project.³⁰⁷ He argues that through educational policies, rooted in classical liberalism in the late 18th and early 19th centuries, the British sought to *civilize* the *natives* through the Anglicist approach to education in India which was grounded in Christian notions of morality. On the linguistic front, until Macaulay’s Minute in 1835, there was no singular policy that the medium of instruction for education should be limited to English.³⁰⁸

Pitts discusses the contributions of Edmund Burke, who built on the scholarship of Adam Smith, and argues that Burke’s view of British Imperialism was not focused on the legitimacy or

³⁰⁶ *Ibid* at 5.

³⁰⁷ Eddie Boucher, “Colonial Liberalism, Global Neoliberalism, and Education in India” (2017) 10:2 The Global Studies Journal 51–66 at 952.

³⁰⁸ Macaulay’s Minute is infamous for declaring that Indian knowledge systems and languages were incomparable to the worth of European literature and languages. The English language was ordained to be the medium of instruction in schools so that the uncivilized Indians could be civilized. Stephen Evans, “Macaulay’s Minute Revisited: Colonial Language Policy in Nineteenth-century India” (2002) 23:4 Journal of Multilingual and Multicultural Development 260–281.

illegitimacy of imperial rule, but on exclusion of Indians along political and moral grounds.³⁰⁹ The British abolition of slavery in the 19th century and the Industrial Revolution had led to the “conviction” in the minds of liberal thinkers, like J.S. Mill, of the superiority of British culture in comparison to the rest of the world.³¹⁰ Pitts also analyzes the work of Adam Smith in his critique of British imperial interests in India because these were based on the subjugation and oppression of a culture which was identified as inferior and “less evolved.”³¹¹ Classical liberalism then took the shape of utilitarianism under the influence of James Mill, and his son John Stuart Mill,³¹² where the ‘usefulness’ of knowledge was used as a tool to govern and oppress the Indians through colonial educational interventions which aimed firstly, at educating Indians in Western thought and philosophies, and secondly, to help serve the British in their administration of India and justify imperial intervention.³¹³

Indian responses to these interventions have been the focus of Boven’s dissertation where he connects the indigenous responses to the educational policies introduced by the British through a review of opinions shared in two 19th century newspapers³¹⁴ – the *Aligarh Institute Gazette* published by the Mohammedan Anglo-Oriental College, and *The Tribune* published by the University of Punjab in Lahore. Boven observes that the opinions of the Indians ranged between those who supported colonial education policies of the British, and those who were

³⁰⁹ Pitts, *supra* note 293 at 7.

³¹⁰ *Ibid* at 15.

³¹¹ *Ibid* at 60.

³¹² Interestingly, Bradney notes that John Stuart Mill did not believe that law education from a professional lens should be considered as part of the university as he declared in 1867 that: “the university was not ‘a place of professional education . . . [its] object is not to make skillful lawyers . . . but capable and educated human beings.’” Anthony Bradney, “Law as a Parasitic Discipline” (1998) 25:1 *Journal of Law and Society* 71–84 at 75.

³¹³ Boucher, *supra* note 307 at 52–54.

³¹⁴ Boven, *supra* note 297.

vehemently opposed to them because of religious anxieties towards a Western secular education. Two news reports on the state of education in the North Western Provinces and Oudh reveal this conflict – a review of one article revealed that there had been a regular increase in the numbers of students in schools through the 1880s, including those that were indigenous and received support from the Government, indicating the success or appreciation of colonial interventions in education,³¹⁵ whilst another argued the opposite. Referring to statistical data, the second report indicated that the numbers of students enrolled in the government schools and colleges was in fact decreasing.³¹⁶ With regard to higher education looking at the Punjab University, news articles from the *Tribune* also shared conflicting views – there were those who argued that focus should be on the Indian vernaculars to promote learning, and those who argued that study in local languages was not possible since they were “undeveloped and imperfect” due to the insufficient learning resources available.³¹⁷ Conflicting views indicate the discomfort of the Indians with these colonial interventions in educational policies, and Boven argues that though there was general appreciation of the work done by the British in education reform in Northern India, anxieties existed that the Anglicists were destroying indigenous languages and culture, while the Orientalists were suppressing Indian identity to a subservient level in colonial India.³¹⁸

I argue that these 19th century encounters of the British with Indians were fraught with conflicts of identity both in terms of construction and reconstruction. The construction of the

³¹⁵ *Ibid* at 92–93.

³¹⁶ *Ibid* at 94.

³¹⁷ *Ibid* at 99.

³¹⁸ *Ibid* at 120.

Indian colonial subject as “backward” and “morally bankrupt” was based on these imperial logics to justify British rule of India. It resulted in a dismissal of Oriental knowledge, cultures, and languages in favour of more Western notions, i.e., the emergence of Anglicism within the Indian context. Once the Indian was identified as such, the reasoning for the corruption of East India Company officials was conveniently understood as the result of this ill-fated encounter of the pure and moral Englishman with the uncivilized Indian native. This led to an attempt at reconstruction of the identity of an “imperial official.”³¹⁹ In the early 19th century, the officials of the East India Company were educated at the Haileybury East India College, established in Hertfordshire (1806-1858), for sole purpose of preparation of these officials before their dispatch to India. Wilkinson argues that a reconstruction of these imperial officers was necessary before their dispatch to India, and they needed to be “virtuous body of civilian officials” so that they could lead by example these people from “backward places” and legitimize British rule in the country.³²⁰ His review of the curriculum³²¹ prescribed at Haileybury College, represented a mix of both Oriental and Anglicist education – although it included Indian history, culture and languages, it also emphasized the study of philosophy from a classical lens through European literature, and a study of the basic precepts of law.³²² But this mix was fraught with conflict which is evidenced in the debates over the East India College which reveal that a more rigorous classical English education organized on utilitarian lines could ensure that imperial officials would be more

³¹⁹ Callie Wilkinson, “The East India College Debate and the Fashioning of Imperial Officials, 1806–1858” (2017) 60:4 *The Historical journal* 943–969.

³²⁰ *Ibid* at 945.

³²¹ For more discussion on the curriculum at Haileybury looking at ethics and morality through the Indian texts of *Hitopadesa* translated into European languages and known as Pilpay’s Fables; and other texts like *Tutinama*, *Bahar-i Danish*, *Gulistan* and *Bostan*, see Arpita Sengupta & Devrupa Rakshit, “Modernization of Legal Education in India: The Interdisciplinary Approach to Education Essay” (2015) 2:1 *Asian J Legal Educ* 57–66 at 199–226.

³²² Wilkinson, *supra* note 319 at 947.

honourable. This however, clashed with the Orientalists who believed that a training in Indian cultures and languages³²³ was necessary for preparation for these officials to fulfill their duties.³²⁴ Wilkinson argues that this continued emphasis on Anglicist education was due to “inertia” within curriculum of education at the time especially because the English classics were such a “well-established part of the English curriculum” and to displace them would require “a strong and concerted effort to dislodge them from their privileged position.”³²⁵ The hope was that this mix of Oriental and European education prepared these officials for dispatch to India where they would acquire further training at the Presidency Colleges,³²⁶ and maintain the assumed superiority of their status in India.

The reality, however, was that these aspiring “virtuous” imperial officials were already engaged in activities that were neither virtuous nor morally superior – the debates of the East India College in the early to mid-19th century reveal that the students lacked discipline and were “infamous for drunkenness and gambling,” with riots unfolding on the campus.³²⁷ Viswanathan argues that the entry of the British Parliament in this area by the early 19th century was reactionary in nature – “the extravagant and demoralised lifestyles” of the officers of the East India Company to exploit Indian peoples and resources for financial benefit had resulted in questions about “the morality of British presence in India.”³²⁸ Therefore, an understanding developed that through a classical liberal education, these students could be improved and the

³²³ Languages taught at the East India College included Greek, Latin, Sanskrit, Persian, Arabic, Hindustani and Bengali. Vasunia, *supra* note 293 at 41.

³²⁴ Wilkinson, *supra* note 319 at 958–961.

³²⁵ *Ibid* at 958–959.

³²⁶ *Ibid* at 947.

³²⁷ *Ibid* at 949.

³²⁸ Viswanathan, “Currying Favor”, *supra* note 293 at 86.

identity of an “imperial official” could be reconstructed before their departure to India – a foreign and unfamiliar world where they could be ‘ruined’ through engagement with the *uncivilized* Indian. The uncivilized Indian, thus, had to be excluded from administration of the country and initially the Indian Civil Service was open only to these British imperial officials.³²⁹ The inclusion of Indians in the Indian Civil Services was not allowed until 1855, and that too was on a limited scale.³³⁰ This exclusion, and later partial inclusion, is evident from the design of the curriculum for the Indian Civil Service exams which deliberately aimed at marginalizing the ruled from governance – E.g., Greek and Latin³³¹ were a important area of study and served to exclude Indians because they did not have access to these languages in the same way the British did in their indigenous system of schooling.³³² It is also important to note, that the state of education in England at the time was also under review – from traditional learning imparted as private education at home, to learning at public schools. This was why the College at Haileybury was deemed necessary to “impose order on the varied and uneven state of education in England at the time.”³³³

³²⁹ Vasunia, *supra* note 293 at 36.

³³⁰ Vasunia writes that between 1855-1913, only 94 Indian candidates passed the Indian Civil Services exam with Oxbridge graduates representing almost 80% of students admitted. Further, between 1904-1913, only 27 Indians were recruited versus 504 Europeans. The reason for the number of Indians recruits being low was the location of the exam which was in London and hence cemented the exclusionary objective of the English in governance of India because Indian aspirants were limited not just by finances, but in the case of Hindus also religion since they believed that traveling by sea was against their beliefs. *Ibid* at 62–63.

³³¹ The bar-at-law also required its students to study Latin since it forms the basis of Roman law and other subjects but students from India did not have access to the study of that language which was available at English schools. Mohammad Ali Jinnah wrote to the Master of the Bench of the Society of Lincoln’s Inn requesting exemption from studying Latin arguing that though he knew many languages which are spoken India, Latin is foreign to the region, and it would take him some time to learn it. Hence, the application for exemption. “Mr. Jinnah applies for exemption from Latin, Lincoln’s Inn, 1893”, online: <<https://www.jinnahofpakistan.com/2010/12/mr-jinnah-applies-for-exemption-from.html?m=1>>.

³³² Vasunia, *supra* note 293 at 36.

³³³ Wilkinson, *supra* note 319 at 954.

The British in India did not have a specific framework or uniform rules for education during the early 19th century till the mid-20th century, and this duty was left to the provincial governments to follow as they saw fit.³³⁴ But during this time, another player was added to this education mix: missionaries who travelled to the country to promote Christianity. This role of the missionaries served British interests as well because it allowed for the suppression of Oriental learning for Anglicist learning, and an alliance emerged between the missionaries and the military complex due to a unified goal – civilizing the *native* along Christian notions of morality.³³⁵ The control of the church over schooling, specifically at the primary and secondary stages began to increase and in the early 19th century, detailed surveys of education in indigenous communities were conducted in the three Presidency Towns to better govern and more importantly control the Indians. The educational surveys conducted were laced with imperial logic of control of the unfamiliar, and Kakkar studies three surveys conducted in the three Presidency Towns – Madras in 1822, Bombay in 1824 and Bengal in 1835 – and argues that the goal was to “dismiss indigenous education and justify its suppression by colonial education.”³³⁶ The Reports of the Surveys when read by the Court of Directors were viewed through an imperialist lens – that the decentralized native education system was considered sub-par at best. Hence, these Reports were interpreted to strengthen the case for remodelling of the education system prevalent in India along Western or European lines.³³⁷

³³⁴ Clive Whitehead, “The Historiography of British Imperial Education Policy, Part I: India” 16.

³³⁵ Viswanathan, “Currying Favor”, *supra* note 293 at 94.

³³⁶ Ankur Kakkar, “‘Education, Empire and the Heterogeneity of Investigative Modalities’: A Reassessment of Colonial Surveys on Indigenous Indian Education” (2017) 53:4 *Paedagogical Historical* 381–393 at 381.

³³⁷ *Ibid* at 389–391.

The alleged superiority of the English education and especially the language of English itself is evident in Macaulay's³³⁸ infamous Minute (2nd February 1835):³³⁹ "I have conversed, both here and at home, with men distinguished by their proficiency in the Eastern tongues. I am quite ready to take the oriental learning at the valuation of the orientalists themselves. I have never found one among them who could deny that a single shelf of a good European library was worth the whole native literature of India and Arabia."³⁴⁰ This condescension and outright dismissal of Indian cultures and languages, and Indian peoples as a whole, by a man who had no knowledge of the languages indigenous to India, played a large part in the method of 'conversion' of Indians to be more 'English' so that a class of people is created that are "Indian in blood, but English in tastes, in opinions, in morals and intellect."³⁴¹ It further endorsed the intervention of European or English-style educational system in the country, thereby justifying British imperial rule.

This successful displacement of indigenous systems of knowledge and learning by a foreign English education resulted in the subjugation of an entire nation of people. While pre-mid-nineteenth British interventions in education were limited to primary and secondary schooling, legal education and trainings were also introduced to civilize the *native* in law, and more importantly to assist the British in governance of their Indian subjects. The next part looks at how legal learning from an English perspective was introduced within informal settings, prior to the introduction of universities in 1857.

³³⁸ It is useful to note that Thomas Babington Macaulay arrived in India just one year prior to this Minute 1835 for service on the Governor General Council of India (1834-1838) Stephen Evans, "Macaulay's Minute Revisited: Colonial Language Policy in Nineteenth-century India" (2002) 23:4 Journal of Multilingual and Multicultural Development 260-281.

³³⁹ This Minute 1835 was endorsed by Lord William Bentinck who served as the Governor-General of India 1828-1835.

³⁴⁰ Pramod K Nayar, ed, *Commentaries, Reports, Policy Documents: Volume II* (London: Routledge, 2019) at 57.

³⁴¹ *Ibid* at 63.

ii. A Pre-University Education in Law

British imperial objectives of governance and administration of India could not be accomplished if the subjects did not support the interventions, at least in some part. These supporters helped legitimize British interventions in the two areas under discussion in this dissertation – education and dispute resolution. During the Mughal period, *vakils* existed albeit in a different form from that of a legal practitioner. They were agents of the Mughal ruler but following the expansion of British rule in India, the concept of the *vakil* changed to that of a pleader facilitating British rule, and this pleader represents the birth of an Indian legal practitioner. At the beginning of the nineteenth-century, the British started the process of creation of an Indian legal practitioner called pleaders – these “qualified pleaders” as provided for in Regulation X of 1802 demanded “men of character and education, versed in the Mohammedan or Hindu Law and in the regulations passed by the British Government.”³⁴² For example, authority was granted to the Chief Courts in Madras to select and provide licenses to pleaders to facilitate practice in the courts at the time,³⁴³ and this class of practitioners served as the bridge between the foreign ruler and ruled.

Pleaders were key figures who “provided the only medium of communication between judges and suitors,” and though this new class was not formally trained in the English legal sense, they served utilitarian purposes – in the social sense, they granted a sense of a legitimacy to the new English courts, and in a legal sense, they provided assistance to the court in deciding cases

³⁴² John Jeya Paul, *The Legal Profession in Colonial South India* (Bombay: Oxford University Press, 1991) at 19.

³⁴³ *Ibid* at 18.

in which the religions of the parties involved played a part.³⁴⁴ Later, systematic legal education and more formalized legal training was declared necessary, not just for the efficient running of the new judiciary but also to test the usefulness of a university education in law which was not in vogue in England at the time.

The earliest evidence of law trainings in colonial India obtained from archival sources at the India Office have been traced to 1812 at Fort St. George in Madras (the first British settlement in 1639).³⁴⁵ Following trainings at the Haileybury East India College as discussed earlier in this chapter, the imperial officers would be trained at the Presidency Colleges to help them adapt to the Indian context. Soon thereafter, legal trainings for Indians also began and this was through the creation of a class of ‘law officers.’ These law officers were also selected from among the Hindu and Muslim populations – those from the former were referred to as *pundits*, while those from the latter, as *qazis* or *muftis* – and were attached to the courts as they existed following Warren Hastings’s interventions in the mid-late eighteenth century.³⁴⁶ These officers assisted the court in arriving at decisions based on the personal law of the two dominant faiths in India.³⁴⁷ Wright in his study of criminal cases in the nineteenth century in Bengal and North Western Provinces, narrates that initially British imperialism was designed to serve the Indians: “The permanency of any foreign dominion (and indeed, the justification of holding such a dominion) requires that a strict attention be paid to the ease and advantage, not only of the governors, but

³⁴⁴ *Ibid* at 27.

³⁴⁵ William Haggerty, “Higher and Professional Education in India”, (1969), online: <<https://files.eric.ed.gov/fulltext/ED049699.pdf>>.

³⁴⁶ Brian Wright, “Islamic Law for the Colonists: Muftis in Nineteenth-Century British India” (2019) 58:3 *Islamic Studies* 377–402.

³⁴⁷ Orby Mootham, *The East India Company’s Sadar Courts, 1801-1834*, Silver Jubilee of the Indian Law Institute publication no 6 (Bombay: N.M. Tripathi, 1983) at 2.

of the governed; and to this great end nothing can so effectually contribute as preserving to the latter their ancient established practices, civil and religious, and protecting them in the exercise of their own institutes..."³⁴⁸ Religious texts on criminal law of the Muslims were translated from Arabic to Persian and English which the British Orientalists were more familiar with to facilitate dispute resolution.³⁴⁹ The law officers bridged the gap between the governed and the British, and were regulated through Regulation XIV of 1816 which empowered the provincial court judges to control their appointments and practice.³⁵⁰

These officers, once trained with government support, had the option of becoming pleaders once they passed their exams. At the time, the term '*vakil*' was used interchangeably with that of pleader, but Indian legal practitioners were not allowed to practice law in the same way as their English counterparts. The most significant difference was in the way law was practiced in courts, the pleader could not address the court directly and all arguments and pleadings were submitted to the court in writing. This was due to a language deficit because the pleaders were not well-versed in English and the judges also had only a rudimentary understanding of the various local languages. Paul in his study of the legal profession in colonial South India states that to "relieve the judges of boredom and disgust caused by the droning of pleaders" who argued in a foreign tongue, it became a custom for oral pleadings to be limited, and if necessary, judges could ask questions which could be responded to "mechanically" by the pleaders.³⁵¹ By January 1816, law classes were introduced and candidates from all parts of India

³⁴⁸ Wright, "Islamic Law for the Colonists", *supra* note 346 at 383.

³⁴⁹ *Ibid* at 382.

³⁵⁰ Richard Clarke, *The Regulations of the Government of Fort St. George, in Force at the End of 1847: To which are Added the Acts of the Government of India in Force in that Presidency* (J. & H. Cox, 1848).

³⁵¹ Paul, *supra* note 342 at 21–22.

applied for admission to study for the posts of law officers and *vakils* from the two dominant faiths in the country.³⁵² The creation of this class of pleaders, it can be argued, was designed to give more effect to the codification of religious law by the British and reduce the role of the religious scholars.³⁵³ The *Madrasa* at Fort William imparted an education in law and literature for those of the Islamic faith, while the Benares College catered to Hindus in teaching Sanskrit literature and laws.³⁵⁴ Until then, this class of Indian pleaders had only belonged to the Hindu and Muslim religions, but by 1832 this religious limitation was removed through *Regulation IV 1832* after which, all Indians, regardless of faith, could practice as pleaders.³⁵⁵

In 1840, the arrival of Mr. George Norton as the Advocate General of Madras introduced another layer to the form of legal learning available to the Indians, albeit exclusionary since only those who understood English could participate.³⁵⁶ He started informal reading circles on various concepts of law through a dialogue-oriented approach as opposed to “formal presentations of legal concepts and ideas.”³⁵⁷ Following the ‘success’ of these reading circles, three years later in 1843, the Advocate General for Bengal, Mr. W. Lyall, also began the lectures on Law in India with the goal to instruct the native Indian students at the Hindu College of Calcutta and the College of Hooghly.³⁵⁸ But the need for more formal institutes imparting higher education was felt by the

³⁵² Revenue Department 1819 page 491, para 77-79, E/4/922, India Office, British Library.

³⁵³ While Hindu *Pandits* and Muslim *Muftis* were expected to provide religious contexts for crime committed by those of either faith being adjudicated upon according to their religion, Wright finds that his research reveals accounts where *Muftis* were consulted in court cases for Hindus, Jains, Sikhs and Muslims. Wright, “Islamic Law for the Colonists”, *supra* note 346 at 386–387.

³⁵⁴ Pramod K Nayar, ed, *Commentaries, Reports, Policy Documents: Volume I* (London: Routledge, 2019) at 39.

³⁵⁵ Clarke, *supra* note 340 at 518–519.

³⁵⁶ Paul, *supra* note 342 at 34. It is interesting to note that by 1840s, there were only two professors of law at Oxford, one whom did not teach. Andrew Boon & Julian Webb, “Legal Education and Training in England and Wales: Back to the Future?” (2008) 58:1 *Journal of Legal Education* 79–121 at 85.

³⁵⁷ Paul, *supra* note 342 at 34.

³⁵⁸ India Public Department page 139; 27th November/Se 27/1844, E/4/781 India Office, British Library.

British. The first proposal for the establishment of a University along English lines was made in 1845 in Calcutta. This was due to the increase in the numbers of qualified pupils who wanted access to further education and a degree rewarding them for their work. Fred Mouat, the Secretary to the Council of Education in Bengal, observed that universities had proven beneficial in Great Britain and Ireland, and a central university with the authority to award degrees in Arts, Sciences, Law, Medicine, and Civil Engineering should also be made available to the Indians. Specifically, with regard to Law, it was expected that graduates would form a separate legal profession in India with licenses to practice in the courts.³⁵⁹ It took another decade for such a university to be established but instruction in law at other colleges continued – Mr. Theobald as a professor of Law at the Hindu College conducted lectures on law and the various forms it takes including the connections between the English common law and the customary law in India.³⁶⁰ In the meantime, regulation of these law officers, pleaders and/or *vakils* was necessary, and this led to the first legislative enactment regulating legal practitioners in 1846.³⁶¹

I propose that the Legal Practitioners Act I of 1846 was important for two reasons: firstly, it identified this recently created group of Indian legal practitioners as a separate, legally recognized body. Secondly, this identification and recognition resulted in setting the stage for privilege and distinction within the nascent legal profession in India. These distinctions are evident within the different classes of legal practitioners in India since the Act of 1846 allowed for the formal import of English barristers for legal practice in the courts in India. This import led

³⁵⁹ Fred J Mouat, "Proposal for a Calcutta University: Chancellor and Visitor Vice Chancellor Fellows Outline of Proposed Regulations Matriculation Examination Arts and Sciences, Law, Civil Engineering, and Degree Medicine and Surgery", *The Bombay Times and Journal of Commerce (1838-1859) Bombay, India* (15 November 1845) 750.

³⁶⁰ "Bengal", *The Bombay Times and Journal of Commerce (1838-1859) Bombay, India* (5 February 1853) 246.

³⁶¹ Advocatanmoy, "Legal Practitioners Act - 1846", (16 June 2021), online: *Advocatanmoy Law Library* <<https://advocatanmoy.com/2021/06/16/legal-practitioners-act-1846/>>.

to the development of a tension between these foreign barristers and the local Indian practitioner which became more significant in the mid-to-late nineteenth century and is discussed in further detail later in this chapter.

The reasoning offered for this colonial import of barristers was that they “through their legal training, experience and tradition, would help render justice speedily and also help elevate the dignity of the courts.”³⁶² This attempt to legitimize British supremacy set the stage for the establishment of a hierarchical judicial system along English lines and facilitated the import of a practice of law with which they were familiar. The role of the Indian legal practitioner at the time was to provide a link between the Indians and the barristers from the colonial metropole – functionally speaking, the latter needed former to help translate, explain the social context of the dispute in court, and provide them with perspectives from the relevant religious and customary law. All these lent increasing legitimacy to British institutional interventions. Legal practitioners at this point thus comprised two main categories – the imported lawyers (mostly barristers from the Inns of Court and Ireland, and Advocates from Scotland) and local Indian *vakils* who acted as pleaders or law officers. Starting out more as an attempt to emulate the barristers, pleaders of the courts began to focus on learning “the English language to offset the potential of a ‘threat’ or of a monopoly of control by a handful of barristers who had been slowly but methodically making inroads into the *mufassal*.”³⁶³

³⁶² Paul, *supra* note 342 at 23.

³⁶³ *Ibid* at 25. A *Mufassal* is defined as a judicial district outside the presidency towns i.e., villages in India. It also appears as “Mofussil” in a quote later in this dissertation.

By 1850 the Act XXXVIII,³⁶⁴ legal counsel who were either pleaders of the Civil Courts of the East India Company, or Advocates of the Supreme Court of Justice created by Royal Charter, were allowed to practice in the Indian courts. By 1853 through Act XX, “attorneys of the Supreme Court also had the privilege of pleading in any of the Company courts provided that they abided by the same rules that applied to barristers and pleaders.”³⁶⁵ At this time, the Indian pleaders ran into some difficulties establishing their position as an actor with power in the field of legal practice – N.B.E. Baillie wrote to the Court of Directors in London in 1848 on the status of pleaders before the judges in court: “pleaders were not only accustomed to ‘exalting the person addressed’ but also to ‘unnecessarily lowering themselves,’ and this practice added ‘to their degradation in the eyes of Judges.’”³⁶⁶ This cultural practice of self-abasement before a higher authority was prevalent in Mughal India, but clashed with English ideals of the independent barrister, who was to be respectful of judges but not unduly deferential to them. The subservience of the Indian legal practitioner was distasteful to the sensibilities of English barristers but nonetheless played a major part in substantiating the hierarchies that existed in the profession at the time.

By the 1850s, the impact of Macaulay’s Minute of 1835 and the classical liberal education along utilitarian lines had taken root through the cultural and linguistic domination of Indian education and these also impacted legal education. Though classes and lectures at the time operated in the space of formal-informal sessions where reliance on the English language was

³⁶⁴ George Smoult Fagan, *Appendix to the Unrepealed and Unexpired Acts of the Legislative Council of India: Containing the Repealed and Expired Acts* (G.C. Hay and Company, 1863) at 378–379.

³⁶⁵ Paul, *supra* note 342 at 25.

³⁶⁶ *Ibid* at 27.

not a priority, a Report issued by the Law Commission on Education in 1854³⁶⁷ suggests a shift in that perspective. This Report stressed the importance of the local vernacular languages in India – as well as the study of Sanskrit, Arabic and Persian which was important not only from a historical and literary perspective, but also for the study of Hindu and Muslim law. However, it also emphasized the importance of an expertise of the English language by the Indians because “a knowledge of English will always be essential to those natives of India who aspire to a high order of education”³⁶⁸ and employment opportunities in both the public³⁶⁹ and private sectors.³⁷⁰ This linguistic preference was also emphasized in the Woods Despatch in 1854³⁷¹ which is considered to have birthed “an organized system of education.”³⁷² This Despatch aimed to Europeanize education and knowledge production in India because it was believed that the “systems of science and knowledge” in the East were “abound with grave errors, and eastern literature,” were “at best very deficient...” and consequently, it was necessary that the wealth of European education in literature and science was made accessible to the Indians.³⁷³ Through this Despatch, an Educational Department was created in the three Presidencies which were empowered to conduct inspections of educational institutions and provide reports on the state of development of higher education as a whole.³⁷⁴ At this point the transition from an Oriental

³⁶⁷ Report of India Law Commission on Education, 1879. It is stated: “This Report was reprinted in 1879 but is in all respects the same as the House of Commons Return No. 393, of the Session in 1854 which is now out of print.” L/PJ/5/448, India Office, British Library.

³⁶⁸ Para 4-11, page 2, Report of India Law Commission on Education, 1879, L/PJ/5/448, India Office, British Library.

³⁶⁹ Indian Civil Services opened up to Indians in 1855 with examinations in England, and the first open competitive exam in India was held in 1922. Vasunia, *supra* note 293 at 66.

³⁷⁰ Report of India Law Commission on Education, 1879, para 15-22, p. 4-5, L/PJ/5/448, India Office, British Library.

³⁷¹ This Despatch 1854 is believed by many scholars to have been written by J.S. Mill who had a utilitarian view of educational policy in India.

³⁷² Gopalrao Ekbote, *Educational System in India and Legal Education*, Sir Alladi Krishnaswami Aiyer endowment lecture 1973 (Waltair: Andhra University Press : copies from Andhra University Press & Publications, 1973) at 7.

³⁷³ Nayar, *supra* note 340 at 3.

³⁷⁴ *Ibid* at 5.

basis of learning to Anglicist superiority was complete, and the imperial objective to make the *unfamiliar* i.e., Indian, *familiar* along English lines had to a great extent been achieved.

The arrival of John Bruce Norton at the Presidency College in Madras in 1855, as the first law professor in the country, changed the training requirements of pleaders in India.³⁷⁵ He aimed to “train up a completely instructed body of pleaders who [might] spread themselves through the Mofussil Courts and introduce a total revolution in the present practice of the administration of law.”³⁷⁶ While work on the establishment of Universities in India was in process, the lectures in law at various colleges in the Presidency Towns continued and were delivered in various subjects related to law e.g., jurisprudence at the Hindu College in Bengal in 1854 was taught by a professor, Mr. Theobald.³⁷⁷ Generally the law lectures included the importance of the role of the British in India in the provision of civil and criminal justice through the East India Company at the Presidency College in 1856;³⁷⁸ jurisprudence, contracts and mercantile law, and judicial evidence and procedure at the Elphinstone Institution in 1857.³⁷⁹ Students attending these sessions were under a hundred in number and were either those who wanted a diploma in law or those who chose to attend to generally acquire knowledge of law, the former would be subject to an examination while the latter were not bound by such assessments.³⁸⁰ The cost per session

³⁷⁵ “History of the College – Government Law College Pattaraiperumpudhur”, online: <<http://glcpr.ac.in/history-of-the-college-2/>>.

³⁷⁶ Paul, *supra* note 342 at 35.

³⁷⁷ “Bengal”, *The Bombay Times and Journal of Commerce (1838-1859) Bombay, India* (20 July 1854) 3064.

³⁷⁸ “Article 9 -- No Title”, *The Bombay Times and Journal of Commerce (1838-1859) Bombay, India* (1 October 1856) 629.

³⁷⁹ “Editorial Article 3 -- No Title”, *The Bombay Times and Journal of Commerce (1838-1859) Bombay, India* (10 June 1857) 1092.

³⁸⁰ “Madras”, *The Bombay Times and Journal of Commerce (1838-1859); Bombay, India* (1 August 1855) 395.

ranged between Rs. 15³⁸¹ to Rs. 30.³⁸² With the rising popularity of these lectures, the need was felt for a more formal system of higher education as a whole and legal education specifically. Hence, the university modelled on the University of London was transplanted in India by 1857, and this institutional import was followed closely by the establishment of the higher judiciary in the major cities by 1862. The next section provides the pre-British context of dispute resolution in India to understand how the hierarchy of courts displaced the traditional forms of Indian dispute resolution.

My archival research shows that the field of legal education slowly but firmly displaced the indigenous systems of learning and led to the emergence of the superiority of the colonizer in India. The Indian actors were expected to learn the rules and play a foreign game dictated by the foreigner on Indian land. Before they even entered the field to compete, they had already been declared inferior to the British actors who occupied the most important positions on the field and had the power to determine which Indian would be allowed to play, and in which capacity. This sense of limited and controlled inclusivity of the Indian on their own territory impacted their perception of themselves and their supposedly *backward* traditional forms of learning. This superiority was not only in education but also in dispute resolution which is discussed next.

³⁸¹ Law Lectures, "Correspondence: Law Lectures to the Editor of the Bombay Times", *The Bombay Times and Journal of Commerce (1838-1859)*; *Bombay, India* (4 July 1855) 330.

³⁸² *Supra* note 378.

b. Dispute Resolution in pre-1862

Societies require mechanisms for dispute resolution that serve the people and reflect their customs and belief systems. This section provides a brief overview of systems of dispute resolution prior to British intervention of higher judicature in 1862 and is divided into two parts: the first traces the indigenous systems to resolve disputes during the times of the Mughals in India (1526-1862), including those that predated the Mughals, as well as the Royal Courts they introduced. The second provides an account of how the British in India (1600-1862) through the East India Company slowly intervened through the Company courts and set the wheels in motion for the eventual import of English-style high courts that were thus far, foreign to the Indian context.

i. Mughal Dynasty

Administration of justice³⁸³ during the Mughals entailed a system of dispute resolution which can broadly be defined to function along two levels: at the first level were the royal courts that worked in the major cities of India and were governed by the *Ain-e-Akbari*³⁸⁴ – a set of regulations introduced by the Mughal Emperor Akbar to ensure that order was maintained in the Kingdom. Though the judiciary was not a separate branch of government at the time,³⁸⁵ there was a category of judges called *Qazis* who were appointed by and delegated with the authority

³⁸³ For more discussion on dispute resolution during the Mughal era and its displacement by the British system of courts see Peter Robb, *A History of India* (Basingstoke, Hampshire ; Palgrave, 2002) at 134–137.

³⁸⁴ *Ain-i-Akbari* translates to the Law of Akbar, translation by author.

³⁸⁵ Nandini Chatterjee, “Reflections on Religious Difference and Permissive Inclusion in Mughal Law Symposium: Re-Thinking Religious Freedom” (2014) 29 J L & Religion 396–415 at 406.

of the Mughal Emperor to examine witnesses and record evidence to help resolve disputes.³⁸⁶ Therefore, it appears that the courts as they existed at the time followed a more inquisitorial approach rather than the adversarial method peculiar to Britain. The second level of dispute resolution predated the Mughals and was a norm in the rural areas, i.e., villages – the *panchayat* system. The “*panch*” in the term “*panchayat*” means the number five, and the term refers to “the ‘coming together of five persons’” which constituted a council comprising (at least) five members of the village or community.³⁸⁷ These councillors were the elders or respected members of the village and were given the authority to resolve disputes between the people through the traditional method of dispute resolution in Indian culture which predated the Mughals. This method resolved disputes through arbitration or mediation, on the principle that parties to a dispute can resolve their differences through a consensus.

Mahr notes that there was also a religious element associated with this consensus – when “the *panchayat*, spoke as one, it was said to be the voice of God; it gave expression to the consensus of the traditional moral order.”³⁸⁸ As a result the *panchayats* applied both religious and customary law³⁸⁹ and were organized along community, caste, or religious basis, which reflected the customs and norms of the concerned village.³⁹⁰ This also meant that this system replicated the class structure of the village itself.³⁹¹ The resolution of disputes, therefore, fell in the domain of *Qazis* and the *panchayats* – there were no “lawyers” or “advocates” as we

³⁸⁶ Eustace J Kitts, “Judge’s Life in India” (1903) 19 L Q Rev 423–429 at 424.

³⁸⁷ Galanter & Dhavan, *supra* note 293 at 54.

³⁸⁸ Theodore A Mahr, “An Introduction to Law and Law Libraries in India Comment” (1990) 82 Law Libr J 91–128 at 103.

³⁸⁹ Galanter & Dhavan, *supra* note 293 at 16–17.

³⁹⁰ Mahr, *supra* note 388 at 104.

³⁹¹ Philip B Calkins, “A Note on Lawyers in Muslim India” (1968) 3:2/3 Law & Society Review 403–406 at 403.

understand them today during Mughal rule of India, and though there was a category of persons called “*vakils*,”³⁹² these were not understood to be lawyers in the adversarial sense. Mithi Mukherjee describes them as “intermediaries in the Mughal period who represented their clients’ interests in various fields, legal and commercial.”³⁹³ The intervention of the British in dispute resolution in India changed what was meant by the term *wakil* identifying him as an Indian legal practitioner in service of the courts.

ii. The British in India

By the seventeenth century, the control of the Mughals over India had started to diminish, and the British were granted increasing authority to regulate their company affairs, and the people who worked under them, as per English laws and legal systems. This signalled an acceptance of adjudication of Indian subjects in India through a foreign legal system, and this intrusion represents a crucial moment of history as it set the stage for the expansion of English influence in law. British legal mechanisms and institutions at the Presidency Towns were established in the seventeenth to eighteenth centuries – through the Royal Charter of 1661,³⁹⁴

³⁹² The linguistic origin of the term ‘*wakil*’ can be traced to four languages – Persian, Urdu, Arabic and Turkish. In classical Arabic, the root of this word is “w-k-l” which means “to appoint or entrust for the care or management of something; to have a commissioned agent, a guardian of one’s interests; to rely upon, confide in, lean upon, submit to.” In all these languages the meaning largely remains the same – a person who is entrusted with the authority to do something on behalf of another, and this was the sense in which *vakils* operated in the Mughal era. https://wahiduddin.net/words/99_pages/wakil_52.htm, accessed 13.04.2018. Further, Paul has defined the term “*wakil*” through its Persian roots as an “agent, ambassador, representative, or counsellor”, Paul, *supra* note 341 at 13.

³⁹³ Mukherjee, *supra* note 293 at 112, n11.

³⁹⁴ Letters Patents Granted to the Governor and Company of Merchants of London, Trading into the East-Indies, bearing Date the Third of April, in the Thirteenth Year of the Reign of Charles II, Anno Domini, One Thousand Six Hundred and Sixty-one, available at East India Company & John Shaw, *Charters Relating to the East India Company from 1600 to 1761: Reprinted from a Former Collection with Some Additions and a Preface for the Government of Madras* (R. Hill at the Government Press, 1887) at 32–46.

during the reign of King Charles II, which established first Presidency Town at Surat in Western India.³⁹⁵ This Charter also granted the East India Company authority to hold court and develop laws/regulations which would further the trade interests of the colonial empire. This Presidency was transferred to Bombay towards the latter half of the seventeenth century (in 1687), and over this period, the British began to consolidate their control over the Indian sub-continent – British rule in Madras was formally established through another Royal Charter of 1687 during the reign of James II which set up the Mayor's Court at Fort St. George.³⁹⁶ The third Presidency Town in Bengal called Fort William in Calcutta followed soon after in 1690.³⁹⁷

The Royal Charter of 1726, during the reign of King George II, further cemented the nascent but growing English judicial system in India, for example, in 1772, the Company was empowered to administer the *diwani*³⁹⁸ for Bengal, and the administration of civil and criminal justice. At this stage the English in India did not introduce English substantive law and English judges adjudicated based on the personal laws of the Indians.³⁹⁹ Over time, as British control of the country expanded, their judicial structures that had been making inroads in Indian society through the East India Company courts also became stronger, and started to displace, in a large part, the traditional forms of dispute resolution that existed. More Indians found themselves in these courts for dispute resolution and consequently, the need for the Indian pleaders and law officers to facilitate that encounter also increased. It would be incorrect to state that this was a happy mix – Indians were increasingly becoming more discontent with their subservient position

³⁹⁵ Mahr, *supra* note 388 at 100.

³⁹⁶ Company & Shaw, *supra* note 396 at 84–96.

³⁹⁷ "East India Company Factory Records Sources from the British Library, London Part 5: Calcutta, 1690-1708", online: <http://www.ampltd.co.uk/collections_az/eic-factory-5/description.aspx>.

³⁹⁸ The right to collect land revenue.

³⁹⁹ Mahr, *supra* note 388 at 101.

in their own society, one that was lesser than that of the English ruler. The War of Independence in 1857 marked this dissatisfaction – the Indian army in Bengal revolted against the East India Company, famously referred to as the ‘Sepoy Mutiny’ by the British and the ‘First War of Independence’ by the Indians, and though this was triggered by the introduction of the Enfield rifle⁴⁰⁰ in the Company’s army, there were other “political, administrative, economic and socio-religious reasons why a spirit of discontent grew during the colonial rule.”⁴⁰¹

Robb argues that one possible reason was the increasing role of missionaries and the “Christianizing agenda,”⁴⁰² while Metcalf argues that one of the reasons motivating the 1857 War was an outright rejection of the judicial institution as transplanted by the British – “One of the most widely detested of all British institutions in India was the system of judicial procedure. If not among the major causes of the Mutiny, the complexity and corruption of the courts certainly helped pave the way for rebellion.”⁴⁰³ The response of the British Crown to this War 1857 was to crush the opposition, revoke all privileges of the East India Company and formally make India part of the British Empire with the appointment of a Secretary of State who possessed “almost unbridled power over Indian finances and was the real ruler.”⁴⁰⁴ Following this 1857 War, the British felt the need to quickly codify criminal law in the country and two Acts were passed in quick succession – the Indian Penal Code 1860, and Criminal Procedure Code 1861.⁴⁰⁵ The impact of codification was the reduction on the reliance on Indian law officers by the courts and the

⁴⁰⁰ This Enfield rifle was rumoured to contain fat from cows and pigs, the former considered sacred by the Hindus and the latter viewed as impure by the Muslims.

⁴⁰¹ Thomas R Metcalf, *The Aftermath of Revolt: India, 1857-1870* (Princeton, N.J: Princeton University Press, 1964).

⁴⁰² Robb, *supra* note 383 at 145–146.

⁴⁰³ Metcalf, *supra* note 401 at 249.

⁴⁰⁴ Nilakshi Jatar, Laxmi Paranjape & Narendra Chapalgaonker, *Legal History: Evolution of the Indian Legal System*, 1st ed. ed (Lucknow: Eastern Book Company, 2012) at 158.

⁴⁰⁵ Wright, “Islamic Law for the Colonists”, *supra* note 346 at 398.

passing of the Kazi Act 1864⁴⁰⁶ indicates this departure and sets the stage for the university educated Indian legal practitioners and the High Courts.⁴⁰⁷

In 1883, a Bill was proposed that sought to amend the Criminal Procedure Code 1861 and allowed Indian judges to conduct trials of European subjects in the Indian Courts. This Bill, known as the Ilbert Bill, became the source of much controversy because it envisioned an equal status of the Indian with that of the European and Roy conducts a wonderful account of the perception of the Bill in India and England.⁴⁰⁸ Roy discusses the anxieties of the English at being tried by Indian judges in the courts and also those of the Indians at seeing how unequal they were perceived by the English on their land. These anxieties were expressed in the newspapers in England and Kaul discusses the views expressed in the English newspapers like the *Telegraph* and the *Daily Chronicle* proposing that “The right of Englishmen to be tried by magistrates of their own colour was, argued the Telegraph, based originally on the broad fact that in India ‘we are the dominant race, and that any wise custom or just law likely to sustain the dignity and influence of the ‘ruling caste’ is a useful and recognised part of the whole Imperial system.”⁴⁰⁹ One of the

⁴⁰⁶ The purpose of this Kazi Act 1864 was to limit the role of the Kazi to that of a ceremonial duties and rites rather than his earlier position of a judicial officer. The Kazi’s judicial duties had been replaced by the British import of the judiciary. This Act was later replaced by the 1880 Act and as proposed by Sayyid Ahmed Khan served the following purpose: “The Bill in question will simply provide for the appointment of Kazis by Government, leaving their position and duties, whatever they may be, just as they now are, and conferring no judicial or other powers on them; and, in order to prevent any possible misapprehension as to the object of the proposed Bill, a saving clause will be added to that effect.” The Kazis Act, 1880, online: <<https://indiankanoon.org/doc/99006840/>>.

⁴⁰⁷ Wright, “Islamic Law for the Colonists”, *supra* note 346.

⁴⁰⁸ Somnath Roy, “Repercussions of the Ilbert Bill” (1970) 32 Proceedings of the Indian History Congress 94–101.

⁴⁰⁹ Chandrika Kaul, “England and India: The Ilbert Bill, 1883: A case study of the metropolitan press” (1993) 30:4 Indian Economic & Social History Review 413–436 at 420–421. As a result of the controversy, the bill eventually passed in 1884 in a more limited form which permitted Indian judges to try Europeans but enabled defendants to request a jury composed of half Europeans in such cases. The racial tensions stirred up by the bill were a major factor in the creation of the Indian National Congress in 1885. For more on the gendered context of the Ilbert Bill 1883, please see Reina Lewis & Sara Mills, eds, *Feminist Postcolonial Theory: A Reader* (New York: Routledge, 2003); Judith Whitehead, “Bodies of Evidence, Bodies of Rule: The Ilbert Bill, Revivalism, and Age of Consent in Colonial India” (1996) 45:1 Sociological Bulletin 29–54.

major consequences of the Ilbert Bill was the creation of the Indian National Congress. Thus the anxieties over being judged by a foreign law or governed by a foreign government went both ways for Indians and the English in India.

IV. Institutional Transplants which Mirrored Each Other

The British encounter with the unfamiliar Indian world through the East India Company from the seventeenth to the mid-nineteenth centuries was marked by their attempts to slowly impose their own systems of governance. These systems were geared to make a foreign land familiar to them and help facilitate their trading and imperial objectives. Institution building was thus an important component of this endeavour and this part of the chapter studies two institutional⁴¹⁰ transplants introduced by the British during the mid-nineteenth century: universities and the hierarchy of courts. Both were transplanted in India to further imperial objectives, and those Indian actors who engaged with these institutions, i.e., students and legal practitioners, were in turn regulated by the rules which organized activity within them. Paul's dissertation and later book publication on the legal profession in colonial South India was a very useful stepping stone for the development of this dissertation and the India Office archives helped build on the narrative for the rest of India.⁴¹¹

⁴¹⁰ Institutional theory, especially in the last four decades has been used/applied in different disciplines, adopts a variety of forms – the simplest is the binary view where an institution is defined as a rule which regulates human behaviour or a system of human behaviour which is governed by rule i.e. organized activity. Ersson and Lane conduct a very useful review of the different definitions of the term “institution.” Svante Ersson & Jan-Erik Lane, *What is an institution?* (Routledge, 2000).

⁴¹¹ Paul, *supra* note 342; John Jeya Paul, *Vakils of Madras, 1802-1928: The Rise of the Modern Legal Profession in South India* ProQuest Dissertations Publishing, 1986).

The selection of the two mid-nineteenth century institutional interventions is a unique approach for the study of legal education and practice as it fuses the two separate but interconnected fields from a historical perspective. The choice of these two institutions is based on three main reasons: firstly, in terms of time frame where both were established only five years apart – the first universities opened in 1857, followed by the first High Courts in 1862. Secondly, the inextricable link represented by legal education between these two institutions which forms the bridge between the two and is the focus of this dissertation. Lastly, the conflicts which emerged between the different classes of legal practitioners in India at the new high courts was the result of the newly introduced university legal education which later became a requirement for enrolment to practice before the new higher judiciary. A study of higher education in law in 21st century Pakistan would be incomplete without mapping the history of legal education and practice in India of the 18th to mid-20th centuries as introduced by the British.

An institution is “an organized, established, procedure,”⁴¹² governed by rules which helps shape its nature and form through the creation of identities of those who engage with it.⁴¹³ The British decided to transplant the two institutions not only because they were familiar with them, but also because there was an assumption that since they worked in their home country, they should work elsewhere. Watson reasons as to why law is borrowed from one place and fashioned in another and proposes that, “Borrowing is easier than thinking. It saves time and effort.”⁴¹⁴ The acceptability of the transplant in the new body is also because of the knowledge that it has a

⁴¹² Walter W Powell & Paul DiMaggio, *The New Institutionalism in Organizational Analysis* (Chicago: University of Chicago Press, 1991) at 143.

⁴¹³ *Ibid* at 146.

⁴¹⁴ Alan Watson, “The Birth of ‘Legal Transplants’” (2013) 41:3 *The Georgia Journal of International and Comparative Law* 605–608 at 607.

“recognized pedigree”⁴¹⁵ and over time, through this acceptance, a legitimacy of that transplant is created. Powell and DiMaggio argue that it was with the role of the professional actors that worked in the institutions around whom the culture evolved⁴¹⁶ and through a process of institutional diffusion, legitimacy (or the lack thereof) is awarded to the organization under study. The role of the professionals or actors that engage with institutions becomes important because they generate the habitus of the actors in that field. This is how courts and universities gained their place by the mid-nineteenth century in India – the culture which developed around these two institutions, and between them, is reflected in the responses of Indian society which led to their entrenchment within the minds of those they regulated. This immersion was rooted in the belief, constructed by the British in India over the eighteenth and mid-nineteenth centuries of the superiority of Western culture and knowledge, as discussed earlier in this chapter. This belief by the mid-nineteenth century was absorbed by many Indians to become a self-evident reality through either the complete or partial adoption of the way of the colonizer. The creation and eventual acceptance of the universities and judiciary is evidenced in the attempts at indigenization of legal education and practice and analyzed further in the next chapter.

a. The Indian University and the Law

India served as fertile ground for English experimentation with university-level legal education. Though in England, university degrees in law were available for study, they had no

⁴¹⁵ *Ibid.*

⁴¹⁶ Powell & DiMaggio, *supra* note 412 at 269–274.

connection to the practice of law for either barristers or solicitors, and apprenticeships with senior members of the legal profession was deemed sufficient to learn legal practice. Boon and Webb conduct a valuable historical study of legal education in the United Kingdom from its birth in the thirteenth century till the twentieth century, identifying that the Inns of Court were traditionally the sole providers of legal training for legal practice by barristers. They further elaborate that by the 1840's this legal training provided at the Inns had been subject to criticism and by 1846, a Parliamentary Select Committee Report "urged the Inns of Court to unite in creating a law university and to establish preliminary examinations and lectureships."⁴¹⁷ The Inns of Court Law School was created by the Inns in 1852 but bore no connection with existing universities at the time. Boon and Webb note that almost a decade later in 1854, a Royal Commission was appointed to review the state of legal education and while it reiterated the earlier recommendation of universities, nothing changed. But between 1850-1858, Cambridge and Oxford universities began BA, BCL and/or LLB degrees where the focus was on jurisprudence, Roman law and international law, and academic study of law was not considered crucial,⁴¹⁸ or even desirable, for legal practice.⁴¹⁹

By this time in mid-nineteenth-century India, the stage was set for experimentation by the British for introducing a university degree in law as a pre-requisite for legal practice in the courts. This became a turning point for the Indian profession, and later for national politics as well. As described by the Director of Public Instruction, E.I. Howard, the "imported barristers"

⁴¹⁷ Boon & Webb, "Legal Education and Training in England and Wales", *supra* note 356 at 83.

⁴¹⁸ This changed in the mid-20th century, following the end of the second World War, where academically trained/educated graduates began to enter the market – Abel notes that by the 1970s "the influence of academic legal education on the size of the profession cannot be exaggerated." Richard L Abel, *The Legal Profession in England and Wales* (Oxford, Oxfordshire, UK: Blackwell, 1988) at 270–271.

⁴¹⁹ *Ibid* at 263–264.

from Britain to India were in all probability “briefless young men of no great learning or ability,” with limited exposure of Indian culture, language, customs, or people.⁴²⁰ To investigate this further for the purpose of this dissertation, a detailed review of the Men-at-the-Bar was conducted, this text is a valuable compilation of the biographical hand-list of the members of the various Inns by Joseph Foster.⁴²¹ An alphabetical list of hundreds of barristers was reviewed and those who had served in India as officers of the court, or in other capacities for the administration of India, were extracted for further study. The first man to acquire a bar-at-law certification in the 19th century and venture to India was Sir Christopher Rawlinson from Middle Temple (enrolled in 1828 and called to the Bar 1831) and had the privilege of becoming the first Chief Justice of Madras from 1849-1859.⁴²²

By the mid-nineteenth century the need for Indians formally educated and trained in law was recognized as crucial at this stage because, as Director Howard stated, the existing lectures in law could only provide one with some knowledge of law which was not comparable to those who study law at the university level. He predicted that when universities started to function all over the country, this difference would become even more evident.⁴²³ By the 1850s, the Council of Education proposed that universities in India would be introduced, modelled on the University of London (which was organized as a federal university). These imported universities would comprise a Senate with the Chancellor, Vice-Chancellor and Fellows who would be in control of the finances and regulatory framework. Universities would impart knowledge, conduct

⁴²⁰ “Legal Education of Civil Servants: From the Sixth Report of Her Majesty’s Civil Service Commissioners Extract from the Proceedings of Government in the Judicial Department from the Director of Public Instruction ... coms. 1859”, *The Times of India (1861-current); Mumbai, India* (17 July 1861) 3.

⁴²¹ Foster, *supra* note 32.

⁴²² *Ibid.*

⁴²³ Note 420.

examinations of candidates and award degrees in the different disciplines offered⁴²⁴ with existing colleges required to affiliate with the new institution.⁴²⁵ Law was identified as the “most important” of the areas of study offered which coincided with British imperial interests, while other subjects included Civil Engineering, study of languages etc.,⁴²⁶ and the cities⁴²⁷ that were chosen initially were Calcutta, Bombay and Madras.⁴²⁸ The first university in India received the assent of the Governor General on 24th January 1857, though Aggarwal notes that there are some conflicting views on which Presidency Town established the first University.⁴²⁹ He identifies that Bombay was the seat for the first law college,⁴³⁰ and states that the primary objective of the law schools was to “enable students to practice law” and “become lawyers able to apply principles to concrete cases.”⁴³¹ At this point, the question of whether a degree in Law was necessary for legal practice was not addressed but was deferred to a later point in time.⁴³² Unsurprisingly, the expectation developed that practising lawyers should comprise the teaching staff arose on the basis that they “were considered best able to impart legal education,” especially since there were

⁴²⁴ Nayar, *supra* note 340 at 7.

⁴²⁵ Boven, *supra* note 297 at 66.

⁴²⁶ Nayar, *supra* note 340 at 8.

⁴²⁷ The University of Calcutta served colleges in the Eastern and Northern regions; The University of Bombay covered the vast region of the Old Bombay Province (Sindh, Gujarat, Kathiawar, Karanataka without Mysore, and Maharashtra without Vidarbha. The University of Madras served the Southern region. S Bhandarkar, *Association of Indian Universities: a Short History, 1925-85*, [2nd ed.]. ed (New Delhi: Association of Indian Universities, 1985) at 3.

⁴²⁸ The list of colleges and institutes that were identified by the Report of the Indian Law Commission on Education in 1879 is based on the Woods Despatch 1854 and is as follows: In Bengal, the Hindoo, Hooghly, Dacca, Kishnagur, Behrampore Government Anglo-Vernacular Colleges, Sanskrit College, the Mahomedan Madrissa, and the Medical College. In Bombay, the Elphinstone Institution, Poonah College and Grant Medical College. In the North-Western Provinces, the Delhi, Agra, Benares, Bareilly and Thomason Colleges. In Calcutta the Oriental Seminary. In Serampore the Bishop’s College, General Assembly Institution, Dr. Duff’s College, and the Baptist College and others.

⁴²⁹ Since the process from commencing classes to getting affiliation with a university and receiving government consent are longwinded, this may be the reason why there is some conflict. Regardless, university education in law began in Calcutta, Bombay and Madras in the mid-1850s.

⁴³⁰ Arjun P Aggarwal, “Legal Education in India Comment” (1959) 12:2 J Legal Educ 231–248 at 232.

⁴³¹ *Ibid* at 233.

⁴³² India Public Department Education India & Bengal Despatches 18th August to 30th August 1858, p.41-74, E/4/854, India Office Archive, British Library.

no legal academics in India at the time.⁴³³ Thus, through the birth of university-level legal education, the habitus of the legal profession stood transformed, where earlier legal trainings were provided through informal sessions, or religious scholars who were consulted on various aspects of laws and customs, the university changed everything. Designed to emphasize future practice in the courts, this over time became a self-evident truth with legal practice being the focus of this higher education. The habitus of legal education following the mid-nineteenth century was divided between different groups – aside from the English barristers, the Indians were divided into different categories of practitioners, from law officers to certified pleaders, these later were either incorporated or replaced by the university-educated Indian legal practitioner.

During the mid-nineteenth century legal education was available to Indians through these newly established institutions and was spread over three years. A perusal of the 1862 curriculum reveals the role of European or Anglicist influence in the subjects offered – for the first year the subjects of General and Comparative Jurisprudence addressed Western legal traditions through the study of Roman and English substantive law, and Eastern jurisprudence encompassed Hindu and Mahomedan law, family, and succession laws. In the second year, a student of law was expected to learn Contract and Mercantile Law, and Torts and Criminal Law, while in the final third year, the subjects covered were Principles of Equity, Evidence, and Civil and Criminal procedure.⁴³⁴ Till then it appears that there was no requirement for a degree in law but the need for university-educated professionals including law graduates started to take root in India.⁴³⁵

⁴³³ Aggarwal, *supra* note 430 at 232–233.

⁴³⁴ *Ibid* at 237–238.

⁴³⁵ “Want of Professional Natives”, *The Times of India (1861-current)*; *Mumbai, India* (31 August 1865) 4.

While aspiring Indian practitioners had to follow this strict course of study, England continued to follow a less formal system for legal training, with the first examinations for the Bar introduced in 1872 and for solicitors and attorneys in 1860.⁴³⁶

By the 1870s in India, increasing numbers of aspiring law students entered the universities – Mr. Clive Bailey, the Vice-Chancellor of the Calcutta University, in his convocation address in April 1871 stated that the teaching provided by the University’s Law Department was “real and thorough,” and this had benefited the students which can be observed with the rising numbers of applicants for admission in the University – 1905 students appearing in the entrance examination in 1870, of whom about 58% successfully passed the exam.⁴³⁷ In the decade 1868-1877, the three universities in Calcutta, Madras and Bombay had conferred 910 diplomas in Law.⁴³⁸ A newspaper article suggests that these rising numbers needed to be controlled,⁴³⁹ and it was suggested that the best way to restrict the numbers was to encourage university law graduates over the pleaders and/or *vakils* who were enrolled in the High Court.⁴⁴⁰

The Letters Patent 1865 allowed the High Courts of Madras, Bombay and Calcutta to draft their own rules for authorizing lawyers for practice which resulted in each High Court having the authority to draft different sets of rules detailing the criteria for admission that reflected the distinct nature of variation in practice in their jurisdiction.⁴⁴¹ This variation is dealt with in greater

⁴³⁶ Boon & Webb, “Legal Education and Training in England and Wales”, *supra* note 356 at 83–84.

⁴³⁷ “Editorial Article 2 -- No Title”, *The Times of India (1861-current)*; *Mumbai, India* (6 April 1871) 2.

⁴³⁸ Nayar, *supra* note 340 at 91.

⁴³⁹ The popularity of university education can be gleaned from an extract from Our Educational Policy in India, where evidence collected states that in the 21 years since Universities were introduced in India, 61, 650 candidates presented themselves for examination, of which 15,673 were from the first 11 years and 45,977 from the next ten years. Further, between the years 1868-1877, the three universities in Calcutta, Madras and Bombay had conferred 910 diplomas in Law. *Ibid* at 91–92.

⁴⁴⁰ An Observer, “To the Editor of the Times of India”, *The Times of India (1861-current)*; *Mumbai, India* (27 December 1876) 2.

⁴⁴¹ Paul, *supra* note 342 at 55.

detail in the next chapter. The increasing preference for university-educated practitioners over pleaders and/or *vakils* that began to take root by the late nineteenth century resulted in the exclusion, and eventual removal, of law officers and pleaders from the landscape of legal practice by the late nineteenth-century in India. The university as an imperial intervention through the study of law allowed for the development of the legal profession to emerge “as a necessary concomitant of the inception and evolution of the British administration.”⁴⁴²

b. Tensions in the Legal Profession following the Twin Institutional Transplants

The habitus of the legal profession as it developed following the import of the twin institutions was marked by exclusivity with the English barrister at the top of the hierarchy of the newly created legal profession, and the Indian legal practitioner subservient to him. The preference for the new law graduates from the universities over the certified pleaders and *vakils* led to a change in the way the local Indian practitioner was perceived and as a result, the construct of the Indian lawyer also evolved. This Indian lawyer who was a pleader or a *vakil* by the end of the nineteenth century became synonymous with a law graduate to a shape more familiar to present-day Pakistan. The actors in the field at this stage were the British and Indian practitioners and by the 1870s tensions emerged within the field which I argue were the result of the two institutional transplants. These tensions were on two levels: the first was between Indians themselves i.e., between the pleaders/*vakils* and the university-educated legal practitioners, and the second, between the Indians and the British legal practitioners.

⁴⁴² Richard L Abel & Philip Simon Coleman Lewis, *Lawyers in Society* (Berkeley: University of California Press, 1988) at 370.

The first level of tension was born when the university degree in law divided Indians into two groups, those with and those without the degree. With certified pleaders and/or *vakils*, and law degree graduates both serving the English barristers in the courts, a preference began to emerge of the latter over the former. This rift was addressed in some part through the Act No. XVIII of 1879, titled The Legal Practitioners Act, 1879, which received Royal assent on October 29th 1879. The Act defined a legal practitioner under Section 3 as a broad category which included Advocates, *Vakils* or Attorneys of any of the High Courts, a Pleader, *Mukhtar*, or a Revenue Agent.⁴⁴³ Pleadors and *Mukhtars*,⁴⁴⁴ and their terms of service to the Courts, continued to be governed under the direction and authority of the High Courts of India through Section 6.⁴⁴⁵ Pleadors⁴⁴⁶ were limited to the appellate jurisdiction of the High Court under Section 8, while *Mukhtars* under Section 9 were allowed to practice in the civil and criminal courts within the limits of the jurisdiction of their respective High Courts.⁴⁴⁷ It appears that potential conflicts between the different sets of Indian legal practitioners were resolved through jurisdictional divides based on the nascent hierarchy of courts that was functioning in India at that time.

⁴⁴³ "The Legal Practitioners Act, 1879", online: <<https://indiankanoon.org/doc/77633/>>.

⁴⁴⁴ Literally the work is rooted in Arabic and means "chosen" but in this context refers to head of a village or district. Translation by author.

⁴⁴⁵ note 443 at Section 6.

⁴⁴⁶ Pleadors also had to undertake examinations to be granted certificates to practice by the High Court of the area and had two standards of exams: the Lower Standard, the fee for which was Rs. 5 and included four papers – Hindu Law of Inheritance, Succession and Adoption, and Mahomedan Law; The Law of Civil Procedure, Limitation, Registration, Stamps and Court Fees; the Law of Contracts and Evidence; and the Indian Penal Code and the Code of Criminal Procedure. The second was the higher Standard for which the fee was Rs. 10 and included the four subjects required in the Lower Standard but at a higher difficulty level as well as other subjects – Law of Torts, Mercantile Law, and Principles of Jurisprudence and is available at Notification by the Judge of the Sadar Court of Sind, Judicial Branch, No.196, dated January 25th, 1884, Sindh Official Gazette, part I, 1884, p.176-177. A later account published in 1899 details the same list of courses but specifies that the examinations would be conducted in the English language and is available at Notification by the Judge of the Sadar Court of Sind, Judicial Department, No.954 dated 1st June 1899, Sindh Official Gazette, part 2 July-August, p.159.

⁴⁴⁷ note 443 at Sections 8 and 9.

However, later as the following discussion shows, it was these jurisdictional division that led to the harboured resentment of the Indian against the British in the practice of law.

While the preference for university educated lawyers over the other legal practitioners began to emerge, the university law degree also evolved. By the end of the 19th century, three points of contention emerged: the first related to the pre-requisite of a BA degree for admission to the LLB degree; the second was based on the emphasis on Roman Law as a crucial component of the LLB degree; and the third was the overall onerous nature of the LLB degree⁴⁴⁸ itself. A person had to pass “an undergraduate degree and a law degree in India” and also had to pass “an examination conducted by the Bombay High Court.”⁴⁴⁹ Mossman, documenting the journey of Cornelia Sorabji (the first woman to practice law in India) writes that in 1897, when Sorabji passed her *vakil* examinations in Allahabad, the requirement was of ten papers each of which were three hours long.⁴⁵⁰ Generally, eligibility for admission to the law degree now required the candidate to have acquired a Bachelor of Arts Degree before application for admission in the law program,⁴⁵¹ which essentially increased the amount of time that an Indian spent in university. This was difficult not only in terms of rigour of this higher education, but also

⁴⁴⁸ The onerous nature of the LLB degree itself is encapsulated in the 820 total lectures over the course of the first and second LLB: the First LLB with a total of 160 lectures spread out over three main subjects as prescribed: Markby, Justinian, and Maine. The second LLB was more onerous with a total of 660 lectures of which 30 lectures covered Succession Act, Parsi Succession Act, Majority Act, Hindu Wills Act. 30 lectures were associated with Mahomedan Law; 150 lectures for Hindu Law; 100 lectures for Contract Law; 100 lectures for Equity; 50 for the Penal Code; 50 lectures for Torts; 50 for Law of Evidence; and 100 lectures for Civil and Criminal Codes and the Limitation Act. “The Law School: 300 as professor 100 as principal”, *The Times of India (1861-current); Mumbai, India* (12 December 1889) 3.

⁴⁴⁹ Abhinav Chandrachud, *An Independent, Colonial Judiciary: a History of the Bombay High Court During the British Raj*, first edition. ed (New Delhi, India : Oxford University Press, 2015) at 27.

⁴⁵⁰ Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Oxford, UK ; Portland, OR: Hart Publishing, 2006) at 219.

⁴⁵¹ India Public Department Education, India & Bengal Despatches 18th Aug to 30th Aug 1858, E/4/854, India Office Archive, British Library.

the cost of relocation from other areas of India to study at the universities located in the major cities. Thus, the student would have to account for the added expense of living in a new city for the length of the degree, including the tuition fees, thereby instantly excluding those who did not have access to sufficient financial resources.⁴⁵² Therefore, tensions related to class were also created with only those who could afford the university fees, and relocation expenses, being deemed eligible for the study of law in India.

Another form of exclusion was that related to requirement of the study of Roman Law at university was immersed in the same theoretical framing of classical liberalism discussed earlier in this chapter.⁴⁵³ This expectation became even more problematic when the students had no access to the study of Latin,⁴⁵⁴ and by 1893 even at the East India Company College, Vasunia argues that Roman Law and English Law were both added as subjects with a similar exclusionary goal, aiming to entice graduates of Oxford and Cambridge⁴⁵⁵ to the Indian Civil Service, which would also improve the image of the “imperial officer.”⁴⁵⁶ Despite these forms of exclusions, especially the time-consuming and expensive nature of the law degree in India, the numbers of candidates in law increased. Toward the end of the 19th century, not only did the numbers of legal practitioners rise but also the status of law professionals, and there were about 14,000 members by that time.⁴⁵⁷ Evidence of Hon. Syed Ahmed Khan Bahadur CSI recorded in the Report by the North-Western Provinces and Oudh Provincial Committee 1884, provides that in 1878,

⁴⁵² “The LL.B. Degree”, *The Times of India (1861-current); Mumbai, India* (16 November 1889) 3.

⁴⁵³ Vasunia, *supra* note 293 at 65–66.

⁴⁵⁴ “Editorial Article 2 -- No Title”, *The Times of India (1861-current); Mumbai, India* (26 July 1888) 4.

⁴⁵⁵ This was very successful with Oxbridge graduates accounting for almost 80% of the total graduates in the Indian Civil Service in by the end of the 19th century. Vasunia, *supra* note 293 at 63.

⁴⁵⁶ *Ibid* at 54.

⁴⁵⁷ Anil Seal, *The Emergence of Indian Nationalism: Competition and Collaboration in the Later Nineteenth Century* (Cambridge University Press, 1968) at 123.

there were 6 graduates of a Doctorate in Law, 4 for Honours in Law, 705 in Bachelors in Law and 235 Licentiates in Law.⁴⁵⁸ During the period 1886-87, in the seventeen law colleges located in the three Towns, a total of 1,673 students were enrolled, while ten years later, in 1896-97 both the number of law colleges and students had doubled to thirty-four schools and 3,020 students.⁴⁵⁹ These developments happened in spite of the lack of funds allocated for universities in India by the British in the Presidency Towns where expenses of the law colleges had to be covered by the tuition fees paid by the students.⁴⁶⁰ As a result, only those who had the financial resources could engage in this higher education. Indian lawyers had also made inroads in the judiciary where by 1888, judges in the lower judiciary were mostly Indians and there was at least one Indian judge in the High Court Bench.⁴⁶¹ The increase in those who chose to study law can also be understood through the increase in litigation in the courts, especially in land cases,⁴⁶² and the codification process that the British had introduced as mentioned earlier.

The second level of tension – and arguably more significant between the dominated and the dominant – developed between the barrister, trained at the Inns of Court in England, and the Indian legal practitioner, educated at Indian universities. This tension was over rights of practice in the High Courts between the original and appellate jurisdictions – the former was reserved for the barristers, and the latter was restricted to *vakils* and the other categories of Indian practitioners.⁴⁶³ The logic of this privilege of original side practice was believed to be based on the assumption that those trained in legal practice at the Inns of Court in England, would be

⁴⁵⁸ Pramod K Nayar, ed, *Indian Responses: Volume IV* (London: Routledge, 2019) at 214.

⁴⁵⁹ Aggarwal, *supra* note 430 at 233.

⁴⁶⁰ Aggarwal, *supra* note 430.

⁴⁶¹ Seal, *supra* note 457 at 126.

⁴⁶² *Ibid* at 124.

⁴⁶³ note 443 at Section 4.

better equipped to manage the cases filed in the High Court as a court of first instance. The appellate side could remain accessible to the Indian practitioner since appeals were based on points of law that could be decided by the Bench rather than reliance on the skills of the Indian counsel. But what about Indians who wanted to become barristers and had the capital to travel to London and study at the Inns of Court? Upon their return, they would also have the privilege of practicing in the coveted original jurisdiction, but that would set them apart from their Indian peers.⁴⁶⁴ Gannendro Mohun Tagore was the first Indian to be called to the Bar in 1862, of the others called to the Bar from 1862-1870, the four from Calcutta were all trained at Middle Temple - Woomes Chunder Bonnerjee, Nawab Syud Ali Jung Ahmud, Bahadoor Khan, and Trak Nath Palit, while the five from Bombay all went to Lincoln's Inn – Govind Vithal Karkare, Phirozeshah Meherwanjee Mehta, Nowrojee Banaji Limjee, Cursetjee Monockjee, and Hormusjee Ardaseer Wadya.⁴⁶⁵

While earlier this tension was only between the English barrister and the Indian *vakil*, it began to change when Indians educated at the universities went on to acquire the bar-at-law certification in London to become barristers. Thus far, all practitioners be they Indian or British were male as per statute with the highest rung inhabited by the barrister. This aspiration for the bar-at-law certificate led Indians to travel to the Inns of Court in England. There were four Inns:

⁴⁶⁴ While the consolidated account by Joseph Foster from all four Inns has been relied upon to conduct this research, the record from the Lincoln's Inn was also available online and I tried to confirm these numbers through both sources. Gannendro Mohun Tagore enrolled in 1859, September 28, Bengal; Poorooshottum Modeliar enrolled in 1861, November 22, Carnatic; Govind Withul Kurkure 1864, November 10, Bombay; Manomohan Ghose 1864, November 12, Calcutta; Phirozeh Meherwanjee Mehta 1865, January 6, Bombay; Hormusji Ardaseer Wadya 1865, January 16, Bombay; Cursetjee Manockjee 1866 May 19, Bombay; and Limjee Nowrojee Bunnajee 1867, January 21, Bombay. Of these Wadya and Mehta studied at the University of Bombay, Ghose at the University of Calcutta, available at The Honourable Society of Lincoln's Inn, *Admissions Registers Vol 2 1800-1893 & Chapel Registers* (1896) at 288–324. Some of the spellings of the names are different in both registers but Poorooshottum Modeliar's name did not come up in my reading of the Foster's account.

⁴⁶⁵ Foster, *supra* note 32.

Middle Temple, Inner Temple, Gray's Inn, and Lincoln's Inn. The record of barristers from the Lincoln's Inn is available online and details the name, ancestry, and earlier qualifications of each aspirant to the bar. This record⁴⁶⁶ was studied to determine how many graduates from India travelled there to acquire the bar-at-law certification, which revealed that during the period 1859-1893, a total of only fifty-nine Indians travelled to Lincoln's Inn.⁴⁶⁷ A detailed study of the record available online reveals that of these, eighteen were graduates of the University of Calcutta, fourteen from University of Bombay, seven from University of Madras, five from University of Punjab,⁴⁶⁸ three from University of Allahabad,⁴⁶⁹ and twelve whose earlier education was not specified in the Record.⁴⁷⁰ There were also those who practised as *vakils* and pleaders but chose to travel for the bar-at-law to Inns, arguably for the privileges that would be available upon their return. Paul in his dissertation on Vakils in Madras notes that there were also those British men who registered themselves as vakils or pleaders to access different jurisdictions.⁴⁷¹

The numbers of aspirants for the bar-at-law increased at the turn of the century – Mukherjee conducts a wonderful account through a study of Indians who travelled to England for higher education between 1904-1947.⁴⁷² Her book seeks to understand the reasons why this group of students chose to travel for further education to England through a documentation of their experiences both in England and upon their return to India. As a group, these “England-

⁴⁶⁶ This account for Lincoln's Inn is more useful than the Foster's consolidated handbook, since the latter ends in 1885 and the Lincolns Inn register is until 1893.

⁴⁶⁷ I studied the record during the years 1857 when the universities were introduced in India till 1893, when the record ended, and extracted those from Indian origin. The Honourable Society of Lincoln's Inn, *supra* note 461.

⁴⁶⁸ The University of Punjab was the fourth university established in 1882 in Lahore. note 197.

⁴⁶⁹ The University of Allahabad was established in 1887. “University of Allahabad”, online: <<https://www.allindiauniv.ac.in/about-uoa/about-university1>>.

⁴⁷⁰ The Honourable Society of Lincoln's Inn, *supra* note 462.

⁴⁷¹ Paul, *supra* note 411.

⁴⁷² Sumita Mukherjee, *Nationalism, Education and Migrant Identities: The England-Returned*, Routledge Studies in South Asian History 4 (London ; Routledge, 2010).

returned” Indian men and women belonged to “upper-middle-class-elites”⁴⁷³ and accounted for almost half (45%) of the students at English schools from the British colonies, and 6% of the total sought to study the Bar-at-law.⁴⁷⁴ The reason for the interest of Indians to study the bar-at-law can be understood to be related to the privileges granted to them upon their return to India, not only in rights of practice and in the form of higher pay scales, but also the prestige associated with the title “barrister.”⁴⁷⁵ By the turn of the nineteenth century, as a response to relative popularity of this certification especially amongst the Indians, curriculum changes in the course for the bar-at-law were also introduced allowing the study of Hindu and Muslim Law, Comparative Law and Colonial Law.⁴⁷⁶ This addition was by way of a substitution for Real and Personal Property, and was criticized by some that it would create two classes of barristers: the English Student, and the Indian Student. Further, the distinction between the two is more evident when one observes the nature of the experience at the Bar – the English student was required to also attend the courts and learn the skills required for practice at the bar, while it was argued that the Indian student engaged in “the least possible exertion” to acquire the “mere qualification of barrister necessary for his enrollment in India.”⁴⁷⁷ In terms of subjects, Roman Law, constitutional law, and criminal law were for all students while the fourth subject allowed Indians students some freedom to choose between Roman and Dutch Law, English Real Property Law and Hindu and Muhammadan Law. Dr. William Blake Rogers, the Director of Legal Studies of the

⁴⁷³ *Ibid* at 3.

⁴⁷⁴ *Ibid* at 24.

⁴⁷⁵ *Ibid* at 16.

⁴⁷⁶ Bandora, “Indians at the Inns of Court: To the Editor of the Times of India”, *The Times of India (1861-current); Mumbai, India* (30 June 1899) 5. The first barrister to teach Hindu, Mohammedan and Indian law as a reader was on 1869-73, Barrister Standish Grove Grady, who was called to the in 1941 from Middle Temple - Foster, *supra* note 32.

⁴⁷⁷ Barrister-at-Law, “The Bar Examination and Indian Law: To the Editor of the Times of India”, *The Times of India (1861-current); Mumbai, India* (23 June 1899) 5.

Inns of Court Law School, commented that though students had the option to take Hindu and Muhammadan Law, there were many Indian students who were interested in taking English Real Property Law because they believed that they would benefit from that subject in terms of understanding English Equity law.⁴⁷⁸ While there is no reasoning provided for this in the archival data collected, it can be gleaned that this preference for English law over Indian personal law by Indian students at the Bar represents the reproduction of the hierarchy of laws with the former at the top and the latter at the bottom.

Almost fifty years after the experiment with university legal education by the British in India, the first universities teaching law in the United Kingdom were established, and by 1909 there were eight faculties in England and Wales with the divide between academic study of law and the professional study of law becoming clearer.⁴⁷⁹ The institutions imparting legal education and training in the United Kingdom also began to benefit financially from this influx of students from the colonies. Indian students were in significant numbers and as a result, the Committee on Indian Students began to protect members of this community. The Committee on Indian Students records from 1921⁴⁸⁰ provide that there was a total of 322 Indians at the four Inns of Court – of these, two were women from Indian origin: Miss Datta and Miss Minatashe.⁴⁸¹

⁴⁷⁸ Dr. William Blake Rogers, Minutes of Evidence of Committee of Indian Students at 42, Grosvenor Gardens, SW, on Wednesday 13th July, 1921, Present Right Hon Earl of Lytton, in the Chair; Sir Deva Prasad Sarbadhikari CIE; Mr. CEW Jones; Sir Murray Hammick, KCSI, CIE; Sahibzada Aftab Ahmed Khan; Miss LM Brooks; Dr. SK Datta; Secretaries: Mr. EG Howarth and Mr. RE Field, Q/10/3/3, India Office, British Library.

⁴⁷⁹ Boon & Webb, “Legal Education and Training in England and Wales”, *supra* note 356 at 86.

⁴⁸⁰ Minutes of Evidence taken before the Committee of Indian Students at 42, Grosvenor Gardens, SW, on Wednesday 13th July, 1921, Present Right Hon Earl of Lytton, in the Chair; Sir Deva Prasad Sarbadhikari CIE; Mr. CEW Jones; Sir Murray Hammick, KCSI, CIE; Sahibzada Aftab Ahmed Khan; Miss LM Brooks; Dr. SK Datta; Secretaries: Mr. EG Howarth and Mr. RE Field, Q/10/3/3, India Office, British Library.

⁴⁸¹ *Ibid.*

A 1922 Report published by the Committee on Indian Students had the following terms of reference: improvement of the state of education in India to allow for students to travel to the United Kingdom for further studies; the mandate of the Secretary of State and the High Commissioner; improvement in the circumstances in the United Kingdom to allow for more Indians to acquire “any special or technical training;” and any other recommendations that would help Indian students in the United Kingdom or any other country. By 1922, the total estimate of Indian students in the United Kingdom was 1450 with higher numbers, on average of 500 annually, arriving following the end of the first World War. The reason of this influx of Indians in United Kingdom was due to the preference of employment in the Indian Civil Service, and to some extent private employment, given to those who studied from England and returned to India.⁴⁸² The belief that an English education or training was better than the Indian equivalent became ingrained in the Indian law student, and this was true especially so for the bar-at-law certification which carried with it the prestige associated with the status of a barrister.

Being called to the Bar was one of the distinctions that continued in some Indian courts and students were attracted by the exemptions available to them on their return to India – the Report detailed the generally similar requirements in the High Courts of Bombay, Calcutta, Madras, Patna, Punjab, and Burma which required a person to have been called to the Bar in England so as to entitle them to High Court practice on the original side.⁴⁸³ Though there were other legal practitioners who practiced at the subordinate courts level in India as mentioned

⁴⁸² This preference can be noted as far back at 1883 where the Report of the Indian Education Commission in Calcutta stated that university educated Indians, especially those that had studied in European universities to be given preference in employment in colleges in India – Recommendation 6, Nayar, *supra* note 340 at 99.

⁴⁸³ Handbook for Indian Students: A Guide to the Facilities for University and Professional Studies and Training in the United Kingdom, London: Printed by His Majesty’s Stationery Office for the High Commissioner for India, 1922.

earlier, the focus is on the Chartered High Courts because it is due to this institutional transplant of the 1860s that demands were heard for “unification of these grades and the gradual disappearance of the practitioners of low qualifications....”⁴⁸⁴ By 1922, this was also a topic of discussion in the Minutes of Evidence before the Committee on Indian Students which clarified that in India, there were two Bars. One was the *Vakil* Bar and the Bar proper, as it was called at the time, which comprised of barristers, the result was that “Even a senior *vakil* is junior to the junior barrister.”⁴⁸⁵

V. Conclusion

This chapter has traced the genealogy of the lawyer in India because of the institutional interventions by the British in the mid-nineteenth century – the universities that taught law as a discipline, and the High Courts that needed trained legal practitioners to facilitate dispute resolution – till the 1920s. Through a study of the role of the *vakil* in Mughal India and later British India, this chapter argues that the birth of the adversarial lawyer, and the practice-focused approach of legal education, was due to the imperial objectives of the British Empire at the time. The existing indigenous culture of dispute resolution and education was displaced with foreign systems which were transplanted to India with the result that a new system was born – one that celebrated English education and training as better than the Indian counterpart. This idea took root in the eighteenth-century through the influence of liberal thought through Mill, Burke and

⁴⁸⁴ Government of India Home Department & Indian Bar Committee, “Report of the India Bar Committee, 1923-24” (1924), online: <<http://dspace.gipe.ac.in/xmlui/handle/10973/52306>> at 8–9 Accepted: 2021-03-31T11:52:34Z.

⁴⁸⁵ Note 480.

others and later permeated legal education as well when the numbers of Indians travelling to the Inns of Court in England increased in the twentieth century.

Though the British in the nineteenth century worked to *civilize* the *natives*, the result of this exercise was riddled with inequalities on multiple fronts. While at the beginning the exclusions seemed to be limited in scope, later these became increasingly divisive. Following the introduction of legal education at the newly created universities in the mid-nineteenth century, lawyers were expected to be university graduates creating distinctions between the Indian pleaders and *vakils* who had no formal legal education. The term *vakil* at this stage evolved to include all Indian practitioners, and so the legal community was divided between them and the English barristers. These barristers occupied a special status in the profession and were awarded more privileged rights in legal practice which served as another form of exclusion. Indians also began to travel to England for a certification in the Bar-at-Law from the Inns of Court.

Thus, the habitus that developed as a result of the introduction of the universities and the courts divided the actors into those with privileges i.e., those with the bar-at-law, and those without, i.e., the Indian university-educated legal practitioner. The superiority of the former at the expense of the latter and the superiority of a university legal education styled along English lines were both challenged by the Indians in the 1920s. This led a transformation in both legal education and the legal profession through calls for Indianization of both areas to better suit the Indians. This historical discussion was a necessary component to understand how the Bourdieusian theories apply to the legal field of practice and education in Pakistan and how the different actors within them adopted and developed different habitus based on their positions.

CHAPTER 4

Indianization of Legal Education and Practice

I. Introduction

The inequalities and exclusions faced by Indians on their own land through governance by a foreign power led to the development of a resistance against British rule during the first half of the twentieth century. This opposition to British colonialism was made stronger with support from the Indian practitioners who ventured formally into the political realm through the creation of political parties in the late nineteenth and early twentieth centuries. This challenge also infiltrated the fields of legal education and the legal profession when calls for Indianization of these two areas were heard, aimed at making these two separate but interconnected fields more suited to Indian peoples. The culture of subordination of the Indian legal practitioner before the English barrister that had developed in the nineteenth century, as discussed in the last chapter, started to evolve once Indian lawyers entered the political frame.

This chapter studies historical developments from the 1920s until Partition of India in 1947 to determine how Indian sensibilities towards ownership of the two transplants – the universities and high courts – led to an embeddedness of legal practice within legal education. This question is explored through an examination of the strengthened role of the Indian lawyer in two ways: politically through the creation of the Indian National Congress in 1885 and the Muslim League in 1907; and administratively in the Senates of universities. The increase in political power of the Indian lawyer on the national front impacted legal education in the universities as well which led to one major shift noted at the turn of the twentieth century – the

emergence of private colleges imparting legal education over law departments in public universities.

This chapter argues that the shift from public to private education in law had a special role to play in the entrenchment of the practice-focused approach to legal education with practitioners gaining increasing ground in university administration through occupation of important positions in the university Senates.⁴⁸⁶ While the power of the Senate vis a vis the Syndicate is not comparable since the latter is stronger, I propose that this inclusion of lawyers in the Senate provides a window into the rising status of lawyer within in the university administration.

II. Methodology

The methodology for this chapter involves archival research from the British Library and online sources, which include reports, commentaries, conferences and seminars, curricula review, and newspaper articles published in the *Times of India*. These sources help investigate the early attempts at Indianization of legal education and practice in India to serve Indians rather than imperial objectives of the British. Furthermore, it helps determine how the role of the Indian legal practitioner changed within the political context of the country at the time.

⁴⁸⁶ Altbach notes that while the positions in the Senate of the University of Bombay have been noted to be as high as 200 members from different groups of people including alumni, labour unions, commercial bodies amongst others, the power of the Senate is not strong. The more powerful body is the Syndicate and manages the running of the institution funding, inspection, investigations etc. Philip G Altbach, *A Half-Century of Indian Higher Education: Essays by Philip G. Altbach* (New Delhi: SAGE Publications, 2012) at 204–205.

III. Indianization of the Legal Profession

By the late 19th century, higher education in India had become the route for those aspiring to public service positions in the country but the offices available to these Indian university graduates were limited. This unemployment had led to the development of resentment towards the British rule in India especially since the higher public offices were reserved exclusively for the English, and at this stage the position of the Indian practitioner within the political and education fields became more prominent. These practitioners created the Indian National Congress in 1885, and later by 1907, the Muslim League was formed to represent Muslim interests and was also dominated by legal practitioners. This addition of a political role in the conception of the Indian lawyer, resulted in an increase in his power within the political field of India at the time, while in legal education the role included the composition of the Senates in universities. The inclusion of legal practitioners in the Senates led to two shifts in the legal education field which impacted what was taught and by whom – the first shift was in the sharing of the power to impart legal education from public universities to those that were privately run and led by commercial objectives; and the second shift was in the embeddedness of a practitioner-faculty in the teaching of law.

a. Political Role of the Indian Legal Practitioner

The political role of the Indian practitioner emerged by the end of the twentieth century with the creation of the Indian National Congress in 1885 – a national Party “dominated by

lawyers, barristers and judges.”⁴⁸⁷ Of the nine founding members who comprised the central leadership, six were London-trained barristers: Phirozeshah Mehta, Badruddin Tyabji, Womesh Chandra Bonnerjee, Manmohan Ghose, Lalmohan Ghose, and Anandamohan Bose; and two others who had legal training: Surendranath Banerjea and Rameshchandra Dutt. Of the sixteen presidents during 1885-1909, eleven were lawyers.⁴⁸⁸ Though the Party swore allegiance to the British Crown, especially in the early years, its creation was in a large part in response to the large-scale unemployment of university graduates in India at the time. The creation of the Muslim League in 1907 was in response to the “Hindu character of Indian nationalism,” and the Aga Khan made the case for a political party that best served the Muslims.⁴⁸⁹ Legal professionals also played a significant role in the creation of this political party as well – Nawab Viqar-ul-Mulk Kamboodh, Law Secretary Government of Hyderabad and Deccan State,⁴⁹⁰ Nawab Salimullah Khan the Deputy Magistrate,⁴⁹¹ and Syed Nabiullah a Lucknow barrister⁴⁹² amongst others.

This political practitioner in the early twentieth century evolved to be a powerful agent of Indians against the British in India and Mukherjee calls this period as the “*Vakil Raj*” – the rule of lawyers. This was because “opportunities for participating in the legal profession were opening up to a large section of the English-educated middle class who had no difficulty finding employment.”⁴⁹³ Through the slow acquisition of power, Indians became more cognizant of their

⁴⁸⁷ Mukherjee M., *supra* note 293 at 110.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ Khursheed Kamal Aziz, *Britain and Muslim India: A Study of British Public Opinion vis-a-vis The Development of Muslim Nationalism in India, 1857-1947*. (London: Heinemann, 1963) at 62.

⁴⁹⁰ “Nawab Viqar-ul-Mulk”, (8 August 2012), online: *History Pak* <<https://historypak.com/nawab-viqar-ul-mulk/>>.

⁴⁹¹ Web Desk, “Nawab Salimullah: Founder of All India Muslim League - The Financial Daily”, (17 December 2020), online: <<https://thefinancialdaily.com/nawab-salimullah-founder-of-all-india-muslim-league/>>.

⁴⁹² “Syed Nabiullah”, online: <<https://prabook.com/web/syed.nabiullah/1836075>>.

⁴⁹³ Mukherjee M., *supra* note 293 at 112.

subservient status in their own society for the benefit of the British rulers. This was evident in the legal profession which is discussed in the previous chapter where the privileged English barrister practised in the High Courts at the expense of the Indian *vakil*. The exclusions and inequalities experienced by the Indian society thus were a lot closer to home for those part of the Indian legal profession, and this led to calls for Indianization of profession by the 1920s discussed later in this chapter.

b. Administrative Role of the Indian Legal Practitioner

The elevation in the position of the Indian practitioner in the national political field was also observed within the field of higher education. Indian lawyers began to occupy important positions in the Senate and as Fellows, e.g., at the University of Calcutta, the Vakils' Party played a supporting role in the election of Fellows where by the end of the nineteenth century, sixteen of the total twenty-four Fellows selected were legal practitioners.⁴⁹⁴ Further, a norm had also developed that the Vice-Chancellor of the University would be a judge of the High Court, which was reasoned to be due to the domination of pleaders in the Senate who could only be controlled by a judge.⁴⁹⁵

At the turn of the twentieth century Lord Curzon arrived in Indian as the Viceroy and while this was marked by "enthusiasm"⁴⁹⁶ in 1899, when he broached the reform of the system of higher education, he faced opposition. Lord Curzon in his 1901 speech at Simla proposed that the nature of the universities needed to be changed since the University of London, on which Indian

⁴⁹⁴ Suresh Chandra Ghosh, *Indian Nationalism: A Case Study for the First University Reform by the British Raj* (New Delhi: Vikas PubHouse, 1985) at 45.

⁴⁹⁵ *Ibid* at 36–37.

⁴⁹⁶ Lovat Fraser, *India under Curzon & After* (London: William Hienmann, 1911) at 176.

universities were based, had also been transformed from an examining body to a teaching institution by 1898.⁴⁹⁷ Further, the Senates of the universities were more in the control of politicians who were using the system of national education to “serve ulterior purposes of their own.”⁴⁹⁸ These politicians were motivated to increase private control of higher education through the system of affiliated colleges “without due regard to the characters of the teachers, the quality of the training, or the degree or discipline.”⁴⁹⁹ I propose that this political role of the practitioner on the national front had directly infiltrated into the universities, e.g., Sir Pherozeshah Mehta, a politician and a barrister, played a dominant role in three public bodies – the Indian National Congress Party, the Bombay Corporation and the Senate of the University of Bombay.⁵⁰⁰ This role of the Indian practitioner within the university setting led to shifts in the way legal education was administered and these are discussed in the next section.

The two shifts that are observed in legal education at the time are, firstly, in legal education which was earlier imparted solely at public universities came to include private colleges, and secondly, the rising emphasis and preference for practitioners as faculty members. This chapter argues that these shifts were connected: the rising role of the Indian practitioner in national politics led to a change in the imperial logic that created them – while earlier their role was to facilitate practice in the English courts, by the turn of the nineteenth century, Indian lawyers entered the national political field to determine their own terms of governance. This rise in power of the political practitioner infiltrated the field of legal education where practitioners

⁴⁹⁷ Ghosh, *supra* note 494 at 70.

⁴⁹⁸ Fraser, *supra* note 496 at 178.

⁴⁹⁹ *Ibid* at 183.

⁵⁰⁰ *Ibid* at 192.

became more dominant in the administration of higher education in law. The next section focuses on the increase in Indian control of the higher education in law.

IV. Indianization of Legal Education

From the mid-nineteenth century, law was taught at public universities and through their affiliated colleges, but by 1897 the first private law college was established at Bombay by prominent legal practitioners of the Bombay High Court under the presidency of Mr. Badruddin Tyabji who was then a judicial officer, in addition to a barrister and political party leader.⁵⁰¹ In 1898, the new private law college was affiliated with the Bombay University in addition to the existing affiliated law college run by the public University. The purpose of the new private college was to remedy the failings of the Government Law College in Bombay, and the Government of Bombay, sensing a loss of control and the rise of competition, expressed its disapproval, stating that "...it is inadmissible to allow the control of higher legal education to pass to private institutions..."⁵⁰² and as a result, the application for affiliation was initially refused by the

⁵⁰¹ *Law College at Bombay University* (Judicial + Public Department: Session 1899, Parliamentary Notice House of Commons, 1899). L/PJ/6/425, India Office, British Library. In handwritten note in reply to Sir William Wedderburn Question No. 21,16 May 1899 "To ask the Secretary of State for India, whether he is aware that a new College of Law, with a suitable staff of professors, under the presidency of the hon. Mr. Justice Tyabji, was established at Bombay in 1897 by private enterprise and that in January 1898 this college was affiliated to the Bombay University: Whether he will state for what reasons the Bombay Government refused its sanction to such affiliation when applied to by the University Authorities:

Whether he is aware that since the founding of the University in 1857 such sanction has in no other case been refused:

And, Whether he will explain how this refusal is in accordance with the declaration of Her Majesty's Government in 1884, upon the report of the Education Commission, that in higher education private effort should be increasingly and mainly relied on and systematically encouraged."

⁵⁰² *Ibid.*

Government of India. On the same issue, the Hon. C. H. Setalvad⁵⁰³ (B.A. LL.B.) argued for the need for the new private law college because the Government Law College had held a monopoly on legal education in Bombay, and even though the college was running at a profit, there was no further investment in the institution itself.⁵⁰⁴

The Government Law College affiliated with the Bombay University was run as an evening school with only three classes, one for each year of the LLB, which were conducted by a staff of only three professors who gave only two 1-hour long lectures each on a weekly basis during the term. The result was that students received limited exposure to legal learning, and “no lectures are delivered on the remaining subjects included in the curriculum and even the subjects on which lectures have been delivered cannot have been adequately dealt with in the number of hours devoted to them.”⁵⁰⁵ Despite the falling standard of legal education, the interest in law from students increased – from 182 in 1892-1893, it rose to 423 in 1897-1898 – which implied that more needed to be done to further legal education. Though the new private college affiliated with the Bombay University represented an intrusion, this chapter argues that this was the ‘first’ institutional adventure of the Indian practitioner in legal education through the private sector – the managing board of the new law college was dominated by legal practitioners with Hon. Mr.

⁵⁰³ Late member of the Bombay Legislative Council, Syndic in Law and Fellow of Bombay University, Advocate of the Bombay High Court.

⁵⁰⁴ A review of the finances of the Government Law College in Bombay between 1910-1935 revealed that the institute was making a profit every year which at times was as high at Rs. 45,000, equivalent to about \$9000 at the time. This profit-making motivation was one of the reasons why the quality of legal education provided was not the priority, which led to the “deplorable condition of Indian legal education” at the time. Aggarwal, *supra* note 430 at 247–248.

⁵⁰⁵ Quotation from the Report of the Committee of Enquiry, as provided in a statement of facts circulated with reference to a Question put down for Tuesday May 16 regarding a new Law College in Bombay, Chairman W. Wedderburn and Secretary J. Herbert Roberts, House of Commons May 15, 1899 by the Hon. C. H. Sevad (late member of the Bombay Legislative Council, Syndic in Law and Fellow of Bombay University, Advocate of Bombay High Court etc.), *Report of the Committee of Enquiry* (House of Commons, 1899), L/PJ/6/425, India Office, British Library.

Justice Tyabji as President, the Hon. Mr. NG Chandavarkar, (BA. LLB), Mr. Rustam KR Cama, (BA LLB), Mr. NV Gikhle (BA LLB) and the Hon. C. H. Setalvad, (BA. LLB) who were constituted as members, with a “staff of six professors, comprising among them experienced and...well-known advocates and pleaders of the High Courts were appointed.”⁵⁰⁶ Thus, by the early 20th century a shift is noted with the increased role of Indian lawyers in the Senate and in teaching. The practitioner-teacher who emerged taught law from a vocational mindset, with both public and private institutions imparting legal education in the country.

Recognizing this shift of teaching from public universities to private universities, the King’s Government in India aimed at improving the conditions of university education in the country. In 1902, the Report of the Indian Universities Commission appointed by Lord Curzon, and chaired by Sir Thomas Raleigh, was issued with this aim in mind. Aside from the English members⁵⁰⁷ of the Commission, the Indian members were Syed Hussain Bilgrami, Nawab Imad-ud-Mulk and the former Vice-Chancellor of University of Calcutta, and Judge of the Higher Court of Calcutta, Justice Gooroodas Bannerjee.⁵⁰⁸ Of the five local Commissioners, three were Indian with a legal background: Ashutosh Makhopadhyaya, a member of Bengal Legislative Council; C Sarkaran Nair, a practising lawyer from the High Court of Madras; and Justice N. G. Chandararkar of the High Court of Bombay. The other two Commissioners were of English origin and occupied the position of Directors of Public Instruction, T.C. Lewis from the United Provinces, and W. Bell from

⁵⁰⁶ Question put down for Tuesday May 16 regarding a new Law College in Bombay, Chairman W. Wedderburn and Secretary J. Herbert Roberts, House of Commons May 15, 1899 by the Hon. C. H. Sevad (late member of the Bombay Legislative Council, Syndic in Law and Fellow of Bombay University, Advocate of Bombay High Court etc.), L/PJ/6/425, India Office, British Library.

⁵⁰⁷ J.P. Hewett (Home Secretary of India); Alexander Pedler (Director of Public Instruction Bengal and former Principal of Presidency College Calcutta); Alfred Gibbs Bourne (Indian Educational Service and Acting Principal of Wilson College Bombay and former Vice-Chancellor of University of Bombay 1888-1890). Ghosh, *supra* note 494 at 75–76.

⁵⁰⁸ *Ibid.*

Punjab.⁵⁰⁹ Lord Curzon noted that the Universities and affiliated colleges had focused more on examination as the “sole test of education,”⁵¹⁰ and as the result the Universities Act 1904 aimed to address this as one of its priorities.

The Universities Act 1904 expanded the functions of the Universities in administrative terms, gave them the power to draft/enact rules and regulations for a more efficient running of the institution, and also laid down the conditions for affiliation.⁵¹¹ The purpose of the Act 1904 was to instil the culture of learning, improve the quality of teaching, reduce the “swollen senates and enhance the power of the professionals.”⁵¹² One of the most significant recommendations was that the bachelor’s degree in law should be two years long (this was implemented in 1908),⁵¹³ and the Report also laid out the general outline of the degree. It was recommended that the study of Law should be allowed following a Bachelor’s in Arts or Science, unless the applicant is interested in one of the categories of legal practitioners for whom University degree was not a requirement i.e., pleaders and mukhtars.⁵¹⁴ Following graduation, the prospective law student could apply for the LLB degree where the teaching method would entail the case method of instruction.⁵¹⁵ The Act of 1904 also mandated that the faculty (referred to as Professors) appointed for legal instruction at the universities could be judges or practising lawyers, and the

⁵⁰⁹ *Ibid* at 76.

⁵¹⁰ Fraser, *supra* note 496 at 185.

⁵¹¹ admin, “Indian Universities Commission 1902 | Recommendations | Provisions |”, (25 May 2020), online: *oureducare* <<https://oureducare.com/education/indian-universities-commission-1902/>>.

⁵¹² David Dilks, *Curzon in India*. (New York: Taplinger PubCo, 1970) at 203 Book Title: Curzon in India. Volume 2.

⁵¹³ Aggarwal, *supra* note 430 at 237.

⁵¹⁴ This class of legal practitioners was in decline in the 20th century following the introduction of universities imparting legal education where the preference for university educated law graduates was seen.

⁵¹⁵ The case method of learning law was introduced by Professor Christopher Columbus Langdell at the Harvard Law School in 1870 which transformed the traditional teaching methods at the time where apprenticeship and lectures were considered the best method of learning law. He proposed that students should read cases and determine what they meant because he believed that law should be viewed as a science of its own. Russell L Weaver, “Langdell’s Legacy: Living with the Case Method” (1991) 36 Villanova Law Review 81.

governing body should have representation of both the Bench and the Bar of the High Courts.⁵¹⁶

The legal education field thus became the playground for practitioners who continued to consolidate their ground to become more powerful actors in the intersection of the two fields of practice and education.

Under the 1904 Universities Act, the Calcutta University enacted new regulations that were granted approval by the Government of India in 1906. The Scheme proposed a new Law School to be established in Dacca similar in structure to the Dacca Arts College, and in terms of the faculty, the principal would be a barrister-at-law (Mr. C.H. Browning was chosen for this position), one full-time lecturer would be employed at Rs.400 and two part-time lecturers at Rs. 200. However, these rates were increased because it was expected that no successful practitioner would leave his practice to teach for a lower salary,⁵¹⁷ and Hon'ble Mr. H. LeMesurier requested a further increase in rates paid, especially for a barrister-at-law to as much as Rs. 750/month and a Professor of Law would be appointed to the position of the Vice-Principal of the Law College.⁵¹⁸ As the demands on the faculty increased, both in terms of the Regulations 1906 as introduced, but also in terms of the students, additional lecturers would be required and a proposal for a Dacca Barrister, Mr. Abdul Kadir, was made by the Chief Secretary to the

⁵¹⁶ Nayar, *supra* note 340 at 300.

⁵¹⁷ Letter No. 590, dated August 8th, 1908, from the Director of Public Instruction, Eastern Bengal and Assam to the Chief Secretary to the Government of Eastern Bengal and Assam, J&P 2024/1910, L/PJ/6/101, India Office, British Library.

⁵¹⁸ Enclosure #3, letter dated February 26, 1910, Shillong, Government of Eastern Bengal and Assam, Education Department, Education Branch, No. 178-E, from the Hon'ble Mr. H LeMesurier, CIE, ICS, chief secretary to government, to the Secretary to the Government of India Home Department, J&P 2024/1910, L/PJ/6/101, India Office, British Library.

Government of Eastern Bengal and Assam to the Director of Public Instruction.⁵¹⁹ Through these legislative enactments in the province, the role of the practitioner in the field of legal education was fortified.

The Regulations of 1906 also made changes to the way legal education at universities was imparted – a cap of 150 students was placed in each class, with each lecture lasting at least forty-five minutes, and the number of lectures for the BL Degree were prescribed to be thirty-two for each of the eleven subjects. It is interesting to note that in the early 20th century, through the British in India, early American influence in university legal education in India was observed – the Langdell case method began to gain popularity and moot courts⁵²⁰ were also introduced as a method of learning in universities with the aim to counter the existing solely lecture-based pedagogical context of legal education in India at the time.⁵²¹ The control of practitioners in legal education in the Bengal province at the time can also be gleaned by the role of the High Court in the introduction of the new regulations of Calcutta University where affiliation and disaffiliation of colleges for instruction for the law degree was to be deliberated upon by three parties: the Government, the Universities and the High Court. Only after approvals awarded by all three of these bodies was the Dacca Law College granted approval. The letter also provides further

⁵¹⁹ No. 139, No. 6991 C dated June 10, 1907 Shillong, from Chief Secretary to the Government of Eastern Bengal and Assam to Director of Public Instruction, Eastern Bengal and Assam, J&P 2024/1910, L/PJ/6/101, India Office, British Library.

⁵²⁰ “For the B.L Degree – for which it is desired that the Dacca College shall be equipped under the present scheme – the minimum prescribed is 32 lectures in each group of subjects (11 in number, 3 for the Preliminary & 8 for the Final Exam); & following the example of American Universities students are required to attend classes for the discussion of legal questions. These are called “Moot Courts”, the minimum prescribed is 12 in each of the 11 groups of subjects. It is also laid down that each College affiliated in law shall make suitable provision for a law library.” 1910 Bengal and Assam State of Legal Education Dacca, L/PJ/6/101, India Office, British Library.

⁵²¹ The lecture mode of education is associated more with civil law education while the common law tradition is associated more with an interactive dialogue teaching pedagogy. Ronald Brand, “Exporting Legal Education: Lessons Learned From Efforts in Transition Countries” (2010) 32:2 Harvard International Review 43–47 at 44.

information regarding the two law lecturers who were granted approval for appointment, and these two were also allowed to continue with their private practice alongside teaching – formally introducing practitioners as teachers.⁵²²

By 1908, the first voices critiquing the LLB curriculum for its English-centric approaches were heard. A Minute written by the Vice-Chancellor Asoutosh Mookerjee, on the Law Classes attached to the Arts College in Bengal, detailed the difficulties encountered by students and faculty of law in the province. Since the new Regulations had added new subjects like Roman Law, Theory of Legislation, Equity, and the English Law of Real Property, the demands on the students had increased with no correlative increase in their commitment. Attendance, one important indicator for the popularity of the program, revealed that students were not as committed to their legal studies as the numbers of registered candidates would indicate – students would get their attendance for a lecture marked by others, i.e., proxies, which basically meant that though a student was registered, they would not attend their classes. Mookerji proposed that Bengal should also follow the University College of Law model as adopted in Bombay, Madras and Allahabad. The proposed college would have one whole-time principal for a salary of Rs. 800, who would not be allowed to practice in the Courts. He would teach for two hours a day and the remaining faculty, comprising of one professor and eight assistant professors, would manage the teaching portfolio for 150 students in each class. As a result, each student

⁵²² No. 143: Government of India, Finance Department, Salaries and Establishments, Education, To the Right Honourable Viscount Morley of Blackburn, O.M, His Majesty's Secretary of State for India, Simla, the 9th June 1910, signed by Minto, O'M. Creagh; J O Miller; G Fleetwood Wilson; S P Sinha; B Robertson; J L Jenkins, L/PJ/6/101, India Office, British Library.

would have nine hours of lectures and six hours of library study per week, which was in part comparable to law colleges in the US and Japan.⁵²³

The 1908 Regulations, which followed the recommendations made by the Indian University Commission (1902), changed the number of years of the law degree from three years to two and amended the curricula which is depicted in the Table below:

Table 4.1: Curricula for the Two-year LLB in 1908⁵²⁴

Year	Subjects
First	Roman Law, Jurisprudence, Contracts and Torts, and Crimes and Criminal Procedure Code
Second	Succession and family rights (focus on Hindu and Mohammedan Law), Property, Easements, and land tenures, Equity and Trusts and Specific Relief, and lastly Evidence, Civil Procedure and Limitation

The Scheme for legal education in the Punjab was also similarly affected, and the law college would consist of one Principal and two full-time professors, imparting legal education on a full-time basis. The proposal of two First Examinations in Law, following which a student could be admitted to the Bachelor of Law Degree, was further clarified – the first entailed examination on jurisprudence, Hindu Law, constitutional law of England and India, Law of Contracts, Torts, Law of Evidence, Civil Procedure Code and Punjab Courts Act. For the second, students who did not wish to proceed to the Bachelor of Law degree would have to study Revenue and Tenancy Law, Alienation of Land laws and pre-emption, while those who wanted to join legal practice, through a Bachelor of Laws studied jurisprudence, criminal law and procedure, Muhammadan

⁵²³ Minute Asoutoush Mookerjee (undated but expected publication listed as 1908), J&P 2024/1910, L/PJ/6/101, India Office, British Library.

⁵²⁴ Aggarwal, *supra* note 430 at 238.

law, customary law, probate and Administration Act, laws related to minors, legal practitioners, limitation, land revenue and tenancy, alienation of land and pre-emption, and Roman law. The guiding principle was that in the first year, students studied legal principles and the second year would entail more practical aspects of law.⁵²⁵

The texts for these more practical courses were based on the statutory enactments as introduced by the British in India,⁵²⁶ e.g., Lord Macaulay's contribution was the Indian Penal Code 1860, and interestingly, this was despite the fact that he barely had any practical experience in England, while Fitzjames Stephen wrote the Indian Law of Evidence, and Sir Raymond West, the Registrar of the High Court of Bombay (though he never practised law in England) came to India and contributed to a more effective implementation of the code of procedure.⁵²⁷ Thus the codification of law, as discussed in chapter 3, was at first focused on the personal law and customs of the Indians determined by religious legal scholars, it was in reality also a form of legislative transplant written by the British tailored to what they thought was *better* for the Indian system. I note that this inclusion of Indian law in the curriculum is double-edged – though it represents the process of localizing the study of law, it was law that the English wrote about India for Indians following consultation with Indian religious legal scholars at the time.

The Indian Educational Policy, issued by the Governor General in Council in February 1913, stated that there had been a marked increase in both the numbers of institutes imparting legal education in the country and the enrolment of students in the law degree. While in 1901

⁵²⁵ "Legal Education in India", *The Times of India (1861-current); Mumbai, India* (5 May 1910) 9.

⁵²⁶ The main codes introduced by the British in India at the time were *Code of Civil Procedure 1908*, *Code of Criminal Procedure 1898*, *Land Tenancy Acts 1868+1887*, *Bombay Code of Regulations*, *Indian Penal Code 1860* amongst others.

⁵²⁷ "Jurists in India", *The Times of India (1861-current); Mumbai, India* (22 October 1912) 8.

there existed thirty-five institutes that imparted legal education through various affiliated colleges teaching 2800 students, by 1913, the number of institutes had decreased to twenty-seven but the numbers of students had increased⁵²⁸ due to the popularity of higher education as a requirement for public service and also for law as a discipline at the time.⁵²⁹ Galanter provides a valuable historical account of the numbers of students enrolled in universities in India and those who were studying law – in 1906-07 of the 25,168 total students enrolled in universities in India, 2898 were law students; in 1920-21 of the 61,324 total students at universities, 5,232 were studying law; and in 1940-41, of the 153,962 total students, 6,362 were enrolled in the law colleges.⁵³⁰ I argue that though these numbers do not represent as much of a steady increase in terms of percentages of law students studying for the LLB degree, they are more useful to understand the popularity of higher education in India at the time – the numbers of law students stood at 11.5% in 1906-07, it was reduced by 1920-21 to 8.5% and by 1940-41, they represented just over 4% of the student body enrolled at Indian Universities. The Report of the Calcutta Commission 1917-19 identified that of the total number of students (27,290) enrolled in the University of Calcutta in 1917-1918, 2,824 were studying law, which represented just over 10% of the student body.⁵³¹

The law student at universities in India received instruction in most part through lectures. In critique of this purely lecture-based legal education system for preparation for the Bar, the

⁵²⁸ Pramod K Nayar, ed, *Commentaries, Reports, Policy Documents: Volume III* (London: Routledge, 2019) at 34–35.

⁵²⁹ The institutes imparting legal education in India that were opened in the early 20th century are listed chronologically by Sundaram (1959): Benares and Mysore in 1916; Patna in 1917; Aligarh in 1920; Lucknow in 1921; Delhi and Osmania in 1922; Nagpur in 1923; Andhara in 1926; Agra in 1927; Annamalai in 1929; Kearala in 1937; Utkal in 1943; Saugar in 1946 and Rajasthan in 1947. M S Sundaram, “A Century of British Education in India 1857-1957” (1959) 107:5035 *Journal of the Royal Society of Arts* 491–507 at 492.

⁵³⁰ Galanter, “Introduction”, *supra* note 293 at 213.

⁵³¹ *Calcutta University Commission (1917-1919) Report Volume VI: Appendices.*

Principal of the University Law College, Mr. C.L. Award, commented on the importance of the study of law from a scientific method. He stated that the lecture was more of a quick review of law and textbooks on the various principles of law, and the current system focused more on cramming for the exam and study through suitable textbooks was more worthwhile than lectures. The case method of studying law followed in the 1920s through case books on Law of Tort, Hindu and Mohammedan Law, and the Customary Law of the Punjab were important but the study material was not as readily available and needed to be produced to “recognize the superiority of case method of instruction in judicial law.”⁵³² While the lectures were useful, they were “wholly inadequate” to prepare a law student for practice, and reading in the chambers of a practicing advocate was necessary.⁵³³ Even though Indian universities were providing legal education to their students, it is interesting to note that by the 1920s, legal education in England was still navigating the new division between the profession and academia. The Law Society while outsourcing much of the legal training to universities in 1921, still exercised strict control over the curricula, and it was only by the 1950s that this control decreased in favour of the universities.⁵³⁴

The *Times of India* noted the conflict between the requirements of the ideal faculty for the teaching of law in 1928 when the Vice Chancellor of the University of Calcutta proposed that “practicing lawyers should not be appointed lecturers in the Postgraduate Departments.”⁵³⁵ As a

⁵³² “Indian Legal Studies: Punjab Lawyer’s Views”, *The Times of India* (1861-current); *Mumbai, India* (11 March 1929) 18.

⁵³³ Sohrab R Davar, “Letter to the Editor 1 - No Title”, *The Times of India* (1861-current); *Mumbai, India* (22 September 1933) 16.

⁵³⁴ Boon & Webb, “Legal Education and Training in England and Wales”, *supra* note 356 at 87–88.

⁵³⁵ “Legal Practitioners as Professors: Objection Set Aside”, *The Times of India* (1861-current); *Mumbai, India* (27 February 1928) 6.

result the Indian practitioners by the 1920's, now more empowered through increasing gains from the national political field, entered into legal education. But this entry was not as natural as one would presume. While practitioners continued to gain ground in the field of legal education in terms of what was taught, they encountered some resistance in teaching at universities. On the other hand, the political field was changing as well in which legal practitioners had a big role. This resulted in an interesting shift in power that the practitioner began to wield by the 1920s and 1930s and is evident in the varied forms of capital he acquired: symbolically through possession of university degrees or the bar-at-law certification; socially through markers of prestige created by distinction based on these colonial logics; and most importantly politically from positions in university administration to the national struggle from for Independence from British Raj. Thus, in the intersection between two seemingly separate fields of legal practice and legal education, the practitioner begins to emerge as a very important actor. I propose that his position, augmented by his role in the larger political field, created a uniquely fertile ground for the Indianization of the legal field in this period just before Independence.

V. The Emergence of the 'Advocate'

By the 1920s, the two institutional transplants of universities and high courts had created different sets of actors (legal practitioners) and the two interconnected fields of legal practice and education. These actors had their own habitus determined by their position in the legal field, one that was marked by the competition for symbolic capital of LLB degrees and/or Bar-at-Law certifications because these capitals created distinctions in rights of practice before the high

courts. These distinctions created divisions within the Indian actors in the legal field on multiple fronts: following the import of the university, they became divided between those in possession of a law degree, and the pleaders and law officers who had not received this kind of formal education. Next, these distinctions were between Indian *vakils* and the barristers – the latter had privileged access to and monopolized the coveted original jurisdiction, while the former were designated to the appellate side and other courts lower in the hierarchy. When Indians also started to travel to the Inns of Court to acquire the status of a barrister, tensions deepened between Indians who possessed the law degree and those who possessed the bar-at-law certification in addition to a law degree as discussed in the last chapter. This symbolic capital, one issued by an Indian university and the other issued by an English Inn of Court, created a sense of competition in the legal field one which by the 1920 was recognized as unfair, unequal, and exclusionary. To level the playing field, calls were heard for eradication of these distinctions within the profession by Indians.

Mr. Dewan Bahadur T. Rangachariar, a law graduate from Madras University,⁵³⁶ advocated for “a homogenous bar throughout India...Uniformity is desirable and necessary”⁵³⁷ due to the “artificial precedence enjoyed by barristers” in contrast to the *vakils*.⁵³⁸ He proposed in his authored note in the Report 1923-24 that this “dual system is quite unsuited and unnecessary even for the original side of the various High Courts in the 3 Presidency Towns...” because the *vakils* were well-equipped to handle matters related to the original side.⁵³⁹ Evidence

⁵³⁶ Author Vengrai Parthasarathy, “Diwan Bahadur T. Rangachariar – Vengrai.com”, online: <<http://www.vengrai.com/?p=56>>.

⁵³⁷ Home Department & Committee, *supra* note 484 at 49–57.

⁵³⁸ “An Indian Bar”, *The Times of India (1861-current)*; *Mumbai, India* (31 March 1924) 10.

⁵³⁹ Home Department & Committee, *supra* note 484 at 49.

for legislation calling for a unified Bar for India is found in 1921, when the same was proposed by Mr. Iswar Saran to create an Indian Bar through the removal of “all distinctions enforced by statute or practice between barristers and vakils.”⁵⁴⁰ There were different views expressed by many about the reasons why the All-India Bar was needed – some said it was an attempt to nationalize India, others proposed that it was a way to exclude Englishmen from the Bar in India, while some also said it was to discourage Indians to travel to England for the Bar-at-law certification. Regardless, calls by the Indians for an all-India Bar became louder. Mr. Payne, a member of the Incorporated Law Society in Bombay, was in favour of provincial bars suited to the needs of each province with the aim of representing all legal practitioners in the province and regulating the standards of the professional duties offered.⁵⁴¹ The desire for the all-India Bar needed to be assessed to determine what shape and form that legislation would take. For this a Questionnaire was designed with thirty-three questions and some of those questions related to the duality that existed in the Bar at the time, between the local Advocates and the English Attorneys.⁵⁴²

⁵⁴⁰ note 538.

⁵⁴¹ “An All India Bar: Solicitors’ Views”, *The Times of India (1861-current)*; *Mumbai, India* (30 November 1923) 11.

⁵⁴² A perusal of this Questionnaire suggests that the term Attorneys included barristers and solicitors. Some of the related questions are: “Are you in favour of the establishment of an All-India Bar, or do you consider that the Bar should be organized on a provincial basis? Do you consider it desirable in spite of the diversity of conditions in the different provinces that the qualifications for admission to the bar should be identical throughout India? Are the existing law courses at the Universities of a sufficiently high standard and sufficiently comprehensive to provide the educational qualification which should be required of candidate for admission to practise in the High Courts? Is the representation of the Bar on the University Faculties of Law adequate? Are the qualifications now required in the case of vakil high enough to be adopted for admission to practices in the High Courts? Are you in favour of maintaining or encouraging the present practise whereby English barristers come out to practise in India and Indians go to England to be called to the Bar? If you are not in favour of altering the present system of enrolling advocates and vakil, would you remove all or any of the distinctions between advocates and vakils in respect of pre-audience, taking instructions direct from clients, the filing of *vakalatnamas* and appearances on all sides of the Courts? would you abolish *vakalatnamas* altogether, or require the production of a power to appear by advocates as well as vakils? Would you amend the law so as to remove the statutory or other privileges which barristers enjoy in respect of judicial or other appointments? Are you in favour of maintaining the dual system of advocates and attorney where it now exists or extending it? Are you in favour of making separate provision for the enrolment of attorneys? Would

The reality of the composition of the profession at the time was that there existed more Indians in legal practice than British, e.g., in 1871 in Bombay there were thirty-eight solicitors (ten Indians and twenty-eight English), and twenty-four Advocates (seven Indians and seventeen English). By 1911, there were 150 solicitors (130 Indians and twenty English), and 250 Advocates (234 Indians and only sixteen English). From 1912-1922, 110 advocates were enrolled with only about four or five Europeans and in the period between 1866-1907, a total of 1511 persons had acquired the LLB degree from University of Bombay. Between 1921-1923, the average number of LLBs was 304/year. Interestingly, the numbers of pleaders enrolled in the Courts had also seen an increase despite the growing preference for university educated lawyers – about 700 were enrolled during the two decades from 1887-1908, a similar number were enrolled between 1904-1922. Of these 700, 250 were enrolled in just four years from 1918-1922.⁵⁴³ As these numbers grew, criticism of the distinctions between the different classes of legal practitioners also gained momentum.

In 1922, Mr. Neogy proposed a Bill for eradication of the distinction between barristers and *vakils* related to practice on the original side of the High Courts of Bombay and Calcutta. This artificial distinction had been the root of the discord between the *vakils* and barristers, and provincial High Courts had different rules, e.g., in the High Court of Calcutta, only barristers from Great Britain and Ireland were allowed to practice on the original side, which is not true of

you substitute for the three branches of advocate, *vakil* and attorney in a single grade of practitioners which would comprise both those who practise as advocates and those who practise as attorneys? What titles or titles would you give to persons admitted to practise (1) in the High Courts and Courts subordinate thereto, (2) in Courts subordinate to High Courts and in Revenue Courts? Do you consider that the usual association of the title “Barrister” with the possession of English qualifications would constitute an objection to the adoption of that title in India?” Indian Bar Committee Questionnaire, Delhi Government of Central Press, J&P 986, 1924. British Library, India Office Records.

⁵⁴³ Dinshah M Mehta, “Lawyers and Litigation: Some Bombay Statistics”, *The Times of India (1861-current); Mumbai, India* (13 September 1924) 8.

Bombay High Court where a graduate of the LLB would be allowed for admission to practice on the Original Side following success in the examination. It was argued that the opening of practice to non-Barristers in Bombay had not caused a deterioration in the way law was practiced, and these distinctions had been based on imperial logics, aimed to protect the privileges granted to early British barristers and exclude Indians. The Committee, though in favour of the establishment of an All-India Bar, recognized that it would not be possible at this stage, and proposed instead for the creation of Bar Councils at Calcutta, Madras, Bombay, Allahabad, Patna, and Rangoon, while Lahore, Nagpur, Karachi, and Lucknow Bars would be established at a later date. The Report envisioned a small Bar Council of fifteen members, of which four would be nominated by the High Court, and/or Advocate General/Government Advocate/Government Pleader, while the remaining eleven would be elected by Advocates of the High Court.⁵⁴⁴ The Council was accorded the power to determine the enrollment, qualification and examination for Advocates of the High Court, including their duties and disciplinary actions, as needed, though the jurisdiction of the High Court in disciplinary proceedings would be maintained. Some regulation of legal education was also awarded to them, specifically in terms of the imparting of knowledge through lectures and the fees charged.⁵⁴⁵

The Indian Bar Committee⁵⁴⁶ was constituted by the Government of India Home Department in 1923, with a dual focus: firstly, whether an All-India or a Provincial Bar should be

⁵⁴⁴ Home Department & Committee, *supra* note 484 at 34.

⁵⁴⁵ *Ibid* at 35.

⁵⁴⁶ This Bar Committee had 8 members, namely J. V.M. Coutts Trotter (Barrister-at-Law); J. Dinshah Fardunji Mulla (LLB) Advocate General (Bengal); Mr. S.R. Das (Barrister-at-Law); Secretary to the Government of Bengal Mr. H.P. Duval (ICS); Colonel Sir Henry Stanyon (Barrister-at-Law); Mr. Rao Bahadur Tiruvenkata (*Vakil*, Madras High Court); Mr. Sitaram Sunderrao Patkar (LLB, Government Pleader, Bombay); President of the Incorporated Society, Calcutta Mr. M.M. Chatterji; and Secretary Mr. J.H. Wise (ICS). J. Dinshah Fardunji Mulla (LLB was replaced in November 1923 by Mr. Rai Bahadur Babu Lalit Mohan Banarji (LLB, Advocate Allahabad.)

created, and secondly, whether the distinctions between barristers and *vakils* should be eliminated. Through a detailed inquiry, the Committee prepared questionnaires and recorded oral evidence to determine the state of legal practice in the different High Courts of the country. At this stage, in 1923, the High Courts of India controlled enrolment of the legal practitioners through rules for admission and the manner of practice, including disciplinary action when needed, over all classes of legal practitioners, excluding revenue agents in Bengal, Bihar, Assam, the United Provinces and the Central Provinces. The Report⁵⁴⁷ identified the different rules that regulated lawyers in the different High Courts, and these have been studied to create the following table:

Table 4.2: Enrolment Requirements in the High Courts of Colonial India⁵⁴⁸

High Court	Enrolment Requirement of a Barrister	Enrolment as a Vakil	Original or Appellate Jurisdiction
Calcutta ⁵⁴⁹	- Bar-at-Law certificate holders (one year in Chambers); and - 3 years of study in England (in addition to one year of chamber) or a degree in the UK, or law degree in an Indian University	- A graduate of the Bachelor of Arts or Science and a Bachelor of Laws in Calcutta, and two years of articling with a practicing vakil of 5 years standing. This period is usually reduced by the Court to coincide with the time when the student is studying for his law degree; or - A pleader who has a law degree from an Indian University may qualify for admission if he has 4 years	- Vakils cannot appear on the Original Side, nor in appeals from the Original Side, except if a question of Hindu or Mohammedan Law arises. - Advocates can appear on both sides but must be instructed by attorneys.

⁵⁴⁷ Home Department & Committee, *supra* note 484.

⁵⁴⁸ This Table has been created based on the information available in the Report by the Indian Bar Committee, 1923-24.

⁵⁴⁹ Calcutta High Court was the only High Court that did not allow advocates to come before *vakils* or pleaders (p.10 Report).

		practice as a pleader in a subordinate court; - Three years service as an attorney of the High Court; - All must pass an examination administered by the High Court (though this requirement has been reduced to a formality in recent times)	
Bombay	- Bar-at-Law certificate holders (one year in Chambers of a practicing barrister with 10 years standing); and - Graduates of the Bombay University Bachelor of Laws with an examination by the High Court unless the applicant is a pleader with over ten years practice	- A matriculate from the Bombay University or an attorney is eligible for admission if he passes the High Court Examination; - A Bachelors or Master of Law is eligible without further qualification.	- Vakils must be instructed by attorneys on the Original Side and by attorneys or pleaders on the Appellate Side.
Madras	- Bar-at-Law certificate holders of England or Ireland (6 months in Chambers of a practicing barrister with 7 years standing); and - Admission of Advocates of Calcutta, Bombay and Allahabad, and a graduate of the Master of Law from University of Madras who have studied with an Advocate of the High Court for at least 18 months. This time could be reduced to 12 months if the applicant has served one year	- A Bachelor of Law from the Madras University is admitted as a vakil after passing an examination in procedure and practice (an exemption is available for those who have served as a subordinate judge in the Presidency) and served for one year as an apprentice with a practicing advocate, vakil or attorney; - All candidates must attend course of lecture on profession conduct and etiquette. - A graduate of the Bachelor of Laws of Allahabad or Calcutta is also eligible	- Advocates and Vakils can appear on both Sides of the High Court but on the Original Side advocates can only appear under instruction from Attorneys or Vakils.

	apprenticeship to enroll as a vakil.	after completion of the apprenticeship period; or - A graduate of the Bachelor of Laws with 5 years practice as a Pleader in the District or subordinate Courts.	
Allahabad	- Bar-at-Law with a law degree from the UK or Universities of Calcutta or Allahabad, with one year study in chambers of a practicing barrister in England; or - Rules also account for those who have a Doctors in Laws of the University of Allahabad who have practiced for 3 years in the United Provinces, and advocates of Calcutta who are otherwise eligible under the Allahabad Rules. - Attorneys and Vakils with ten years standing at the Bar are eligible for invitation by the Chief Justices and Judges.	- A graduate of the Bachelor of Laws from Allahabad University or a B.L. from the Calcutta or Madras University can be admitted as a vakil; and - A test to determine the candidate's knowledge of the vernacular. - A vakil is eligible for High Court practice after 2 years practice in the subordinate courts.	- No ordinary Original Jurisdiction.
Patna	- Barristers of England or Ireland have to be educated in the UK for three years (in addition to the one year in Chambers) or have a degree from a UK University or a law degree from an Indian University. - Attorneys and Vakils with ten years standing at the Bar are eligible	- A graduate of the B.A., or B.Sc. with a B.L. or LL.B from an Indian University with 2 years practice of articling with a vakil of the High Court; - A Pleader holding a B.L. Degree with 4 years of practice in the subordinate courts; - An Attorney who has practiced for 3 years in the High Court;	- No ordinary Original Jurisdiction.

	for invitation by the Chief Justices and Judges.	- All cases the candidates must pass an examination in law and procedure prescribed by the high Court, and in some cases a test in the Hindi language	
Lahore	- Barristers of the UK are allowed to practice without any other qualification. - First grade pleaders are also eligible for admission if they have ten years standing, including 5 years of practice in the jurisdiction of the High Court. Further, if the pleaders are graduates of the Doctor of Law from Punjab University, that earlier 5-year period is reduced to 3 years.	- English, Scottish, and Irish solicitors, vakils or attorney with three years practice in the High Courts who pass an examination in Revenue Law, Procedure and Customary Law of Punjab; and - Those who have an Honours in Law from the University of Punjab. - Second grade Pleaders with 2 years standing if they are a graduate of the Bachelor of Laws from Punjab University, of three years if their Bachelor of Laws is from another University, and five years standing without a law degree.	- No ordinary Original Jurisdiction.
Rangoon	- Only barristers of UK are eligible to be admitted to the advocates' rolls. The barrister should have read for one year in chambers of a practicing barrister of at least 5 years standing, practiced for at least 2 years in the courts of the country where he has been called, to have 2 years experience in chambers of a practicing barrister in	- A graduate of the Bachelor of Laws from Rangoon University, or from Calcutta University if they have studied Buddhist law and Burma local laws, with 3 years practice as a second-grade pleader or advocate. This candidate may also present themselves for the first-grade pleader examinations. - Solicitors of the UK can be admitted as first grade pleaders.	- No limitations – advocates and pleaders can appear on both Sides of the High Court.

	Burma of at least 10 years standing; or - To have practiced, prior to his call, as a pleader or an advocate for a minimum of 7 years. - An Advocate of Scotland is required to have practiced for 2 years at least in Scotland.		
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This study of the archival material that generated the earlier Table reveals that there were a whole host of legal practitioners by the 1920s: advocates, barristers, attorneys, solicitors, *vakils*, pleaders. To understand these distinctions one can study the privileges that they are assigned and who possesses those from a historical context, these were based primarily on race especially when the High Courts were introduced with the British occupying the positions of dominance in the legal field. This was the logic of the legal field at the time, and this determined the habitus of the different actors. It was only when access to privileges, earlier reserved for the British barristers, was acquired by some Indians that the habitus shifted. The dominated began to question these distinctions based on imperial logics which India society had outgrown or overcome. The Report noted that *vakils* in principle exercise their duties in the High Courts (except those high courts where original jurisdiction distinctions existed) on “identically similar terms and neither of them enjoying any peculiar privilege or suffering under any particular disability.”⁵⁵⁰ On this distinction, the Report recommended that in all the High Courts, barring the Calcutta and Bombay High Courts, one single category of legal practitioners called “advocates”

⁵⁵⁰ Home Department & Committee, *supra* note 484 at 11.

should be registered and separate categories of High Court vakils or pleaders should be eradicated, but this new category of Advocates would continue to have the distinction of original side practice, or not.⁵⁵¹

While this issue of an all-India Bar was under way, another crucial development took place during this time which deserves mention. Women had thus far been legally excluded from practice in the United Kingdom, but in 1919 the legal profession was opened to them through a statutory enactment passed by the British Parliament, the Sex Disqualification (Removal) Act. This formally allowed women to enter the legal profession⁵⁵² and a similar enactment was also passed for India, titled Legal Practitioners' (Women) Act, XXIII of 1923.⁵⁵³ The practitioner for the first time was also imagined as a woman, and the first women-in-law were Cornelia Sorabji⁵⁵⁴, Regina Guha⁵⁵⁵ and Sudhansa Bala Hazra,⁵⁵⁶ who had fought for over two decades to be recognized and legitimate legal practitioners. The result was that finally, the image of the Advocate in India was not just that of a 'Man of Letters' but also allowed for the inclusion of women. Once the Indian Bar Councils Act was successfully passed in 1926, this 1923 Act was accommodated in the 1926 Act under Section 9(3).⁵⁵⁷

One of the most important contributions of the 1926 Act related to the tension between barristers and *vakils*/pleaders: the creation of a single category of "Advocates" who under

⁵⁵¹ *Ibid* at 13.

⁵⁵² "Sex Disqualification (Removal) Act 1919", online: <<https://www.legislation.gov.uk/ukpga/Geo5/9-10/71/section/1/enacted>>.

⁵⁵³ "The Assembly: C. P. C. Amendment Bill Women Legal Practitioners", *The Times of India (1861-current); Mumbai, India* (22 March 1923) 10. Accessed September 12, 2021.

⁵⁵⁴ Suparna Gooptu, *Cornelia Sorabji: India's Pioneer Woman Lawyer* (New Delhi: Oxford University Press, 2006).

⁵⁵⁵ "In Re: Regina Guha vs Unknown on 29 August, 1916", online: <<https://indiankanoon.org/doc/1090509/>>.

⁵⁵⁶ "In Re: Miss Sudhansu Bala Hazra vs Unknown on 28 November, 1921", online: <<https://indiankanoon.org/doc/1246400/>>.

⁵⁵⁷ Section 9(3), *Indian Bar Councils Act 1926*.

section 2(a) were defined as those who were “entered in the roll of advocates of the High Court.”⁵⁵⁸ However, distinctions between advocates permitted to practice on the original side of the High Court continued, one of which related to who was eligible for elected membership to the Bar under clause 4 sub-clause 3. This sub-clause further clarified that of the elected members, the High Court had the authority to determine the number of advocates who would be barristers from England and Ireland, or members of the Faculty of Advocates in Scotland.⁵⁵⁹ Thus, though it appears that distinctions were removed, in reality exclusions based on jurisdictions of the High Court remained. Privileges in the field cannot be eradicated through the simple stroke of a pen, a consolidated effort is needed to uproot them, but other developments followed in legal education after the passing of this 1926 Act.

The Legal Practitioners and Bar Councils Act 1926 empowered the Bar Council to admit, discipline, and provide for the improvement of legal education in the country. I argue that this sets the stage for a *legalized* entrenchment of the role of legal practitioners in determining the course of legal education in the country and this Indianization of the legal profession also impacted the indigenization of legal education. Criticism of the universities in the early twentieth century continued especially in terms of their inability, or lack of desire, to maintain high standards of legal education. The Chief Justice of the Allahabad High Court (1932-1937) Sir Shah Sulaiman, in the 1930s, warned that if the universities were unable to maintain these standards, the Bar Council would have to introduce its own examination, in addition to exercising their right to refusal in recognizing the degrees of such universities. Further, continuing to follow the

⁵⁵⁸ Section 2(a), *Indian Bar Councils Act 1926*.

⁵⁵⁹ Section 4(3), *Indian Bar Councils Act 1926*.

lecture-method to large classes was insufficient in terms of teaching of the law, especially when student fees generated an income of Rs.72,000 from the 400 students enrolled.⁵⁶⁰ By 1934, the Bar Council introduced lectures on administrative law, constitutional law of the British Commonwealth, private and public international law, taxation laws amongst others. Sir Alladi Krishnaswami Iyer, the Advocate General of the newly elected Bar Council, commented that such lectures were needed so that law graduates are prepared not just for joining the profession but also “to act in the larger terms of society” of which they are a part.⁵⁶¹ This identification of the role of lawyers as members not only of the legal profession but of the Indian society is crucial and marks a point where a change from imperial objectives to legal education entered a stage of transformation to societally-centred objectives for the Indians. This view was also stressed at the Bombay Pleaders and Advocates Conference in Poona in 1934, where it was lamented that the culture of the legal community was focused on litigation and commercial objectives rather than the administration of justice.⁵⁶² Further, the issue of professional envy due to the continuing professional privileges that barristers and advocates possessed, despite the formal single category of Advocates introduced through the 1926 Act, would taint the profession if not create further hurdles, e.g., the requirement that the Chief Justice of a High Court needed to be a barrister through convention rather than statute is another example of these rivalries.⁵⁶³

The rate at which legal practitioners in India were produced in the 1930s was high, but the quality of these lawyers was not adequate, and has been argued to be focused more on

⁵⁶⁰ February 10 Cawnpore, “‘A Race for Results’: Universities Warned Low Standard and Too Many Passes Bar Council may Refuse Recognition to Degrees”, *The Times of India (1861-current); Mumbai, India* (12 February 1934) 10.

⁵⁶¹ “Bar Council of Madras: Efforts to Advance Legal Education”, *The Times of India (1861-current); Mumbai, India* (8 November 1934) 9.

⁵⁶² “Lawyers In Conference”, *The Times of India (1861-current); Mumbai, India* (10 March 1934) 12.

⁵⁶³ *Ibid.*

producing ‘technically qualified lawyers.’ Newspaper reports detail the criticism that was levelled at the quality of law graduates of the Government Law College in Bombay: the development of the law of India was in the hands of law graduates who were “trained in the theory and practice of the law in this light-hearted and casual fashion” by a “constantly shifting staff” of lecturers.⁵⁶⁴ The need was felt for the creation of an Institute in India, like the Institute of Advanced Legal Studies in London, as recommended by Lord Atkin’s Committee on Legal Education, for the comparative study of law rather than relying on a purely technical and narrow study of law.⁵⁶⁵

This tension between the *traditional* English practice-focus and a more Indian societal-focus of legal education has also been documented by articles published in the Times of India. L.V. Deshpande, in a letter to the Times of India as early as 1935, wrote of the importance of studying subjects like economics, sociology, psychology, history and medical jurisprudence to be added to the legal curriculum over the four years of study so that the practical aspects of law in society would be better understood and practiced in law.⁵⁶⁶ Opinions were expressed in the newspaper that if a lawyer acts without “professional honour,” he is “as great a danger to society as a highwayman,” and should “go through a liberal course of general education before he steps forward to plead for the rights and wrongs of his fellow creatures.”⁵⁶⁷ As a result, assessment of each candidate in the examination should be more concerned with substantive elements that required legal reasoning rather than memorization – there should be an equal proportion of questions on theory and those which were hypothetical problem-based to ensure that the

⁵⁶⁴ “Legal Education”, *The Times of India (1861-current)*; *Mumbai, India* (1 September 1934) 12.

⁵⁶⁵ *Ibid.*

⁵⁶⁶ L V Deshpande, “Legal Education: To the Editor of ‘The Times of India’”, *The Times of India (1861-current)*; *Mumbai, India* (14 May 1935) 16.

⁵⁶⁷ “Legal Education”, *The Times of India (1861-current)*; *Mumbai, India* (13 April 1935) 12.

emphasis was on legal thinking rather than memory;⁵⁶⁸ if one relied on memory to pass examinations, the candidate could fool the examiner but not the judge. Justice Ashutosh Mookerjee⁵⁶⁹ commented: “He may be artful, cram, delude his examiners, and obtain admission to his degree; but let him rest assured that he will never delude the judge, much less his adversary who will not be slow to take advantage of his profound ignorance.”⁵⁷⁰

By 1936, voices for ownership of legal education by Indians grew louder, and prominent among these was that of Dr. Bhimrao Ramji Ambedkar, the Principal of the Government Law College in Bombay and future father of the Indian constitution. Dr. Ambedkar was a powerful voice in the legal field and saw law as a powerful tool for justice, e.g., his work on the equal rights of Dalits in the Indian social hierarchy deserves mention here.⁵⁷¹ A highly accomplished man, he possessed numerous qualifications including two MA’s (1913-16) and a PhD (1927) from Columbia University, as well as a bar-at-law certification from Gray’s Inn in 1922,⁵⁷² and a DSc in economics from the University of London in 1923.⁵⁷³ Serving as the Principal of the Government law College in Bombay in 1936, he was one of the first voices to advocate for the ownership of

⁵⁶⁸ Aggarwal, *supra* note 430 at 242.

⁵⁶⁹ Justice Mookerjee (1864-1924) was a graduate of the Presidency College in Bengal. He was part of the University Reforms Commission set up by Lord Curzon in 1902, and also served as a judge of the Calcutta High Court from 1904. “Mookerjee, Asutosh - Banglapedia”, online: <https://en.banglapedia.org/index.php/Mookerjee,_Asutosh>.

⁵⁷⁰ Aggarwal, *supra* note 430 at 244.

⁵⁷¹ “Bhimrao Ramji Ambedkar | Biography, Books, & Facts | Britannica”, online: <<https://www.britannica.com/biography/Bhimrao-Ramji-Ambedkar>>. For a detailed account of his work see Jesús Francisco Cháirez-Garza, “Touching Space: Ambedkar on the Spatial Features of Untouchability” (2014) 22:1 Contemporary South Asia 37–50; Christopher S Queen, “Dr. Ambedkar and Untouchability: Fighting the Indian Caste System” (2008) 28:1 Buddhist-Christian Studies 168–172; Naheem Jabbar, “B. R. Ambedkar and the Hindu past” in *Historiography and Writing Postcolonial India* (Routledge, 2009) 145.

⁵⁷² Tribune News Service, “Dr BR Ambedkar — the only Indian to find a place at Gray’s Inn”, online: *Tribuneindia News Service* <<https://www.tribuneindia.com/news/jalandhar/dr-br-ambedkar-%E2%80%94-the-only-indian-to-find-a-place-at-grays-inn-286850>>.

⁵⁷³ “Bhimrao Ambedkar”, online: <https://c250.columbia.edu/c250_celebrates/remarkable_columbians/bhimrao_ambedkar.html>.

legal education in the country through a review of the curriculum for the law degree. He argued for a broader base of knowledge to be cultivated for law students which allowed them to understand their role and function within society, and how others inhabit the same space. He proposed that aside from legal training and study, subjects related to sociology; psychology; logic; rhetoric and public speaking; and languages were crucial for successful lawyering.⁵⁷⁴ Following an adoption of these subjects, the LLB degree should not remain a two-year endeavour but should be spread out over four years instead,⁵⁷⁵ with an aspiring law student joining University for study of law following a Matriculation Certification which was equivalent to ten years of schooling.⁵⁷⁶ Further, the study of law should allow for part-time education so that those students who need to work to be financially secure are able to do so without compromising on their future legal careers.⁵⁷⁷

Dr. Ambedkar believed that the professors who delivered lectures should be drawn from the practising lawyers because they were the best suited to teaching law at university while the tutors who were expected to fill in the gaps as needed should be full-time employees of the University. The method of instruction, be it case-method, text-book method or lecturing should be left to the professor to decide.⁵⁷⁸ The result of this would be that law would be taught with a practice focus, and I do not believe Dr. Ambedkar saw this as a problem because it appears that he believed that practitioners could provide a unique perspective in teaching law which looked at the role of a lawyer as part of his society. If legal education focused on societal approaches

⁵⁷⁴ Pramod K Nayar, ed, *Indian Responses: Volume V* (London: Routledge, 2019) at 127.

⁵⁷⁵ *Ibid* at 128.

⁵⁷⁶ *Ibid* at 129.

⁵⁷⁷ *Ibid* at 130.

⁵⁷⁸ *Ibid* at 131.

towards learning, then Dr. Ambedkar was a revolutionary in India at the time, especially because he did not see teaching law and lawyering as separate from society.⁵⁷⁹ He also played an instrumental role in the drafting of the Indian Constitution in 1950 where he chaired the Constitution Drafting Committee.⁵⁸⁰ His educational experience which spanned different disciplines and continents, along with his life experience as a Dalit, allowed for a unique perspective that had a great impact on the country following independence from the British Raj in 1947.

VI. Conclusion

The period between from the 1920s till Independence from British Raj in 1947 was a time of great change in the legal field. Legal practitioners expanded their sphere of influence from the field of legal practice and entered two new fields, that of legal education field and the national political field. Gains in capital from the creation of political parties by the early twentieth century manifested in greater control of the legal profession, and through that field of legal education. The legal practitioner in India at the time was therefore marked by the power they wielded on multiple fronts and led to the calls for the practice and education in law to serve Indians. This changed the habitus of the legal profession where the Advocate emerged (as a man and a

⁵⁷⁹ Much has been written on the work Ambedkar did to eradicate inequality in Indian society from the class-based system where *Shudras* and *Dalits* were the lowest classes see Cháirez-Garza, “Touching space”, *supra* note 569; Jabbar, *supra* note 569; Queen, “Dr. Ambedkar and Untouchability”, *supra* note 569 and inequality of gender which has been written about extensively as well: Runi Datta, “Emancipating and Strengthening Indian Women: An Analysis of B. R. Ambedkar’s Contribution” (2019) 11:1 Contemporary Voice of Dalit 25–32.; Ananya Vajpeyi, “Ambedkar and the Struggle for Women’s Equality” (2016) 1:1 Antyajaa: Indian Journal of Women and Social Change 5–9.

⁵⁸⁰ “Constitution of India”, online:

<https://www.constitutionofindia.net/constituent_assembly_members/b__r__ambedkar>.

woman) equipped with the legal skills needed to effect change and the success of ridding South Asia from imperial domination. The next chapter discusses how the legal field developed in the two newly created countries of India and Pakistan following Independence in 1947.

CHAPTER 5

The Emergence of the Post-Colonial Practitioner

I. Introduction

The process of Indianization of the legal profession and legal education began in the early twentieth century and it was this ownership by the Indians that in some part led to Independence from the British Raj in 1947. This chapter investigates legal education developments in the two new countries of India and Pakistan through two main questions: to what extent did the two countries work to displace the colonial norms of the legal field inherited at Partition; and how external actors or foreign influences continued to play a part in the field of legal education.

American interventions in the twentieth century following Partition through the Asia Foundation, Ford Foundation, Fulbright Scholarship Programmes, USAID, and the Asian Development Bank had an impact on what was taught at law schools, and how, in South Asia. I argue that interest in legal education continued to be impacted by politics in India and Pakistan – India represented a country dedicated to democracy and rule of law and thus more open to American influence, while Pakistan with its tenuous relationship with democratic and authoritarian rule made attempts at reform of legal education with this foreign assistance comparatively difficult. Through the second half of the twentieth century, legal practitioners were more dominant in their role in legal education in Pakistan, while in India space for legal scholars and academics was created with the help of the successful interventions of the United States. This is why the 2018 Supreme Court case becomes so important as an indigenous response to a deteriorating situation in Pakistan.

II. Research Methodology

The research method adopted whilst studying legal education in the second half of the twentieth century adopts a mixed methods approach. A study of constitutional developments – the Indian Constitution 1950, Pakistan’s Constitutions of 1956, 1962 and 1973 – and governance from the South Asian perspective allows for the description of the legal landscape in the two new countries. An investigation of the political climate through reports of different donor agencies like the Asia Foundation, Ford Foundation, Fulbright Scholarship Programmes, USAID, and the Asian Development Bank help determine the different paths that the higher education in law took. Some of these Reports were available online and an unpublished one from 1999 was kindly shared with me by Professor Mark Galanter who was part of the research team in Pakistan at the time. Reports of the different Law Commissions, especially the 1958 Report published during General Ayub Khan’s era, provides the early context on legal education and profession in Pakistan. This Report was secured by the author by chance upon her visit to the Pioneer Book House in Karachi,⁵⁸¹ which along with books on law, also carries official publications of legal texts and related material by the Government for sale. Furthermore, a review of the five-year Plans which were available online and prepared by the Planning Commission of Pakistan also help determine areas of reform that the governments at the various times focused on.

A review of the literature helps provide context of developments in legal education especially in India and helps inform the discussion on changes in curriculum on the Pakistani side of the border. The two-year curriculum for the LLB was accessed through the librarian of the

⁵⁸¹ Pioneer Book House is one of the oldest publishing houses for books on law in Karachi. Established in 1945, two years before Partition, this book house carries old and new publications as well.

Sindh High Court Mr. Ibrahim who kindly shared a copy as it existed till 1992 from University of Karachi. The three-year curriculum was obtained from the course details available at the library of the Sindhi Muslim Law College in Karachi which is affiliated with the University of Karachi. Unfortunately, accessing other official sources formally for data was inhibited for two reasons, at first it was because of the increase in public scrutiny of legal education since the cases had been filed in the Supreme Court, and the Bar and Law and Justice Commission exercising caution in sharing historical information with repeated requests meeting with denial. Later, the global pandemic offered a secondary excuse to keep access to material limited, e.g., the Law and Justice Commission of Pakistan agreed to give access to their reports but only if I visited their facilities in-person, a fact that I was physically unable to do due to Covid-19. I was therefore forced to fill gaps in the research and collect material from the variety of sources mentioned earlier, and also telephonic interviews with other stakeholders from universities like Islamia Law College in Karachi, International Islamic University and Bahria University Law College in Islamabad, all of which shared their time and experience which helped inform the discussion. Newspaper archives at the Daily Dawn news publication were also useful to help paint as complete picture as possible of the state of legal education during the second half of the twentieth century.

III. American Interventions in India and Pakistan 1947-2000

Following the Indian Independence Act, 1947, two dominions were created – India and Pakistan – and while both had the power/authority to draft, repeal or amend legislation, the

office of the Governor General was created to facilitate the working of the new legislature.⁵⁸² Both countries struggled to embrace this new era of post-coloniality and while India adopted a more democratic rule of law path, Pakistan became embroiled in a battle between military and democratic rule.⁵⁸³ I argue that though at Partition the goal of legal education was to produce able legal practitioners for both countries, this divergence in the political context (and the impact of US influence especially in India) played a role in the way law, institutions, and especially legal education developed in the two new countries through the second half of the twentieth century. The next section discusses the impact of the different political climates in both countries that sent legal education in different directions.

a. The Political Climate

The political environments in the new countries represented different approaches to governance. While in India democracy was able to take root more so, in Pakistan continuing military intrusions held the country hostage to martial law for almost half of its history following Independence. This was evident in the Constitution-making process, where India by 1950 had

⁵⁸² “1947 Indian Independence Act”, online: <<https://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-and-empire/collections1/collections2/1947-indian-independence-act/>>.

⁵⁸³ During Pakistan’s history of seventy-five years since Independence, the military has been in power almost half that time: the first coup was in 1953 under Governor General Ghulam Mohammad, the second was from 1958-1969 under General Ayub Khan followed by 1969-1971 under General Yahya Khan, the third was from 1977-1988 General Zia-ul-Haq, and the last formal coup was from 1999-2008 under General Pervez Musharraf. The period of democratic rule, including the current under Prime Minister Imran Khan, has been under some scrutiny as a form of military control which continues to hold the strings of democratic government in the country. “Pakistan - From disunion through the Zia al-Huq era | Britannica”, online: <<https://www.britannica.com/place/Pakistan/Military-government>>. For more on this look at: Ayesha Jalal, *The State of Martial Rule: The Origins of Pakistan’s Political Economy of Defence* (Cambridge England ; New York: Cambridge University Press, 1990); Ayesha Jalal, *The State of Martial Rule: the Origins of Pakistan’s Political Economy of Defence*, Cambridge South Asian studies 46 (Cambridge [England]; Cambridge University Press, 2008).

developed its rights-based Constitution,⁵⁸⁴ Pakistan struggled. In 1949, the first Constituent Assembly in Pakistan passed the Objectives Resolution⁵⁸⁵ which was to be the basis of the new Constitution and stated that the country would be governed under the “principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam.”⁵⁸⁶ It took another five years for the final draft of the first Constitution by 1954, but the Assemblies were dissolved by the then Governor General Ghulam Muhammad, and the second Constituent Assembly created under Governor General Order No. 12, 1955 passed the first Constitution for the Muslim nation almost a decade after Independence in 1956.⁵⁸⁷ Soon thereafter, General Ayub Khan dissolved the assemblies and came into power through a military coup in 1958, and over the next thirteen years the country stayed under military rule. It was during this time that the second Constitution of 1962 came into force, and in 1971 General Yahya Khan took over from General Ayub Khan. The following year in 1972 Pakistan was engulfed in a war between its two Wings, with East Pakistan gaining independence from the West to become Bangladesh. Less than a decade later

⁵⁸⁴ Dhavan notes that American influence in drafting of this Constitution was also present with the Constitutional Advisor travelling to the United States “to seek advice on the features of the American Constitution which could be incorporated in India”, and as a result a federal system of government (also inspired by the Australian experience) was adopted. Its chapter on Fundamental Rights is an adaptation of the US Bill of Rights. Rajeev Dhavan, “American Scholarship and Indian Law” in *Traffic of Ideas between India and America* (South Asia Books, 1985) 291 at 297–298. Baxi also writes about the impact of America in the drafting of the Indian Constitution – “The Constitution of 1950 is essentially a product of Anglo-American legal tradition and culture; it is a shrewd eclectic exercise in selecting and accentuating the best of the West, which incidentally also met the needs of the rising bourgeoisie, the true inheritors of the struggle for the national independence.” The Indian Constitution itself then inspired the development of other constitutions in Asia and Africa. Upendra Baxi, “Ideas in Law: America and India” in *Traffic of Ideas between India and America* (South Asia Books, 1985) 319 at 321.

⁵⁸⁵ “Objectives Resolution (1949)”, (6 August 2012), online: *History Pak* <<https://historypak.com/objectives-resolution-1949/>>.

⁵⁸⁶ The Objectives Resolution 1949 was incorporated as a substantive part of the Constitution of Pakistan, 1973.

⁵⁸⁷ The Media Group | Publishing Partner, “Special report: Parliament in Chaos 1951-1958”, (25 August 2017), online: <<https://www.dawn.com/news/1353861>>. For more on the period between 1947-1951, see Special Report of the Daily Dawn: The Media Group | Publishing Partner, “Special report: The founding fathers 1947-1951”, (17 August 2017), online: <<https://www.dawn.com/news/1352119>>. For more on the 1956 Constitution of Pakistan see G W Choudhury, “The Constitution of Pakistan” (1956) 29:3 Pacific Affairs 243–252.

another Constitution was needed to reflect the new political state and the current Constitution of Pakistan was passed in 1973 during the democratic rule of Prime Minister Zulfikar Ali Bhutto.⁵⁸⁸

This constitutional confusion on the Pakistani side of the border was not replicated in India, where its rights-based Constitution introduced in 1950 sparked the interest of the United States. The US “looked on with awe as this economically poor, yet fiercely independent nation sought to embrace political and legal principles that had long been valued within the United States.”⁵⁸⁹ And in the 1950s the US began to show interest in the region through various organisations. The US-based Ford Foundation and the Asia Foundation took an active role in the development of institutions in both India⁵⁹⁰ and Pakistan following Independence, but the results of these interventions can be seen to have borne fruit in India⁵⁹¹ more so than in Pakistan. The Overseas Development Fund of the Ford Foundation was set up in 1951 to cover Burma, India, Indonesia, and Pakistan. The Ford Foundation’s focus in Pakistan was to “establish and strengthen key institutions to produce competence,” since following Independence the country had lost trained personnel⁵⁹² and institutions that could train people due to migration.⁵⁹³ Hence,

⁵⁸⁸ “Pakistan’s Constitution”, online: *Council on Foreign Relations* <<https://www.cfr.org/background/pakistans-constitution>>.

⁵⁸⁹ Jayanth K Krishnan, “Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India” (2004) 46:4 *The American Journal of Legal History* 447–499 at 447.

⁵⁹⁰ In India, the Rockefeller Foundation also played an active role through 1916 to 1973 and its focus was more in the medical field with a focus on public health. Gordon talks about the roles of both Rockefeller and Ford Foundation in India. Leonard A Gordon, “Wealth Equals Wisdom? The Rockefeller and Ford Foundations in India” (1997) 554 *The Annals of the American Academy of Political and Social Science* 104–116.

⁵⁹¹ The Ford Foundation from 1951 to 1995 in India spent US\$128 million through one account, while another states that number to be US\$275 million, they have all focused on training and education. *Ibid* at 112.

⁵⁹² Of the 540 Indians in the Civil Service, only 82 opted for Pakistan and in the new capital at Karachi, officers used packing crates for tables because of the dearth of facilities. Louis A Picard, Robert Groelsema & Terry F Buss, eds, *Foreign Aid and Foreign Policy: Lessons for the Next Half-Century* (New York: Routledge, 2015) at 131.

⁵⁹³ George Gant, “The Ford Foundation Program in Pakistan” (1959) 323:1 *The Annals of the American Academy of Political and Social Science* 150–159 at 150.

foreign advisers provided their consultancy services and grants which funded these initiatives including one called Education Extension Centers with the help of American Universities.⁵⁹⁴

The focus of these initial interventions in Pakistan appear to be in areas other than legal education – the Foundation set up three polytechnic institutes which offered a three-year course of training and apprenticeships following high school, and a college of home economics which was geared towards the education of young women.⁵⁹⁵ Through the introduction of a Planning Board which passed five-year plans, Pakistan worked with the financial support of the Foundation and received help from advisers from Harvard to help the new country.⁵⁹⁶ However, Gant notes that the efforts of the Foundation were at times a waste because of a lack of understanding of Pakistan’s system of approval regarding the schemes which “must follow a slow tortuous process of review and approval,” following which it is placed on the budgets of the provincial and federal government, after which they are finally granted approval.⁵⁹⁷ The Asia Foundation⁵⁹⁸ has also worked in Pakistan since 1954 providing assistance in “economic development and social inclusion, especially for women...,”⁵⁹⁹ and contributed through USAID in two major projects: the Parliamentary Development Project and Federal Judicial Academy Project.⁶⁰⁰ USAID funding was

⁵⁹⁴ *Ibid.*

⁵⁹⁵ *Ibid* at 152.

⁵⁹⁶ *Ibid* at 153.

⁵⁹⁷ *Ibid* at 153–154.

⁵⁹⁸ Since 2016, the Asia Foundation has begun work on Alternate Dispute Resolution due to the lack of access to justice that Pakistanis have due to lack of resources for dispensation of speedy justice, corruption, poor quality legal education and “ill-equipped lawyers who lack practical skills and training opportunities.” “Alternative Dispute Resolution: A Paradigm Shift in Pakistan’s Justice System?”, (26 July 2017), online: *The Asia Foundation* <<https://asiafoundation.org/2017/07/26/alternative-dispute-resolution-paradigm-shift-pakistans-justice-system/>>.

⁵⁹⁹ “Pakistan”, online: *The Asia Foundation* <<https://asiafoundation.org/publication/pakistan/>>.

⁶⁰⁰ Picard, Groelsema, & Buss, *supra* note 592 at 141.

also geared towards basic education, reproductive health and child health, advocacy and strengthening non-governmental organizations.⁶⁰¹

In terms of higher education, at Independence India had twenty universities⁶⁰² while Pakistan inherited just three – the Punjab University (1882), Dacca University (1921) and Sindh University (this was created just a few months before Partition in 1947).⁶⁰³ This deficit in the institutions of higher education needed to be addressed and in the first few years after Independence, three new universities were established – Peshawar University in 1950, Karachi University in 1951 and Rajshahi University in 1953 and government expenditure increased from Rs. 61 lakhs to 2.3 crores.⁶⁰⁴ However, the mere establishment of centres of learning have limited effect if the people who teach and conduct research are not available. Thus, recognizing the importance of higher education in training lawyers, doctors, engineers, scientists, philosophers etc., the First Five Year Plan⁶⁰⁵ identified the “sharp break in the pattern of higher education” that existed in the framework in India by the British when they had introduced universities styled along the University of London.⁶⁰⁶ The need arose for the review of the system of higher education to make it more relevant to the country to counter colonial influence in the curriculum in four ways: firstly, the courses should be enriched with Islamic history, literature, and morality; secondly, the reduction in reliance on English as the medium of instruction to emphasize a more

⁶⁰¹ *Ibid.*

⁶⁰² “Higher Education in Post-independent India (1947-1970): a critical evaluation in terms of selected criteria of effectiveness” Malini Gopalakrishnan, Montana State University (1973).

⁶⁰³ *The First Five Year Plan (1955-60) Education and Training (Draft)* (Planning Board, Government of Pakistan, 1956) at 79–80.

⁶⁰⁴ *Ibid* at 3. One lakh equals 100,000. One crore equals 10 million.

⁶⁰⁵ These Plans were prepared for a five-year period and detailed government economic policies over many different areas, including industry, technology, education etc.

⁶⁰⁶ note 602 at 78–79.

functional, use of the language; thirdly, emphasize sciences, both “physical and biological,” so that the country can benefit of agricultural and industrial development; and lastly, research and learning in science education at the post-graduate level should be emphasized.⁶⁰⁷ The Plan deals specifically with professional education in the fields of medicine, engineering, agriculture, social welfare, and business and public administration, but the profession of law was missed within the review, though it was mentioned periodically in a cursory manner.⁶⁰⁸

b. Curricular Reform of the LLB Degree

In terms of legal education, the problems faced by both countries at Partition were the same: there was a lack of trained and committed law faculty, dedicated law students, pedagogy was determined by a black-letter law approach, continuing reliance on rote memorisation rather than critical thinking, and limited resources in terms of infrastructure of law colleges and their libraries. The fault lay in the history of the introduction of British law in India as one in some part divorced from the reality of Indian life which was governed by its own traditional systems based on family, kinship etc. as source of social management and regulation. English law as introduced during the colonial period, or even codification of the local customs, entailed an inflexible approach to law which did not connect with social reality of Indians. The study of law, thus, took shape within rote memorisation because the goal of legal education during the British Raj was focused on dissemination of information rather than “critical understanding” of the law.⁶⁰⁹ I argue

⁶⁰⁷ note 603 at 102–104.

⁶⁰⁸ *Ibid* at 134–146.

⁶⁰⁹ Arthur Taylor von Mehren, “Law and Legal Education in India: Some Observations” (1965) 78:6 Harvard Law Review 1180–1189 at 1181–1182.

that the pressing demand of legal education for Pakistan, as for India, at the time of Partition was to produce competent legal professionals.

Ballakrishnen conducts a very useful account of the objective of legal education in India following Partition and argues that the most “immediate need” for the new country was to “replace the inaccessible law schools” located in Britain.⁶¹⁰ These institutions in the United Kingdom during the British Raj had been unapproachable for many but became almost impossible to access because of restraints on foreign exchange following Partition. To account for this loss of access, the new Republic focused on Indian law colleges which emphasized a “practice-specific pedagogy,” although by the 1950s the calls for a move from a purely vocational approach to legal education from a societal perspective re-entered the frame.⁶¹¹

In Pakistan, Five Year Plans were developed to provide a guideline on how development could be achieved in the country. The First Five Year Plan (1955-60) draft identifies that the primary objective for education in the country “was to save the system from collapse, a task which was made difficult by the loss of supervisory and teaching personnel.”⁶¹² It was during the time of the First Five Year Plan that the first military coup occurred, and General Ayub Khan took the reins of the country in 1958.⁶¹³ This year was also significant because of the first Report of the Pakistani Law Reform Commission 1958-59 was issued which dealt specifically with the gap in legal education and the legal profession by addressing the two areas in separate topics under Chapters XXV and XXVI respectively.⁶¹⁴ It detailed the Pakistani position towards the end of the

⁶¹⁰ Swethaa Ballakrishnen, “Where Did We Come From? Where Do We Go? An Enquiry into the Students and Systems of Legal Education in India” (2009) 7:2 Journal of Commonwealth Law and Legal Education 133–154 at 137.

⁶¹¹ *Ibid.*

⁶¹² note 602 at 1.

⁶¹³ Partner, *supra* note 587.

⁶¹⁴ note 209 at 115–126.

1950s (which reads almost as if it describes the situation in the 2000s as discussed later in this chapter) and stated that there was a lack of uniformity in terms of the standards of legal education of the country – law was taught at both public universities and private colleges affiliated with those universities which were run by lawyers on a commercial basis. These institutes offered classes during the day and at night, though the latter were generally offered more so in the private colleges, and the eligibility of enrolment in law courses was not uniform. The Bar was declared responsible for its failure to dedicatedly work towards the “improvement of the legal system” or the provision of adequate vocational training.⁶¹⁵ The Report stressed the importance of adopting “uniform standards of legal education in the country” so that the Bar and the Bench would benefit, and the “sole aim of the Universities should not be to turn out competent legal practitioners.” This idea represents the potential of an indigenized understanding of the way law was understood, learnt, and taught. The Report further recommended that inspiration should be drawn from Europe and America, where “legal education is recognised as a sociological discipline of the highest order.”⁶¹⁶ This emphasis on law and social discipline is evidence of the 1930s narrative as proposed by Dr. Ambedkar on the study of law from a social lens, as discussed in the last chapter.

This 1958-59 Report was quite progressive in the way it sought to improve the standards of legal education suggesting that law should be taught from an interdisciplinary focus, while also recognising the importance of teaching some areas of law like constitutional law or administrative law to BA students as electives. It further stressed the importance of limiting the

⁶¹⁵ *Ibid* at 115.

⁶¹⁶ *Ibid*.

numbers of law students enrolled by attracting only those who are dedicated to law, rather than pursuing the degree due to a lack of other options. This would also help manage the “overcrowding in the profession,”⁶¹⁷ and suggested that the best way of pursuing this was to identify two different routes: the academic which could follow a two-year degree where aspiring academics could study “legal principles and the substantive law,” and the professional course which would, in addition to the first two years specified earlier, require a third year where aspiring lawyers would focus more on procedural laws and learn the practical side of lawyering.⁶¹⁸ This division between the two types of law degrees was a novel proposal at the time and the system of assessment was also more rigorous with annual examinations, and two other exams each year that were treated as qualifying exams for the annual examination.⁶¹⁹ Further the curriculum proposed for this three year LLB degree reflected this dual focus as depicted in the next Table extracted from the details in the Report 1958-59.

Table 5.1: Recommended Curriculum for a Two-year and Three-year Law Degrees

Year	Subject/Course
First Year	
Paper I	English and Islamic Jurisprudence
Paper II	Pakistani Constitution, Constitutional History of Indo-Pak sub-continent from 1900 onwards
Paper III	History and Principles of Common Law and Elements of Comparative Law
Paper IV	Law of Contract and of Torts
Paper V	Principles of Criminal Law

⁶¹⁷ *Ibid* at 116.

⁶¹⁸ *Ibid* at 120.

⁶¹⁹ *Ibid* at 117–118.

Second Year	
Paper I	Principles of Equity (ref to Trusts, Mortgages and Specific Relief)
Paper II	Mercantile Law
Paper III	Public International Law or Private International Law
Paper IV	Principles of Muslim Law and Elementary Principles of Procedure and Limitation
Paper V	Land Laws
Third Year	FOR PROFESSIONAL PRACTICE ONLY
Paper I	Conveyancing Pleadings
Paper II	Civil Procedure
Paper III	Criminal Procedure and an option between <i>Evidence Act (Guardian Wards Act)</i> or Insurance Law
Paper IV	Theories of Legislation and Interpretation of Statutes and Administrative Law

This three-year LLB curriculum and its division into two parts – two-year general study of law and one-year professional study – I propose represented an exciting moment where study of law could be more representative of the needs of Pakistani society, stepping away from the colonial trappings in legal education. This proposed curriculum was well-structured with courses geared towards a useful mix of theory and statute from historical and comparative perspectives. The course of study structured along these lines allowed for the creation of dual space in legal education, professional and academic.

The Report 1958-59 also specified the requirements for faculty at law colleges and universities with emphasis laid on full-time faculty that would be provided with a non-practising allowance. They would comprise of two main streams: lecturers would have a Master's Degree, or a first-class bachelor's in law or a first class at the Bar; Readers would have a Master's degree with some publications; while Professors would either have a foreign post-graduate degree in

law (e.g., BCL Oxford or LLB Cambridge), or a Master's in law with published research and six years' minimum teaching experience. Only part-time faculty would be chosen from the legal profession who had at least five years' experience at the bar, though this experience may be reduced based on academic excellence of the candidate.⁶²⁰ The Report criticized the private law colleges, stating that they "should not be allowed to degenerate into mere machines for producing legal practitioners," and affiliations awarded should be based on strict criteria that kept the standards of teaching, library facilities, buildings etc.⁶²¹

Unfortunately, the impact of this valuable Report 1958-59 was not felt. The Report could have addressed many of the crucial problems in legal education and practice that would be necessary for a decolonization of the country, but rule of law and democratic government was not the focus, and nothing materially changed in legal education for the next few decades. This is not true of India where in 1954, the Ford Foundation had dedicated twelve million dollars to the cause of legal education. Of this amount, seven Million dollars were given to American law schools like, Harvard, Columbia, Michigan, Stanford and Berkeley, to develop an international law curriculum, provide training to Indian lawyers who came to study in the US, and create a space for Indian and American academics interested in working in Indian legal education.⁶²² Baxi sums up the successes of the Ford Foundation in India with regard to legal education in three main ways: the financial assistance for infrastructure developments at the Delhi and Banaras Law School which included the funding of law libraries; an exchange program for law faculty; and the

⁶²⁰ *Ibid* at 138.

⁶²¹ *Ibid* at 119.

⁶²² Krishnan, *supra* note 589 at 450.

investment in legal research through the establishment of the Indian Law Institute which is a “premier” institution in the continent.⁶²³

The Ford Foundation’s interventions in India faced critique from its own American academic consultants in the mid 1950s, like Carl B. Spaeth from Stanford Law School and Herbert Merillat, a lawyer and historian – who believed that for any effective reform one needed to engage with the parties on the ground like the Indian Bar Council, and work with Indian academics researching and teaching in India.⁶²⁴ The consultants proposed that two sets of Indians – academics (which included judges) and officers of the Indian Foreign Services – should be invited to the US and study the “theoretical and practical aspects of international law and diplomacy from American Law Professors.”⁶²⁵ At a conference in Stanford in 1957, one of the key areas of reform in legal education was to research and teach law from a comparative and historical context rather than the “rote memorization of black-letter rules” which was the practice in India at the time.⁶²⁶

By 1958, the Indian Law Commission also issued a Report which described the state of legal education in similar terms to Pakistani equivalent. The Report declared that law schools in the country were “extremely defective” and were not geared to produced “jurists or competent legal practitioners.”⁶²⁷ It further stated that the standards of legal education had worsened and listed a number of ways⁶²⁸ that legal education could be improved, including a clear division

⁶²³ Baxi, *supra* note 584 at 328–329.

⁶²⁴ Krishnan, *supra* note 589 at 451–453.

⁶²⁵ *Ibid* at 454.

⁶²⁶ *Ibid* at 455.

⁶²⁷ *Law Commission Report* (Indian Law Commission, 1958) at 44.

⁶²⁸ The Report further limited the law degree to only those who had graduated with a BA previously, law courses at the universities should focus on theory while practical courses should not be part of the curriculum, the exclusion of Roman Law and a compulsory subject, jurisprudence should be taught in the second year, teaching should be at full-

between the law expected to be learnt at university and that which is required during the one-year apprenticeship period.⁶²⁹ The Report further provided for the requirements of the apprenticeship period in terms of training, and further, the involvement of the Indian Bar Council to arrange for lectures delivered by practising advocates preparing the apprentice for practice which focused on procedural law and professional conduct amongst others.⁶³⁰

The Law Commission Report 1958 proposed that only full-time dedicated faculty should teach and dispensed with the *traditional* idea that practitioners should teach at law schools. The practitioner could be part of visiting faculty and divide their time between practice and teaching which was in opposition to the culture of teaching of the US where a full-time committed faculty taught law through a mixed pedagogy of lectures and the Socratic method, including case method. The Report proposed that practical law courses should be the responsibility of the Bar while the more theoretical aspects of law as per a scientific study of law should be the responsibility of the law colleges.⁶³¹ This was a shift from a solely practice-oriented approach to legal education inherited from the Raj.

The interventions of the US in legal education in transition countries have been criticized by many, including Brand who argues that there was a “paternalistic” attitude of the US towards these countries, born of the arrogance that “‘we’ have it all right, and ‘they’ either have it all wrong or simply that ‘they’ don’t have it, and the key to development is for ‘them’ to do it our

time institutions with a full-time faculty, the lecture method should remain the mode of teaching but supplemented with seminars and an adoption of case-method, moot courts should be restricted to the professional courses, a diploma in law should be available for those who do not want to practice, introduction of entry examinations for law schools, focus on research and other that involved the role of the Bar to introduced professional courses to facilitate the apprenticeship period prior to enrolment. *Ibid* at 549–550.

⁶²⁹ *Ibid*.

⁶³⁰ *Ibid* at 551–552.

⁶³¹ Krishnan, *supra* note 589 at 457.

way.”⁶³² He proposed that for this form of aid to be successful, two main aspects need to be kept in mind: first, that reform is a two-way street, just because it worked in the US does not mean it will in transition countries who do not have the same socio-political heritage; and second, these interventions cannot be short-term but must have a long-term view so that the reforms proposed are sustainable in nature.⁶³³ I argue that these reform attempts in legal education bore more fruit in India than in Pakistan because of the change of lens to one that was post-colonial in nature especially from the 1960s. The democratic political leaning allowed for more openness to reform, and the stronger drive towards Indianization of legal education to serve the needs of Indian society.

The intervention of the US in India created a greater space for academic approaches to law. Foreign academic advisors played a role in the formation of the law colleges, the curriculum, and also opened the country to the work of American and Indian scholarship. India worked to changing the culture around legal education but the transition from a colonial-rooted system of education towards one that was indigenous to India was not easy. What should be the kind of legal education imparted in the universities which were now almost a century-old? India looked to the United States for guidance, in terms of pedagogy and in dispensation of justice. The adoption of the Langdell case method continued to have a significant impact, but Aggarwal argues that it was not as efficient as a form of learning when thus far, there had been a more statute-oriented study of law.⁶³⁴ This method required the development of students, in terms of “their powers of reasoning, their ability to find issues, their capacity to think...” but the difficulty

⁶³² Brand, “Exporting Legal Education”, *supra* note 521 at 45.

⁶³³ *Ibid* at 45–46.

⁶³⁴ Arjun P Aggarwal, “Legal Education in India” (1959) 12:2 *Journal of Legal Education* 231–248 at 244.

arises when the class sizes are large and faculty is not trained to teach in this style.⁶³⁵ However, Indians were dedicated to the Indianization of law and education so that the learning was centred around Indian society, rather than control by a former colonial power, and that was what they continued to work on.

I propose that the primary difference between US interventions in education and those of the British is simple: the former was based on an invitation by the Indians within the understanding that there would be a more equal negotiation of the best path forward for the country, rather than the latter which were colonial impositions with limited or no room for debate. When Dr. Ambedkar and others questioned the colonial positioning of legal education, they investigated the role of law to serve Indians and the existing centres of knowledge and aimed to change the imperial norms that had restricted the growth of Indian socio-cultural power. This led to a proposal for legal learning viewed through a societal lens. The heavy reliance on memorization by rote, which Dr. Ambedkar worked to eradicate, that had become the norm especially for legal education had served to stifle critical thinking that questioned the colonial narrative. The need for an anti-colonial curriculum that “recognizes the power of ‘local social practice and action in surviving the colonial and colonized encounters’” was felt more so in India.⁶³⁶ Kanu studies post-coloniality within the field of education and invites an inquiry into education reform by viewing and “rethinking the curriculum as cultural practice in postcolonial education contexts” – cultural practice refers to a “lens for examining curriculum,” and was

⁶³⁵ *Ibid* at 244–245.

⁶³⁶ George J Sefa Dei & Stanley Doyle-Wood, “Critical Knowledge/Multiple Knowings - Possibilities, Challenges, and Resistance in Curriculum/Cultural Contexts” in *Curriculum as Cultural Practice: Postcolonial Imaginations* (University of Toronto Press, 2006) 151 at 177.

“intended to place culture (i.e., the beliefs, values and meanings on which different groups draw to make sense of their world) at the centre of curriculum analysis and reform, and to emphasize practice as an important context for this endeavour.”⁶³⁷ The 1960’s and 70’s in Pakistan saw the beginning of what Iqbal calls the first movement in law and development in developing countries with the intervention of American legal academics aimed to bring about a “change in law and justice institutions.”⁶³⁸ Pakistan and India were both part of this movement and it sought to “use law reform as an instrument of development,” and “focused on bringing about a change in law and justice institutions.”⁶³⁹ As a result, legal education was identified as the beginning of the reform process and the earlier criticisms of following a *foreign* approach were levelled during this time as well. Specifically, Iqbal identifies five reasons that formed the basis of the critique in Pakistan: the focus of a professional and practical approach to law; assumption that the developing countries under review would be following a political system similar to the United States; the idea that a single model could be applicable in all countries, ignoring the unique political and social contexts in each jurisdiction; presumption that the judiciary in all countries are independent and sole arbiters of disputes; ignoring the pluralism that exists in each legal field; and the expectation that each country will have a strong central State which would lead the reform.⁶⁴⁰

The impact of the law and development movement though critiqued was different in India and from the 1960s till the ‘80s remarkable reforms in legal education were experienced. The

⁶³⁷ Yatta Kanu, *Curriculum as Cultural Practice: Postcolonial Imaginations* (Toronto: University of Toronto Press, 2006) at 4–5.

⁶³⁸ Khurshid Iqbal, “The Rule of Law Reform and Judicial Education in Pakistan” (2015) 1 Eur JL Reform 47–92 at 63.

⁶³⁹ *Ibid.*

⁶⁴⁰ *Ibid* at 64.

decline in quality of lawyering through the production of “half-baked lawyers” was addressed through the creation of Legal Education Committees through the introduction of the Advocates Act 1961. The Indian Bar through these Committees aimed to improve legal education through collaboration with Universities, and thus improve the state of lawyering in the country.⁶⁴¹ The 1964 Kerala University Commission Report identified that instead of just training lawyers to be purely litigators, space needed to be created for legal education to be “broad-based, socially oriented and pragmatically conceived.”⁶⁴² In 1967, the two year LLB⁶⁴³ in India was increased to three years,⁶⁴⁴ followed by a mandatory apprenticeship period and an exam for admission to the Bar.⁶⁴⁵ In spite of these improvements, a “mushroom growth” of law colleges was observed in the country which were geared more towards commercial concerns rather than imparting quality education and had inadequate facilities in terms of infrastructure, library facilities and quality of education imparted by the teachers through an old and outdated syllabus.⁶⁴⁶ By the 1970s, institutions, legal academics and scholars in India became more single-minded in their aim to make legal education geared towards the goal of social objective both in terms of the curricula and pedagogy.⁶⁴⁷ Many law schools in India had separated the law degree into two parts, the general LLB degree which was two years long for those who did not want to practice law upon

⁶⁴¹ DN Jauhar, “Legal Education: A Case for Five Year Law Programme” (1999) 41:1 Journal of the Indian Law Institute 66–77 at 67–68.

⁶⁴² Ballakrishnen, “Where Did We Come From?”, *supra* note 610 at 137.

⁶⁴³ Aggarwal notes that this two-year LLB was insufficient for the law student to “properly absorb or be given a thorough grounding in the principles of law.” This was introduced through the Indian University Commission of 1902 and formally introduced since 1908. Aggarwal, *supra* note 634 at 236–237.

⁶⁴⁴ *Ibid* at 237. This three-year LLB was recommended by the Saddler Commission in 1919, the Calcutta University Commission, and the Radhakrishnan Commission.

⁶⁴⁵ Jauhar, “Legal Education”, *supra* note 641 at 68.

⁶⁴⁶ *Ibid* at 69–71.

⁶⁴⁷ Ballakrishnen, “Where Did We Come From?”, *supra* note 610 at 138.

graduation, and the three-year LLB which was geared towards practice.⁶⁴⁸ This led to the evolution of this objective into making “legal education in India service-oriented.”⁶⁴⁹

Indian legal education till the 1970s taught law in a manner that was not indigenous to their social context, and therefore is “unlikely to capture the interest of the student” – even if it does, it does not help towards the “development of Indian law.”⁶⁵⁰ This influence of the societal context within law was given impetus in India by American politics as well, which in the 1960s included the impact of the civil rights movements, women’s movement, the war on poverty, and the war in Vietnam. These political developments brought clinical programs in legal education in the US to the fore and by the 1970s, the Ford Foundation’s decision to fund the Council on Legal Education and Professional Responsibility established clinical programs for legal service in India.⁶⁵¹ Around the world legal education in the 1970s was under review and clinical legal education programs became prominent in the field. In the United Kingdom, some form of clinical programs had been introduced where students engaged in some “simulations and role play” but these were not in the organized and specialized form they took in the United States at the same time.⁶⁵² In Canada, this form of experiential legal learning also took root in the 1970s with a number of leading universities in the country including Universities of Manitoba, Alberta, Toronto, Windsor, Dalhousie and York (Osgoode Hall Law School) to name a few, engaged in

⁶⁴⁸ *Ibid* at 141.

⁶⁴⁹ *Ibid* at 138.

⁶⁵⁰ Jill Cottrell, “10 + 2 + 5: A Change in the Structure of Indian Legal Education” (1986) 36:3 *Journal of Legal Education* 331–357 at 341.

⁶⁵¹ Jeff Giddings et al, “The First Wave of Modern Clinical Legal Education: The United States, Britain, Canada, and Australia” in *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011) 3 at 5.

⁶⁵² *Ibid* at 7.

community legal clinic providing legal services with federal funding.⁶⁵³ Clinical programs were established in Australia as well during this time period, including the University in Melbourne, La Trobe University, and University of Monash, while others followed suit in the 1980s.⁶⁵⁴ The clinical legal education movement in the US, aside from the country's political context of the time, was also in some part in response to the lack of an apprenticeship component prior to the Bar exam and enrolment at the Bar.⁶⁵⁵ These programs were very useful in providing students with the experience that clinical programs offered.⁶⁵⁶ By 1977, the Committee on National Juridicare Equal Justice-Social Justice, encouraged the introduction of these programs in Indian law colleges so as to "sensitize students to the broader social obligations of the legal profession."⁶⁵⁷

Professor Robert Cole from California upon invitation to assess the developments in legal education in India for the Ford Foundation in 1971, concluded that the legal profession was focused on a litigation perspective,⁶⁵⁸ and any overhaul of the system would not be effective because universities were "resistant to change; intensely bureaucratic; corrupt; wedded to outdated standards for evaluating employees; and highly inefficient."⁶⁵⁹ With the universities and the University Grants Commission so wedded to preserving the status quo, other avenues for reform would have to be found.⁶⁶⁰ The solution proposed was to find members of the Indian legal community "with imagination and a drive to get things done, and give them some resources to

⁶⁵³ *Ibid* at 7–8.

⁶⁵⁴ *Ibid* at 8–9.

⁶⁵⁵ *Ibid* at 14.

⁶⁵⁶ *Ibid*.

⁶⁵⁷ Bruce Avery Lasky & M R K Prasad, "The Clinical Movement in South East Asia and India" in *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011) 37 at 45.

⁶⁵⁸ Krishnan, "Professor Kingsfield Goes to Delhi", *supra* note 589 at 468–469.

⁶⁵⁹ *Ibid* at 470.

⁶⁶⁰ *Ibid*.

get things done.”⁶⁶¹ This is how scholars such as Professors NR Madhava Menon and Upendra Baxi entered the frame.

Through Professor Menon’s time in Columbia University⁶⁶² and experience of clinical legal programs in the US, he introduced many changes to the legal education system in India.⁶⁶³ A special consideration was made to “curriculum development, new and progressive interactive work-centred teaching methodologies, case management, training workshops, administrative procedures, and manual production, as well as general office setup.”⁶⁶⁴ By linking legal aid with legal education, the form clinical legal education took in India was to instill two main characteristics in the legal professional: skills and social justice values. The goal was to change the way law was perceived and practised in the country.⁶⁶⁵ Menon’s contribution to the development of clinical legal education in the Indian law schools has had immeasurable benefits to the field and was a major factor in the Indianization of legal education in India’s post-colonial narrative. He, in his co-authored paper with Bloch, writes that there are three main qualities of clinical legal education around the world: the first is related to the professional education mission which has two main curricular objectives, preparing students for legal practice which is lost in the traditional curriculum of legal education, and the training in professional skills whilst “instilling

⁶⁶¹ *Ibid* at 472.

⁶⁶² Bloch writes that Menon’s time in the United State as a Fulbright Scholar at Columbia University in the 1980s, played a monumental role in his experience with clinical legal education as it was institutionalized in the United States in the 1970s and 1980s. Frank S Bloch, “NR Madhava Menon: The Guiding Light for Global Clinical Legal Education” (2020) 11:2 Jindal Global Law Review 209–220 at 210.

⁶⁶³ By way of an example, when Prof. Menon was invited to set up a new law program in Pondicherry, he encountered the same bureaucratic red tape and institutional resistance but still was successful in introducing three main changes: the pedagogy changed from lectures to case method and problem-solving techniques of learning; clinical legal education programs; and changes in the curriculum. All reforms had an eye on social justice which became the main aim for all legal education reforms in the 1970s and beyond. Krishnan, “Professor Kingsfield Goes to Delhi”, *supra* note 587 at 466–467.

⁶⁶⁴ Lasky & Prasad, *supra* note 657 at 41.

⁶⁶⁵ *Ibid* at 44.

professional value of public responsibility and social justice.” The second quality is related to the experiential form that this learning takes, rather than the traditional lecture method of teaching pedagogy. The third aims to re-focus the goal of legal education towards social justice.⁶⁶⁶ Training students to be attuned to the needs of the society that they inhabit, and will later serve, resulted in a form of social action that transformed the way law was taught and learnt in the country.⁶⁶⁷

The role of Upendra Baxi, a celebrated jurist and scholar in India, also linked legal education to society by focusing on how the former could be used to help resolve the issues concerning the latter.⁶⁶⁸ Participating in a series of workshops⁶⁶⁹ conducted by the University Grants Commission in the mid-1970s, Baxi wrote a detailed working paper on a more socially relevant legal education for the University Grants Commission 1975-1977. The three-year curriculum which was decided by the Bar Council of India consisted of a minimum of sixteen courses of which ten were compulsory⁶⁷⁰ and six optional courses from a list of eighteen.⁶⁷¹ Baxi

⁶⁶⁶ Frank S Bloch & NR Madhava Menon, “The Global Clinical Movement” in *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011) 267 at 269.

⁶⁶⁷ *Ibid* at 270. Another valuable contribution by Professor Menon was the introduction of the comprehensive five-year program which, following completion of high school or matriculation, permitted students to graduate with a BA/LLB; this will be discussed in greater detail in a later section of this chapter. Krishnan, “Professor Kingsfield Goes to Delhi”, *supra* note 589 at 478–479.

⁶⁶⁸ Lovely Dasgupta, “Reforming Indian Legal Education: Linking Research and Teaching” (2010) 59:3 *Journal of Legal Education* 432–449 at 439.

⁶⁶⁹ The immersion of legal education within the social sciences was one of the main aims of these workshops and the Report identifies three main objectives: modernization of the LLB syllabus to make it more attuned to the needs of social landscape; to identify how law courses could be enhanced through an interdisciplinary approach; and preparation of guidelines for development of course materials for each course. Baxi Upendra, *Towards a More Socially Relevant Legal Education 1975-1977* (University Grants Commission, 1977) at 1.

⁶⁷⁰ Indian Legal and Constitutional History; Contract; Tort; Family Law; Criminal Law and Procedure; Constitutional Law of India; Property Law; Evidence; Legal Theory (Jurisprudence and Comparative Law); and Civil Procedure (including Limitation and Arbitration) *Ibid* at 4.

⁶⁷¹ Administrative Law; Equity; Public International Law; Company Law; Labour Law; Taxation; International Organization; Bankruptcy; Law of Cooperation and Public Control of Business; Military Law; Insurance; Trust and other fiduciary obligations; Trademarks and Patents; International Economic Law; Criminology and Criminal Administration; Interpretation of Statutes and Principles of Legislation; Legal Remedies; Private International Law. *Ibid* at 4–5.

states that a perusal of these courses as proposed by the Bar are focused on the study of law from a professional perspective,⁶⁷² and traditionally, this has focused on a litigation perspective of legal work, while more modern interpretations would look at the study of law from a social context.⁶⁷³ From this modernistic perspective, curricula development would view law not in a purely doctrinal black-letter sense but more as “a social process” in itself.⁶⁷⁴

The study of law from a social context required revisions in the curricula of the Indian LLB degree and needed the incorporation of learning available from more local sources like Gandhi, Tilak, Ranade, and others.⁶⁷⁵ As a result, Baxi denounced the influence of foreign theories in the study of law through the import of American legal education in India. This critique had been raised by American critics of the Ford Foundation’s work in the 1950s in India, as discussed earlier, but Baxi spoke specifically about this with reference to the case-method. He stated that for this method to be successful, the teacher needs to accept the inherent “uncertainty and insecurity” in the case method as a pedagogical tool. It is rare, however, for law faculty in India to state that they “do not know the answer to a problem”⁶⁷⁶ and as a result, there is a disinclination on the part of faculty to adopt this as a form of teaching. He suggested that this could be addressed through organization of workshops, which would be about four to five weeks long, to help learn “how one can transform one’s teaching techniques even in the most under-developed contexts.”⁶⁷⁷

⁶⁷² *Ibid* at 5.

⁶⁷³ *Ibid* at 6–7.

⁶⁷⁴ *Ibid* at 8.

⁶⁷⁵ *Ibid* at 11.

⁶⁷⁶ *Ibid* at 14.

⁶⁷⁷ *Ibid* at 17.

These developments in legal education in India, with the help of Professor Menon, Baxi and others, had by the late 1970s and 1980s moved towards making the law degree a five-year degree – a BA for the first two years, and the LLB for the next three. The Indian Bar Council introduced a new structure to legal education: after ten years of schooling, two years would be for academic or vocational schooling, followed by five years of law school. The five years of law school would be comprised of two years of pre-law courses,⁶⁷⁸ and three years of law courses where compulsory courses were twelve.⁶⁷⁹ The University could also prescribe its own courses which were at least six courses which were more specialized in nature to the law degree.⁶⁸⁰ These changes led to the development of the National Law Schools which aimed to develop “socially conscious lawyers who...would responsibly serve in the field of law by developing skills in regard to advocacy, legal services, legislation, law reforms” etc.⁶⁸¹ Entrance exams were required for aspiring law students, coupled with an intensive curriculum to address the issue of those who chose to study law due to lack of other options.⁶⁸² This new program allowed students the option of employment that was less practice-focused which was one of the major successes since it broke the ceiling that limited graduates of law to practice.⁶⁸³ A wider scope for legal education

⁶⁷⁸ Pre-law courses as provided in the Bar Council of India Rules were: General English; Political Science; Economics; History; Sociology; Legal language and writing; and History of Courts, Legislature and the legal profession. Cottrell, “10 + 2 + 5”, *supra* note 650 at 346.

⁶⁷⁹ Compulsory Courses in Law were Contract Law; Torts; Family Law (Hindu and Muslim Law); Crime and Procedure; Constitutional Law of India; Property Law and Easements; Evidence; Legal Theory; Civil Procedure; Administrative Law; Public International Law; and Practical Training. *Ibid*.

⁶⁸⁰ These courses included: Equity; Company Law; Labour Law; Taxation; International Organisation; Bankruptcy; Law or cooperation and Public Control of Business; Legislative Drafting; Military Law; Insurance Law; Trusts and other fiduciary obligations; Trademarks, copyright and patents; International Economic Law; Criminology and criminal administration; Interpretation of Statutes and principles of legislation; Legal Remedies; Private International Law; Comparative Law; Law and Social Change; Law and Poverty; Law related to Land Revenue, Land Reform and Rural Development; Law and Planning; Law relating to Local Self-Government. *Ibid* at 347.

⁶⁸¹ Ballakrishnen, “Where Did We Come From?”, *supra* note 610 at 145.

⁶⁸² *Ibid*.

⁶⁸³ *Ibid* at 148.

would be adopted through interdisciplinarity, and the Bar Council would have more control over quality.⁶⁸⁴

Cottrell documented some of the reactions to these new reforms in legal education in India from the part of faculty who believed that teaching was not the problem, rather student commitment was the larger issue. It was believed that students, especially those that were influenced by members of different national political parties, would be hostile to any increase in numbers of years at school and may riot against the system. Others questioned the capability of law teachers to teach non-law courses in the social sciences. Faculty, meanwhile, believed that the solution was not to teach “more” because the increase from two years to three years in the LLB had not helped, and would in fact make legal education more elite in nature, accessible only to those with financial means. The Bar Council also received criticism in its policies regulating the admission to the Bar that the standards of entry at that stage needed to be improved and increased role through different professional training programs.⁶⁸⁵ But work on the five-year curriculum continued and in 1984, the University of Udaipur was the first to adopt the new reforms to legal education⁶⁸⁶ and by 1986, the National Law School of India University⁶⁸⁷ was established through the National Law School of India Act, 1986. This Act 1986 “conferred complete administrative and academic autonomy to the University.”⁶⁸⁸ These schools, as analyzed by Badrinarayana, introduced four main changes that proved to be very effective: the introduction of national level examinations for admission, restricting the number of entries to 80

⁶⁸⁴ Cottrell, “10 + 2 + 5”, *supra* note 650 at 347–348.

⁶⁸⁵ *Ibid* at 349–351.

⁶⁸⁶ *Ibid* at 351.

⁶⁸⁷ “About NLSIU”, online: *National Law School of India University* <<https://www.nls.ac.in/about/about-nlsiu/>>.

⁶⁸⁸ *Ibid*.

per year per school; objective of legal education was social justice and work in public interest; combination of BA with the LLB making it a five-year degree qualification; and the introduction of clinical legal education where students gained experience in the reality of legal problems encountered by the people.⁶⁸⁹ The new curriculum at the National Law School followed the trimester system:

Table 5.2: Breakdown of 5-year BA/LLB India⁶⁹⁰

First Trimester	July-September	Sociology I; Economics I; Legal Methods, Materials & Processes; Torts I; English and Legal Language
Second Trimester	October- January	Economics II; Political Science I; History I; Contracts I; English & Legal Language (Continued)
Third Trimester	March-July	Sociology II; Contracts II; Constitutional Law I; Torts II; English and Legal Language (Continued)
Fourth Trimester	July-September	History II; Political Science II; Constitutional Law II; Family Law I
Fifth Trimester	October- January	Jurisprudence I; Constitutional Law III; Criminal Law I; Family Law II
Sixth Trimester	March-July	Criminal Law II; Administrative Law; Property Law; Political Science III
Seventh Trimester	July-September	Criminal Law III (Cr. P.C.); Law of Evidence; Code of Civil Procedure I; Clinical Course I (ADR)
Eighth Trimester	October- January	Code of Civil Procedure II; Corporate Law I; International Trade Law; Land Law
Ninth Trimester	March-July	: Drafting, Pleading, & Conveyancing; Corporate Law II; Human Rights Law; Law, Poverty, and Development
Tenth Trimester	July-September	Taxation Law I; International Law I; Jurisprudence II (Interpretation of Statutes); Intellectual Property Law
Eleventh Trimester	October- January	Clinical Course II (Litigation); Banking Law; International Law II; Labor Law
Twelfth Trimester	March-July	Environmental Law; Trust & Equity; Labor Law II; Insurance Law

⁶⁸⁹ Deepa Badrinarayana, "India's State of Legal Education: The Road from NLSIU to Jindal" (2014) 63:3 Journal of Legal Education 521–523 at 522.

⁶⁹⁰ Krishnan, "Professor Kingsfield Goes to Delhi", *supra* note 589 at 498–499.

Thirteenth Trimester	July-September	Conflict of Laws; Optional Seminar I; Optional Seminar II; Optional Seminar III
Fourteenth Trimester	October- January	Taxation Law II; Optional Seminar IV; Optional Seminar V; Optional Seminar VI
Fifteenth Trimester	March-July	Legal Practice (Professional Ethics); Optional Seminar VII; Optional Seminar VIII; Clinical Course III (Placement) "All courses carry a uniform course credit of 4 each.

Menon describes this “integrated” approach as one where the study of law is combined with social justice through various clinical methods where the focus is on “public good.”⁶⁹¹ Reforms in higher education need to be attuned to the “agonizing reality of” the social context of India – “the reality of destitution, deprivation, poverty, exploitation and harrowing levels of sub-human existence.”⁶⁹² By the 1980s, the role of the Ford Foundation in legal education in India began to diminish⁶⁹³ but by this time the wheels had been set in motion. The impact of American academics like Marc Galanter⁶⁹⁴ in re-exploring Indian legal education from an interdisciplinary focus played a great part in opening the field not only in India but also around the world. His work, and that of his contemporaries like Bernard Cohn,⁶⁹⁵ Robert Kidder⁶⁹⁶ etc., looked at the study of law “closer to the realities of what occurs on a daily basis in courthouses, police station,

⁶⁹¹ NR Madhava Menon, “Keynote Address at the Seventh Worldwide Conference of the Global Alliance for Justice Education Held at Jindal Global Law School, Sonapat, India on December 10, 2013” (2014) 1:2 Asian Journal of Legal Education 147–151 at 149–150.

⁶⁹² Baxi, *supra* note 669 at 27.

⁶⁹³ Baxi, *supra* note 584 at 333–334.

⁶⁹⁴ Some of the work that Marc Galanter has undertaken in law in India overlaps with the legal profession, legal education and the rule of law in the country - Galanter, “Introduction”, *supra* note 293; Marc Galanter & Rajeev Dhavan, *Law and Society in Modern India* (Delhi: Oxford University Press, 1989); *India’s Grand Advocates: A Legal Elite Flourishing in the Era of Globalization*, SSRN Scholarly Paper, by Marc Galanter & Nick Robinson, papers.ssrn.com, SSRN Scholarly Paper ID 2348699 (Rochester, NY: Social Science Research Network, 2013).

⁶⁹⁵ Bernard S Cohn, “Law and the Colonial State in India” in June Starr & Jane F Collier, eds, *History and Power in the Study of Law* New Directions in Legal Anthropology (Cornell University Press, 1989) 131.

⁶⁹⁶ Robert Kidder, “Report of the Conference on the Comparative Study of the Legal Profession with Special Reference to India Report” (1968) 3 Law & Soc’y Rev 415–444.

and villages...”⁶⁹⁷ Galanter writes that “Public and profession in India concur in visualizing the lawyer in the role of courtroom advocate, rather than business adviser or negotiator, much less social planner. Lawyers see themselves this way and clients typically come to them at a relatively late stage of a dispute, already committed to go to court.”⁶⁹⁸ Galanter admits that there is no guarantee that legal education always leads to legal practice, his work focuses on those who do practice since there is little information about what those who do not practice after their law degrees.⁶⁹⁹ At the close of the 20th century, in India, the Global Alliance for Justice Education held a conference with the aim of encouraging participants “to imagine a law school whose primary mission is to reduce injustice,” with the aim addressing “the question of how to place justice – and how to achieve justice – at the center of legal education concretely and pragmatically.”⁷⁰⁰ In India, this careful articulation of the goal of legal education in post-Partition India was through the selective encounter with American legal education culture where Indians controlled the manner and form the narrative took to serve the people of the country in a more effective way.

Pakistan unfortunately did not have the same engagement as India. This is evidenced through a study of the Five-Year Plans of the Government. These Plans detail areas of reform in different sectors and I studied the Plans to interrogate how higher education in law was affected. Soon after the time of the Report 1958-59, the Third Five-Year Plan in Pakistan (1965-1970) was passed which recommended certain reforms in teaching which emphasized that students needed to be taught how to think and focus on “real learning” rather than memorisation by rote and

⁶⁹⁷ Moog, “The Study of Law and India’s Society”, *supra* note 52 at 129–130.

⁶⁹⁸ Galanter, “Introduction”, *supra* note 293 at 207.

⁶⁹⁹ *Ibid* at 213–214.

⁷⁰⁰ Frank S Bloch, *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford ; Oxford University Press, 2011) at xxi.

heavy reliance on the teacher to do the work for them. The change in teaching would also need to be reflected in a change in examination and assessment because it was recognized as one based on an “archaic system” which was “conducive to the laziness of the pupils over lengthy periods of time...,” and encouraged memorization.⁷⁰¹ But this unfortunately continues to reflect the current reality of the Pakistani legal education system and the different sets of five-year plans from the 1970s onwards focused on different aspects of higher education in the country but did not touch upon legal education. The emphasis in the Fourth Five-Year Plan (1970-1975) was on the development of Universities with a scientific orientation to allow for better employment opportunities for its graduates,⁷⁰² while the Fifth Five-Year Plan (1978-1983) focused on the developed of skilled labour and emphasis was on agricultural development and its related fields of water, power, transport, communications etc.⁷⁰³ By the mid-1980s, the focus of the Planning Board shifted on the development of science and technology through investment in existing universities to improve quality in these areas through the Sixth Five-Year Plan (1983-1988).⁷⁰⁴ The next Plan, the Seventh (1988-1993), introduced changes in the curriculum in university education to accommodate General Zia’s vision of the Islamic Republic of Pakistan and should reflect Islamic values. Further, until then, the Federal Government had been responsible for funding universities while the administration was in the hands of the provincial governments. Through this Seventh Five-Year Plan (1988-1993) the private sector was encouraged to fund different areas so as to

⁷⁰¹ Government of Pakistan, Planning Board, “Third Five Year Plan”, (1970), online: <https://www.pc.gov.pk/uploads/plans/3rd_five_year_plan.pdf>.

⁷⁰² Government of Pakistan, Planning Board, “Fourth Five Year Plan”, (1975), online: <https://www.pc.gov.pk/uploads/plans/4th5yPlan_1970-75.pdf>.

⁷⁰³ Government of Pakistan, Planning Board, “Fifth Five Year Plan”, (1983), online: <https://www.pc.gov.pk/uploads/plans/5th_5year_plan_1978-83_part_1.pdf>.

⁷⁰⁴ Government of Pakistan, Planning Board, *Sixth Five Year Plan* (1988).

improve the quality of higher education and universities were to become self-financed over time, and the focus continued to be on science and technology.⁷⁰⁵ The Eighth Five-Year Plan (1993-1998) recognized that universities continued to suffer from “serious administrative, financial and disciplinary problems,”⁷⁰⁶ and proposed that the University Grants Commission would be awarded complete authority in dealing with universities because the duality of control, i.e. financial control of federal government, and administrative control of provincial government, had been unsuccessful. This duality in control also existed in legal education, albeit in a different form, and continues to date as discussed in chapter 2. The Higher Education Commission (established in 2002, replacing the earlier University Grants Commission) and the Pakistan Bar Council share control of legal education in the country. But the quality of this specialized higher education did not improve.

Raza et al write that higher education in Pakistan as a whole has suffered due to lack of political will to effect change, insufficient investment, arbitrary registration of ill-equipped private institutions, all of which result in an inability to implement any meaningful change through effect decision-making.⁷⁰⁷ Ibad identifies the neglect of education on the national scale through a study of budgetary allocations to the sector which have historically remained fixed at 2% of the GNP, despite UNESCO’s recommendation of a minimum of 4%. It was only in 2003 that this was increased to 3%, in higher education by 2005 Rs. 9 billion (a 1500% increase) were

⁷⁰⁵ Government of Pakistan, Planning Board, “Seventh Five Year Plan”, (1993), online: <https://www.pc.gov.pk/uploads/plans/7th_5year_1988-93.pdf>.

⁷⁰⁶ Government of Pakistan, Planning Board, “Eighth Five Year Plan”, (1998), online: <https://www.pc.gov.pk/uploads/plans/Eighth_1993-1998.PDF> at 318.

⁷⁰⁷ Mehr Mohsin Raza et al, “Analysis of Higher Education Policies of Pakistan and Suggestions for New Policy” 22 at 17–18.

allocated but rising costs inflation and expenses unfortunately didn't allow for any material improvement.⁷⁰⁸

The Pakistan Bar Council was created in 1973, following Bangladesh's independence from West Pakistan, through the Legal Practitioners and Bar Councils Act, 1973.⁷⁰⁹ The Bar was responsible for management of the legal profession through the grant or cancellation of licenses to practice, discipline of its members as well as management of legal education through its Legal Education Committees which were empowered to accredit law schools, decide the curriculum, and hold conferences and seminars to improve the state of legal education in the country. Advocate Moin Azhar Siddiqui remarks that law has historically been kept subordinate to other disciplines and treated as a poor cousin even though lawyers have played an influential role in the government throughout the history of the country.⁷¹⁰ However, it appears that the Bar was not focused on legal education and therefore, developments were slow during the 70s and 80s.⁷¹¹ Advocate Akmal Wasim notes that as far back as 1965, legal education was undertaken as a part-time endeavour, and faculty members would be practising advocates where they would teach for an hour and go back to practice. The system was a rote learning process and not true learning, and the same continued even after the creation of the Pakistan Bar Council.⁷¹² Until 1991, the law

⁷⁰⁸ Fareeda Ibad, "Analysis of Pakistan's Educational Policy in Terms of Higher Education" (2017) 6.

⁷⁰⁹ note 143.

⁷¹⁰ Siddiqui, *supra* note 179.

⁷¹¹ Repeated attempts to access the archives or records related to legal education in Pakistan with the Judicial Commission of Pakistan and the Pakistan Bar Council failed for two main reasons: the 2018 Supreme Court case had been questioned by several parties, and thus, the Bar was not interested in allowing any requests for access to their archives for fear of further criticism; the access to the Judicial Commission archives was not possible because initially it was refused, and finally when it was granted Covid-19 had already hit and travel to Islamabad was not safe. To compensate for the loss of material during this time, interviews with key personnel revealed that no reform had unfolded or been affected in the area of legal education because of the tumultuous political climate of the 70s and 80 which included the imposition of another martial law under General Zia-ul-Haq from 1977-1988.

⁷¹² Akmal Wasim, *The State of Legal Education in Pakistan* (2020).

degree in Pakistan was still a two-year degree as designed by the British in colonial India but there had been an addition and substitution of some courses when compared to the two-year curriculum followed in the early twentieth century. The Table that follows lists the courses studied during these years obtained through the University of Karachi Examination Department.

Table 5.3: Curricula for the Two-Year LLB

Year	Courses
First	Modern Jurisprudence and Islamic Jurisprudence; <i>Constitution of Pakistan 1973</i> and Interpretation of Statutes; <i>Pakistan Penal Code</i> and <i>Criminal Procedure Code</i> ; Muslim Personal Law and Basic Arabic Quranic Texts; <i>Contract Act</i> and <i>Sale of Goods Act</i> ; <i>Partnership Act</i> , <i>Negotiable Instruments Act</i> and Principles of Mercantile Law, <i>Arbitration Act</i> , Law of Carriage of Goods
Second	<i>Specific Relief Act</i> , Law of Insurance and <i>Income Tax Act</i> ; <i>Transfer of Property Act</i> and <i>Sind Rent Ordinance 1979</i> ; <i>Civil Procedure Code</i> and <i>Limitation Act</i> ; <i>Evidence Act</i> and Law of Torts; Public International Law; Company Law and Labour Laws; Civil Pleadings, Conveyancing and Ethics etc.

As can be seen, the Islamic influence is evident: the course on jurisprudence was amended to include Islamic jurisprudence and a study of Arabic texts, in addition to the existing courses on Muslim Personal Law. The second difference between the two-year curricula was the heavy focus on doctrine by the early 1990s, where earlier areas of law were based on their specific categories, later it was more focused on the statutes. For example, Contracts and Torts were taught together in the first year and about eight decades later, the study of the subject focused on statutory enactments. Thus, the two-year curriculum as it existed until 1991 was more statute-focused and through the passage of time, as the Pakistani National Assembly enacted more statutes, some of which were added to the curriculum in a seemingly procedural manner. In 1991, the three-year curriculum was introduced which followed fourteen years of schooling and

students were expected to study seven subjects in each year. These are provided in the following Table.

Table 5.4: Curricula in the three-year LLB in Pakistan from 1992-2018⁷¹³

Year		Courses
Part I	Paper I	English Jurisprudence
	Paper II	Law of Contract - General Principles and Law of Contract, 1872 - Sale of Goods Act, 1930
	Paper III	Islamic Jurisprudence
	Paper IV	Law of Tort & Easement
	Paper V	Criminal Law - General Principles - The Pakistan Penal Code, 1860 - Hudood Ordinance
	Paper VI	Constitutional Law I - The British Constitution - The US Constitution
Part II	Paper I	Constitutional Law II - Constitutional History of Pakistan - Constitution of Pakistan
	Paper II	Equity - Principles of Equity - The Trusts Act, 1882 - The Specific Relief Act
	Paper III	Mercantile Law - The Companies Ordinance 1984 - The Negotiable Instruments Act 1881 - The Partnership Act 1932
	Paper IV	Law of Transfer of Property - Transfer of Property Act 1882 - Registration Act 1908 - Succession Act 1925 - Land Acquisition Act 1894
	Paper V	Islamic Personal Law - Muslim Personal Law and relevant enactments/Quranic verses - Islamic Pre-emption Laws - The Guardian and Wards Act, 1890
	Paper VI	International Law - Public International Law - Private International Law
	Paper VII	Special and Local Laws

⁷¹³ Pakistan Bar Council, *Three-Year LLB Curriculum* (Hamdard University School of Law, 2004).

		- West Pakistan Land Revenue Act 1967 (as adopted in respective provinces) - Tenancy Act
Part III	Paper I	Civil Procedure - The Civil Procedure Code 1908 - Limitation Act 1908
	Paper II	Criminal Procedure - The Code of Criminal Procedure - Medical Jurisprudence (Autopsy and Injuries)
	Paper III	Law of Evidence - <i>Qanoon-e-Shahadat</i> Order 1984 - Elements of Legal Ethics
	Paper IV	Conveyancing and Pleadings - Conveyancing - Pleadings - Interpretation of Statutes (General Clauses Act, Section 6, 16, 21 & 26 and selected topics)
	Paper V	Administrative Law - Principles of Administrative Law - Administrative Tribunals - Laws of Civil Service
	Paper VI	Minor Acts - The Stamp Act, 1899 - The Suits Valuation Act, 1887 - The Court Fees Act 1870 - Arbitration Act, 1940 - Urban Rent Laws
	Paper VII	Labour and Taxation Laws a) Labour Laws - Workmen's Compensation Act 1923 - West Pakistan Standing Orders 1968 - Industrial Relations Ordinance 1969 b) Income Tax Ordinance 1979
	Additional Non-Credit Courses as prescribed by the Pakistan Bar Council	- Information Technology (Diploma Course) - English Legal Language - Understanding Law - History of Law - Introduction of Environmental Law - Introduction to Intellectual Property Law - Alternative Dispute Resolution

This three-year curriculum had even more of a statutory focus: only a few courses like jurisprudence, constitutional law, and conveyancing and pleadings, were taught without any reliance on specific legislative enactment but the rest were purely a study of statute. E.g., some

courses like Paper VI was limited to five Minor Acts that have been critiqued to serve little to no purpose: “I have practiced for three decades, and never used the Stamps Act at all. Such courses need to be removed from the curriculum.”⁷¹⁴ The study of legal education from this historical perspective in this dissertation has been useful to understand the logic of the inclusion of these Acts. The Court Fees Act and the Stamps Act both were prescribed in the curriculum for the examination as a Pleader in the late 19th century.⁷¹⁵ It is confounding to discover these relics of a Pleader’s past, continued to occupy an area of examination for the final year of the LLB degree a hundred years later.

Some of the proponents for the change from a two-year LLB degree to a three-year one, were leading practitioners who were also teachers of law in the universities and included a judge of the Lahore High Court Justice Aamer Raza Khan,⁷¹⁶ Advocate Hamid Khan,⁷¹⁷ Advocate Rasheed Razvi.⁷¹⁸ The hope for the increase of one-year to the LLB degree was that the quality of legal

⁷¹⁴ Ijaz Ahmed, *The State of Legal Education in Pakistan* (2020).

⁷¹⁵ Notification by the Judge of the Sadar Court of Sind, Judicial Branch, No.196, dated January 25th, 1884, Sindh Official Gazette, part I, 1884, p.176-177.

⁷¹⁶ Justice Aamer Raza Khan received his LLB degree from the Punjab University – one of the oldest universities in Pakistan established in 1882, and his LLM from Harvard served as a judge of the Lahore High Court from 1979-1981 but refused to take the oath under General Zia-ul-Haq’s Provisional Constitutional Order. He taught law at Punjab University for almost 50 years and also authored the commentary on the Code of Civil Procedure 1908, which is still the primary text by practitioners for commentary on the Code. K Miyon, “Justice (Retd.) Aamer Raza A. Khan: A leading light in the legal profession - Jurist Panel”, (8 January 2021), online: <<https://www.juristpanel.com/justice-ret-d-aamer-raza-a-khan-a-leading-light-in-the-legal-profession/>>. *Justice Aamer Raza A. Khan: A Living Legend of Law*, SSRN Scholarly Paper, by Justice (R) Dr Munir Ahmad Mughal, papers.ssrn.com, SSRN Scholarly Paper ID 3670095 (Rochester, NY: Social Science Research Network, 2020).

⁷¹⁷ Advocate Hamid Khan is a prominent lawyer, educationist and the author of several books on law in Pakistan. He has served as a member of the Punjab Bar Council, as well at the Pakistan Bar Council where he also chaired the Legal Education Committee. He was also elected the President of the Supreme Court Bar Association from 2001-2003. administrator, “Hamid Khan Advocate”, (31 March 2012), online: *Trending Topics in Pakistan* <<https://www.pakistantimes.com/topics/hamid-khan-advocate/>>; Khan, *supra* note 54; Khan, *supra* note 54; “Hamid Khan”, online: <https://www.goodreads.com/author/show/1093843.Hamid_Khan>.

⁷¹⁸ Advocate Rasheed Razvi completed his LLB in 1972 from Government Islamia College and joined legal practice in 1973. He served as a judge of the Sindh High Court from 1995-2000 but refused to take fresh oath under General Pervez Musharaff’s martial law in 2000. He has served as an elected member of the Sindh Bar Council 1984-1994, the General Secretary of the Karachi Bar Association in 1981, President of the Sindh High Court Bar Association for four terms during 2000, 2008, 2009 and 2019. He also served as the President of the Supreme Court Bar Association

education would improve in two ways: firstly, that only serious and committed students would engage in the study of law, and secondly, that this change would control the ever-increasing private law colleges that had started to impart legal education in the country. However, this appears to be more of an attempt to regulate entry to the profession rather than improve the state of legal education in the country. Hamid Khan regretfully noted that “it was quite a failure,” especially in terms of the private law colleges that,

kept increasing, in every place. Every city had a law college and most of them did not require actual lectures to be delivered, everything was done fictitiously to just show that requirements are complete. Money was made in a big way and private law colleges became a way of making big money...and the change from two years to three years made no difference, in fact the problem became much bigger.⁷¹⁹

It was clear that more needed to be done, and by 1998 the Bar Council passed the Rules of Affiliation for Law Colleges to address this specific problem, which led to the litigation in 2005 as discussed in chapter 2.

By the late 1990s while in the UK there was growing acceptance of universities imparting legal education (by 1996 there were eighty-six law schools, as opposed to forty-eight two decades ago),⁷²⁰ Pakistan saw the interventions of two foreign players working in judicial reform that indirectly impacted legal education in universities: the first was the Asian Development Bank funded project, Access to Justice Program which began in 1998, and the second was the Asia Foundation which started the Pakistan Legal and Judicial Reform Project. The Access to Justice

from 2016-2017. “Rasheed Razvi | Biography - Rasheed Razvi & Associate - Advocates & Legal Consultants | Top Law Firm in Karachi, Pakistan”, online: <<https://www.razvilaw.com.pk/rasheed-razvi-biography.php>>.

⁷¹⁹ Khan, *supra* note 150.

⁷²⁰ Boon & Webb, “Legal Education and Training in England and Wales”, *supra* note 356 at 94.

Program began its work in the country through a loan of \$350 million and a grant of \$0.9 million,⁷²¹ however, the interpretation of access to justice was limited to managing the case load of the courts and reduction in delays in the delivery of justice. As a result, the reform work was focused on legal, judicial and police reforms and not sufficiently on legal education. The Program set out six areas of judicial and court reforms; police reforms; legislative and procedural reforms; administrative reforms; other institutional reforms; and legal empowerment. The last area included the promotion and reformation of legal education through the creation of a Fund for Innovation in Legal Education that would “strengthen the quality of legal education in law schools.”⁷²² Also the Report allowed for centers of excellence in legal education in the country,⁷²³ and these would allow for reform that is “technically and financially sustainable and has a positive regard for social equity.”⁷²⁴ Continuing legal education was also suggested by the Program through the work of the bars.⁷²⁵ Siddique critiques the Access to Justice Program in three ways: first, it was overly concerned with efficiency in the court rather than administration of justice itself; second, the reforms proposed were not connected within the social context and focused more on case management practices of the courts; and lastly, the reforms adopted a narrow focus which was centred on the courts and therefore included judges and legal practitioners, and

⁷²¹ A Ercelawn & M Nauman, “Asian Development Bank and Pakistan: Case Study of Access to Justice Programme” (2002) 37:44/45 Economic and Political Weekly 4561–4564.

⁷²² *Access to Justice Program Pakistan* (Asian Development Bank, 2001) at 64.

⁷²³ *Ibid* at 19.

⁷²⁴ *Ibid* at 29.

⁷²⁵ *Ibid* at 73.

excluded members of the public.⁷²⁶ Specifically, legal education had been “historically neglected and reforms have not materialized or worked due to multiple reasons.”⁷²⁷

In contrast, the importance of legal education and the role of the legal profession is evident in a Report⁷²⁸ prepared by the Asia Foundation⁷²⁹ on its Pakistan Legal and Judicial Reform Project. This Report was not published, and could thus not be implemented, due to the imposition of another decade martial law in the country under the Chief of Army Staff Pervez Musharraf in 1999.⁷³⁰ But the Report is useful when trying to understand the state of legal education in Pakistan at the close of the twentieth century – it carried a separate section on Legal Education and the Legal Profession. The objective in these areas was to “improve the human resource capacity of the legal profession and the judiciary by improving the quality of legal education....”⁷³¹ It identified that between 1947 and 1999, Pakistan had seen a decline in the quality of legal education, both in the professional and academic sense, with the result that “legal education in Pakistan is not producing lawyers, judges, legal scholars, government legal officials and other law-trained personnel Pakistan needs to meet the legal, economic, governance, social

⁷²⁶ Siddique, *supra* note 54 at 263–339.

⁷²⁷ These reasons include: “unclear regulatory arrangements and overlapping regulatory jurisdictions, but no real institutional stakeholders; low bars of entry to law schools and also the paucity of new dynamic law schools; outdated legal curricula; inadequate teaching pedagogy; a dearth of full-time, research-focused academics, with consequent reliance by law colleges on part-time faculty; lack of financial and other career incentives for the legal academy; inadequate infrastructure and facilities; unsatisfactory governance of law schools; a near absence of research culture; and legal textbooks/treatises; and less than appreciative social and cultural attitudes towards a career in the academy.” *Ibid* at 298.

⁷²⁸ Professor Marc Galanter kindly shared this Report with me at a conference on Law and Society in Madison Wisconsin in 2018.

⁷²⁹ The website for the Asia Foundation details the following description of its work in Pakistan – “Through a continuous presence in Pakistan since 1954, The Asia Foundation has developed strong ties and valuable expertise on local, regional, and international issues. With an extensive network of local and regional partners in both government and civil society, our projects extend throughout the country, and range from large, nationwide programs to small, local initiatives. In Pakistan, efforts focus on promoting economic development and social inclusion, especially for women, strengthening citizen-state relations, and fostering human rights.” note 599.

⁷³⁰ *Pakistan Legal and Judicial Reform Project* (Asia Foundation, 1999).

⁷³¹ *Ibid* at 57.

and cultural challenges of poverty, civil conflict, social stratification, abuse of rights that Pakistan faces.”⁷³² The key reason⁷³³ for this failure was attributed to the “failures of governance and management of legal education” in the country, and a failure to implement the Reports⁷³⁴ of the Law Commissions of Pakistan in the past.⁷³⁵ This (unpublished) Report recommended the creation of a National Council for Legal Education which will be granted “independent authority to set standards for admission, evaluation and examination, faculty recruitment and promotion, research output...” and would be established through a legislative enactment.⁷³⁶ The composition of this Council was suggested to include members of the Bar, retired and serving judges, scholars, deans of law faculties amongst others, and would be empowered to license and accredit institutes providing legal education. Further, authority was also granted to this to create national bodies for the promotion of legal education and support research, convene conferences so that legal scholarship in the country would be enhanced.⁷³⁷

⁷³² *Ibid* at 58.

⁷³³ The Report further identifies in detail the problems with the system of legal education: “The strategic causes of decline and weakness in Pakistani legal education include lack of strong, implementable processes for institutional processes for institutional quality in legal education; significant under-resourcing of legal education; lack of transparency, accountability and faculty control within legal education, along with significant politicization at certain times; outmoded curricula and teaching; the virtual absence of legal research and a research environment; significant understaffing of full-time faculty; poor infrastructure, libraries and faculty resources; inequitable access and outmoded, sometime corrupt admissions procedures; outmoded, sometimes corrupt examination systems; poor earlier education and language skills amongst the students; among other issues.” *Ibid*.

⁷³⁴ Attempts at access to these Reports from the Law and Justice Commission were not successful because the global pandemic made in-person visits impossible and the Commission Secretary Dr. Muhammad Raheem Awan, though helpful, was unable to provide me digital copies of the Reports requested. These Reports include, Justice Hamoodur Rehman Law Reform Report 1967-70; High Powered Law Reform Committee Report 1974, Law Committee for Recommending Measures for Speedy Disposal of Civil Litigation 1978; Committee on Islamisation of Laws and Establishment of Qazi Courts 1980; and Commission on Reform of Civil Law 1993. But these Reports focused more on litigation reforms rather than legal education. “Reports by the Law and Justice Commission Pakistan”, online: <<http://www.ljcp.gov.pk/Menu%20Items/Publications/Reports%20of%20the%20LJCP/reports/report22.htm>>.

⁷³⁵ note 730 at 58.

⁷³⁶ *Ibid* at 59–60.

⁷³⁷ *Ibid* at 61.

In terms of curriculum, the Report suggested that the first year of the LLB should cover subjects like “legal method, contract, introduction to Pakistani law, legal institutions and legal history, constitutional law and related foundational courses.”⁷³⁸ The second and third year courses would include courses covering a range of topics that were useful for “modern legal practice,” legal policy and for the “development of legal scholarship” with an addition of clinical legal education, legal aid etc.⁷³⁹ Faculty for each national centre needed to be full-time, and granted enough resources, money and time to further research and scholarship, and establish a network with the different institutes providing legal education.⁷⁴⁰ The importance of a research-oriented law faculty was also emphasized by Baxi, as discussed earlier in this chapter, within the Indian context. The categorization of law teachers as on the lowest rung of the legal ladder holds true for Pakistan as well as India, with the exception that only practitioners can enter judicial service, not academics. The hierarchy present in the legal field also influences how law teachers are perceived in Pakistan – regarded as ‘failed lawyers,’ their role in legal education is not considered as worthy in comparison to those of litigating lawyers and this limits their potential impact. This view has been fortified by observations shared by Advocate Akmal Wasim who stated that if one is a full-time teacher of law, he/she is considered a failure in legal practice.⁷⁴¹

Through these stricter controls, the 1999 Report of the Asia Foundation on Pakistan proposed that the legal profession could be improved in the following main areas: the introduction of a sound Bar entry examination to limit entry to the legal profession to those who

⁷³⁸ *Ibid* at 62.

⁷³⁹ *Ibid* at 62–63.

⁷⁴⁰ *Ibid* at 63.

⁷⁴¹ Wasim, *supra* note 712.

are deemed qualified; improving admissions testing for law schools; improving the apprenticeship period before enrolment to the Bar; improving the interview process for enrolment to the Bar; and improve the disciplinary process, continuing legal education, better legal aid facilities etc.⁷⁴² These are the same issues that the Supreme Court identified in 2007 and 2018 in its judgments on legal education. Unfortunately, the 1999 Report by the Asia Foundation was not published, let alone implemented, due to the imposition of another martial law in the country in 1999. On the 12th of October 1999, the military government under General Pervez Musharraf overthrew the democratically elected government of Prime Minister Nawaz Sharif and declared an Emergency under Chapter X of the Constitution of Pakistan, 1973 thereby, suspending not only the operation of Constitution⁷⁴³, but also any reforms to legal education that could have been introduced at the turn of the century.

The three-year LLB degree curriculum continued till the 2018 reforms when the need was felt that the LLB degree should be made at par with other professional degrees like the medical and engineering colleges which were both five-year vocational degrees.⁷⁴⁴ Advocate Wasim notes that the issue is not the number of years, the key was expertise of the faculty so the two-year LLB was more substantial in comparison even though the teachers were only LLB graduates, they were experts in the field.⁷⁴⁵ But there were also those practitioners teaching areas of law that they were not well-versed in – Advocate Ijaz Ahmed who also studied the two-year LLB in Punjab, notes while their faculty at the time was a mix of locally and foreign educated

⁷⁴² note 731 at 63.

⁷⁴³ “How the 1999 Pakistan coup unfolded”, (23 August 2007), online: <http://news.bbc.co.uk/2/hi/south_asia/6960670.stm>.

⁷⁴⁴ Siddiqui, *supra* note 179.

⁷⁴⁵ Wasim, *supra* note 712.

legal practitioners and well-respected in particular fields, they were not necessarily experts in what they were teaching. At times, some would teach based on what they thought was more important, but it was rare for students to write an essay or get any feedback from the teacher. One thing that was lacking was “nobody tried to make you think,” and the focus was just on the single prescribed text and the related exam guides.⁷⁴⁶ This to a great extent unfortunately continues to be the problem to date in the country.

IV. Conclusion: The Twentieth-century Construct of the South Asian Practitioner

The post-colonial construct of the South Asian practitioner took different forms in India and Pakistan. In India, the image of a lawyer became grounded in an interdisciplinary approach to legal education with the goal of social justice, Pakistan continued in the more practitioner-focused approach of the colonial lawyer. Reform initiatives in both countries were influenced by their individual political circumstances where India was more geared towards the rule of law, and Pakistan struggled with democratic and authoritarian rule for almost half of its existence. Therefore, by the end of the twentieth century, the construct of the lawyer in Pakistan was an ill-prepared and poorly trained practitioner in the courts, with a legal education that failed to account for the study of law from a societal perspective. The country’s legal education and practice have thus been riddled with multiple problems which included a lack of entry requirements at law colleges, to the quality of education imparted by a part-time practitioner

⁷⁴⁶ Ahmed, *supra* note 714.

faculty, to poor assessment mechanisms that granted enrolment with the Bar. These limitations have continued through the decades since Partition, only to become increasing insurmountable with the passage of time, with one fact remaining constant – the practitioner reigned supreme in the courts and in universities. The contentious 1998 Rules passed by the Pakistan Bar Council, in part aimed to address some of the problems in legal education, but these were simplistic measures that were not venturing to the core of the issues, attributing much of the reason for the declining quality of legal education to the law colleges.

In Pakistan, the field of legal education by the end of the twentieth century remained trapped in the colonial frame to a significant extent. The lack of sufficient focus on reform of legal education to suit the needs of Pakistani society led aspiring lawyers to resort to foreign LLB degrees which were considered to be *better* than the Pakistani law degree. The institutional inertia of two actors/regulators of the legal education field, the Bar, and the Higher Education Commission, kept the possibility of affecting real change in legal education at arm's length. This resulted in the structure of the legal field to continue in the same manner as it was during British rule of India, impacting the habitus of the profession, with a rising preference for UK acquired legal education and training. This thus stifled the way law is practiced in the courts as well, because the quality of judge-made law depends on the quality of the legal assistance provided by lawyers, as noted by the Supreme Court in its cases on legal education as discussed in chapter 2. Practitioners, though integral in fighting against the British Raj and post-Independence military regimes in Pakistan, have been less focused on provision of justice, and more on the commercial aspect of litigation, rather than social service. This comparative method of studying legal education within post-colonial contexts in South Asia reveals that the problems of legal education

and practice are not new, and the next chapter studies the continuing coloniality within legal education and practice in the twenty-first century.

Appendix

University Of Karachi LLB PART- I (1991-1992) SYLLABUS						
I (100/40)	II (100/40)	III (100/40)	IV (100/40)	V (100/40)	VI (100/40)	VII (100/40)
Modern Jurisprudence Islamic Jurisprudence	Constitution of Pakistan, 1973 Interpretation of Statutes	Pakistan Penal Code, 1960 Criminal Procedure Code, 1998	Muslim Personal Law Basic Arabic and Quran Text	Contact Act, 1872 Sales of Goods Act, 1930	Partnership Act, 1893 Negotiable Instrument Act, 1881 Principles of Mercantile Law Arbitration Act, 1940 Law of Carriage of Goods	
LLB PART- II (1991-1992) SYLLABUS						
I (100/40)	II (100/40)	III (100/40)	IV (100/40)	V (100/40)	VI (100/40)	VII (100/40)
Specific Relief Act, 1877 Law of Insurance Income Tax Act	Transfer of Property Act, 1882 Sindh Rented Premises Ordinance, 1979	Civil Procedure Code, 1908 Limitation Act, 1908	Evidence Act, 1872 Law of Torts	Public International Law	Company Law Labour Law	Civil Pleadings Convincing Legal Ethics

CHAPTER 6

Continuing Coloniality in Legal Education and Practice

I. Introduction

The 150 years (or so) under study for this dissertation (1857-2022) have been helpful in understanding how South Asian legal practitioners were created, shaped by the socio-political environment of which they were a part. By merging the two lenses of education and practice, this dissertation provides a unique perspective on the construct of a legal practitioner in Pakistan today and can help guide reform initiatives that are grounded within history and sociology. This chapter studies the socio-political context of 21st century Pakistan through the eyes of students of law and recent entrants into the legal profession.

I argue that the problems in legal education sought to be addressed through the Supreme Court's 2018 judgment are not new but are systemic in nature. The study of law continues to be bound by colonial logics and has not been decolonized in the past seventy-five years since Partition. While attempts at reform have been made, most notably in 1958 through the Law and Justice Commission's Report and the unpublished Asia Foundation Report as discussed in chapter 5, nothing has materially changed.⁷⁴⁷ Even the 2018 judgment, though suggesting valuable changes as analyzed in chapter 2, fails to divorce the colonial partnership of legal education with practice, or the privileges associated with English law degrees and training certificates. This chapter studies the responses of a group that is rarely consulted when introducing

⁷⁴⁷ note 209; note 730.

changes/reforms – law students and young practitioners. Through focus group research this chapter explores the extent to which the field of legal education continues to be bound by colonial norms of practice and education.

This chapter is divided into four main sections: the second details the methods used to answer the research question, the third part investigates the issues in administration of legal education in the country. I argue that these issues are systemic in nature because they have recurred over the 150 years and have not been sufficiently addressed. The fourth part examines the current construct of the practitioner as a member of an organized, hierarchical Bar with a focus on their interventions in the political field. The success of the Lawyers' Movement (2007-2009) has impacted the way the lawyer is perceived within the Bar and as a member of society with a growing acceptance of the political legal practitioner. The fifth section focuses on the role of the Bar as a regulator of the legal profession and education and invites a constructive critique to inform the discussion on the path to reform.

II. Research Methodology

The research method draws on socio-legal and sociological methods to answer the research question posed in this chapter. Focus groups and interviews with law students and graduates were conducted in 2019-2020. The focus groups were a necessary tool for this research because they allowed a window into legal education from the perspectives of law students and early legal practitioners which have thus far been ignored by the stakeholders in legal education. Since there are two main options available to aspiring lawyers in Pakistan, the Pakistani LLB and

the foreign equivalent, either through registered centres of the University of London or the Brierly Price Prior University, for distance learning degrees, I included participants from both groups. Originally designed as four sessions with four sets of participants from both LLB degrees available in Pakistan – students and practitioners, unfortunately only three were possible. These were conducted in July and August of 2019 in Karachi, and each lasted just over two hours with a minimum of four⁷⁴⁸ and maximum of six participants. While originally, I wanted to focus on participants for the two groups of young lawyers who had joined the legal profession when the 2012 Petition was being adjudicated upon in 2018. Of those who were interested and participated in the focus group research exercise from Pakistani LLB had graduated in 2016 and 2017. Thus, the participants from the Pakistani LLB degree were four in number (two who had confirmed cancelled at the last minute). For the second focus group of practitioners, six participants were selected from the University of London LLB degree through the registered centres in Karachi and graduated in 2017 and/or 2018; the third group comprised students who were enrolled at a University of London registered centre in Karachi at the time of the research exercise in 2019.⁷⁴⁹ While attempts were made to include students of the Pakistani LLB for the fourth session, these were unsuccessful since it was summer time and access to universities was limited due to vacations. Invitations for the focus groups were formally sent to some law schools in Karachi, and one institution Le'cole School for Advanced Studies⁷⁵⁰ responded favourably while

⁷⁴⁸ I had aimed to have six participants in each focus group to ensure uniformity in the process but one group which was composed of graduates of the Pakistani LLB degree was only conducted with four participants because two cancelled on the day of the study.

⁷⁴⁹ Though I had initially imagined that I would also conduct another focus group for Pakistani LLB students, the ensuing pandemic following March 2020, severely limited not just my access to students during that time but also the risk posed to the safety of myself as the principal investigator, and the participants was too great.

⁷⁵⁰ Le'cole is one of the first centres which were registered with the University of London and offers the LLB degree over a three-year period. "University of London Worldwide", online: *Lecole* <<https://www.lecole.edu.pk/london/>>.

the other participants were chosen through invitations sent on various social media groups on Facebook, WhatsApp etc.

Details of the sixteen participants in the three focus group sessions are as follows: in the session with students of the University of London LLB Program there were four women and two men. The men were both in their first year of the degree, while two of the women were in their first year, and the other two in their third. The session with graduates of the University of London were a group of five women and one man. Of these three had graduated in 2017 and three in 2018. The graduates of the Pakistani LLB were four with three men and one woman. Of these two had graduated in 2016, one in 2017, and one in 2018. The selection of these participants was via a snowball technique and attempts were made to make the samples equally distributed between the sexes. All participants of these groups, barring one, were unknown to me prior to this research exercise. The one participant that I knew had been part of a course I taught on Common Law in 2016-2017 but had responded to the call for participants independently. A priority was also based on time constraints, I wanted to ensure that these sessions could be conducted before I returned to Canada.

In the relaxed atmosphere of a focus group setting, the participants shared their views comfortably, and the role of the principal investigator was more focused on facilitating the conversation. At the beginning of each focus group the objective of the session was detailed: to understand experiences of law students in learning law, and how that learning helped them prepare for their careers. A clarification was also provided: this research exercise was not aimed to be a criticism about individual schools but an honest conversation on legal education as related to the participant's experience. In addition, to account for student experiences from the first

liberal arts based five-year LLB Pakistani degree started by the Lahore University of Management Sciences in 2005, interviews were conducted with six graduates. All six graduated in 2020 and two were women, and the rest men. These participants were selected based on interest expressed when an invitation was sent to the LUMS Law Alumni group and the interviews lasted between thirty to fifty minutes.⁷⁵¹ All interviews were conducted via telephone because of the global pandemic but also because the subjects were from different cities: two from Karachi, one from Lahore, one from Islamabad and one from Attock. Two graduates from the Brierly Price Prior⁷⁵² LLB Honours program were also interviewed because this English Law degree is also imparted in Lahore, in addition to the more popular University of London degree.

An article by Zamin Talpur deserves special mention here. In 2013, Talpur conducted focus group research to assess “what is taught at law schools and how it should be taught” from the perspective of law students.⁷⁵³ Further, he identifies that higher education in law has received “almost no attention in terms of formal research,” and his study finds that “quality” in terms of this education from the perspective of the law graduates is “a somewhat elusive concept.”⁷⁵⁴ In an attempt to address the gap in the literature on students experiences of studying law in Pakistan, the focus group research exercise conducted for this project was a useful tool in determining whether, and to what extent, the legal field’s colonial roots impact student decisions

⁷⁵¹ I requested two fresh lawyers who had interned with me in the summer of 2018 to join me in this research exercise. Aside from helping me take notes, I wanted them to share their observations after the sessions as well since they were both from different LLB programs in the city, Zorain Nizamani was a graduate of the University of London program while Wahiba Jatoi was a graduate of the LUM law program.

⁷⁵² The Brierly Price Prior is a UK University created in 1975 and has four schools teaching and providing training in Law, Nursing, Business and Technology in the UK and around the world through its remote learning program. “About BPP University | About Us | BPP”, online: <<https://www.bpp.com/about-bpp/bpp-university>>.

⁷⁵³ Talpur, *supra* note 77 at 60.

⁷⁵⁴ *Ibid.*

to study law and later practice. Finally, I also conducted observation studies in 2017 at the Sindh High Court at Karachi. The selection of courts was based on hierarchy with the Chief Justice of Sindh's courtroom Ahmed Ali Sheikh being the highest, and the lowest being the court of a then newly inducted Justice Yousuf Saeed. The aim was to see how the law is practiced within the hierarchical setting, the manner of the formal processes that practitioners and judges engage in to understand lawyering in a more nuanced way.

III. Systemic Issues in Pakistani Legal Education

Studying lawyering and legal education from a socio-historical perspective helps one see a legal practitioner through time so that one can have a more distinct understanding of how the practitioner was constructed and how her image has evolved to the twenty-first century. This historical investigation has revealed that legal education and practice in Pakistan today suffers from the same, or similar, problems as within the colonial context. I argue that these have become exacerbated within the post-Independence narrative because no concerted effort was made to displace those norms with new ones.

The research conducted via focus group exercises helped paint a current picture of the Pakistani legal field, and five main themes emerged that demonstrate the interconnectedness of legal education and practice: the English law degree is *better* than the local Pakistani LLB; the prestige of a barrister is more than that of the *vakil*; knowledge of the English language is vital for success; the faculty best suited to teach law is a practitioner one; and a graduate of law will *obviously* enter legal practice. Examination of these five inter-related themes reveal how societal

perceptions, as well as those of the legal community, continue to keep the profession within the straitjacket of Pakistan's colonial history. When viewed through a Bourdieusian lens, they also provide further evidence of the overlap in boundaries between the fields of legal education and practice. The intersection of these two fields in legal education which is geared towards practice are metaphorically referred to as mirrors because they reflect each other. The boundaries within and between fields as discussed in chapter 1, are created and reinforced by actors, and Liu defines boundary work "as the process by which a social actor defines the boundary of its spatial location vis-a-vis the locations of other social actors."⁷⁵⁵ But when related to the legal field in Pakistan, as discussed earlier in this dissertation, there are no clear boundaries, and overlaps between two fields emerge, that of legal education and practice. In the simplistic sense this relates to the boundaries created through distinctions in legal education and/or training which in Pakistan are demonstrated by the kind of law degree one possesses, i.e., from University of London or Pakistani LLB degree. This chapter argues that the habitus of the legal field continues to be cast by the long shadow of colonial roots of legal practice and the ensuing impact on education. The structure of the legal field is still divided, in fact even more so than before, by the distinctions based on the kind of law degree or training.

This section of the chapter unpacks the continuing coloniality with insight gained from the focus groups and interviews conducted with law students and young lawyers so that any reform attempted is informed by these perceptions. Perusal of court files reveals that the voices of these groups of actors – law students and young practitioners – are completely absent within

⁷⁵⁵ Sida Liu, "The Legal Profession as a Social Process: A Theory on Lawyers and Globalization" (2013) 38 *Law & Soc Inquiry* 670–693 at 676.

the narrative of legal education from 1998, when the contentious *Rules* were introduced, to the cases filed before the Court, and even following the judgment in 2018. This is a valuable contribution of this thesis and aims to address the silence of important actors who are the recipients of legal education – the law students. A study of the norms in legal education through focus groups and interviews add to the narrative as it has developed in Pakistan today and is necessary when examining the role of the practitioner in the field of legal education.

a. English Law Degree is Better than the Pakistani Degree

Participants in the three focus groups were asked what they think a lawyer is and their responses described him/her as a practitioner i.e., a person who knows the law, argues well, and has good social connections. These connections are a valuable source of social capital that help lawyers develop their client base and can take different shapes: a history of legal practice within the aspirant's family, their connection with bar politics, especially the law colleges where they studied, and which law degree they chose to undertake – the *local* LLB as administered through the Higher Education Commission and the Pakistan Bar Council, and the foreign LLB administered by the University of London distance-learning program through its registered centres in Pakistan.⁷⁵⁶ The curriculum of the latter is determined in the UK and is based on English Law. A discussion in the focus groups with fresh graduates of and current students enrolled in the University of London distance learning LLB allowed for a more nuanced understanding of the reasons for their choice for this more expensive and foreign degree. Four main reasons emerged

⁷⁵⁶ There are select schools that also provide the BPP LLB degree in Lahore.

as to why this degree was a preferred choice: its shorter than the Pakistani LLB by two years since it's a three-year degree;⁷⁵⁷ it's considered to have more value since it is an *English* degree which indicates the continuing coloniality in the minds of the youth/their parents and the legal fraternity;⁷⁵⁸ it's an easier degree especially if one is attuned to the Ordinary and Advanced Levels' system which is also administered in Pakistan under the outsourced English system of secondary education;⁷⁵⁹ and lastly, the prestige of a foreign degree allows the opening of many doors on both international and national fronts.⁷⁶⁰

The fact that an option for the acquisition of an English LLB degree whilst sitting in Pakistan exists is a very strong indicator of the continuing coloniality in the country and demonstrates the embeddedness of the Eurocentric approach to legal education, as discussed in chapters 3 and 4. The rising demand for University of London degree indicates its increasing popularity and parents (if they can afford it) choose to send their children to one of the registered centres providing this English LLB degree. A total of thirty teaching centres provide the degree through the distance learning program of the University of London – these are located in the major cities with nine in Karachi (Sindh); two in Multan (Punjab); eight in Lahore (Punjab); one in Faisalabad (Punjab); one in Gujrat (Punjab); and nine in the twin cities of Islamabad and Rawalpindi.⁷⁶¹ This remote learning, specifically that of the University of London, is a source of significant economic capital for the UK with programs in over 190 countries around the world.⁷⁶²

⁷⁵⁷ *University of London Graduates Focus Group* (2019).

⁷⁵⁸ "If I talk about this from a Pakistani mindset, it has more value than other institutions that are making you a lawyer." Participant No. 1 in *University of London Graduates Focus Group* (2019), *supra* note 757.

⁷⁵⁹ *Ibid.*

⁷⁶⁰ *Ibid.*

⁷⁶¹ "Pakistan", online: *University of London* <<https://london.ac.uk/ways-study/pakistan>>.

⁷⁶² In comparison, India only has a total of six registered centres for the University of London LLB degree. "University of London - India", online: *University of London* <<https://www.london.ac.uk/ways-study/india>>.

Perusal of the financial statements available online helps investigate this. In 2016-17, of all the distance and flexible learning programmes, including law, Pakistan featured number four of ten, with a total of 3,403 students.⁷⁶³ Statement for 2017-18 indicate that the popularity of these programs had increased in Pakistan with the country moving to number three in the top ten countries with a total of 3849 students, overtaking Malaysia that had 3425 students registered in these programs at the time.⁷⁶⁴ In 2018-19, Pakistan had risen to number two in the ranking with 4432 students, overtaking the UK who experienced a decline from previous year with 2062 students registered. Singapore stayed in the lead with 7833 students on which data was available, in all four years.⁷⁶⁵ The structure of the 2020 Statement has changed so one cannot deduce the numbers of students from the top ten countries in the same fashion as the earlier Financial Statements, but the total income from tuition fees and education contracts is stated to be just over 64 million pounds.⁷⁶⁶

The assumption that the London degree is *better* than the *local* one holds strong in the minds of the students and their parents – the focus group conducted with students of the University of London LLB degree demonstrates that students believe it to be a more theoretical degree that helps develop their analytical skills in comparison to the Pakistani LLB degree.⁷⁶⁷ However, when these students join internships at law firms, or when they graduate and look for

⁷⁶³ Pakistan lagged behind Malaysia which had 3491, UK with 2452, and Singapore which had the significant lead with 9432 students enrolled in the Bachelors' International Programs *Financial Statement* (University of London, 2017) at 5.

⁷⁶⁴ In second place was the UK with 2271 students, and Singapore still was at number one with 8547 students. *Financial Statement* (University of London, 2018) at 9.

⁷⁶⁵ *Financial Statement* (University of London, 2019) at 8.

⁷⁶⁶ Of these 62 million pounds were generated from students from the University's distance-learning program. *Financial Statement* (University of London, 2020) at 48.

⁷⁶⁷ note 757.

jobs, they find their degree to be lacking the practical element that their local LLB counterparts possess:

We live in a bubble that proclaims that since we are University of London students, we get more preference. This is wrong. The local LLB students (like those from Sindhi Muslim Law College affiliated with the University of Karachi) get more of a preference because they know how to do research on Pakistani law.⁷⁶⁸

The apprehension, or sense of unease, in the participants from the University of London degree is born from the obvious fact that what they had been studying is not related to the Pakistani context:

You don't exactly know how things work when you start because you relate everything to the English law you have studied, which is why you have to learn from scratch. If you're doing the Pakistani LLB, you know all these things already.⁷⁶⁹

But the focus group conducted with graduates of the Pakistani LLB revealed diametrically opposing views – participants shared that they had not been taught legal research at all, except one participant who said that at her law college, affiliated with Hamdard University in Karachi, they had been taught how to conduct research. The rest shared that their law college experience was limited to attendance in classes, prepare for the examinations through a study of the past papers and sit for the exams. These examinations are repetitive so one can predict the questions that will be asked in the final paper. Subject Guides which have answers on different sets of questions that appear in the examination allow the student to memorise answers to the most common questions only to be regurgitated at the exam.⁷⁷⁰

⁷⁶⁸ *Ibid.*

⁷⁶⁹ note 757.

⁷⁷⁰ "Focus Group with Graduates of the Pakistani LLB degree" (27 July 2019).

The law firms are the first to experience the quality of legal education when they hire graduates as associates or students as interns. While the bridge between law school and law practice has been described to be difficult to cross in different parts of the world,⁷⁷¹ in Pakistan it possesses unique challenges. To account for the limitations in one degree which can be off set by the other foreign degree, some law firms have developed their own mechanisms when putting together teams of interns – Participant 1 in the focus group with the University of London students shared that at her internship at one of the popular law firms in Karachi, the partners developed a strategy to team students from different educational backgrounds together. This included her, and two from the Pakistani LLB (one from Sindhi Muslim Law College affiliated with the University of Karachi, one from the law department at the Lahore University of Management Sciences) – “They knew that if one left some gaps open, then the other could fill them, and this strategy worked well.”⁷⁷² Clearly the employers are adapting to the situation they find themselves in, but an adaptation does not encourage reform. And more reflection is necessary to effect meaningful change. There are some who are working to address the issue of lack of research and writing in law – Advocate Taimur Malik has set up an online platform with the name *Courting the Law* that allows law students and early career practitioners to contribute to the development of law by “raising awareness and increasing accountability.”⁷⁷³

⁷⁷¹ William C Mathes, “The Practice Court: Practical Training in Law School” (1956) 42:4 American Bar Association Journal 333–398; George Neff Stevens, “Legal Education for Practice: What the Law Schools Can Do and Are Doing” (1954) 40:3 American Bar Association Journal 211–260; Harry W Arthurs, “Poor Canadian Legal Education: So Near to Wall Street, So Far From God” (2000) 38:3 Osgoode Hall L J 381–408.

⁷⁷² Focus Group with Students of the University of London LLB Degree (2019).

⁷⁷³ “*Courting The Law*”, online: *Courting The Law* <<http://courtingthelaw.com/>>.

b. The Status of a Barrister over a *Vakil*

The status of the one who possesses⁷⁷⁴ a Bar-at-Law certification from the Inns of Court in England continues to be a position of privilege in the Pakistani legal field. A participant in the focus group with students from the University of London LLB degree, shared their reasons for choosing law as a degree: “Those one looks up to in history are all barristers, from Jinnah to Gandhi to Nehru to Abraham Lincoln.”⁷⁷⁵ As argued in Chapters 3 and 4, this privilege is rooted in the historical context of Indian barristers fought for independence from the British Raj, from Mohammad Ali Jinnah who fought for Pakistan, and Mohandas Gandhi and Jawaharlal Nehru for India. In the focus group conducted some participants shared that they dreamt of doing the bar-at-law when they were in law school:

Because it’s a title and somehow puts you on the same level as Mr. Jinnah. The Bar for me makes me think of him, money, and cars!⁷⁷⁶

While the bar is not a requirement in Pakistan to practice in the courts, it does groom you and teaches you a lot more than what you learn on the job. You can’t deny that even now in Pakistan, barristers still get the prestige.⁷⁷⁷

What I think of a barrister is a person who is formally trained in advocacy, that’s what differentiates that person from others. But while that person is well trained, at the end of the day if you are not getting a pupillage in England, one can’t call themselves a barrister. I meet barristers and I ask them about this pupillage issue, and they are like no we are barristers, but if you go bar service court, they won’t allow you to give legal services as long as you haven’t done a pupillage. The Pakistani barrister rationalizes it by saying that we only have to practice here. So it’s a very good thing if it can also be done indigenously here by

⁷⁷⁴ I draw a distinction because a pupillage in England is still a pre-requisite for calling oneself a barrister. Most ‘barristers’ in Pakistan travel and acquire training the Lincoln’s Inn, and return to practice in Pakistan as a substitute to the pupillage at a barristers’ chambers.

⁷⁷⁵ Participant 4, note 772.

⁷⁷⁶ Participant 6, note 757.

⁷⁷⁷ Participant 3, *Ibid*.

the Pakistan Bar. But just like as a title, let's just say, I have also seen very stupid barristers.⁷⁷⁸

The focus group with Pakistani LLB graduates also revealed the prestige element associated with the barrister:

There is a charm of a barrister but that is limited to social engagements like sitting at a social country club and drinking tea with bureaucrats and other government officials.⁷⁷⁹

Another participant shared:

We were provided a basic education in law at Sindhi Muslim Law College but there is a difference in the way we are perceived and treated, and the way barristers are, especially by the judge. This is because of our mindset, we are still slaves to the British, so a barrister continues to be perceived as glamorous."⁷⁸⁰

The status of the barrister continues to be a source of prestige in the legal profession, and four of the six participants in the focus group for graduates of the London LLB degree expressed their interest in pursuing the bar-at-law from London in the future.⁷⁸¹ Interesting, only one graduate from this London LLB after less than two years of practice, expressed a desire to study for the bar-at-law,⁷⁸² of the rest three wanted to study for an LLM if the opportunity arose, while the remaining two said they were not sure.⁷⁸³ Glamour aside, there continue to exist privileges of exemption from lower court practice which can be granted by the Pakistan Bar Council. These exemptions are available at the discretion of the Pakistan Bar Council under the 1973 Act through

⁷⁷⁸ Participant 3, *supra* note 772.

⁷⁷⁹ Participant 1, *supra* note 770.

⁷⁸⁰ *Ibid.*

⁷⁸¹ note 757.

⁷⁸² Participant 2, *Ibid.*

⁷⁸³ Participants 1,2,3 and 6 *Ibid.*

a proviso under Section 26(d).⁷⁸⁴ Rule 108-I of the Pakistan Legal Practitioners and Bar Councils Rules, 1976 also allow for this exemption from lower court practice specifically for those who have an LLM or those who have served one year with a counsel in England after a call to the Bar there.⁷⁸⁵ While these exceptions award discretion with the Bar, this research study has proven that they reflect the historical privileges that English barristers possessed on their arrival in British India, that are discussed in detail in chapter 3. Over time they have become embedded within the legal field and though the formal distinctions between the *vakils* and barristers were removed through the 1926 Indian Bar Councils Act, these continued as discussed in chapters 4 and 5.⁷⁸⁶ This privileged heritage has permeated into Pakistan where it retains its position of power through the 21st century.

Another recent (and terrifying!) development is the opportunity to be certified with the Bar-at-law from Inns of Court in England while sitting in Pakistan over the past five years.⁷⁸⁷ This

⁷⁸⁴ Section 26: Persons qualified for admission as advocates

S. 26(d): "he has undergone such course of training and passed such examination after training as may be prescribed by the Pakistan Bar Council: Provided that this clause shall not apply to any class of persons who, by reason of their legal training, or experience are declared by the Pakistan Bar Council to be exempt from the provisions of this clause. Emphasis added.

⁷⁸⁵ The following persons shall be exempt from training and examination provided in Rule 108-C supra

(1) Applicant who have received an LLM degree from any university in Pakistan or a university recognised under Section 26(1)(c)(iii) of the Act, or a degree or a diploma which is declared by the Pakistan Bar Council to be equivalent to that degree...

(3) Applicants who after having been called to the Bar in England have completed a full one-year training with a senior counsel in England which training thereafter entitled them to appear independently in Courts in England Legislation regulating the Provincial Bar Councils also have these exemptions." Emphasis added. Provincial statutes of the Bars also reflect these.

⁷⁸⁶ Advocate" category which merged all the different Indian legal practitioners.

Section 2(a) "advocate" means an advocate entered in the roll of advocates of a High Court under the provisions of this Act."

Sections 3 & 4: Introduction of a Bar Council for each High Court at Bengal and Bombay through a system of *elected members registered on the rolls entitled to practise in the original jurisdiction of the High Court i.e. Barristers of England, Ireland and Faculty of Advocates of Scotland for the first Bar Council.*

⁷⁸⁷ Multiple attempts to interview the management of this Institute met with failure despite the fact that a list of questions was requested by the management of the institute and provided.

distance-learning training opportunity is available at the Blackstone School of Law & Business, associated with the Lincoln's Inn,⁷⁸⁸ and students study at the registered institute in Lahore and travel to England for a month for assessment. The School proudly invites law graduates to "Join the big league: Stand in Pakistani courts as a qualified Barrister to win cases for your clients with great advocacy skills and prestige" for a total fee for the nine months equalling approximately Rs. 1.4 million.⁷⁸⁹ The prestige attached to this qualification can be gleaned from their promotional material which declares:

You can officially place the title of "Barrister" before your name on your "Wakalatnama"⁷⁹⁰ and official correspondence with the Honourable Courts in Pakistan.⁷⁹¹

In just a couple of years the institution⁷⁹² has successfully trained 120 students.⁷⁹³ While information is not available on the composition of this group of distance-trained barristers, one can only assume that they are part of a socio-economic class that can afford to pay the fees in the foreign currency.

The existence of these options to study and be trained in law from the English context while living in Pakistan is the tragic reality of our legal education system. The demand exists for that privileged degree and certification because of the continuing coloniality within the Pakistani

⁷⁸⁸ This institution also provides the distance learning LLB from the University of London "Become a Barrister - Bar at Law Transfer Course", online: *Blackstone School of Law & Business* <<https://www.bsolpk.org/bar-at-law-transfer-program>>.

⁷⁸⁹ *Ibid.* Further, the dire economic circumstances of the country have significantly weakened the Pakistani Rupee against the pound and therefore, the cost of the degree has increased, it ranges between USD 6000-7000.

⁷⁹⁰ The term "*Wakalatnama*" or "*Vakalatnama*" refers to the Power of Attorney received by the lawyer to argue their client's case and is rooted in the term "*vakil*" and "*nama*" which means document.

⁷⁹¹ note 788.

⁷⁹² The School also conducts video interviews with barristers to promote its bar-at-law certification – one such video available on YouTube is titled "Benefits of being a Barrister in Pakistan." *Benefits of being a Barrister in Pakistan with Barrister Waleed Ashraf* (2020).

⁷⁹³ note 788.

legal field. This magnetic power of the Bar-at-Law certification from the Lincoln's Inn continues to enhance the division in the legal field which is not only that the English law degree is *better*, but to carry the title of a barrister is also *better* than that of the Advocate. These preferences indicate the embeddedness of the colonial approach in legal education and practice and represent the ever-growing need for a decolonizing exercise on the area. Unfortunately, voices critiquing this state of affairs are few and far between, and these programs have sprung up partly due to the coloniality but also because of the lack of quality Pakistani LLB education. This quality will continue to fall if reforms of legal education are not prepared and instituted. While the Supreme Court, in its detailed judgment on legal education in 2018, proposes a set of reforms (in consultation with the actors in the field) to improve the Pakistan LLB qualification, it does nothing to displace these colonial norms that remain wedded to legal education and practice in Pakistan. This leads us to the English language itself.

c. Knowledge of the English Language

Fluency in the English language continues to be an incredibly powerful tool for success in the legal field was identified in all focus groups – “*Angreiz chalay gaye, Angrezi chor gaye!*”⁷⁹⁴ While English is the medium of instruction in both LLB degrees, the teaching by faculty generally employs a mix of English and local languages, especially Urdu. On the other hand, a student from the University of London degree shared their internship experience:

I had a friend who studied from England. He is a barrister, and he practices here in criminal litigation. He has kept this assistant in his office just to translate all the Urdu work to English. The FIRs are typed in English by the assistant which

⁷⁹⁴ “The English left but left English with us!” Translation by author. Participant no. 5 note 770.

he then reads. Everyone has different ways to adapt. For some that is a feasible option while the others learn how to read Urdu.⁷⁹⁵

A graduate from the University of Sargodha in his interview stated that though the medium of instruction is English almost 85% of the lectures were conducted in Urdu, but if the medium of instruction was changed to Urdu, then it would limit his chances of studying abroad – “We need to maintain the international standard, and therefore it’s important for it to remain the medium of instruction.”⁷⁹⁶ This desire to fit within the imagined international standard can come at the cost of learning since the assessment is in English. However, there are those who teach purely in English, and this can be a serious limitation for those who are not fluent in the language:

We come for a *normal* background, we studied in the local neighbourhood schools, so when we are taught LLB courses by those who use ‘British level’ of English, we do not understand much. We had this barrister teach us and we didn’t understand his English.⁷⁹⁷

The official language of the Court continues to be English but in the reality of practice, like in teaching, multiple languages are used.⁷⁹⁸ Observation studies conducted at the Sindh High Court in Karachi in December 2017 revealed that ease of communication between the judge, lawyer, and even the client, is key. The study conducted in Justice Yousuf Saeed’s Court on the 22nd of December 2017, demonstrated that the judge would use the language he believed that the lawyer was able to communicate effectively in the language – English or Urdu, or a mix of the two which is most often the norm.⁷⁹⁹ Another study conducted of the court of the then Chief

⁷⁹⁵ Participant 4, *supra* note 772.

⁷⁹⁶ Aashir Imran Shaikh, *Experience of Legal Education and Practice in Pakistan* (2020).

⁷⁹⁷ Participant No. 3, *supra* note 770.

⁷⁹⁸ Former Chief Justice Jawwad S. Khawaja through his judgment dated XXX attempted to give effect to Article

⁷⁹⁹ Observation Study dated 22nd December 2017, Justice Yousuf Saeed’s Court, Sindh High Court at Karachi.

Justice of Sindh, Ahmed Ali Sheikh, on the 21st of December 2017, also demonstrates a similar attitude towards language in his court. Justice Sheikh was fluent in at least three languages which allowed him to communicate effectively with the lawyer, he remarked in Urdu:

It appears to me that you are unable to understand English so I will ask you the same question in Sindhi.⁸⁰⁰

There also exists the perception in the minds of young lawyers that their fluency in the English language may help them impress the judge, especially at the district court level. A participant describes their experience of practice:

In the lower court, if you start your argument in English, there is a certain impression that you create before the judge. The argument may not be strong, but the judge will still be impressed, and thus, half the case is already won!"⁸⁰¹

But in the reality of everyday practice, at least in Sindh, at least three languages are used regularly: English, Urdu, and Sindhi. Three participants in the focus group conducted with graduates of the local LLB who were practising in the city courts shared that knowledge of Sindhi is crucial for legal practice at that level in the hierarchy of courts. Despite being from the Urdu-speaking community in Karachi all had a working understanding of the language.⁸⁰² For lower court practice, it is more useful to know Sindhi as shared by a participant in the Pakistani LLB focus group: If you want to practice in the lower courts you need to know Sindhi, if you want to practice in the High Courts you need to know English.⁸⁰³ This was also confirmed by a participant of the focus group with graduates of the other LLB program, one participant shared:

⁸⁰⁰ Observation Study dated 21st December 2017, Chief Justice Ahmed Ali Sheikh's Court, Sindh High Court at Karachi.

⁸⁰¹ note 757.

⁸⁰² note 770.

⁸⁰³ Participant 4, *Ibid*.

In Sindh there is the whole *Saien*⁸⁰⁴ culture. Someone who speaks in Sindhi gets more preference than the Urdu speaking person.⁸⁰⁵

Many people who are Urdu or Punjabi speaking have actually learned Sindhi to get that added advantage.⁸⁰⁶

The graduates from the first five-year interdisciplinary program taught at LUMS which began in 2005 have experienced legal education in a different manner. With a high emphasis on writing and research, students are taught how to conduct Pakistani and foreign legal research which sets them apart when they enter the profession and are valuable products that employers want to hire. Six graduates of the LUMS Law program were interviewed telephonically in 2020, each interview lasted about 45 min. All except one had encountered no difficulty in the English language, one participant who was from a smaller city, Abbottabad, said: “I understand English but am not very comfortable in it, especially in the beginning of law school. I came from an FSC (Fellow of Science) Matriculation background, and those from the O’ and A’ Levels (distance learning from England, International General Certificate of Secondary Education) have a different style of speaking. While I struggled in the beginning, since I was confident in Urdu it was ok. Also, I am happy with the way I am!”⁸⁰⁷

A senior lawyer turned academic Akmal Wasim stressed the importance of the English language as the medium of instruction especially because all the pleadings and the laws (both statute and case law) are in English. When one thinks of the intellectual context, he believes that

⁸⁰⁴ The word “*Saien*” means a lord or landlord in the Sindhi language and is considered socially as occupying a high position in hierarchical terms. The use of the term *Saien* by the participant in the study as a descriptive word of the legal culture in Karachi suggests that those who speak Sindhi receive social privileges that are not as accessible to those from other linguistic groups.

⁸⁰⁵ Participant 1, *supra* note 757.

⁸⁰⁶ Participant 3, *Ibid*.

⁸⁰⁷ Hamza Mahmood, *An Interview with a LUMS Graduate* (2020).

English is a better language for expression of legal analysis – “English is important for law but graduates of law can hardly understand one paragraph, let alone use a dictionary!”⁸⁰⁸ The entire legal corpus as it exists Pakistan continues to remain in one language, English which is not accessible to all – “When you don’t possess the language skills, you are disconnected from the learning environment.”⁸⁰⁹ Arshad Nawaz Khan, a full-time academic in Islamabad, shared that students at his university are not from the “elite class,” and thus are not fluent in English. They prefer a mix of Urdu and English, but many speak a third regional language as well. While writing in English for them is a challenge, at times a bigger challenge is listening and speaking in this foreign language. In comparison students in the foreign degree programs can speak and write in English but have no understanding of law within the Pakistani context.⁸¹⁰ Similar sentiments were shared by a practitioner who runs the Islamia Law College in Karachi, Advocate Moin Azhar Siddiqui: “How can the medium of instruction be English, when the student knows next to nothing of the language?”⁸¹¹

This language controversy has continued in post-colonial Pakistan keeping the narrative bound in a medium that is divorced from the reality of the people. This also had a part to play in the independence of East Pakistan from West Pakistan into Bangladesh in 1971 because of a declaration that Urdu would be the national language,⁸¹² even though the language spoken in

⁸⁰⁸ Wasim, *supra* note 712.

⁸⁰⁹ Ahmed, *supra* note 714.

⁸¹⁰ Arshad Nawaz Khan, *The State of Legal Education in Pakistan* (2020).

⁸¹¹ Siddiqui, *supra* note 179.

⁸¹² Article 251. National language.-

(1) The National language of Pakistan is Urdu, and arrangements shall be made for its being used for official and other purposes within fifteen years from the commencing day.

(2) Subject to clause (1), the English language may be used for official purposes until arrangements are made for its replacement by Urdu.

(3) Without prejudice to the status of the National Language, a Provincial Assembly may by law prescribe measure for the teaching, promotion and use of a provincial language in addition to the national language.

East Pakistan was Bangla, one which is very different from Urdu. This is evidenced in Article 251 of the Constitution of Pakistan 1973 which envisioned the replacement of English with Urdu as the official language, but no material work has been done on this ground. In 2015, the Supreme Court attempted to undo the dominance of this colonial language – former Chief Justice of Pakistan, Justice Jawwad Khawaja, authored a judgment on this Article in 2015⁸¹³ and adjudicated that we need to let go of the “colonial language” in favour of the national language, Urdu, in accordance with Article 251 of the Constitution. The petitioner in this case argued that the Government’s unwillingness to implement or follow this constitutional mandate had resulted in “a societal and linguistic divide” between those who can speak the English language and those who cannot. Khawaja connected the government’s constitutional obligation under Article 251 to several fundamental rights, including the right to dignity (Article 14); right to equal treatment under law (Article 25) and the right to education (Article 25-A), stating that failure of the Government to implement Article 251 is a violation of these fundamental rights. He noted the obsession with the English language in governance of the country, on both the Federal and Provincial level, stating that “there is hardly any necessity for the use of the colonial language which cannot be understood by the public at large.” This judgment was an attempt by a judge to shape a Pakistani identity which was separate from the post-colonial historical context of the country.

Luhmann writes, “the postcolonial cannot find peace in nationalist identity because of the unhappy dualism of colonial identifications.”⁸¹⁴ Bourdieu also explores the role of languages

⁸¹³ Muhammad Kawkab Iqbal v. Government of Pakistan, Pakistan Law Digest 2015 Supreme Court 1210.

⁸¹⁴ T M Luhmann, “The Good Parsi: The Postcolonial ‘Feminization’ of a Colonial Elite” (1994) 29:2 Man (London) 333–357 at 194–195.

in structuring positions within the field and thus, reflected in the habitus. He proposes that all communication “brings into play a complex and ramifying web of historical power relations between the speaker, endowed with a specific social authority, and an audience, which recognises this authority to varying degrees, as well as between the groups to which they respectively belong.”⁸¹⁵ He relates this to the colonial context which resonates in terms of the legal field under study in this dissertation. The language of the dominated, i.e., the coloniser, becomes imposed upon the dominated who must learn a new language to survive the new reality. However, since he has not experienced the historical pulls that created that language, his relation to that is truncated and thus, akin to what Bourdieu recounts William Labov’s description as a “*broken language*.”⁸¹⁶ While the colonized Indians until the mid-twentieth century aimed to learn English, especially those in the legal profession since it was the language of the court, this struggle continues in some form in present day Pakistan.⁸¹⁷ In the 2018 judgment, the Court universalizes the English language at first by assuming that English is necessary since it is the language of the courts and of law, and the LLB degree curriculum should allocate sufficient space to its learning. This statement essentially ignores the inequalities that structure rights of access to the language. The relation of the dominated with a language of the dominant is inherently unequal and its perseverance in legal education and practice, officially at least, creates its own set of *haves* and *have-nots*. Furthermore, as learnt from the literature review in chapter 1, the

⁸¹⁵ Wacquant, “Towards a Reflexive Sociology”, *supra* note 43 at 46.

⁸¹⁶ *Ibid.*

⁸¹⁷ For example, speaking in a localized version of the language, the judge is referred to as “Mi’ Lord,” but pronounced “Mee Laard. Observation Study dated 22nd December 2017, Justice Yousuf Saeed’s Court, Sindh High Court at Karachi.

mix of English with the local language(s) can give birth to its own language of sorts which is not, or should not, be viewed as inferior to either.

d. Practitioner Faculty is Preferred

The historical rise of practitioners in the legal field has been discussed in this dissertation and this section investigates their roles in teaching. The preference awarded to a practitioner as a teacher is part of the reality of teaching law in Pakistan today and is discussed in chapter 2 through the study of the 2018 Supreme Court judgment, which declares legal practitioners and judges are best suited to teaching law. But this does not necessarily imply an addition to the prestige of the status of a ‘teacher of law’ – a graduate of the local LLB in Karachi stated: “If you are teacher or an academic in law, you are perceived as a failed lawyer. The practitioner-faculty comes to class and just reads the text of the statutes.”⁸¹⁸ Sandwiched between court practice in the morning and client meetings and case preparation in the evening, the teaching practitioner hustles back and forth between court, college and chambers. There is no training of the practitioner to be a teacher, the expectation is that a practitioner is competent to teach law because they possess an LLB degree and this results in cyclical pattern which repeats past practices and norms. A senior advocate of the Sindh High Court, who received his education in Punjab, Ijaz Ahmed, shared that most teachers at his alma mater University of Punjab, were practicing lawyers and judges, and the method of teaching was lecture-based but the problem was:

⁸¹⁸ note 770.

No one tried to make you think, the focus was always on the one book assigned for the course, or one statute even, and the aim was to pass the exam. This has not really changed in Pakistan today – we continue to promote book learning and not encouraged to think. Law as a profession is solution-oriented and needs that analytical component to be emphasized, especially in law school. The goal of legal education should be to teach students how to think.⁸¹⁹

This lack of emphasis on critical thinking is also rooted within the historical context of the British Raj where memorisation by rote became the predominant practice and has been discussed in chapters 3 and 4. Though a hundred years ago Asotoush Mookerji questioned this form of ‘learning,’ it unfortunately still holds legal education hostage in Pakistan to a great extent. Students continue to rely on Subject Guides which have prepared answers to questions asked in past examinations and students learn those by heart only to reproduce them on the day of the exam.⁸²⁰ In this environment it has been difficult to prepare quality legal practitioners let alone thinkers of law and Siddique argues: “Historically underfunded and ignored, state law school in Pakistan never have developed a favourable environment for a quality local research to flourish...,” and this absence “has resulted in negligible improvement of teaching and research standards.”⁸²¹

Faculty at the University of London registered centres also leave much to be desired – one participant of the focus group with students of this degree shared: “What I don’t like about this ‘university program’ is that we don’t have any law professors. The faculty is just part-time teachers who don’t have any opinions about legal and political philosophy. They use the course textbook and teach you the content through elaboration.”⁸²² Another participant said that their

⁸¹⁹ Ahmed, *supra* note 714.

⁸²⁰ note 770.

⁸²¹ Siddique, “Legal Education in Pakistan”, *supra* note 56 at 499.

⁸²² Participant, *supra* note 772.

centre didn't teach students how to learn the law which left their learning lacking, and they had to develop their own ways of learning effectively.⁸²³ An interviewee shared that the faculty that teaches the University of London program are all recent graduates from the program themselves⁸²⁴ and therefore, the faculty imparting this foreign education through registered centres are not experienced in the Pakistani legal context. The reliance therefore is only on the Subject Guide⁸²⁵ and course material assigned by the University of London and faculty teach it in the manner that they learnt rather than reflect on what the needs of the students may be.

The Pakistani LLB as taught by the LUMS Law School has a mix of full-time academic faculty and adjunct practitioner-faculty, and an interviewee shared that they prefer being taught practical courses by those who have the relevant experience in practice – “the practical experience that judges have had as lawyers, and later on the Bench is very helpful and has a positive effect on learning.”⁸²⁶ Another student shared that the faculty at LUMS taught really well: “class participation is very interactive and useful – the discussions are based on qualitative content.”⁸²⁷ This quality in selection of appropriate learning material which is available to all students and taught by appropriate faculty members is also crucial for learning. Advocate Moin Azhar Siddiqui, who runs the Islamia Law College in Karachi while managing his legal practice, questioned the interdisciplinary focus of the five-year LLB degree introduced following the 2018 judgment – “Where will we find the teachers to teach the courses in the 5-year syllabus that have

⁸²³ *Ibid.*

⁸²⁴ Ali Yousaf, *Interview with a Graduate of the University of London LLB Degree* (2020).

⁸²⁵ This Guide is available for each subject of the LLB curriculum and aims to help student of distance-learning navigate the course material independently, through a study of the recommended material for the subject. Unfortunately, students tend to rely more fully on these Guides as the primary source of learning rather than use them for their purpose which is to help them study the rest of the material.

⁸²⁶ Haider Mati, *Interview with a LUMS law graduate* (2020).

⁸²⁷ Anas Khan, *Interview with a LUMS law graduate* (2020).

a multidisciplinary focus?”⁸²⁸ The desire for a full-time, non-practising law faculty may be the need of the hour but the system should also produce and retain people for those positions and that can only happen if the environment is conducive. The role of the practitioner should only come when courses are practical in nature or when pupillage with the Bar Council begins. This should be the focus of the Bar: to provide adequate training opportunities to young graduates and the goal of legal education should be to “foster ethics of a good practitioner.”⁸²⁹

The fields of practice and of education are intimately connected with each other and practitioners are preferred as faculty for law. This link is historical in nature as discussed throughout this dissertation. Rooted within the colonial context, this dissertation argues that not enough effort was made to reform legal education following Independence leading the practitioner to continue to hold a dominant position in the field. Studying law from an academic or research perspective has not been a priority and continuing to follow a solely practice focus to teaching has limited the goal of legal education to legal practice as is discussed in the next section.

e. Graduate of the Law Degree will Practice in the Courts

With a practitioner-faculty and a predominantly practice-focused curriculum it is no leap of the imagination that the graduate is expected to practice law in the courts of the country. The legal field from its import to India in the mid-nineteenth century continues to demand compliance with this practice orientation. The participants in the focus groups all stated that the

⁸²⁸ Siddiqui, *supra* note 179.

⁸²⁹ Omer Soomro, *Interview on State of the Legal Education in Pakistan* (2020).

goal of legal education is to practice in the courts, and only one of the sixteen clarified that she chose to work in corporate law, separating that from *traditional* litigation practice.⁸³⁰

This is also reflected in the interviews with practitioners and law students and one question that was asked of all people interviewed was: What is the goal of legal education? and most said that the goal was practice. A PhD student studying in China, Jahanzeb Butt⁸³¹ was interviewed and he shared that this goal needs to be changed. With reference to China he observed that “people are not lawyers only, they are in policy, governance, law enforcement, academia, research, there are alternative careers in Law in China, but Pakistan’s perception is that you are going to be a lawyer and then a judge? The student of law’s focus in the degree is that ‘*I am going to be a lawyer,*’ and a visiting faculty of legal practitioners encourage that – ‘*do the degree and learn everything in the courts, the degree is useless, and the thing is to get to court.*’”⁸³² Professor Arshad Nawaz Khan who teaches at the Quaid-e-Azam University which imparts the Pakistani LLB degree program shared that for society the goal of legal education is to make *vakils* even though that should not be the reality – “a *vakil* is not just a person who practices in the *kacheri*⁸³³ but can be someone who is a consultant, or any field related to law where legal skills that are required.”⁸³⁴

The Head of Law Department of the Bahria University, Maleika Malik shared what she saw as the goal stating that one should “produce good quality lawyers who prioritise honesty and

⁸³⁰ note 770.

⁸³¹ Jahanzeb Butt is a 2012 graduate of the Punjab Law College, affiliated with the University of Punjab. He joined legal practice and taught legal drafting and administrative law at the Bahria University (2017-2018) before proceeding to China for his PhD.

⁸³² Jahanzeb Butt, *State of Legal Education in Pakistan* (2020).

⁸³³ The term *kacheri* is an Urdu word that means judicature or judicial.

⁸³⁴ Khan, *supra* note 810.

ethics and this can change the *badmash*⁸³⁵ culture that has developed in lawyers and make it refined profession.”⁸³⁶ Professor Owais Shaikh who runs the Department at the Shaheed Zulfiqar Ali Bhutto University of Law shared a similar assessment: “The goal of Pakistani legal education is simply to produce legal practitioners for practice. There is no higher goal of critical thinking or anything of the sort, since the system is not geared towards it.”⁸³⁷ Advocate Hamid Khan proposed that goal of legal education should not be limited to the production of “good lawyers but good legal educationists...unfortunately, the focus of legal education has been on practice because the other route – to be a professor of law – is not considered as fruitful in the financial sense, or looked at by society as respectful. So a law graduate wants to become a *vakil* from there you can set up your practice or become a judge. Unlike professors in other countries where they are given greater honour than a practicing lawyer, this is not so in Pakistan. Until we don’t give faculty the priority, things will not change.”⁸³⁸ Similar sentiments were shared by Rasheed Razvi where he mourned the reduction of the legal profession to a mere source of money, rather than one which was “a service to civil society...Now a boy comes to the profession and wants to become a millionaire.”⁸³⁹ The result of this deplorable state of affairs is that “People now curse the profession and while in the rest of the world it’s a very honourable profession. Such *ghatiya*⁸⁴⁰ people have been added to the profession that the system is rotten. We have made lawyers into

⁸³⁵ *Badmaash* in Urdu translates to a mobster or a criminal in English.

⁸³⁶ Malieka Malik, *State of Legal Education* (2021).

⁸³⁷ Owais Shaikh, *State of Legal Education* (2021).

⁸³⁸ Khan, *supra* note 150.

⁸³⁹ Razvi, *supra* note 213.

⁸⁴⁰ The Urdu word *ghatiya* means disgraceful, or humiliating. Translation by author.

ghundas,⁸⁴¹ the people have also been disappointed with such lawyers. But there are no good lawyers, and there are therefore poor judges. Those that are few and far in between.”⁸⁴²

Abira Ashfaq who has taught law in Karachi for almost fifteen years⁸⁴³ when asked about the goal of legal education in Pakistan shared quite honestly: “I don’t know if there is a goal – I personally don’t know whether we are even an intellectual collective...if we had a discussion with different law colleges on a collective vision that would help because the student interest is there, especially in Moots which really help students learn. Furthermore, pro bono work will help considerably in this.”⁸⁴⁴ She proposed that legal education should focus on scholarship around legal issues that address larger social concerns through public interest litigation to counter the “classist and elite entrenched legal system...” present in the country.⁸⁴⁵

As has been proven in this dissertation and confirmed through the interviews conducted for this chapter, the goal of legal education in Pakistan has been geared towards the production of legal practitioners, no matter how inadequate they may be. This practice-focus is now so entrenched in the system of legal education and rooted in Pakistan’s colonial history that to dislodge it requires much more than a judgment by the Supreme Court. One needs the will to transform change into reform and this unethical, poorly educated lawyer in 21st century Pakistan inhabits a unique position in the political field which has impacted legal education and is the focus of the next part.

⁸⁴¹ The Urdu word *ghunda* means a mobster or a bully. Translation by author.

⁸⁴² Kalanauri, *supra* note 251.

⁸⁴³ Ashfaq taught for twelve years at a University of London registered center in Karachi and for the past two years has been teaching Human Rights Law and Legal Philosophy at the Institute of Business Administration.

⁸⁴⁴ Abira Ashfaq, *State of Legal Education in Pakistan* (2021).

⁸⁴⁵ *Ibid*.

IV. The Raj of the Political Practitioner

I propose that the construct of the practitioner in the twenty-first century has embraced this political inclination whole-heartedly, without sufficient emphasis on ethics in the profession or quality in legal education. With the badge of resistance against authoritarian rule, fighting for the rule of law, the practitioner has emerged as the Guardian of Justice. These gains are political in nature due to their connection to the larger field of power in the country and has added to the post-colonial narrative in a manner similar to the historical resistance against the British Raj as discussed in chapter 4. Therefore, this role of resistance against oppression is not unfamiliar in Pakistan, and practitioners have protested the multiple military dictatorships that have ruled Pakistan for almost half of its history. This Movement (2007-2009) has been discussed in chapter 2 in connection with the 2007 Supreme Court case on legal education and has played a crucial role in the formation of the twenty-first century political legal practitioner. This link between law and politics exists in Pakistan, as in other countries, but this dissertation does not focus on it as a whole, only in part through the Lawyers' Movement, with the aim to see how the construct of the practitioner evolved following the successful resistance posed by the lawyers and civil society. Some have studied this Movement within the context of social movement theory,⁸⁴⁶ while others have investigated it within the frames of judicial activism, judicial politics, bar, and bench relations amongst others.⁸⁴⁷

⁸⁴⁶ Husnul Amin & Samina Rehmat, "Lawyers' Movement and Social Movement Theory: A Critical Analysis" (2016) 8:1 Pakistan journal of criminology 41-.

⁸⁴⁷ Maryam S Khan, "Empowerment without Accountability? The Lawyers' Movement in Pakistan and its Aftershocks" (2019) 50:3 IDS bulletin (Brighton 1984); Osama Siddique, "The Judicialization of Politics in Pakistan: The Supreme Court after the Lawyers' Movement" in Mark Tushnet & Madhav Khosla, eds, *Unstable Constitutionalism* (Cambridge: Cambridge University Press, 2015) 159; note 168; Hena Khursheed Bajwa, *Pakistani Media, Public opinion, and the Downfall of Pervez Musharraf: News Attribute Agenda-setting, and Cognitive*

The Movement began just some months after the first judgment on legal education was passed by the Supreme Court in 2007, as discussed in chapter 2, where an incredibly dismal picture of the state of legal education was painted in the country. There has been no recognition that the lawyers who took to the streets were products of the same “mushroom growth of law colleges” that had been called into question by the Pakistan Bar Council before the Supreme Court in 2005. The celebrated Movement (2007-2009) was led by senior members of the legal fraternity, which included leading women lawyers like Asma Jehangir and Hina Jellani, who fought against the military for constitutionalism and rule of law and created the image of the lawyer as a hero, or a saviour against oppression of non-democratic forces that had held the country in its grip for the past 75 years:

Since 9th March, the Black Coats of Pakistan waged a relentless struggle to change mindsets. We had to teach the common man what justice really meant, who was the oppressor and who could deliver them from oppression.⁸⁴⁸

Advocate Muneer Malik, who was one of the four counsels for the Chief Justice Iftikhar Chaudhry behind whom all rallied, writes in his memoirs that the Lawyers’ Movement was a drive to change mindsets of different sets of people: the masses who continued to follow a belief system, born of our colonial roots, that there were two rules, one for the powerful and one for the meek; the judges who needed to be mindful of their role with the trichotomy of powers and resist the temptation to side with the military establishment; political leaders needed to be reminded of

Liberation in the Lawyers’ Movement (Thesis, 2016) [unpublished]; Faqir, Islam & Rizvi, *supra* note 168; Shabbir Ahmad Khan, *Judicial Independence in Pakistan: A Case Study of Lawyers’ Movement, 2007-2009* ProQuest Dissertations Publishing, 2021) [unpublished] Book Title: Judicial Independence in Pakistan: A Case Study of Lawyers’ Movement, 2007-2009.

⁸⁴⁸ Muneer A Malik, *The Pakistan Lawyer’s Movement, an Unfinished Agenda*, first edition (Karachi: Pakistan Law House, 2008) at xi.

their role as representatives of the people within a truly democratic frame; and lastly, the military and bureaucratic establishment which acted as a “lord over the masses like a foreign occupying force.”⁸⁴⁹ Though changing these four kinds of mind-sets may have been the agenda for those who were driving the Movement, for the participants in the Movement it is proposed there was a personal element – how can the military touch one of our own, and that too the highest judicial officer of the country?

Following the success of this Movement in 2009, Bar and Bench relations were at their peak and practitioners were perceived as the guardians of justice – the force of resistance against the military oppressor. Though politics within the Bar existed in some form since the Bars on the federal and provincial levels are elected bodies, the impact of the Movement renewed an interest in Bar politics. During the focus group research exercise and interviews, it was observed that every law graduate represents a single vote and thus, is an important commodity when its time for bar elections. This has also been evident in the focus groups conducted with graduates of both LLB degrees: “Bar elections happen all the time!”⁸⁵⁰ A participant of the focus group with graduates of the Pakistani LLB degree warrants narration:

I received a call from a friend that a particular member of the Sindh Bar Council needed an associate since he was contesting for elections the following year. When I met this senior advocate, he asked me ‘*Can you come in the morning?*’, to which I replied in the affirmative, asking for details about the cases fixed the next day. He responded simply stating that ‘*Come in the morning and you will find out.*’ At the time I didn’t know that a political lawyer doesn’t practise law, but practises politics. He wanted ten to fifteen lawyers to show that he has a big firm, and he has significant support. This is a source of power for him. After two months of roaming around with him, attending meetings with other members of the Bar and judges, canvassing for votes and support, I asked

⁸⁴⁹ *Ibid* at 75–77.

⁸⁵⁰ note 770; note 757.

myself, what am I doing? This is not why I joined the profession? And I resigned from that firm.

An interview with Advocate Aashir Ikram Shaikh, a graduate of the University of Sargodha in Punjab shared that he worked hard to develop relations with the faculty at his University:

There are those in my peers who were landed and just got law degree to get power over state institutions like the police etc. and add to that power...the visiting faculty came for politics and wanted to establish a larger vote base for bar elections. One teacher taught us in our last semester who gave us great marks for future political affiliation. Once we got our licenses we became voters, I now have a group of 24 people who are voters.⁸⁵¹

This impact of bar politics on legal education has been significant as described by Advocate Altamush Saeed:

Legal education has also been affected by the political scene at the bar level. Because of the elections that are coming now, due to Covid-19, HEC was not taking the test but the Punjab Bar still enrolled advocates because they need the vote bank. Young lawyers just want to work on elections and get experience on that and not on their practice so how do they become good lawyers. They are dependent on their seniors for salaries but are focused on elections and get famous through that process. It works out well for the seniors as well. There are almost three elections a year, the HC bar, the Tax Bars and District Bars. They start campaigning one year before the elections...court buildings are covered with posters of bar council nominees' elections which is something that I don't appreciate at all. This as per the Legal Practitioners Act this is all illegal and we filed a case against this very issue and some posters were removed but we were forced to withdraw our petition due to pressure from our colleagues at the Bar.⁸⁵²

⁸⁵¹ Shaikh, *supra* note 796.

⁸⁵² Interview Altamush Saeed (2021).

Image 1



Image 2



Image 3



Image 4



Image 1: Entrance to the District Courts in Karachi

Image 2: The first building in Block A in the District Courts in Karachi

Image 3: Inside the Karachi District Courts premises

Image 4: One of the buildings in the Karachi District Courts⁸⁵³

It is the structure of the Bar Councils which allows for elections at the federal and provincial level through the Legal Practitioners and Bar Councils Act 1973, but another set of elected bodies also exist – Bar Associations. These Associations are not license-awarding bodies

⁸⁵³ These photographs were taken by the author on 20th November 2020.

like the Bars but aim to protect the members of the legal community and are organised along rights of practice based on the hierarchy of courts – Supreme Court, High Court, District Courts, and specialized Tribunals like the Karachi Tax Bar. A review of the Memorandum and Articles of Association of the Sindh High Court Bar Association reveals a mandate which is very similar to that of the provincial Bar Councils, in terms of “high professional ethics , etiquette and efficiency” as dictated by the 1973 Act, and a dedication to an independent judiciary and the rule of law. In addition, the Association also undertakes the responsibility of caring for members of the Association including their families in medical aid, residential facilities, recreational programs, and the promotion of higher education in the children of Advocates.⁸⁵⁴ Elections for these Associations are also conducted on an annual basis and provincial Election By-Laws govern these, e.g., for the Sindh Bar Association it is the 2015 Election By-Laws that control the same.⁸⁵⁵ The reality is that “the young lawyer or an experienced practitioner both know the value of their vote and the power it wields.”⁸⁵⁶ They support any candidate who once in power will not quiz them for

⁸⁵⁴ Section 3, Memorandum and Articles of Association of the Sindh High Court Bar Association.

⁸⁵⁵ The Multan High Court Bar Association also carries a similar mandate including the maintenance of protection of “the dignity and prestige of the legal profession and tone up profession etiquette” as per the Legal Practitioners and Bar Councils Rules, 1976. Section 3, High Court Bar Association Rules, Multan.

The Lahore High Court Bar Association is also organized along similar lines especially with regard to conduct and etiquette of the legal profession – “To maintain higher professional standards of probity and integrity amongst its members and to check and eradicate unprofessional practices; to maintain the dignity of the advocates; to act for maintaining the dignity and noble character of the Legal Profession and to enhance the dignity of the Legal Fraternity in the society;” amongst others. “About – LHCBAR”, online: <<https://lhcbars.com/about/>>. Further, the Mission Statement on the Lahore High Court Bar Association available on the same page reads as follows: “A Bar Association has a sensitive and committed role to play in the administration of justice. The Bar judges the Judges and the Bar itself through an efficient networking of its members. No doubt, it has to be in the vanguard for upholding the democratic values that our constitution stands and provides for. In this regard, Lahore High Court Bar Association has a unique position that has no domestic parallel. The Lahore High Court Bar Association, Lahore is old and premier Bar in Pakistan. It serves the public and the profession by helping ensure respect for the Constitution of the Islamic Republic of Pakistan, secure rule of law, propagates justice and promote professional excellence.”

⁸⁵⁶ While the exact scope of this power is not reducible in specific terms, it is the prestige of the title that is attractive. Since this was not the focus of the dissertation, the research work conducted did not probe into how this power of elected positions is reflected in real terms.

their actions [but] rather facilitate them at all times. The candidates willfully accept this convenient trade.”⁸⁵⁷ Young lawyers who were part of the focus groups also reflect these sentiments and an article published in 2017 declares: “Unfortunately, these elected bodies lack in intent and purpose to penalize the deviant law professionals as they consider any move against one of them a risk to all of them. Thus, votes are exchanged for negotiated immunity for the voters.”⁸⁵⁸

The 2018 judgment of the Supreme Court, though clear on the passing rate for bar entry examinations as 50%, did impact the Punjab Bar Council’s spirit of resistance which in 2020 was directed against the Court. This provincial Bar flouted the 2018 judgment and proceeded to register students who did not make the passing mark. In 2020, an Application was filed in the Court by an advocate from Lahore, Advocate Aneeq Khatana, against the Chairmen of the federal and provincial Bar Councils and governments, and the Higher Education Commission,⁸⁵⁹ for implementation of the 2018 judgment, but also called out the actions of the Punjab Bar Council regarding unlawful enrolment. This violation of the SC orders was evidenced in three main ways: firstly, the arbitrary reduction of the pass rate for the Law GAT from 50% as mandated by the judgment, to 40% to allow them to vote in the next elections; secondly, it was also alleged that the same provincial Bar had issued licenses for practice to those who had been unable to take the Law GAT exam which had been postponed by the Higher Education Commission due to the global pandemic; and lastly, the Bar had taken no action to provide for Bar Vocational Training

⁸⁵⁷ OverToZaman, “The Untouchables – Lawyers and the writ of law.”, (9 December 2017), online: *Over To Zaman* <<https://overtozaman.com/2017/12/09/the-untouchables-lawyers-and-the-writ-of-law/>>.

⁸⁵⁸ *Ibid.*

⁸⁵⁹ Civil Miscellaneous Application No. 6181/2020, Malik Aneeq Khatana and Others, filed in Constitutional Petition 134 of 2012.

courses which the Court ordered to prepare fresh graduates for legal practice.⁸⁶⁰ Advocate Hamid Khan shared his observations: “We had decided that 50% of the marks in the Bar Exam would graduate but then I found out that Punjab Bar changed that because they wanted the votes.”⁸⁶¹ Advocate Ahmad Awais, the Chairman of the Punjab Bar Council appeared before the Court following the issuance of notices on the 29th of October, 2020 denied that the “relaxation in passing marks in the Law GAT Test” was for voting purposes. The Orders of the Court in this Application while reiterating its earlier directives in the 2018 judgment also focused on the establishment of a Directorate for Legal Education which was needed to “supervise and implement the legal education initiatives being taken by the Pakistan Bar Council.”⁸⁶² The idea of this Directorate is not new, a National Council for Legal Education had been discussed in the past as well, as detailed in chapter 5, but through Order dated 6th June 2022 it was finally established.

The Application challenging the actions of the federal Bar for failure of implementation of the 2018 judgment, and the arbitrary enrolment practices, is illuminating in two senses: the first is the unfortunate reality that what one would imagine to be the strongest actor in the field, the Supreme Court, is weaker than is perceived – it is unable to ensure that members of its own community, i.e., the legal profession and the Bar Councils, follow its orders. When the writ of the state is flouted, consequences are necessary to keep parties in check and ensure that such incidents do not arise again. While the 2007 and 2018 judgments give the impression that the

⁸⁶⁰ There are other grounds that are not related to enrolment issue and include: the similarity of the two Bar Tests for local LLB and the equivalency of foreign LLB degrees; failure to review the 5-year LLB curriculum which was expected in 2019; the failure to establish a Legal Education Directorate that would be charged with the task of improving the state of legal education in the country. Civil Miscellaneous Application No. 6181/2020, Malik Aneeq Khatana and Others, filed in Constitutional Petition 134 of 2012.

⁸⁶¹ Khan, *supra* note 150.

⁸⁶² Order of the SC in Civil Miscellaneous Application No. 6181/2020, Malik Aneeq Khatana and Others, filed in Constitutional Petition 134 of 2012, dated 27-04-2022.

fact the Pakistan Bar Council needed to approach the highest court of the land in its original jurisdiction, indicates that the federal Bar is also unable to regulate entry into the profession, one of its primary functions. The second is the lack of accountability of the Bars by the Court – how is it that the reasons for the provisional enrolments were not detailed in the Orders? Why did the court accept the pandemic as a sufficient reason for the grant of licenses, provisional or otherwise?

The habitus of the different actors in the legal field, while retaining its colonial practice-focused frame, has been changed by organized Bar politics. The gains in political capital by the legal community historically through its connection to the large field of national power, has permeated into the Bar, and the legal education and practice is now bound by its own politics. Lawyers line corridors of the High Courts during the working day, greeting each lawyer that passes by, canvassing for votes for an upcoming election.⁸⁶³ Bar members receive messages on social media requesting for votes for candidates they support. Interestingly, there is very little discussion on these forums about the causes these candidates stand for, and support is generally awarded based on an association or a link with a member who falls in one group supporting a particular candidate. Furthermore, as this chapter has discussed, it has had a significant impact on legal education as well where practitioners are part of the dominant visiting faculty.

⁸⁶³ Observation Studies of Election Campaigns the High Court of Sindh, at Karachi, November 2019.

V. Conclusion

This chapter has studied the responses of young practitioners and aspirants to the legal profession in Sindh through focus groups and interviews. This exercise has been illuminating in determining the extent to which Pakistan's legal education is bound by colonial norms inherited at Partition in 1947. Five themes emerged following this research exercise that have helped answer the research question posed: English LLB degree is better than the Pakistani one; the status of the barrister is higher than that of a *vakil*; knowledge of the English language is necessary for success in practice; a practitioner faculty is preferred for teaching law; and the graduate of law will practice in the courts. These themes have also been discussed in previous chapters within the socio-historical context of Pakistan and pre-Partition India, and therefore, this argues that these are systemic issues that need to be addressed for the decolonization of legal education and practice in the country.

The emergence of the political legal practitioner is another theme that has been recurrent within the historical context of the country but the shape that it takes now is not just limited to the national field of political power but also within the legal profession itself through bar elections. These elections while are important since the Bar is an elected body, it has changed the nature of *learning on the job* that is expected of new entrants to the legal profession, who are directed by their seniors to focus on canvassing and campaigning for particular candidates rather than learning legal practice. This chapter finally argues that the proximity to colonial power/history, i.e., *Englishness* as represented by the choice of law degrees or training etc., has been amplified by intimacy with the national field of politics, and the legal profession stands

changed due to this. The next chapter concludes this dissertation and invites potential paths to reform legal education that can help serve the needs of Pakistani society.

CHAPTER 7

Conclusion: From Resistance to Reform

This dissertation has proven through a socio-historical study that legal education is, and has been, centred on practice, and this approach is rooted in Pakistan's colonial history. I propose that the changes introduced in the system of legal education in the country through the 2018 judgment of the Supreme Court should be viewed as a road map for reforming the system but more needs to be done. While some of the changes proposed by the Court are not novel, it is important to recognize that nothing has shifted the practice-narrative of legal education over the past 150 years. While the judgment was successful in bringing foreign degrees under increased examining scrutiny, it does nothing to displace the status of University of London law degrees which are an evident form of the continuing colonialism in the Pakistani legal field. The impact on the habitus of the actors in the Pakistani legal fields (both education and practice) is that of continuing coloniality on the one hand, and the introduction of the politicized Bar on the other. The current habitus therefore is both colonial and post-colonial in nature and the judgments by the Supreme Court and the reforms they propose does nothing to shift this narrative. The result is a continuing entrenchment of coloniality in legal education which is mirrored in legal practice and vice versa.

I. The Practitioner as a *Vuklaagard*

While the role of the Bar in national politics has been celebrated as it stands for the rule of law, in opposition to authoritarian rule as discussed in the last chapter, there is also the ugly side of a politicized practitioner that has emerged in Pakistan. Termed *vukalaagardi* by the media,⁸⁶⁴ the image of the legal practitioner in mainstream media over the past five years or so has been equated to that of a highwayman using his might to protect his personal interests at the expense of public service. This Guardian image of the lawyer stood marred soon after when mainstream media reported on the excesses (and violence) committed by young entrants to legal practice, especially in Lahore as discussed in chapters 1 and 2. In December 2019, the height of this violent face was seen when practitioners went head-to-head with members of the medical profession in Lahore, and in a talk show called “Off the Record,” hosted by Kashif Abbasi invited the Vice Chairman of the Punjab Bar Council (Shahnawaz Ismail) to understand how such a horrific event could take place and how the Bar would manage it. Vice Chairman Ismail expressed his sadness at the incident and commitment to take disciplinary action against those concerned, whilst also commenting on the difficulty of regulating 120,000 advocates that are enrolled in the Punjab Bar. A guest on the show, Saleem Bukhari (a journalist and political analyst) held the Punjab Bar Council responsible, arguing that, “there is a new army of lawyers that has emerged as a natural result of lack of disciplinary action by the Bar over other incidents that have occurred without adequate monitoring and responsibility.”⁸⁶⁵ In response, the Lahore Bar Association

⁸⁶⁴ “Novel action by CJP falling victim to ‘vuklagardi’ – CustomsNews.pk Daily”, online: <<https://customnews.pk/2019/04/15/novel-action-by-cjp-falling-victim-to-vuklagardi/>>.

⁸⁶⁵ note 161.

President Advocate Hafiz-ur-Rehman declared these acts of violence in Lahore, and larger Punjab, as isolated incidents of a minority of lawyers, and was only able to offer his remorse at the hospital violence in 2019. There was a no recognition of the failure of the Bar to achieve its most important purpose – regulation of the legal profession.

However, these *vuklagardi* (while noting that not all lawyers engage in such activities) are more powerful than one initially perceives. In 2016, a disciplinary committee was formed to regulate unruly lawyers in Punjab and “to check the growing incidence of misbehaviour in the subordinate courts and to protect the rights of the judges who face the hostile attitude of lawyers.”⁸⁶⁶ This, shockingly enough, was also resisted by the Punjab Bar Council and a province-wide protest was called by the provincial bar. Instead of recognizing the depravity of the situation at hand, this resistant response of some elected members of the Bars demonstrates institutional ineptitude and desire to preserve the status quo of power. The categorization of this violent lawyer as a minority, to only one or two percent of the Punjab Bar members, effectively implies that anywhere between 1200-2400 lawyers are engaged in these acts. These lawyers allegedly belong to the group that have been recently added to the profession, and a columnist conjectures that maybe lack of work is the reason for this unruly behaviour: “...credibility, legal work and professional progress as a lawyer will matter very little. In the absence of this, more and more people will resort to bar politics, which in turn will be identified with strikes and violence. For if legal work is not available, the young lawyers will use the bars and collective action to acquire social clout.”⁸⁶⁷ This identification of lack of legal work is interesting if one looks at the high

⁸⁶⁶ “Advocates of Hooliganism”, online: *Newsline* <<https://newslinemagazine.com/magazine/advocates-of-hooliganism/>>.

⁸⁶⁷ Arifa Noor, “Subplots in the story”, (17 December 2019), online: <<https://www.dawn.com/news/1522693>>.

numbers of the country's population – 207,774,000 as per the 2017 census,⁸⁶⁸ but other sources from November 2022 reveal the figure to be much higher now at 231,132,543.⁸⁶⁹ In a country where divorces, custody, and inheritance cases are all adjudicated by the courts through suits for administration, custody etc., simplistically speaking, the lack of work for lawyers can be an ill-informed argument. The bigger question remains answered: how are these angry, young practitioners granted licenses to practice law, or licenses to engage in violence when things don't go their way?

With no fear of repercussions, attempts at regulation have led to strikes and suspension of work by members of the Bar, and this rogue group can be more appropriately categorized as Guardians of *Injustice*. Judges described one practitioner as “drunk on power, unafraid to curse judicial officers, drag them from their courtrooms and padlock the doors.”⁸⁷⁰ This representation shows the ugly side of the politicized practitioner – one who lacks discipline and fears no accountability, i.e., not the rule of law but the rule of lawyers.⁸⁷¹ It is important also to remember this concept with the *Vakil Raj* as termed by Mukherjee⁸⁷² about the period during the first half of the twentieth century, as discussed in Chapter 4. Though there are clear rules of conduct and etiquette that a lawyer must follow, there is a lack of enforceability due to a failure of self-regulation by the Bar: “Men in black uniform behaving like ruffians...Sad incidents of members of

⁸⁶⁸ note 2.

⁸⁶⁹ “Pakistan Population (2022) - Worldometer”, online: <<https://www.worldometers.info/world-population/pakistan-population/>>.

⁸⁷⁰ Richard Leiby, “Once Hailed as Heroes, Pakistani Lawyers Now Seen as ‘Gangsters’ - The Washington Post”, online: <https://www.washingtonpost.com/world/asia_pacific/once-hailed-as-heroes-pakistani-lawyers-now-seen-as-gangsters/2012/11/11/bccbf3a2-2c26-11e2-a99d-5c4203af7b7a_story.html?wprss=rss_social-world-headlines>.

⁸⁷¹ “The Rule of Law(yers)”, (24 October 2017), online: *Daily Times* <<https://dailytimes.com.pk/129621/the-rule-of-lawyers/>>.

⁸⁷² Mukherjee, *supra* note 293.

the bar harassing, physically confronting, and even attacking judges, litigants, and the general public are loathsome, and outright disgusting.”⁸⁷³ This lack of enforceability reflects the status of the untouchable practitioner, a King in the legal field in Pakistan.



Image source: Tribune Newspapers⁸⁷⁴

II. A Summary of Arguments

In this dissertation, I have proved that the goal of legal education in Pakistan is to prepare students of law for legal practice and this goal is rooted in the country’s colonial history. In

⁸⁷³ Sheraz Ahmed, “Pakistani Lawyers’ Misconduct Insults The Profession of Lords”, (23 November 2020), online: *Naya Daur* <<https://nayadaur.tv/2020/11/pakistani-lawyers-misconduct-insults-the-profession-of-lords/>>.

⁸⁷⁴ “Lawyers in the dock: 250 booked on terrorism in PIC attack”, (11 December 2019), online: *The Express Tribune* <<https://tribune.com.pk/story/2116058/firs-registered-lawyers-attack-punjab-institute-cardiology>>.

chapter 2, I studied the 2018 reforms of legal education by the Supreme Court and found that the teaching and learning of law at universities, and their affiliated colleges, is guided by the practitioners' logic geared towards litigation. The next chapter investigated the roots of this approach and discovered that the connection between legal education and practice was made in the mid-nineteenth century when the two institutional imports of universities and higher judiciary were brought to India by the British. The habitus that developed in the early professionalization of law, while guided by the practitioner's logic, was marked by distinctions based on the kind of legal trainings practitioners had attained, with holders of the Bar-at-Law certification at the highest rung of the hierarchy of practice in the new High Courts. I argue that while initially the nascent legal profession in colonial India was dominated by English barristers, towards the end of the nineteenth century, Indians also acquired this coveted status and blurred the boundaries based on race to ones based on class.

Chapter 4 examined how Indian legal practitioners gained various forms of political capital, from the early to mid-nineteenth century, and worked on indigenization of the legal profession through the 1926 Indian Bar Council's Act, and legal education through calls by people like Prof. Ambedkar to tailor the study of law to Indian society. I argue that these political gains of the practitioner were evident on the national front through organized political activity, and in the universities where practitioners gained positions in administrative capacities. The power of the practitioner, with the support of civil society, led to the departure of the English from Indian shores.

The fifth chapter studied the landscape of the legal field of education in post-Independence/Partition Pakistan. The chapter explores the influence of the United States in

changing the norms of legal education in both India and Pakistan, and I argue that these attempts bore more fruit in India due to Pakistan's turbulent relationship with authoritarian and democratic rule. Reform attempts of legal education from the mid-to-end of the twentieth century were limited and the colonial norms in legal practice continued to have a hold on what was taught in law colleges and by whom.

The sixth chapter scrutinized how these colonial norms of practice impact legal education in Pakistan in the twenty-first century and through a focus-group research exercise, this dissertation proved that thinking of the aspirants to law continues to be bound by values of a colonial past. I argue that law graduates continue to aspire to traditional legal practice, as opposed to any other careers that they could use their legal knowledge in. This concluding chapter invites stakeholders to conduct and execute reforms in legal education guided by the socio-historical investigation conducted in this dissertation, to make legal education more suited to the Pakistani context.

The use of Bourdieu's field theory and the notion of the habitus has helped inform this investigative exercise. This dissertation argues that the fields of legal education and practice cannot, or should not, be studied separately as the two are intimately connected through a historical study of the import of the two institutions of universities and high courts in the mid-nineteenth century. The habitus of the actors in this intersecting field of practice and education has been determined by colonial norms, which continue to impact the kind of law degree and training that aspirants to legal practice choose to acquire. The continuing preference for an *English* education subjugates the study of Pakistani law at universities to a subservient status and this has also impacted the lack of reform in the area until the twenty-first century. The reforms

introduced by the Supreme Court in 2018 though monumental in improving the regulation and monitoring of universities, and their affiliated colleges, and the introduction of a five-year LLB, have done nothing to subvert the continuing colonial narrative in legal education in Pakistan. Drawn from the Bourdieusian framework, I argue that this continuing coloniality is due to the internalization of hierarchies in legal practice, and their impact on legal education. Disruption of this narrative is only possible if one as a first step, questions the facts one sees as self-evident and therefore *true*, and second, if one works to replace those norms for newer ones that are more relevant to the current, local context. The reality of the Pakistani practitioner today is one of resistance (legitimate or otherwise) and this dissertation from a socio-historical approach helps us see the practitioner better. This can inform future reforms making them more nuanced and grounded in history.

III. The Hard Truth

I have argued that the source of these problems is not solely in legal education imparted at colleges and university, but also the failure of the self-regulation mechanism that is demanded from the Bar. The duties of the Bar are governed by the Legal Practitioners and Bar Councils Act 1973 and discussed in detail in Chapter 2. The Bar appears to be more focused on its up-coming elections and the political mandate required to assume the coveted elected office. Connection with the national political realm enables a free flow of money to allow for the amassing of votes – “Anyone with strong political linkages, one who could muster or buy enough votes to muscle

his group into power, will steal the spotlight. More votes, means sure success.”⁸⁷⁵ This is where the unquestionable grant of licenses by the Bar to undeserving applicants needs further scrutiny.

A participant in the focus groups with graduates of the University of London degree stated:

I have asked the Bar why they are so lenient in granting licenses and their theory is, which I agree with, that we won’t stop anyone from becoming a lawyer. This is a pond, we are allowing all the fishes to enter, whoever can swim will swim and the ones who cannot, will die. Who are we to stop anyone?”⁸⁷⁶

To this another participant objected:

But someone has to stop them, if not now, then maybe in front of a judge they will fail and be admonished. It is better to just fail in the exams. So, I feel you cannot just let anyone pass. In this way, you can make everyone a doctor too, make everyone an engineer, and then when machines break, buildings fall and people die, then you will find out the consequences. Before a lawyer ruins someone’s case, because he is not competent enough, it is better to stop him.⁸⁷⁷

This is what the voice of reason would say – only deserving and competent graduates of law should be granted the right to practice. Mere possession of an LLB degree does not create a vested right for grant of the license to practice law in the courts of the country.

The habitus of the legal profession is thus adversely affected by these rogue actors. The gains in political capital of the legal community, coupled with a failure of adequate regulation from the Bar, results in a sort of untouchability of practitioners in the country and resistance to regulation, legitimate or otherwise, has become the cornerstone of some of these politicized practitioners of law. The practitioner emerges as an actor in the legal field where he is King in multiple senses: the first which is the main theme of this research project is the practice-focused approach to legal education where I have successfully argued that through the sanction of the

⁸⁷⁵ OverToZaman, *supra* note 857.

⁸⁷⁶ Participant No. 6, *supra* note 757.

⁸⁷⁷ Participant No. 1, *Ibid*.

Supreme Court the practitioner is declared a King in the legal field. The second is the untouchability of this King, one who metes out punishment as he sees fit, and the instances in the last five years as discussed in this chapter, and earlier in the introduction, demonstrate this untouchability. While the police booked over 250 lawyers under the Anti-Terrorism Act following the incident, fifty-two lawyers were detained and brought to court the following day, but the legal community in Punjab protested this legitimate action by the state.⁸⁷⁸ A strike was called by the Punjab Bar Council which resulted in a suspension of all court work, holding the justice for litigants hostage.⁸⁷⁹

I propose in this dissertation that any reform work of legal education needs to be conducted in recognition of the intimate connection of legal education and practice. The role of the Bar in this effort is crucial and I argue that this work needs to be collective in nature – the Pakistan Bar Council on the Federal level must ensure that its provincial bars are working with it and not against it, and this needs to be deployed in a systematic manner separating the reform into two stages: legal education at universities and colleges, and legal training for practice. This dissertation has demonstrated that the legal practitioner is in the strongest position of power, with its influence in legal education field as well as the field of legal practice and it needs to use this position to effect change.

⁸⁷⁸ note 870.

⁸⁷⁹ “Lawyers continue to observe strike in Punjab over arrests in PIC attack case”, (16 December 2019), online: *Daily Times* <<https://dailytimes.com.pk/521516/lawyers-continue-to-observe-strike-in-punjab-over-arrests-in-pic-attack-case/>>.

IV. An Invitation to Reform

Reform is possible when one accepts the reality of the situation before them, and this dissertation has explored the present reality of practice and its entrenchment in legal education from a socio-historical perspective from 1800-2022. Working with (and not against) the current, this dissertation proposes that the reform of legal education which is aimed at producing *better* legal practitioners is only possible if the Bar, as a first step, takes charge and exerts its statutory control to regulate its members. The next step would be to invite opinions and views of the different stakeholders on how to, firstly, give effect to the changes introduced by the 2018 judgment, and secondly, to give more suggestions on how the system of legal education can be improved. This exercise of inviting opinions of the members of the profession is not new – the Indian legal profession in 1924, as detailed earlier in chapter 4, had invited responses from its members regarding the constitution of an All-India Bar Council and transfer of powers from the High Court related to enrolment and discipline to the Bar.⁸⁸⁰

Inclusion of the views of different stakeholders on the review of legal education in Pakistan would allow for a more reflexive approach to intended reforms. This dissertation has explored the self-evident reality of legal education as a preparation for practice in Pakistan from a historical perspective, and studies the automatism of actions in practice and/or education which allows for performance of those actions without mindful intention from a Bourdieusian perspective. The expectation that a holder of an LLB degree *will* join legal practice is one of those demonstrations of automatism and this action allows for the actor to develop a sense of, or a

⁸⁸⁰ Indian Bar Committee Questionnaire, Delhi Government of Central Press, J&P 986, 1924, India Office Archive, British Library.

“feel for the game.”⁸⁸¹ In this dissertation I sought to interrogate these seemingly *natural* inclinations by adopting a reflexive approach, following a socio-historical analysis, to try to move past the acceptance of reality of practice and education in law so that one can achieve the intended reform of the system.

The five themes discussed in the last chapter that emerge from the focus group study highlight the continuity in coloniality of legal education and practice – from the choice of which LLB degree to study, where to acquire legal training in preparation for the Bar, the preference awarded to the English language over local languages, teaching to be conducted by legal practitioners, and the expectation of practice following acquisition of the LLB degree. To detach oneself from this mindset requires a reflexivity in thinking, why is ‘*Englishness*’ still preferred over ‘*Pakistaniness*,’ and how can thinking relationally help rupture this thought process. While appreciating the work of the Supreme Court to reform legal education, one which is not part of its constitutional mandate *per se*, this dissertation invites the *reformers*, or those interested in effecting reform of legal education, to work towards the improvement of the *local* LLB (in terms of curriculum, teaching, pedagogy, trainings, etc.) so that the English counterpart is truly a thing of the past. To build, or rebuild, the system of legal education as one that allows for space to think about other careers parts rather than the *traditional* legal practice approach inherited at Independence. An institution like the proposed new Directorate of Legal Education could allow for this to take fruit.

The Directorate of Legal Education has been sanctioned by the Supreme Court as discussed in chapter 2 and 6, and this represents a crucial opportunity where the Practitioner

⁸⁸¹ Bourdieu, *supra* note 18 at 223.

King and/or the Bar can step up and use its political capital to work towards reform, rather than against it. The political nature of the Bar cannot be divorced from the reality of legal practice today, but one can try to work towards reform by using the strength of this political power. This approach needs a strong will from its members/actors towards effecting reform from a reflexive perspective. The power of the Practitioner King is all-encompassing, one needs to try to channel this power to produce more able and competent legal practitioners as a first step, following which one can imagine a higher education in law to be a gateway to other career paths.

V. Conclusion

This dissertation aimed to understand the current reality of the lawyer as a practitioner through a historical approach, and to conduct this genealogical study, methods were drawn from the disciplines of history, sociology, and law to help see the problems in legal education in Pakistan better. This study is the first of its kind and finds value in its overlap with three disciplines which allows for it to be of interest, or use, to a larger segment of the academic and practice community. The Practitioner King, who rules supreme in the fields of legal education and practice in Pakistan, needs to understand how they came to acquire this immense power over the past 150 years, and work to use that privileged position to re-imagine the goal of legal education for the twenty-first century. The time for reform is now, we cannot let go of this opportunity to effect *real* change in the way law is taught and practiced in Pakistan.

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