

- **Citation:** Arif, S. M. A. W. K., Shahbaz, S., & Gardazi, S. M. F. (2022). Lawyers' Tale in the History of Indian Subcontinent: An Analytical Study of the Mughal Imperial System and Classical Hindu Law *Global Legal Studies Review*, 7(II), 44-49. [https://doi.org/10.31703/glsr.2022\(VII-II\).05](https://doi.org/10.31703/glsr.2022(VII-II).05)



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## Lawyers' Tale in the History of Indian Subcontinent: An Analytical Study of the Mughal Imperial System and Classical Hindu Law

- p- ISSN: 2708-2458
- e- ISSN: 2708-2466
- Pages: 44 – 49
- Vol. VII, No. II (Spring 2022)
- DOI: 10.31703/glsr.2022(VII-II).05
- URL: [http://dx.doi.org/10.31703/glsr.2022\(VII-II\).05](http://dx.doi.org/10.31703/glsr.2022(VII-II).05)

**Abstract:** *Lawyers do have many skills, but their training and work are client-centred. Therefore, the major considerations remain in the interests of clients. Lawyers did play an important role in the administration of justice. The history of the legal profession and the role of Lawyers has been expounded by many scholars in their writings. However, this article focuses on representation through Lawyers in British India and analyses textual data of classical Hindu law. In the reign of Mughal emperors, particularly Muhiyuddin Muhammad Awrangzib (1658-1707), representation through lawyers was recognised, and even to date, the role of lawyers plays a significant role in order to secure ends of justice and prevention of abuses. The paper critically discusses representation by lawyers, their role and their duties in British India. In particular, it analyses the text of classical Hindu law by contextualising the text of Classical Hindu Books. Finally, it establishes that for the first time in the reign of Aurangzeb, Vakil-e-Sarkar or Vakil-e-Shara were appointed as lawyers (Vakils) to defend the State in the suits filed in every district. It also finds that classical Hindu law recognises representation through lawyers.*

**Key Words:** Lawyers, British India, Mughal Emperors, Hindu law, Vakil

### Introduction

Lawyer's role in society seems important as he squabbles for the rights of the people. An advocate, in the discharge of his duty, knows but one person in the entire world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, and, among them, to himself, is his first and only duty; and in performing this duty, he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on reckless of consequences, though it should be his unhappy fate to involve his country in confusion. (Zacharias & Green, 2006)

According to the [Model Rules \(2008\)](#), it is the responsibility of a Lawyer to represent a case as per the client's will. Lawyers have to argue according to the law of the land. His representation of clients is very

important as he is contributing to Justice within society ([Model Rules, 2008](#)). Client goals are paramount, with only modest constraints imposed by the countervailing interests of others or the public in general ([Molitemo, 2009](#)). The client may deviate, but lawyer must argue on behalf of the client for the administration of Justice. In this context, it is argued support that limits as much on the worry that a client will not receive adequate representation from a repulsed lawyer. Instead, good lawyers take professional pride in the lawyer who represents the unpopular client without regard to the lawyer's own views. The profession prides itself on the ethic of separation from a client's moral position. In British India, lawyers play a significant role in addressing people's issues. On the other hand, Classical Hindu Law also recognises the legal profession and the existence of this system.

With the above prelude, this work is divided into two parts. The first part is related to the representation

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of Lawyers in British India, in which specific attention is given to the era of Aurangzeb and Shahjahan. Further, the cases argued and pleaded by lawyers are also listed. In this context, their remuneration, Elevation to the bench and lawyers in other departments of Shahjahan are also addressed. The second part focuses on the text of Classical Hindu Law in which the *slokas* or stanzas have been taken from the relevant books and critically examined. Further, the opinion of highly qualified Scholars regarding the existence of Lawyers in classical Hindu law is also addressed. Finally, conclusions will be drawn up.

### Analysis of Representation through Lawyers in British India

This section analyses representation through Lawyers in British India. *Fatawa-e-Alamgiriya* and *Fiqh-e-Firoz Shahi* are the two Muslim Indian codes in which the duties of lawyers are mentioned. Another term applied to them was *Vakils*; even to date, this term is used in Pakistan and India. There is a specific chapter on the representation of lawyer's, i.e. *Kitabul-Vakalat*, in the above-mentioned books.

Mawardi holds that a lawyer should be well equipped with knowledge of the law. Judges or *Qazis* should also have sound knowledge about the profession for dispensing justice. Lawyers and Judges are the experts of law having sound knowledge of the subject. Muhammad Tughlaq (1315-1351) appointed the Ibn Batuta, a Judge in his time, who discussed the role of *vakils* in that era. According to Sir Thomas Roe, the petition of the East India Company was presented by his solicitor, who perused his plaint in the Emperor's Court.

### Leading Cases Argued by Lawyers

According to Basheer Ahmed, the following cases were argued by lawyers ([Ahmad, 1941](#)).

1. Amin Khan v Manucci this case was a theft case.
2. East India Company v State, this case was a civil case in which Ram Chander acted as Vakil.
3. State v Mirza Beg Kotwal, this case was related to murder in which Qawam Uddin argued the case.
4. Mst. Feeta v Miran was a civil suit.
5. Azmatullah v Ghulam Muhammad.
6. Khwajah Ahmad v Abi Muhammad.
7. Nusrat Ali v Qaim Ali.

Lawyers were recognised, and one Vakil was given the title of "Vakalat Khan" in the time of Bahadur Shah (1707- 1712) for his successful advocacy.

### Vakil-e- Shara or Vakil-e-Sarkar and their Remuneration

The name given to Lawyers was *Vakil-e-Shara*. In all cases, submission of a power of attorney (*Vakalat Nama*) was compulsory for the *Vakils*. Today such practice is the same in Pakistan and India. Lawyers are supposed to present their *Vakalat-Nama* in court before pleading with the case.

In terms of East India Company, the Calcutta Supreme Court was authorised to enrol attorneys at law and advocates under the Regulation Act, 1773, as much in number as it deemed fit for the functioning of the Bar. The solicitors and attorneys from Scotland, Ireland and England, were allowed only for such enrollments. In the later stages, the Supreme Court of Madras and the Supreme Court of Bombay were also authorised to enrol the lawyers for practice. However, the courts didn't allow any Indian lawyer to appear for trials. ([Kulshrestha, 2005](#)) In 1793, both Hindus and Muslims were allowed under a reformed and regularised profession by Cornwallis to practice law before the *Sadar Divani Adalat* (the Main Court) as enrolled *vakils* (pleaders). ([Munir, 2005-06](#))

At the rate of rupee one daily, the remuneration was paid to *Vakil-e-Sharai* by State ([Khan, 1930](#)). Dr. Muhammad Munir has written an excellent article on the subject where he states that: "These *Vakils* had to give free legal advice to the poor. They were appointed by the Chief Qazi of the Province or sometimes by the Chief Justice (*Qazi-ul-Quzat*)" ([Munir, 2012](#)). Today in Pakistan and India, such Lawyers are State prosecutors, and State gives them remuneration.

### Vakil in other Departments

Agents were also called 'Vakil' those days, as it was found general term. "Vakil-e-An Hazrat", "Waqea'at-e-Alamgir," was referred to as Shahjahan's 'diplomatic' representative at the Court of Aurangzeb.

### In the Case of Pauper Suits

In the case of pauper litigants, the lawyers were required to give free advice to the needy during the reign of Aurangzeb Alamgir.

### Classical Hindu Law

Ancient Hindu law recognised that parties have a right to be represented through other persons. It is necessary to find out that is such a person "lawyers"? At the present time, such persons are referred to as pleaders, advocates, vakils and lawyers. The question arises that such persons correspond to the modern

lawyers who safeguard the interests of the people. Ancient Hindu law did recognise such persons as lawyers. There was a class of experts who provided legal services to the parties in a suit in order to secure and protect their rights. Even in other countries, i.e. Pakistan, the United Kingdom, Canada and the USA, such persons provide their service by way of giving legal opinions on law questions and pleading cases. It became known to the west by looking at Hindu law. For this purpose, it is necessary to analyse the Hindu textual law to understand the above-mentioned discussion.

### Various Codes and opinion of Scholars

In this section, firstly, the opinions of scholars who accept the existence of lawyers are discussed, and then textual data will be analysed.

The *Halhed's Code of Gentoo Laws* (1777), one of the most important documents which are translated by the *Vivadarnavasetu*, comprised the specific chapter titled "Of Appointing Wakeel". These are also translated as attorneys or *Vakils*. This chapter explicitly speaks about Lawyers. It states that:

"if the plaintiff or defendant has any excuse for not attending the court, or for not pleading their own cause, or, on any other account, excuse themselves, they shall, at their own option, appoint a person as their vakil; if the vakil gains the suit, his principal also gains; if the vakil is cast, his principal is also cast";

"in a case where the accusation is for murder, for a robbery, for adultery, for eating prohibited food, for false abuse, for thrusting a finger into the pudendum of an unmarried virgin, for a false witness, or for destroying anything, the property of a magistrate, a vakil must not be appointed to plead and answer in such cases; the principals shall plead and answer in person; but a woman, a minor, an idiot (sic), and he who cannot distinguish between good and evil for himself, may, even in such cases as these, constitute a vakil".

One eminent authority drew a conclusion that at the stage of a trial, each party has the right to appear, and the representation was through persons. Today, such persons are known as Lawyers. The persons who gave their legal advice to clients are recognised in Indian law. They constitute numerous professions in India. They are also known as advocates ([Jolly, 1890](#)). Jolly, in his book, recognised the existence of the legal profession in India by translating various classical Hindu law books. In this context, it seems that Jolly believed in the existence of lawyers as well. He supported the representation through Lawyers under classical Hindu law ([Jolly, 1928](#)).

### Lawyers' Existence Recognized by other Scholars

The existence of legal practitioners is also argued by other scholars. Few of them who support the existence are as follows:

1. The Indian scholars recognised and maintained the existence of Lawyers in ancient India as "legal practitioners". KP Jayaswal was one of the ancient professional lawyers. He was a lawyer perhaps earlier by the time of *Manusmrti*. He translated *Manusmrti* as follows:  
The *Dharmasutras* presuppose the existence of the profession much earlier, with its history going back to the definition of *vidya-dhana*. The verse says the advisor on the law to each party who was Brahmin, the one who acquires his property against the money supplies to the defendant for defence (the speculator who is a merchant), the creditor (who gets his decree) and the King (who gets court-fees) are getting benefits from litigations and legislations. On the other end, the judges, sureties and witnesses are those who bear the loss for the sake of the deeds of others. ([Jayaswal & Jainavalkya, 1931](#)).
2. The *Responsa Prudentium* of the early Romans was perhaps most analogous to the system where the persons had no other role to play except providing their views, while the estimations of the legal professionals also were not obligatory upon the King to act. However, there was any legal occupation like the modern sense of the terminology as there were not enough signs of existence during the era of the *Smritis*. The King and his Councilors may ask the people specialised in the knowledge of the law to give their view for the contemplation of cases. ([Sarkare, 1958](#))
3. Another writer P Varadachariar's (1946), argued that: "In Ancient India, it is not possible to say anything as to the existence of a legal profession." It seems that he also recognises the existence.
4. Interestingly, PV Kane approximately denies the existence of the legal practitioners in the primaeval era, as he believes:

There is nothing to illustrate that any group of people whose occupation was similar to that of the current legal practitioner, solicitor or counsel and the State regulated the same existed while replying to an interesting question of whether lawyers existed in ancient India as an institution. The answer must be that so far as the *Smritis* are concerned, no. ([Kane, 1946](#))

## The Textual data

### Narada

A first point to be noted is that the representation in a court of law is not referred to before the *Naradasmṛti* as assessed after analysing the text of *Narada*. The first one to mention the institution explicitly was *Narada*. It may either the representation in courts did not exist before *Narada*, or it did exist from an earlier time. The means by the Jolly's translation of *Naradasmṛti* exhibit as:

If one deputed by the claimant, or chosen as his representative by the defendant, speaks for his client in court, the victory or defeat concerns the party himself and not the representative (Jolly, 1889).

The second stanza of *Narada*, as translated by Jolly, says:

He deserves punishment who speaks on behalf of another, without being the brother, the father, the son, or the appointed agent; and so does he who contradicts himself at the trial (Jolly, 1889).

From the second stanza, the meaning can be drawn. As per *Narada*, the speaking for a person in the court by another person was termed as *Niyoga*. In other words, the *niyoga* means the appointment.

### Brhaspati

Concerning representation through Lawyers, at least one *sloka* must be connected with representation as referred by the *Brhaspatismṛti*. Jolly translates that:

For one timorous, or idiotic, or mad, or overaged, and for women, boys, and sick persons, a kinsman or appointed agent should proffer the plaint or answer as his representative.

It is clear from this stanza that representation through lawyers does exist and is recognised according to the wording of *Brhaspati*.

### Katyayana

It is one of the most important books in which the representation through lawyers is focused and argued. There is a detailed chapter in connection with a representation. It is famous out of all *Dharmasastris*. PV Kane arranged the title Substitutes or recognised agents of parties for his collected and translated not lesser than the seven *slokas* on the area under discussion.

Kane translated the first two *slokas* of (*Katyayana* 89-90) as follows:

"A person though other than the defendant, if put forward by the defendant before the judge as the

defendant should be regarded as the defendant and he also who is accepted by the plaintiff himself as the defendant."

"It is the right of the person charged [to give a reply] and not of another person since the latter is unconnected [with the dispute]; [but] even a stranger may be allowed [to have the right to defend] if he is put forward as the defendant] by the person charged [by the plaintiff]." (Kane, 1933)

The right to defend was allowed and recognised. The defendant may defend his suit through a lawyer. In this connection, the representation through lawyers is very clear. The plaintiff must appear through a lawyer, i.e. person acting as his representative. The *Slokas* of *Katyayana* are very clear and support the existence of the legal profession and pleading through a representative.

### Pitamaha

It is also necessary here to mention the text and verses of *Pitamaha*. These are translated by *Scriba* as follows: Whenever someone deploys another individual to act as his representative, it is considered as if the principal himself did the act, and it can't be cancelled. The King should carry out the proceedings of a court case when the mother, the father, a relative, a friend, or a servant appears as council representation. (Scriba, 1902)

### Sukranitisara

*Sukranitisara* also recognised the representation of Lawyers. For Example, *Sukranitisara* verse 108, translated by BK Sarkar, reads as follows:

A person who knows the legal procedure can be appointed as a representative by the defendant or plaintiff. (Sarkar, 1914)

*Sukranitisara* identified a few elements necessary in the representative, which are summarised as follows:

The parties would appoint their representatives who know the rules of legal procedure (those are *vyavaharanabhijna*); (2) The remuneration (fee of the expert), *niyogin* or *niyojita* would be dealt with in detail; and; (3) The King would not appoint the *niyogin* but by the party.

Here one may infer that representation was done through Lawyers because he is an expert in legal procedures and knows the legal theories and concepts in detail. He is supposed to be learned the laws of the land in which he is practising. Plaintiffs also give payment to the Advocates, and parties appointed their representative and not the King did so.

However, it could not be concluded that a professional group of experts on legal matters was found whose usual actions amounted to representing the persons in the courts as it was not identified by the known pieces of evidence extracted from a written source. The close personal relationship between the two persons was indeed the necessary condition for representations, as assessed from the literature. The importance of special competence in legal matters or any other qualification was secondary to representing a person in the court. However, it could be a parallel trait to the personal relationship. Hence, the meaning was not treated as a skilled or specialised person (*vyavaharaina*) but as *suhrd* (friend). The client had been discussing their issues in detail with their representatives. The professional expert was working to safeguard the rights of the litigants.

### Conclusions

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It is concluded that during the reign of Aurangzeb, for the first time, lawyers were appointed to plead before the court of law. Lawyers were used to appearing before the court to give free advice to the poor's free of charge. They were full-time appointed to defend state cases. Such Lawyers exist in each district. *Vakil-e-Shara* had a staff which included three clerks and one accountant. He was attached to the Court of *Qazi-e-Pargana*. It can be deduced from the above that the entire *Sukranitisara*, as a matter of fact, is of recent origin.

It is clear from the text of *Sukranitisra* that the professional experts were there and appointed by the parties as representatives on their behalf.

Legally speaking, such professional experts are Lawyers because they were not appointed by the King but by parties. The parties give their consent to appoint Lawyers in order to decide their cases according to the law. The layman does not have deep knowledge of the law, but lawyers do have. The remuneration of the Lawyers was also given by parties.

It is important for consideration, as *Varadachariar* (1946) says, "it provides for the appointment of a 'representative' not only on the ground of the party's ignorance of *Vyavahara* but also on the ground of his being otherwise busy". It is clear that the class of professional Lawyers is part of the ancient justice system. However, *Dharmasastra* includes the idea of friendship or blood relationship etc., between the two persons, one represented as a lawyer or legal representative and one being represented as principal. This shows that in the Classical Hindu Law, parties appoint their representatives, i.e. lawyers. Such Lawyers carried on till the day in different courts of India. Their job is to give a legal opinion on the point of law and to protect the rights and interests of the people.

### Chronological Survey of Sanskrit Texts (Kane, 1933)

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- 1) Dharmasutras 600-300 B. C.
- 2) Manu 200 B. C.-100 A. D.
- 3) Yajnavalkya 100-300 A. D.
- 4) Narada 100-400 A. D.
- 5) Brhaspati 300-500 A. D.
- 6) Katyayana 400-600 A. D.
- 7) Vyasa 600-900 A. D.
- 8) Pitamaha 600-900 A. D.

### Commentaries and Nibandhas

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- 1) Asahaya on Narada 700-750 A. D.
- 2) Vyavaharacintamani 1500-1550 A. D.
- 3) Viramitrodaya on Yajnavalkya 1615-1645 A. D.
- 4) Vivadarnavasetu 1773 A. D.

### Art Haastra

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- 1) Kautilya 300 B. C.-100 A. D.
- 2) Sukranitisara [1800 A. D.]

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