

CHAPTER IV

ADVOCATES

The number of Advocates who were entitled to practise in the settlements was limited by *arrêté*. Under the *arrêté* of 12 January 1950, the number was fixed as follows :

Pondicherry	20 <i>avocats-conseils</i>
Karaikal	12 <i>avocats-conseils</i>
Mahe	8 <i>avocats-conseils</i> or <i>conseils agréés</i>
Yanam	8 <i>avocats-conseils</i> or <i>conseils agréés</i>

Avocats-conseils were those who had the degree of *licencié en droit* (licentiate in law) from a French University, had gone through a period of probation as *avocats-stagiaire* and had been enrolled as a member of the Bar. *Conseils agréés* (approved counsel) were those who had obtained the certificate of *capacité en droit* from a law school and had undergone some practical training. In Pondicherry and Karaikal, the system of permitting certificate-holders to practise was abolished, in the other Establishments the practice continued, mainly because of the lack of adequate number of persons who had the degree of *licencié*. Though a law school was established in Pondicherry, it was necessary to go to France to take the final examination for the degree at a French University. The *conseils agréés* in Establishments where they were permitted to practise enjoyed the same rights and privileges as *avocats-conseils* in regard to pleading and representing their clients.¹

Probation

Advocates before being called to the Bar had to undergo what was called *stage* (probation) ; hence the name *avocats stagiaires* during their

1. There was no separate class of *avoués* in POKKAMY. Article 4 of the *arrêté* of 22 June 1952 provided that *avocats-conseils* and *conseils agréés* were entitled to perform various acts of procedure as *avoués* in the metropolis used to do.

probationary period. French citizens and native subjects of the colony who were not less than twenty one years of age and who had the degree of licentiate in law could be admitted to the Bar as *avocats stagiaires* (apprentices-at-law, or advocates on probation). They were expected to be on probation for two years doing (in the language of the *arrêté* of June 22, 1932) "diligent work" (*travail assidu*) in the office of an *avocat-conseil* or *conseil agréé*. The fact that each *avocat-conseil* or *conseil agréé* could take only one person for probation in his office tended to limit the number of advocates on probation. It was, however, made possible to take two probationers with special authorisation from the Bar Council. The probationers were required to attend regularly the sittings of the court and to undergo the training organized under the bye-laws of each Bar.² At the expiry of the period of probation the *avocats stagiaires* were required to take an examination consisting of a written and an oral test. The written test which was for the duration of three hours consisted, in part, of drawing up a statement of claims and reports after studying a file related partly to French civil law and civil procedure and partly to Hindu Law. The oral test which was held in public included questions on professional etiquette, customs and traditions of the Bar and judicial knowledge required of an advocate. A brief account was required to be given by the candidate regarding a case the file of which he was asked to examine during such time as was fixed by the board of examiners. The board which met at least once a year at Pondicherry consisted of

1. One councillor of the Court of Appeal :
2. The President of the Court of First Instance at Pondicherry or the public prosecutor :
3. One Advocate nominated by the President of the Bar Council.

At Karaikal, Mahe and Yanam the board consisted of the Justice of the Peace with extended jurisdiction, the Public Prosecutor, one *avocat-conseil* at Karaikal nominated by the President of the Bar Council and at Mahe and Yanam by the President of the Court at Pondicherry. No candidate was allowed to take the examination more than three times.

It may be of interest to acquaint ourselves with what is involved in obtaining the degree of *licencié en droit*. To obtain the degree, high school graduates (that is, those who have passed the final examination called *baccalauréat*) should take a four-year course at a law faculty in one of the universities. French law faculties used to be known as faculties of law and economic sciences. They teach not only subjects of a strictly legal nature, but also many courses in the social sciences. The programme

2. Each of the settlements had a separate Bar.

in the first two-year period includes the study of a number of introductory courses in social sciences and legal history, apart from elementary courses in basic legal subjects such as private law which includes the law of persons, of property, of obligations, and a few courses in public law such as criminal law, constitutional law and administrative law.³ In the third year of his studies, the candidate for the degree has to offer a number of compulsory courses. They include courses in commercial law, labour law and civil liberties. Among the elective subjects he has to offer, he may choose between two groups of courses, one falling within the private law area and the other within public law and political science area. The private law field includes courses on civil procedure, and advanced civil law subjects like real property, and suretyship; in the public law-political science area, the courses include those in international law and the methodology of the social sciences. The fourth year is devoted to a concentration of studies on one of two major fields, private law or political science. A student who selects private law for his specialisation has to do advanced courses in conflict of laws, *droit civil*, taxation, and other private law courses. Those who select political science have to take courses in European organizations, the history of political ideas and similar subjects. Over and above these, both categories of candidates are obliged to offer for examination five optional one-semester courses; these may be chosen from within or outside one's field of specialisation.

Those who had obtained the *certificat de capacité en droit*, provided they satisfied the conditions regarding citizenship or nationality, age and character as in the case of *avocats stagiaires* could be admitted to the bars of Mahe and Yanam as *conseils agréés stagiaires*. Advocates on probation were permitted only to plead and not to represent the parties. Advocates and *conseils agréés* were entitled to plead and represent the parties in all civil, commercial and administrative matters.

Though the general rule was that advocates, approved counsels and apprentices-at-law could practise only before the courts to which they were attached, those of the Bar at Pondicherry were authorised to practise before the courts of other territories of the colony.

Advocates and approved counsel in all matters and apprentices-at-law in criminal matters were not permitted, when they were nominated by the judge or the President of the Bar Council, to refuse without legitimate and valid reasons, to defend accused persons, missing persons and destitutes before the courts of their place of residence. If the reasons given were not considered valid and if the legal practitioner persisted in his refusal, action would be taken against him by the Disciplinary Council.

3. P. Herzog, *Civil Procedure in France*, p. 29 et seq.

Before being admitted to the Bar, the advocates and approved counsel were obliged to give a security of immovables or 3000 francs in cash at Pondicherry, 2000 francs at Karaikal, and 500 francs in Mahe and Yanam.

Bar Councils

Each Bar of the Establishments was to be administered by a Bar Council which in Pondicherry consisted of five regular members and two alternate members and in the other Establishments of three regular members and one alternate member. In the Bars of Mahe and Yanam where the number of legal practitioners was less than six, the duties of the Bar Council were to be performed by the Court of First Instance, Pondicherry.

The duties of the Bar Council consisted of

- (i) dealing with the difficulties regarding the enrolment of *avocats-conseils*, and *conseils agréés*, in the Bar, dealing with the admission of holders of the degree of *licencié en droit* and the certificate of *capacité en droit* for training, the enrolment of advocates on probation in the Bar as well as with the enrolment and rank of advocates who, after having been already enrolled in the Bar and after having given up their practice, applied for taking up practice again;
- (ii) maintaining the principles of moderation, impartiality and integrity on which the Bar Council insists, and exercising supervision required by the honour and interest of the Bar Council;
- (iii) dealing with all matters connected with the practice of advocates, especially with regard to the protection of the rights of advocates, and the strict observance of their professional duties;
- (iv) managing the properties of the Bar Council, administering and utilising the incomes of the Council to ensure the grant of relief to the members of the Bar, to their widows or their children either directly or by instituting a Pension Fund;
- (v) authorising the President of the Bar to institute legal proceedings, to accept all donations and legacies made in favour of the Bar Council, to compound or to compromise, to agree to all alienations or mortgages and to contract debts.

The Bar Council was required by *décret* to decide on applications for enrolment on the rolls of *avocats-conseils* and *conseils agréés* and on the roll of advocates on probation within two months from the date of receipt of the applications. If within this period the Bar Council had rejected the application or had not given any decision, the applicant could prefer an appeal before the Court of Appeal. In the absence of any intimation of the decision within the month following the expiry of the time limit

granted to the Bar Council for arriving at a decision, the party concerned could consider that his application was rejected and prefer an appeal before the Court of Appeal.

The Bar Council functioning as disciplinary council could take action and censure legal practitioners for infractions and fraud committed by them. The Council was empowered to apply such sanctions as warning, censure, suspension for a period not longer than six months and disbarment.

Advocates and approved counsel were forbidden from

- (i) becoming directly or indirectly successful bidders of movable and immovable properties for the sale of which they were in charge of taking action and becoming possessors of successful and litigious rights;
- (ii) entering into aleatory agreements with parties and others, the benefit of which depend on the outcome of a case;
- (iii) joining together to run two or more separate offices or from lending their names for conducting suits illicitly;
- (iv) practising any other profession or carrying on any kind of trade;
- (v) holding the office of administrator or the office of director of any agricultural, industrial or commercial company, the office of editor of a journal having the nature of a commercial undertaking, the office of managing editor of any periodical;
- (vi) demanding honoraria from parties they were bound to defend;
- (vii) using paid or interested agents for establishing relations between them and litigants and from asking for clients through agents, brokers or the press;
- (viii) committing a breach of secrecy of investigation, particularly by communicating details extracted from the file, or by publishing documents, papers or letters relating to an investigation in progress.

Infringement of these prohibitions could be punished by disbarment. The legal practitioner subjected to the penalty of suspension or disbarment could prefer an appeal to the Court of Appeal at Pondicherry.

The Bar Council could confer the title of honorary advocates on *avocats conseils* and *conseils agréés* who had been enrolled for fifteen years before tendering their resignation.

The details given above of the training of the advocates and the rigorous supervision to which they were subjected would indicate that they deserved to be held high in social esteem for their learning, integrity and sagacity and they were so held in **PONKAMY**.

A substantial change in the set-up was brought about by the Pondicherry (Extension of Laws) Act, 1968 which extended to the Union Territory of Pondicherry, among others enactments, the Advocates Act, 1961 with certain modifications. The Act envisaged a united bar council for the State of Tamilnadu and the Union Territory of Pondicherry. The important modification effected was the addition of section 58AA to the Advocates Act. The section reads :

Special Provisions in relation to the Union territory of Pondicherry:—

(1) Notwithstanding anything contained in this Act, all persons who, immediately before the date on which the provisions of Chapter III are brought into force in the Union territory of Pondicherry, were entitled to practise the profession of law (whether by way of pleading or acting or both) under any law in force in the said Union territory or who would have been so entitled had they not been in public service on the said date, shall for the purposes of clause (a) of sub-section (1) of Section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926, and every such person may on an application made in this behalf within such time as may be specified by the Bar Council of Madras, be admitted as an advocate on the State roll maintained in respect of the said Union territory.

(2) Notwithstanding anything contained in this Act, every person who, immediately, before the date on which the provisions of Chapter IV are brought into force in the Union territory of Pondicherry was practising the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force in the said Union territory, who does not elect to be or is not qualified to be, enrolled as an advocate under sub-section (1), shall, notwithstanding the repeal of the relevant provisions of such law by the Pondicherry (Extension of Laws) Act, 1968, continue to enjoy the same rights as respects practice in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or, as the case may be, to which he was subject immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such persons as if they had not been repealed.

The words 'in any other way' in sub-section 2 in relation to the practice of the profession of law have been given a very wide interpretation with the result that *notaires*, *huissiers*, court interpreters and court clerks have been admitted to the role of advocates. The government regards this as a gracious gesture when certain categories of public officials like the *notaires* and *huissiers* have been deprived of their means of livelihood by the abolition of their posts. The beneficiaries, however, consider that the enrolment provided them with little comfort as they were not particularly equipped in most instances with the necessary education and training to practise as advocates. This was especially so after the extension of the procedural laws, both civil and criminal, and a large number of Indian enactments, all based on the common law, with which they had not even a nodding acquaintance, not to speak of knowledge or expertise.