LAWYERS AND THEIR CLIENTS

IN A NORTH INDIAN DISTRICT

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by

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ABSTRACT

This study is concerned with lawyers and their clients in the north Indian district of Muzaffarnagar, Uttar Pradesh. Its aim is to examine the informal aspects of the formal legal system, the hypothesis being that an informal dimension is especially important where the formal institutional structure is weak.

The thesis is divided into seven chapters. The first is concerned with the aims of the thesis, with the general social features of the district, with methodology and with a description of the fieldwork methods. All lawyers who were regular practitioners in the district courts (kachahri) of Muzaffarnagar city, have been included in the study sample. The second chapter deals with the definition of a profession, in particular that of 'legal profession' and with the various approaches to the study of a profession. Then the thesis looks at the history of the Muzaffarnagar district Bar, the social background of its lawyers and with the question why people join this profession. Chapter Four is concerned with the bases and patterns of the linkages between lawyers and clients, and in particular with the roles of the para-professional men such as touts and brokers as middlemen and the qualities such as primordial ties; with how lawyers become leading lawyers; with the question of the degree to which the lawyers in Muzaffarnagar conform to the criteria of the 'professional man'; and with the issue of the public image of the legal profession. In Chapter Five I analyse factional politics in the district Bar, in order to examine the bases of grouping among lawyers and with the question of 'unprofessionality' in their associational behaviour.

Chapter Six is concerned with the relationship of the traditional panchayat system to the modern legal system in the context of ideas held about the provision of justice.

In the final chapter the conclusion is drawn that primordial ties are of great importance to the operation of the legal system, that social background influences professional behaviour, that lawyers are profit-oriented rather than service-oriented, and that the difference betwen 'occupation' and 'profession' is a matter of degree.

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1. [Note: Taking pictures of people in the kachahri was not objected to, and many photographs were taken with the subjects' open agreement.]

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I dedicate this work to the memory of my late wife Soni, with whom I could share only ten months of my life.

CHAPTER ONE

Introduction

1. Aims of the thesis

This study is concerned with lawyers (vakil)[1] and their clients (mowaakil) in the north Indian district of Muzaffarnagar, UP. The aims of the thesis are twofold.

The first covers the question of extending our knowledge about Indian society, in particular the legal profession. The relationship between law and society has been an important concern of both sociological and anthropological investigation, but scholars have largely ignored the subject of the legal profession itself. This is in spite of the fact that professionalism has become a corollary of modern industrial society. Where lawyers were studied theywere not treated as professional men and the method used by the American sociologists and scholars of law who did attempt to study the legal profession used mainly secondary sources, interviews and questionnaires. However, they missed using the crucial anthropological method of participant observation and limited themselves to an examination of lawyers' social backgrounds and their field of specialisation. More specifically, studies on the Indian legal profession - despite lawyers' importance in Indian society - have been neglected by all branches of the social sciences.

The first effort to study the Indian legal profession was made by American scholars at a conference held in Chicago in 1967. However, few of the papers contributed looked at the lawyer-client relationship, and the conference participants agreed that the Indian legal profession in all its aspects should be studied

since India had the highest number of lawyers in the world (at present some 100,000) second only to that of the United States, with a corresponding importance. From the initiation of the profession during the British period, lawyers in India played a key role in the movement for Independence. They not only maintained but even improved their prominence in Indian public life after the end of British rule, as can be seen from the fact that in 1982 the percentage of lawyers in the central ministerial Cabinet was 74 per cent (see Ooman 1983:5).

The first aim of this thesis then is to examine lawyers as a profession in India and provide a firm ethnographic basis for understanding them.

At the same time there is the whole question of the nature of the legal profession and its relation to other forms of legal activity. Here my second aim is to examine the formal and informal dimensions of the legal system - which in part demands a comparison of the concept of professionalism with the way people observe professional standards and how the relationships between people in the profession correspond to the ideal demanded of them. One hypothesis presented is that a formal organisation or bureaucratic organisation may not always be able to operate without an informal dimension, particularly when the formal organisation did not originate in the society concerned. The modern legal system in India was introduced in the 18th century by the British. This was totally different to the traditional panchayat system. In India, primordial ties such as caste, kinship, religion and so on, play as great a role in 'formal' organisations as in 'informal' groups. In contrasting the principles of professionalism which are identified with formal

organisations with what goes on in India in order to understand legal 'professionalism' as it actually operates there, the significance of the network approach as one way of studying the informal process within the formal one will be assessed.

To cover the above aims, the thesis is divided into the following chapters. Chapter Two reviews definitions, the difference between an 'occupation' and a 'profession', and the attributes of the concept 'profession' given in the literature. I shall then draw my working definition of the term 'profession'. Then I put forward my view on the conceptual framework to be used in analysing the interaction process among the lawyers, their clients and the mediators who go between them.

Three main approaches - the processual, the conflict, and the structural-functional approach - have been used in the sociological and anthropological literature. I find that these three approaches are inadequate to deal with such questions as to whether the social background of lawyers affects the structure and interactive aspects of the lawyer's relationship with clients, para-professionals and others in the legal system; or how the relationship between lawyers and clients began and how it was maintained or was changed; or how a lawyer can become a leading lawyer. It will be suggested that the network approach is more useful is exploring the type of question as mentioned above, but that it needs some modification to give the answers we are looking for. This stems from the fact that in general scholars have used this approach in the context of the whole social field of ego rather than in a more specific field of activity. In this present study I am mainly concerned with the study of ego's (lawyer) linkage with that of alter (the client) in a specific field of

activity (legal) and not in all social contexts. In other words, I am only concerned with a part of ego's network. Two new concepts will therefore be introduced - that of the 'professional recruitment-set' and the 'clientage-bank'. The professional recruitment-set refers to the bases on which a professional man (here a lawyer) gets his clients and the people who have been clients and who could be clients in the future. I will call these clients of the lawyer his 'clientage-bank'.

To explain the nature and the bases of lawyers' professional recruitment-sets, it is necessary to know first their socio-cultural background. As Mayer (1961) and Boissevain (1973:125-48) observed, the environment, both socio-cultural and physical, influences the composition and structure of a person's social network. Therefore Chapter Three will be concerned with the socio-cultural background of lawyers, classified in terms of their caste, age, religion, education, rural-urban origins, nature of the family and so on. The chapter will explore how these factors affect their professional behaviour and their relationship with their clients and colleagues as well as the reasons why people join or do not join the legal profession. These socio-cultural factors are not the only ones affecting social interactions amongst lawyers, clients and others associated with the Indian legal system. The physical structure of the kachahri (court compound) where all lawyers have their offices and all district courts are situated will be described to show how the physical setting plays its part in this too.

The thesis will then examine how the socio-cultural background of lawyers influences their professional behaviour and

the bases and patterns of the linkage among the lawyers, clients and mediators. More specifically, Chapter Four will discuss four topics. The first will look at the main bases of the linkages between the lawyers and clients and how a client engages a particular lawyer. These linkage bases can be divided into two categories: (i) That of the persons involved who act as go-betweens - the munshis (lawyers' clerks), touts, chronic litigants, government officials, experienced litigants and witnesses and so on; and (ii) The quality of links that are formed - caste, kinship, religion, region, family and political ties, reciprocity, profit and so on. The second question asks how a lawyer becomes a 'leading' lawyer. The third one asks to what degree do the lawyers of Muzaffarnagar kachahri follow the 'ideal-type' image of the profession or, in other words, what might be the relationship between the ideology of the profession and the actual behaviour of these professional men. Finally I would like to discuss the issue of whether the prestige (or standing) of the legal profession is declining in India, as it has been said to be doing. Chapter Four in effect analyses the informal socio-legal process as it actually operates from the lawyer's (ego) as well as the client's (alter) side in the formal legal process. Rarely has any study attempted to relate the social background of lawyers to their role performances. Gandhi's study (1982) seems to be the only exception, but this paid more attention to only one aspect, that of the touts.

Chapter Five will be concerned with the politics of the district Bar - how different types of informal group emerged and operated. I was able to identify three types of informal groups, that is, the 'clique', the 'caste-faction', and the

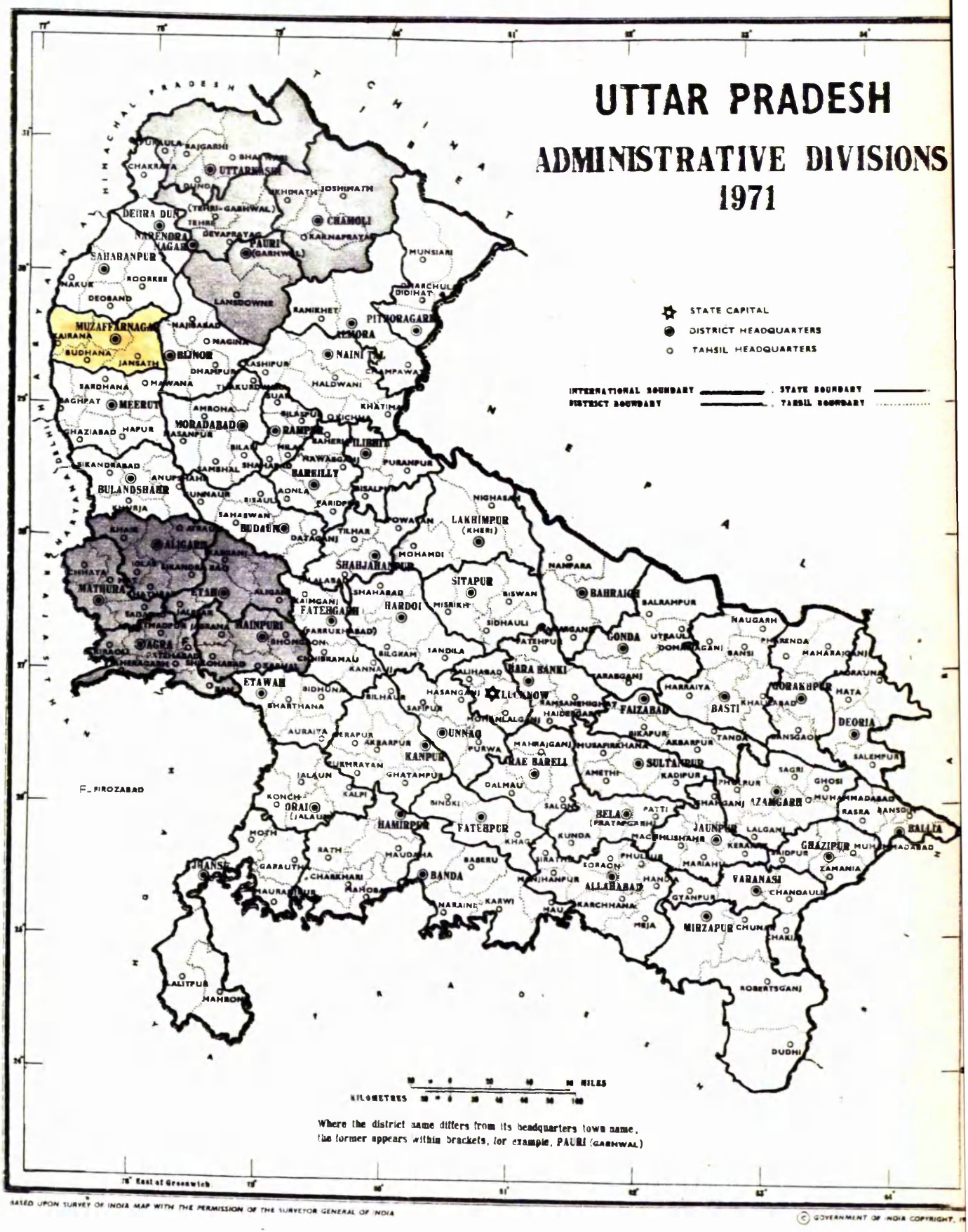
'coalition', among the lawyers. I will deal with the operation of these informal groups in connection with the Bar election which took place in March 1984 during my field-research. Indeed, this election provided me with a good opportunity to get a clear picture of informal socio-political relationships among the Bar members. In the analysis of Bar politics I am mainly concerned with the issue of 'unprofessionality' (sometimes called non-professionalism) in the lawyers' Association as it is one of my main aims to examine the difference between the ideal image of the profession and actual behaviour.

Chapter Six will look at the relationship between the traditional panchayat system (customary law) and the modern legal system (lawyer's law). Before my visit to the field I did not have any intention to look at this issue but when I noticed that at the same time my respondants were settling the disputes through panchayats as well and that roughly one third of the disputes were never brought to the courts from the rural areas, I naturally became interested in the connection between the two different legal systems. I will discuss briefly three inter-connected questions. First, the nature of the relationship between panchayats and the modern courts - are they opposed or complementary in respect of ideas about the provision of justice? Second, who the people are who prefer to take their disputes to court rather than to a panchayat and who do not, and, third, in what situations and with what values does a litigant prefer a particular type of system, ie, traditional panchayat or the modern legal system ?

The rationale for studying the legal profession at district level is that a district headquarters town in India provides the

complex of law courts and government offices, and with respect to social change it represents an intermediary position between village and city. In the district town we can observe intensive interaction between traditional and modern values or, in Singh's (1973) words, interaction between particularistic and universalistic values. The selection of the district town Muzaffarnagar in western Uttar Pradesh state was mainly due to my familiarity with the people, the place, and its local dialect and culture, as I am a native resident of the district.

The next section of this introductory chapter will provide a general picture of the Muzaffarnagar district, its physical setting and historical background with special attention being paid to its contemporary economic, political, socio-cultural, administrative and legal structure as well as its communication network. These aspects are connected to the legal profession and system, litigation and the litigants, as can be seen from the way lawyers play the leading role in the party politics of the district or when the prosperity of local agriculture enables the farmers to send their children to the cities for education. Subsequently many of the children then join the profession and together with the access to financial resources enables the farmers to be more litigious. The extension of transport and other means of communication are an important factor in bringing more disputes to the courts from the villages rather than having them settled by the traditional panchayats, thus they are part of the means whereby modern legal culture is spread in the villages.


UTTAR PRADESH
ADMINISTRATIVE DIVISIONS
1971
STATE CAPITAL
DISTRICT HEADQUARTERS
TAHSIL HEADQUARTERS
INTERNATIONAL BOUNDARY
STATE BOUNDARY
DISTRICT BOUNDARY
TAHSIL BOUNDARY
KILOMETRES
MILES
Where the district name differs from its headquarters town name, the former appears within brackets, for example, PAURI (GARHWAL)
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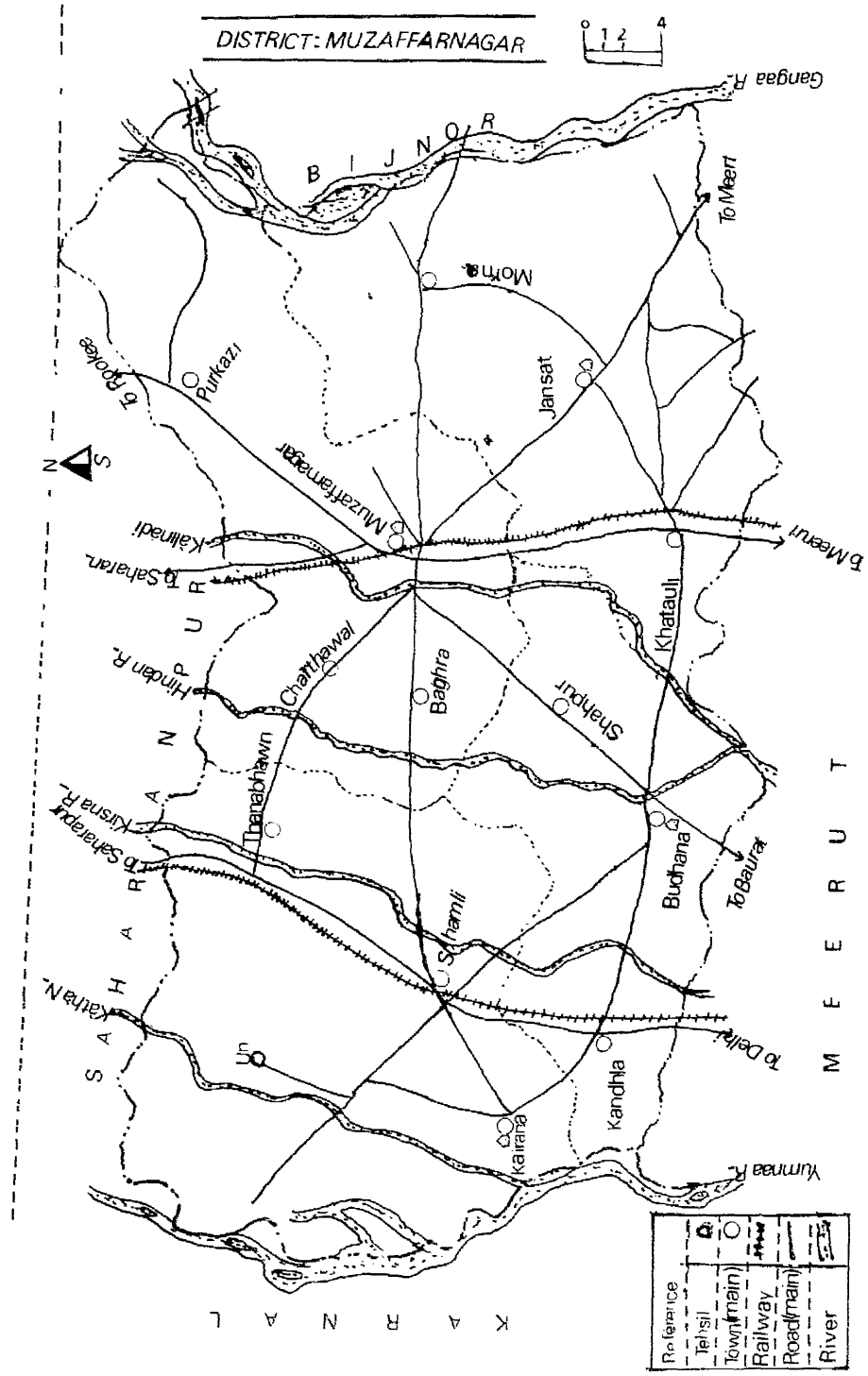

DISTRICT: MUZAFFARNAGAR
0 1 2 4
Ganga R.
BIJNOR
To Meerut
Mohna
Purkazi
To Roorkee
Jansat
N
S
Muzaffarnagar
Kailnadi
To Meerut
To Saharan.
Khatauli
Chartawal
Baghra
Shahpur
Hindan R.
Thanabhawn
Kisna R.
To Saharanpur
Budhana
To Baura
Shamli
Katha N.
To Delhi
Kandhla
Kairana
Yumnaa R.
SAHARANPUR
KARNAL
MEERUT
Reference
Tehsil
Town(main)
Railway
Road(main)
River

2. The setting of Muzaffarnagar district

In this section I will present a general picture of the Muzaffarnagar district concentrating on its topography and its historical background. Special attention will be paid to its contemporary economic, political, socio-cultural, administrative and legal system as well as its transport and communication network.

The physical setting

The administrative district of Muzaffarnagar is one of the most prosperous districts of India, although it does not possess any striking physical feature - just being a part of the fertile Gangetic plain. It is situated in the duaab (fertile land between two rivers) of the Gangaa and Yamunaa rivers, between the district of Meerutin the south and Saharanpur in the north. In the west the Yamunaa river separates it from the Karnal district of Haryana state, and in the east the river Gangaa forms the boundary between this district and the Bijnor district. It is roughly rectangular in shape. At its longest, from east to west, it is 98 km and at its widest, north to south, it is 58 km. The total area is 4245 sq km (Nevill 1920; Ismaarikaa 1983).

During the major part of the year the climate of the district is largely influenced by the prevailing dry continental air, the summer being intensively hot (approximately 31° to 37°C) and the winter cold (about 10° to 15°C). It is only during the monsoon month, from the last week of June, that air of oceanic origin reaches the district, bringing with it increased humidity, cloud and rain. The year may be divided into four seasons: the winter, from October to February, followed by the summer season which continues till about the end of June when the south-west

monsoon arrives. The monsoon season (the rainy season) lasts till September. The average annual rainfall of the district is 30 ins. and the pattern of annual rainfall in the district as a whole is uniform (see Prakasha Rao 1976:20; Statistical Diary, UP, 1982).

Looking at the entire area in terms of its physical features we find it consists of four clear tracts. On the extreme east, the riverain tract of the Gangaa valley contains the whole area of Gordhanpur and parts of Bhukarhari and Bumaa-Samabalhara. The next tract is between the Gangaa and the western side of the river Kalinadi, through which runs the Gangaa Canal. To the west of this tract there is the duaab of the Kalinadi and Hindon rivers. Lastly, the fourth tract comprises that portion of the district which extends from the Hindon to the Yamunaa river, the eastern half of which is traversed by the Yamunaa Canal. The first and fourth tracts are less fertile than the other two. The majority of the cases of cattle-lifting occur in the first and fourth tract because those who carry out this activity can easily cross the river to the other districts with the cattle. In the fourth tract live the Bauriya, a tribal community, noted for their reputation as burglars throughout the country.

According to the 1981 census, the total population of the district was 2,274,487, the urban population accounting for 21.6 per cent of this and on the increase. The number of inhabited villages is 927. The population density was 548 per sq km. The average size of a village was 2,000 inhabitants and of the seven towns was 25,000 inhabitants. The population of Muzaffarnagar city in 1971 was 114,783 (Census of India, 1971).

The history of the region

The history of the district is obscure up to the period beginning several hundred years after the Muslim invasion. It may be conjectured that it formed part of the Pandayaa kingdom which had its capital at Hastinapur in the adjoining district of Meerut. Another historical version includes it in the dominions of Pritwiraj Chauhan, the ruler of Delhi. Documented history first tells us of the country around Muzaffarnagar at the time of the Muslim conquest in the 13th century. This remained a dependancy of the various dynasties which ruled at Delhi until the final dissolution of the Moghal empire. The earliest colonists probably consisted of Aryan settler, Brahman and Rajput. They were succeeded by the Jats, who occupied the whole southern portion of the district, where their descendants still form the main landowning class. At a later date the Gujars took possession of the poorer tracts which the Jats had left unoccupied, and they, too, are still to be found as big landlords. Finally, with the Muslim incursions, bodies of Sheikhs, Saiyids and Pathans entered this region and parcelled out among themselves the remainder of the territory.

According to Persian histories, Tamur paid one of his violent visits to the district in 1399 AD when all the infidel inhabitants whom he could capture were mercilessly put to the sword. Under Akbar, Muzaffarnagar was included in the government (sarkaar) of Saharanpur district. During the 17th century, the Saiyid family of Barha (now known as Baghra village) rose to great eminence and filled many important offices about the court. The ancestors of the Baghra family are said to have settled in

Muzaffarnagar district about the year 1350, and to have enjoyed the patronage of the Saiyid dynasty, which ruled at Delhi in the succeeding century. In 1414 AD, Sultan Khizr Khan conferred the control of Saharanpur on Saiyid Salim, the chief of their fraternity, and from that time on they rose rapidly to regional power and had great influence at Court. One physician (hakim) of King Jahangeer was from a family of Baghra village. Under Akbar and his successors, various branches of the Barha Saiyid families became the leading landowners in the province. They were celebrated as daring military leaders being employed by the emperors on all dangerous ventures, from the Indus to the Narbada. It was mainly through their aid that victory near Agra was won in 1707 by which Bahadurshah made good his claim to the imperial title. The part which they bore in the revolution of 1712, when Farrukh Siyar was elevated to the throne, belongs to the general history of India. As a reward for the important services rendered on that occasion Saiyid Husain Ali (from Baghra village) was made commander in chief. One of his descendants, Saiyid Muzaffar Khan Khanjahan started to build a new town on lands taken from Surju (now 'Sujdu'), Sarwat and Kheraa villages. This was completed by his son, who named it Muzaffar-nagar in honour of his father who died in 1645 AD. The descendants of all four Saiyid families who ruled Muzaffarnagar district are still living in different parts of the district.

After some raids by Sikhs from the Panjab, the district fell into the hands of Marathas in 1788 and after the fall of Aligarh in 1803 the whole of this region came under British rule. (Sources: Nevill 1920:157-203; Imperial Gazetteer of India, Vol XVIII:85-7.)

Economic structure

The economy of the district is dominated by the agricultural sector which, together with allied activities, forms the most important source of employment and revenue. Over 73 per cent of the total land is under cultivation (Parkhasa Rao 1976:21-2). The majority of cases that are settled in district courts relate to agricultural land disputes and also the majority of the litigants come from villages, and are usually farmers. The plain of the upper Gangaa is one of the most highly irrigated agricultural regions of India and irrigation has played a dominant role in boosting its agricultural prosperity, particularly during the last hundred years. The eight rivers and five canals and their tributaries (rajhwahaa) cover the whole of this district for irrigation. The village farmers' desire for profit is tempered by their reluctance to take risks and this is mainly responsible for the unchanging cropping pattern, dominated by sugar-cane, wheat and paddy, and the general rotation sequence of cash crops for market. Maize, cotton, tobacco, chillies, lintals (dals), and seasonal vegetables, mainly for domestic consumption, and for local markets, are also grown. Over the last fifty years sugar-cane especially has, as a cash crop, brought many changes in the village life and has also led to the growth of industry (particularly those sugar-cane related ones), banking facilities, towns, market centres, and education institutes. It has raised the standard of living in general. The prosperity of the farmers is the main reason that, in the distrcit and tehsil Bars, the farmers' sons dominate, numerically speaking,

because the farmers can now easily afford to send their children to higher education in the cities. I noticed that even the fluctuations in the price of sugar-cane affected whether or not there were more or less court cases and the size of the lawyers' fees. Using a questionnaire (see Appendix A) I asked lawyers if they thought that the rise and fall of the sugar-cane price controlled the number of court cases in the district courts. Eighty-six per cent out of the total number replied 'yes', but I was unable to confirm this with the court records due to the fact that only those for the last two years had been kept. It is confirmed, however, that whenever the price of sugar-cane rises lawyers' fees also increase - and sometimes farmers say in the event of a dispute: 'Ik bigha gannaa iss naam kaa hee sahee' (I keep one fifth of an acre (bigha) of sugar-cane for this litigation). In towns, markets also depend on the purchasing capacity of farmers in the district.

The local sugar-cane products market (mandi) is reputedly the biggest one in Asia (Hindustan, 17 June 1984, Delhi). Nearly 1,000 market labourers have been recruited by sugar traders from the nearby states of Rajsthan and Haryana to the district and nearly the same number of market labourers have migrated to the Panjab due to the higher wages there. Industrial development in this district has taken place over the last thirty years and has taken the form of some iron and steel rolling mills and sugar factories. Hand-made blankets, bullock or buffalo-driven carts (buggi) with rubber tyres and calico printing are the main cottage industries in the district. The main social feature of Muzaffarnagar's industrial development is that almost all industries are in the private sector and are

owned by members of the local trading castes. The majority of industrial labourers are from the vicinity. Disputes relating to the industrial set-up hardly ever arise in courts here since the labour unions are still very weak.

Transport and communication

The city of Muzaffarnagar is situated on the Delhi-Dehradun national highway at a distance of 72 miles from Delhi to the north. The spatial distribution of transport in the district is determined by the parallel and north-south alignment of the rivers Yamunaa and Gangaa. This district of Meerut in the south and Saharanpur district in the north, connected by train and road routes, almost intertwine each other and pass through Meerut, Khatauli, Muzaffarnagar and Deoband (in the district of Saharanpur) and pass the towns of Shamli and Thanaabhawan. Cutting almost at right angles to the two north-south routes, the east-west road runs through the centre of the district, linking Panipat town (in Haryana state) on the west of the Yamunaa and Gangaa which function as boundaries between districts and states [see map]. The villages and towns (kasbaa) of the district have been connected with metalled (paccaa) and unmetalled (kachhaa) roads. More than 50 per cent of the villages of the district are within one mile of a road and there is no village which is more than five miles from any metalled road (Source: Praksha Rao 1976:133). The buses are the main transport to carry passengers within the district from one place to another and these buses are run by government and private services. On average a bus goes to Delhi, the capital city of India, every half an hour. At present a litigant can come to the district courts in Muzaffar-nagar city and go back to his village the same day. This was

formerly difficult due to lack of transport facilities; some old villagers from border villages told me that their walk to the district courts used to take eight to ten hours in the past, and usually they used to stay overnight at the residences of their lawyers. Since trade has increased and communications have improved, the towns have grown large and are more in contact with the villages. The extension of transport and communication is an important factor in bringing more litigations (mukadmah) to the courts which were settled in the past by traditional panchayats in the villages because modern communication methods and other means of transport have helped to spread the modern legal culture in the villages.

Overall the communication and information network is not bad compared with other districts of the state. Some twenty-five Hindi and Urdu daily newspapers are published from the various urban centres. The most popular ones, Muzaffarnagar Bulletin and Danik Dehaat, are both published in Hindi.

Political structure

Factionalism and ties of caste and kinship play the main role in the politics of the district (zila). The main politically active parties are Congress (I), Lokdal, Bharatyia Janta Party (BJP), Democratic-Socialist Party (DCP) and Janta Party. These parties are all directed from national level. The Communist parties have very little influence in public life. There are two member of Parliament (MP) seats and nine seats for the Legislative Assembly (MLA). The majority of the Jats follow Lokdal, whereas the trading castes (Bania, Jain, Khatri) and refugees from Pakistan follow BJP. The Brahmans, Tyagi,

backward castes and scheduled castes (Harijans) follow Congress (I), and the rest are divided on the basis of caste or community. For instance, Muslims support Muslim candidates without consideration for party affiliation.

The above political alignments are clearly reflected among lawyers. The majority of the Jat lawyers support Lokdal, while the lawyers of Brahman, Tyagi, backward castes and scheduled castes support Congress (I) and those of a business background support BJP. During my fieldwork both the MPs and the three MLAs were from Lokdal and six MLAs were from Congress (I) Party. One MLA from Congress (I), an industrialist from the city of Muzaffarnagar, was a minister of cabinet rank and one MLA from Lokdal, who was also a leading lawyer specialising in criminal law, was chairman of the UP Public Accounts Committee. Rural-urban differences appear to be irrelevant in the elections.

The majority of lawyers actively participate in district politics. For instance, during fieldwork I found that the president and the two secretaries of Lokdal were lawyers and the president of the Janta Party and the DCP were also lawyers. One general secretary and two joint-secretaries were lawyers in Congress (I). In fact, the executive committees of all the parties are dominated by district Bar members. In the past all ministers (except one) who were selected from this district were lawyers by profession. One successful lawyer in the district Bar, who had been deputy Chief Minister of the State during the Janta Party's regime in 1979, gave up his legal practice to follow his old family occupation of agriculture. When I asked him why he had left his practice at the Bar, he replied that, although he had lost Rs.4000 worth of earnings in

a month from practice, he had enjoyed one of the highest posts at the State level, and it would therefore be an insult for him to sit again with his former colleagues in the kachahri (court compound). Some other lawyers who gave up their practice in this manner had the same feeling. For instance, another lawyer who had been director of the Co-operative Bank and chairman of the same for many terms (and during my stay in the field was director of the State Bank of India and the UP Financial Committee [UPFC]) had given up his practice. One day, during my fieldwork, Mr Charan Singh, president of Lokdal at national level and ex-Prime Minister, visited Muzaffarnagar city campaigning for his party. Out of sixty-six members who joined his party after the campaign visit fifteen were lawyers. There also took place seventeen demonstrations in the city while I was there - and all of them were led by lawyers. So, as we can see, lawyers have a strong grip on the socio-political development of the district. I noticed that the main issue of discussion among Bar members at the Bar Association building during lunch was district politics. Mr Charan Singh had a lot of support in this district, particularly among his own Jat community.

Village politics is mainly based on lineage (khaandaan), caste and factionalism. In the remote villages of the district traditional panchayats like caste, village and ganwaand (a group of neighbouring villages having regular social intercourse) panchayats are still functional in the legal as well as political sense (see Pradhan (1976) for a study of the panchayats in the district).

Socio-cultural structure

There are twenty-one main Hindu castes and nearly the same number of Muslim castes in the district. The Jat, Rajput, Gujar, Tyagi, Saini and Rood are the main Hindu peasant castes and the trading castes are the Bania, Jain, and Khatri. The main Hindu service castes, that is, the Nai (barber), Kumhaar (potter), Dobhi (washerman), Teli (oil-presser), Badiye (carpenter), Lohaar (blacksmith), Sonaar (goldsmith), Chudaa (sweeper), Chamar (leather worker and agricultural labourer), and Kahaar or Dinwaar (water carrier) are also very much part of the village social system. The majority of Brahmans are peasants in this district. The Muslims are also divided in a manner very similar to the Hindu caste system since the majority of the Muslim population had been converted from Hinduism during the Moghal period. They still follow some of the Hindu customs and the calling of their original Hindu castes. They even maintain the brotherhood (bhaicharaa) in their counterpart to the caste system (Pradhan 1966:53). The peasant castes, socially, politically and economically, are dominant in the villages, although it is the Chamaar caste that predominates numerically. Each caste is still associated with a particular occupation (pesaa; kaam; dhandaa) but this does not mean, however, that all the members of a caste - or even a majority of them - do, in fact always follow their traditional occupation. Even when they do follow this they need not do so to the exclusion of another occupation. Some of the service castes have more than one traditional occupation regardless of their differing ones and are also engaged in agriculture in one capacity or another.

The jajmaani relationship (exchange of services) still exists in the villages. The service castes get faslanaa (a certain quantity of grain at harvest time) from their jajmaan (landlord) for their services. But now the tendency is for these service castes to give up their traditionally associated occupations and they prefer payment in cash and not in kind. Those new occupations and professions, introduced by the impact of Westernisation or modernisation, are in general preferred by all castes.

In the district the religions exist in the following proportions: 70 per cent Hindu, 29 per cent Muslim, 1 per cent Christian, 0.2 per cent Sikh and 0.7 per cent the remainder. The total percentage of scheduled castes and tribes was 14.8 per cent. The ratio of female per thousand males was 844 (Census of India, 1971). Many cases for harrasment and insult were brought in the district courts by the peasant and lower castes against each other.

The family structure is dominated by patrilineal, exogamous and joint family concepts. The division of labour in the family and the society of Muzaffarnagar is based on gender. The age of marriage differs from caste to caste and marriages are arranged by parents. Generally the head of the family will be the last male member of the family. It is customary in rural areas for the married woman not to show her face to the elders of her family, other elders of the village and outsiders. Neither should she show her face to her husband in a public place or call her husband by his name. Marriage within the father's clan (gotraa) and mother's clan is customarily prohibited. Family

disputes about marriage, divorce and property are not generally brought before the courts, and potential litigants would be advised by lawyers and judges to withdraw. The legal age of marriage is eighteen years for a girl and twenty-one years for a boy, but many take place where the participants are under this minimum age although they would not be registered at court.

Two main classes of people are migrating to the urban centres, not only in this district but in the whole of India. The labour class for better jobs - or just simply for jobs - and the rich farmers for better education, health facilities, and so on, for their children. In the district of Muzaffarnagar I noticed that the main feature of this migration was that these migrants tended to be more rural than urban orientated in their way of life.

Administrative structure: History

At the time of the Mughal emperor Akbar, the whole area of Muzaffarnagar belonged to the government of Saharanpur, with the exception of Khandhla province (parganaa) which lay within the boundaries of the government of Delhi. At that time the province of Muzaffarnagar was known as 'Sarwat', the name being changed to Muzaffarnagar during the reign of Emperor Shahjahan in about 1633 (Nevill 1920:124).

After the British conquest in 1803, the district was attached to Moradabad and in 1804 it was assigned to the district of Saharanpur, which then extended from the Siwalik hills as far south as the northern provinces of Bulandshahr district (then a part of Aligarh district). The district was administered by the Resident of Delhi for the two years before 1806. It became the headquarters of the sub-collectorship of Saharanpur

district in 1824 with Mr W Dundas as the first sub-collector. Two years later, in 1826, he was succeeded by Mr Franco during whose administration it became a fully fledged district (Nevill ibid:125)

In the above context it is important to mention that during the first two years of British rule, the government followed the existing arrangements. Large tracts of country were then held by the great mugarraridars. A Gujar raja, Ramdayal of Landhouraa, held the greater portion of the Purchhpar province and some estates beyond its borders. Nain Singh, the Gujar chieftain of Bahsuma, remained in charge of Bhuma, while the Muslim family of Marhal retained possession of the greater part of Muzaffarnagar city, Soaran and Charthaawal, which they had formerly held in Jagir for the support of troops. The provinces of Banat and Bagraa were held on a similar tenure by Najabatali Khan. The descendants of Khanjahan (founder of Muzaffarnagar city) held nearly all of Khatauli in detached estates, and the remainder was in the possession of a Rajput mugurraridar. The great part of Jauli-Jansath was held by the Saiyid families and Bhukarheri and Sambaleraa were shared between the Gujar chiefs and small mugharraridars. Till May 1805, the collector performed the duties of magistrate and collector for both divisions of Saharanpur (Nevill ibid:127-8). The above-mentioned families had the right to collect revenue and had magisterial power. The interesting feature about them is that their descendants are still living in the district, but after Independance they lost all their power and public influence. After the British moved into the district, from 1803, its boundaries were changed, with villages being transferred between it and neighbouring districts as well as the alteration

of its internal divisions.

In 1903, the district of Muzaffarnagar was divided into four tehsils and seventeen provinces for administrative and revenue collection purposes. The executive staff of the administration of the district had consisted of a collector, four fully empowered magistrates of whom one was usually a covenanted civilian, four tehsildars with magisterial powers, a district superintendant of police, a civil surgeon who was usually an assistant surgeon in charge, and a deputy inspector of schools (Nevill ibid:123).

Administrative structure: The present

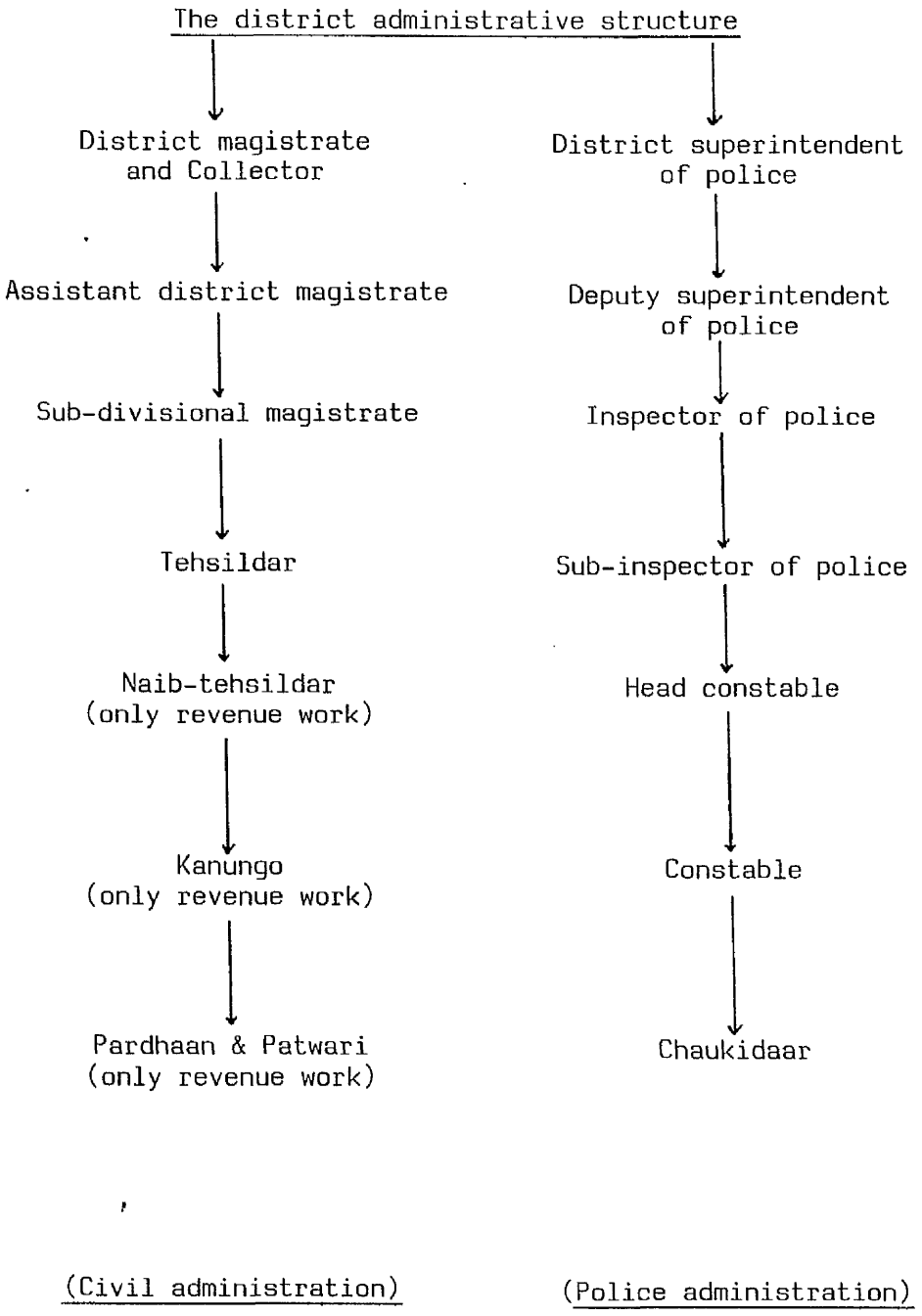
After Indian Independance in 1947, the Indian government also maintained the same administrative structure with some minor changes (see Figure 1). At present the district is the most important single unit of administration and from this point of view contact between government and people the collector is head of the district administration and it is he who also acts as district magistrate. When he functions as head of the revenue organisation he is called the collector and when he exercises his magisterial powers he is called the district magistrate (DM). He is either a member of the Indian Administrative Service (IAS) or a senior member of the State Civil Service (PCS) who may have been specially selected for this appointment. The DM represents the government in the district in practically all spheres. The collector is assisted by a number of deputy collectors belongingto the PCS. When these deputy collectors use their magisterial powers they are called sub-divisional magistrates (SDM). They may also be put in charge of sub-divisions of the

district or work as additional district magistrate (ADM) in a big city under the supervision of the DM. The duties and functions of the SDMs are similar to those of the collector or DM, though of a lesser degree and confined to the sub-division. These SDMs also supervise and inspect the work of tehsildars.

At the tehsil level the tehsildar is the chief administrator, revenue officer and magistrate. His main function is to collect land revenue. Under him are the Naib tehsildar and Kanungo who only have revenue collecting powers. The government formulates policies and passes orders to the collector who pass them through the SDMs to the tehsildars with appropriate directions, and it is at the tehsil level that orders are actually executed. Beneath the tehsils, at village level, the land record keeper (patwaari) is the revenue officer and he maintains the village map (shafira), index to the map (khasraa), record of proprietary rights (khewat), and the record of rights for the tenants (khetauni). At this level we also find the chief of the village (pradhaan). who is the chief officer and who is elected by villagers for a five year term.

In Muzaffarnagar district there is one collector and district magistrate and under him an ADM, four SDMs, one special magistrate for Muzaffarnagar city, and two to three additional SDMs. The office of the collector is known as the 'Collectorate'. The collectorate-officer and his court, as well as that of the DM, are located in the kachahri of Muzaffarnagar city. The district of Muzaffarnagar is divided into four tehsils of Budhanaa, Kairnaa, Morenaa, and Sadar (chief).

Figure 1. The district administrative structure



Police administration

The superintendent of police (SP) is the executive head of the district police force. He is responsible for the efficiency and the discipline of the force and for ensuring the maintenance of peace. He keeps in contact with the people of the district and has to maintain awareness of all events in his jurisdiction. There are under him four deputy superintendents of police (DSP), circle inspectors, public prosecutors, revenue inspectors, sub-inspectors, assistant public prosecutors, head constables and constables (see Figure 1). The district of Muzaffarnagar is divided into four police circles comprising on average four to five police stations and the charge of the circle is held by a deputy superintendent. There are two types of police station - urban and rural. These are further subdivided into first and second category. Circle inspectors are in charge of important police stations whereas other urban and rural police stations are under the charge of sub-inspectors. Both inspectors and sub-inspectors in charge of police stations are assisted by other sub-inspectors, head constables and constables. In every village a village guard (chaukidaar), who is a part-time employee, is the only police agent; he is appointed by the district magistrate. His primary duties include watch and ward, carrying of messages and general assistance to the police.

The legal structure

The legal system of ancient India derived from the classical Hindu textbooks, mainly the Dharma sastras and Manusmrti, and was based on the notion that punishments were differentiated according to caste ranking and social status - hence there was no separation

between the legal, political and social systems. The raja was the guardian of the system. Most cases were settled at village level by different types of panchayats. Disputes within a village were settled by the village panchayat. Disputes within a caste were settled by the caste panchayat, whilst those between villages were handled by the ganwaand panchayat. The panches (judges) of these panchayats were recruited partly on the basis of heredity, sometimes on their reputation for integrity. The panches or council members sitting in a panchayat meeting to determine cases were considered to be equivalent to five gods imbued with qualities such as justice and impartiality. Usually these five or more panches were appointed. The ideal panch, 'Panch Parmeshwar', epitomised the ethos of the village society. Dissatisfied litigants could appear directly to the king. It is a debatable issue as to whether a legal profession as we know it existed in ancient India. However, it is obvious from the old Hindu textbooks that the friends, relatives and neighbours could plead cases on behalf of the litigant in panchayats or the raja's court (see Srinivas 1955:18, Cohn 1959:79-93; Derrett 1968: 80,102; Rocher 1968-69:383-402; Singh 1973:94-7; Pradhan 1966).

During the Muslim period this system continued unchanged. As Calkins (1968-69:403-4) has pointed out, most disputes were settled outside the Muslim rulers' courts maintained by the regional ruling groups. The mughal kings and Jagirdars intervened only in those cases where there had been a considerable breach of the peace or where the village revenue had not been paid. There was little need for the Mughals to establish any other type of legal system. In northern India political power was often exercised at the ganwaand level by lineages, and members of

the dominant lineages would be called upon to settle village and other disputes that could not be resolved at the village level. Pradhan (1966:96-8), who conducted his field study in the Muzaffarnagar district, found a mandate (firman) of the Emperor Akbar addressed to the heads (choudharyies) of the lineage panchayat in the region of Muzaffarnagar district. His translation from Persian to English of a mandate is as follows:

> "By the present firman, certain community councils in India which charged certain taxes, are now being excused. Each community council has my permission and is free to carry on its traditional functions in my region. Both Hindu and Muslims are one in my eyes, so I give freedom (of action) to these councils. They are exempt from the payment of jazia (religious tax) and other royal taxes.'
> (Issued in the region of Emperor of India, Emperor Akhbar, 11th Ramzan 989, Hizri (AD 1580).)

According to another mandate of the Emperor Akbar:

> 'Every community and the khaps [clan's geographical area] of the Jats of the duaab have the freedom to carry out their functions according to their ancient customs and laws within their respective councils, under the reign of Shanshah Akbar, for example, 1. Khap Baliyan Jat, 2. Khap Solakain Jat, 3. Khap Kalaslian Gujar, 4. Daiya Khap Jat, 5. Gathwala Khap Jat.
> The rules and regulations apply to the Khaps which may unite in one group and live in peace with each other.' (8th Ramzan 987 Hizri (AD 1578), Emperor Akbar; Raja Todarmal).
> 'Note: This mandate [is] for Choudhary Pacchumal, Shoran, and Choudhary Lal Singh, Sisauli.'

Such royal mandates were issued to the different khaps of Meerut division and in Haryana state from time to time by various Mughal emperors till the reign of Muhammad Shah. These mandates are still preserved by the families of the hereditary secretaries (wazirs) to these panchayats at Soran village, some fifteen miles from Muzaffarnagar city.

It appears then, at least at province level and below,

that Mughal justice was much less significant than customary law and local methods of settling disputes.

With the establishment of British rule in India there came a turning point in the legal system. Many legal innovations were introduced by the British government. The main feature of this new legal system was that it was antagonistic to the Hindu legal tradition because it was based on universal equality and rationality and not on particularistic differences. The foundation of this new judicial system was laid down by Warren Hastings, Governor of Bengal. He supported a decentralised system of law courts to conduct criminal and civil justice. There were company courts and a supreme court, all deriving from the company's (ie, the East India Company) authority in every Presidency city, Madras, Calcutta, and Bombay. By the provisions of the Regulating Act 1773, the British Parliament separated the Supreme Court from those of the East India Company, so as to control its activities. This dual system was abolished in 1861 when the enactment of the Indian Penal Code and the Codes of Civil and Criminal Procedure made it possible to systematically control the lower courts. In every province a high court empowered to hear appeals from the lower courts was established. The high court in Uttar Pradesh state (UP) was set up in 1861 at Agra and it was known as the high court of 'the northern western provinces' and shifted to Allahabad in 1866.

The legal system at present

After Independence, the legal system which was adopted by the Indian government was based on the British legal system. However, the system has been modified to the needs of India,

including the incorporation of the personal law of Hindus and Muslims in matters of succession, marriage, divorce, guardianship, etc. At present at the apex is one Supreme Court (located at Delhi) and then eighteen high courts, seventeen of which are located in different states, and one of which is located at Delhi. The seven union territories come under the jurisdiction of the nearest high court. High courts are independent of the executive part of the government administration.

The high court of UP governs all criminal and civil courts (faujdaari and diwaani-adaalats) in the state, but its jurisdiction in some revenue matters is barred. For revenue matters the highest court is the Board of Revenue. A Bench of the high court has been functioning at Lucknow city where some of the high court judges dispose of cases arising in the nearby twelve districts of the State. The high court has powers of superintendence over all courts in the State. It makes rules, civil and criminal, calls for a number of returns and issues other instructions regarding practices and proceedings of courts and also determines the manner and form on which books, entries and accounts will be kept. Apart from this administrative authority it constitutes the highest court of appeal on the civil and criminal law and has also some original jurisdiction which means its judgement will be final in some cases. The high court has power within the State concerned to issue to any person or authority orders or visits for the enforcement of rights conferred by the constitution on the citizens of India and for any other purpose. The high court is also responsible for the posting and transfers of subordinate court judges.

Like the high court, the judicial administration in a

district is also fairly uniform throughout India and variations are only minor(see Figure 2). The highest judicial authority in the district is the district and session judge (DJ). He combines both civil (as district judge) and criminal (as sessions judge) powers. In UP, below the district and session judge are civil and session judges (CJ) who perform both civil and criminal judicial functions. Where work justifies, there may be an additional district and session judge. Below are the subordinate judges. At this level there is a bifurcation: additional sessions judges and assistant sessions judges functioning on the criminal side and civil judges of various grades functioning on the civil side. The criminal courts, that is to say, the district and sessions judge, additional sessions judges and assistant sessions judges, decide serious criminal cases which are committed to them by magistrates. They also hear appeals from the 1st class and 2nd class magistrates' decision. Civil courts are usually divided into a number of ranks. Courts of the higher ranks, ie, district judge and civil judges of the senior division have unlimited original jurisdiction in civil suits and are also the appellate courts for decisions from lower rank civil courts. The lower rank civil courts have limited jurisdiction and usually by suits up to the valuation of Rs.5000. Besides hearing suits properly so-called, the civil courts exercise jurisdiction over such matters as guardianship, marriage and divorce. An appeal from the district judge and the civil judges of the senior ranks lies to the high court; on the criminal side an appeal from the sessions courts lies to the same court.

There are small case courts presided over by senior civil

judges and dealing with small suits but pronouncing final orders; a reference to the high court can only be made on a point of law.

The district and sessions judge has general control over all the civil courts and sessions courts and their establishments within the district; he inspects the proceedings of all courts subordinate to him and gives such directions with respect to the matters not provided for by law as he may think necessary. There is considerable administrative work with him in regard to the control of the establishment attached to courts. The district magistrate and other magistrates are not subordinate to the district and sessions judge but the latter hears appeals from their criminal judicial decisions. (Sources: Kurian 1982:845; Zaheer & Gupta 1970: Chap V; Singh 1976:17-26; Shukla 1976:189-93).

In the district of Muzaffarnagar, all the district courts are located at the headquarters in the premises of the kachahri in Muzaffarnagar city. During my field research there was one district and sessions judge who combined both criminal and civil powers and was the head of the district judiciary. Below this were six additional district judges (ADJ), three on the criminal side and three on the civil side (as Figure 2 shows). Below them there was a special additional district judge who dealt with civil and criminal cases. Below him there was one chief judicial magistrate (CJM) who dealt only with criminal cases and had the responsibility to distribute the cases in different courts on behalf of the district and sessions judge. Below the CJM were nine munsif magistrates who had power only on the civil side. Among these nine munsifs, two sat at Kairana tehsil for a few days a month. At the bottom of the district judiciary,

Figure 2. The judicial organisation in Muzaffarnagar district in ranked order

High court

(at state level)

|

District courts

(at district level)

|

Post & No.	Jurisdiction
District & Session Judge (1)	Civil & Criminal Side
Add. District Judges (6)	(Three on the Civil & three on the Criminal side)
Special Add. District Judge (1)	Civil and Criminal side
Chief Judicial Magistrate (1)	Criminal side
Munsif Magistrates with various grades (9)	On the Civil side; two have courts at tehsil level
Judicial Magistrates (2)	One on the Civil & one on the Criminal side

Note: The chart is based on the information given by the head clerk of the District & Session Judge of Muzaffarnagar district

there were two judicial magistrates, on the civil side and on the criminal side (Source: The Record office of the District & Sessions Judge, Muzaffarnagar city).

The constitution, powers and procedures of the courts dealing with criminal cases are governed by the provisions of the Criminal Procedure Code (Cr. PC) and the procedure of the civil courts is regulated by the Civil Procedure Code (CPC).

I attempted to collect information about the total number of court cases in the different courts but some judges did not allow me this facility. However, I could collect some information related to this from some courts for the years 1977-78 and 1980-81, which is as follows:

Table 1. The nature and the total number of law cases in some district courts during 1977-78 and 1980-81.

Year	Total No. of cases	Nature of cases
1977-78	817	Criminal
1980-81	926	"
1977-78	149	Marriage petitions
1980-81	311	" "
1977-78	856	Civil cases of the district judge
1980-81	998	
1977-78	1952	Civil cases of munsif magistrate courts
1980-81	1980	

To sum up, where the district and session judge is the head of the district judiciary, the district magistrate is the head of the district administration and both parts are independent, just as the high court is independent of the State government. However,

the district magistrate has both executive and judicial powers and the district judge has only judicial power. Appeals from the suits which are originally decided by higher civil courts in the district lie to the high court.

3. Research methodology

The field research was carried out over a period of about eight months, from August 1983 to April 1984, in the district of Muzaffarnagar (UP). This district is where I myself come from and I have spent nearly twenty years there. It is my view that to study one's own society has both its advantages and its disadvantages. As a member of the society which is under research, a researcher is able to collect more in-depth information, more reliable data, it is easier to establish rapport and an understanding of the 'real meaning' of the people's behaviour is more likely to happen. On the negative side, there is the strong possibility that one is subjective, due to one's membership of the same society or group. Second, one can sometimes overlook data due to its familiarity but which is still of significance for the research. However, in this regard, it is my opinion that this will depend on the training of the researcher and his or her personality.

I had no problem in establishing rapport because of my knowledge of the local language (Hindi) and culture. I used a mixture of sociological and anthropological techniques and tools to collect field data. I collected primary data through participant and non-participant observation, a questionnaire (for lawyers only), and unstructured interviews with lawyers,

court officials, clients, munshis, touts and relevant government officials. The secondary data was collected mainly from the district judicial and executive courts and from the district information office, district statistical office, superintendent of police office, the DBA and Civil Bar. Also information was gathered from different libraries, mainly the Indian Law Institute Library (New Delhi), the School of Oriental and African Studies (London), Senate House library at the University of London, and the Institute of Legal Studies (London), as well as from newspapers published in Muzaffarnagar city.

Although I have doubts about the use of questionnaires in collecting data, I did so for the following reasons.

-It was a quick way to collect data about the lawyers' social backgrounds, eg, age, religion, caste, class, education, rural-urban, specialisation of law practice, family structure, etc. I assumed that on these points they would not give false information, an assumption which bore further checking out.

-I wanted to draw a small representative, stratified sample from the larger sample of lawyers for a more intensive study and it was more convenient to draw this up on the basis of the questionnaire list.

-I wanted to find a group of twenty to twenty-five lawyers who would not hesitate to answer truthfully about their profession and who had the time after their work at court to talk to me. It was difficult to learn about them without personal contact and getting their responses to the questionnaire permitted this.

-Through the questionnaire I was able to find the five leading lawyers (as named by their peers) in the response of Q.23 (see Appendix A).

The sample

I confined the questionnaire largely to the kachahri, where the district judicial and executive courts and district

administrative offices were situated, and where all lawyers who practised civil, criminal and revenue law in the district courts had their chambers. I got the lists of the District Bar Association (DBA) and the District Civil Bar Association (DCBA) members from the secretaries of these two Bars. However, I found this inadequate to make up the investigation of respondents because some members had given up their practice, some did not come regularly to the kachahri and some worked at the tehsil. I therefore conducted my study only of those lawyers who came regularly without consideration of their membership in either the DBA or the DCBA; and these numbered some 510. I excluded taxation lawyers, who had their offices in a different part of the city, although I visited some of their offices and the office of their Association to collect general information about them. After having complete the 510 questionnaires I then drew a small representative sample of eight lawyers on the basis of their replies about religion, education, age, the nature and length of their practice, and their rural-urban origin and so on, for intensive study of their life histories and attitudes about their profession. I also made a study of about five clients from each lawyer's 'clientage-bank'.

The administration of and nature of the questionnaire

I personally administered the questionnaires to the lawyers and if any one of them felt uncomfortable about filling it out I would do it for them. The respondents usually took about half an hour to complete the questionnaire and some new facts came to my notice during this process. Thus, I found that there seemed to be some connection between the way the questionnaire

was filled up and the social background of the respondant. Some lawyers hesitated in their response to certain questions. Who were they? This proved an important question. For instance, I observed that those lawyers with a business family background did not like to give their responses to Q.6, 'Do you have an income from other sources also?' The Muslim lawyers preferred to put down their religion in the column for caste, while they were divided in the caste system. Mostly lawyers from the lower castes were suspicious about filling in the questionnaires. A Chamar at first left his chamber to avoid me whenever I visited it. It was only after having been convinced by his colleagues that he did so.

I remained in the kachahri from 10am to 5pm on weekdays where I usually completed ten to twelve questionnaires. At lunchtime I went to the DBA's common room and canteen where I had an opportunity for group participation observation and sometimes for non-participant observation. This situation enabled me to gain access to the opinions and views of the Bar members on a variety of issues, especially on politics and the district judiciary. Sometimes, while the courts were in session I attended them also. In the evening I visited the residences of lawyers, court officials and munshis for interviews. At weekends and during holidays I visited different villages to contact the clients. Most of the clients were from villages and were non-literate so it was impossible to use a questionnaire with them. Neither did I use a tape-recorder or take notes when I was with them since this would only have made them suspicious of me. Instead I interviewed them in an unstructured and informal way and wrote up the interviews in my daily note diary

after the meeting. In the beginning when I found that my Western dress also influenced the replies of the village clients I started to wear the local dress (kurtaa and pajamaa). I was also able to speak the local dialect of the Hindi language. To such clients the kind of questions asked were: 'Who was (is) your lawyer?', 'How did you find him?', 'How do they decide their fees?', 'Are you satisfied with your lawyer's service or have you been cheated?', 'Do you maintain a relationship with him after the judgement on your case has been passed?', and 'Do you think that the modern legal system is better than the traditional panchayat system?'

Depending on the situation at the time I used a camera and a micro-cassette tape recorder and maintained a daily diary, and these were used as the basis for my field notes which I wrote up every evening. I attended all the Bar meetings where the lawyers could be found and it was fortunate that during the time I was in the field a DBA election took place, thus enabling me to get a clear picture of factionalism at work in Bar politics and the nature of the relationship between colleagues which would have been difficult to collect in other ways. I struck up a friendship with a young boy who acted as a professional tout in the kachahri and sometimes offered him 'imported' cigarettes and breakfast. Through him I met his other friends among the touts and was thus able to observe toutism as practised in the kachahri.

Already, before my fieldwork, I knew most of the lawyers and their munshis, their social backgrounds and personalities. However, I designed some questions for the questionnaire which would cross-check the replies given to other questions. To some extent some of the statements made by the respondents could be

easily matched with their observed behaviour in the kachahri, courts and public meetings. It was also very easy to ask their neighbours, friends, colleagues and those less well disposed toward them about them. Munshis were also important sources about their activities. I took one precaution when talking to the munshis never to interview them in the presence of their employers. For verification of data I used a camera and tape recorder as incontrovertible proof. As can be seen, therefore, many techniques were used to ensure that I had as faithful a picture as was possible of the Muzaffarnagar kachahri. For statistical tabulation and correlation I employed the SSPS Computer Analysis System (Nie et al 1975) at the University of London Computer Centre.

CHAPTER ONE: Note

1. An Indian lawyer is called vakil (vakeel; wakil). But the use of this term did not previously signify any specific profession. vakil is an Urdu word meaning 'agent'. It was first used in Muslim law books in connection with marriage settlement. In the early British period vakil meant a personal representative from a governor or general to the court of a Nawab or Roya. It was also used for the agents of the district collector, zamindar, or high official - either Indian or English. With respect to the district courts under the Nawabs, vakil also meant an agent who represented a party in a law court. After the regulation establishing pleading as a profession for Indians, vakil meant a pleader with legal training, and a licence authorising him to practise was necessary.

After the establishment of the high courts in 1862, vakil meant a person who had studied law in a university and had passed the high court vakil's examination. Later it came to mean the graduate of a university with an LL.B degree who as a fully-fledged advocate can handle work without the assistance of a counsel. Under The Advocate Act, 1961, the official term for vakil has been accepted as 'advocate'. According to this Act, two classes of advocates have been recognised, namely 'senior advocates' and 'other advocates'. An advocate designated as senior advocate of the Supreme Court or a high court has the opinion that by virtue of his/her ability, he is deserving of such distinction. However, people still generally use the term vakil for a lawyer throughout India. (See Misra 1961:162-3; Schmitthener 1968-69:350; The Advocate Act 1961)

CHAPTER TWO

The definition of and approaches to the study of professions

In this chapter I will deal with the definition of 'profession' and the various sociological and anthropological approaches to the subject; and then I will put forward my view on the conceptual framework to be used in analysing the activities of lawyers in Muzaffarnagar.

1. Towards a definition of profession

A review of the literature written by sociologists and anthropologists over the last few decades shows that many definitions of 'profession' have been attempted but with little agreement except in the description and analysis of the attributes of the role which distinguish it from 'non-profession' or 'occupation'. For example, Spencer (1885, Col I, Chp VII) included not only lawyers and physicians in his list of professions but also dancers, actors, biographers and philosophers.

Marshall (1971:310) wrote that 'The idea of a "profession" can be traced back to the ancient world, to the Greek image of "the good life" and the occupations and activities consistent with it, and to the Roman conception of the "liberal arts".' Under this latter heading were included mathematics, music, astronomy, and so on (Mayer, personal communication). But from this we cannot deduce the current definition of the word which can then be applied to all societies.

The definition of the word 'profession' according to Webster's New World Dictionary (1972:1134) is a 'vocation or occupation, requiring advanced education and training and involving intellectual skills, as medicine, law, theology, engineering and teaching, etc.'

It clearly shows that the word refers to a loosely defined group of occupations and that the criteria according to which various occupations are included in the category are not very clear - since according to this definition we can also include dancers, distillers, car mechanics, and so on.

Carr-Saunders (1928:3-13) in his classical work on professions wrote that it may be defined as an occupation, based upon specialised intellectual training the purpose of which is to supply skilled service or advice to others for a set fee or salary. Thus specialised intellectual training is one of the criteria for 'profession' and definite remuneration another. They added that some features, like codes of ethics, are common to all professions and a universal rule is the prohibition of self-advertisement. Advertising amongst the professions is seen to be an attempt to gain custom by other than the legitimate means of proficiency in the profession, by skill and through success in dealing with clients. Another universal rule is that which aims at making the fee or salary paid by service rendered the sole remuneration or advantage which a practitioner receives. He should not accept any commission, discounts, allowances or indirect profit.

However, in practice we can see that many professional groups accept commissions, discounts and allowances from different agencies, and they advertise their skills and recommend to their patients those medicines and pharmacies in return for commission in cash or kind from the respective drug companies or medicine dealers. American lawyers and English engineers also advertise their profession services and fees. The Law Society in England has just allowed solicitors to advertise themselves. Thus both rules mentioned by Carr-Saunders are not justified in practice, perhaps because he had in mind only contemporary British society when he wrote.

The definition of the term profession and its attributes is recognisably an 'ideal type', since in actual practice the picture always differs. But actual and ideal image are interacting factors which I will analyse in the following chapters with reference to the professional behaviour of lawyers at district level in the north Indian district of Muzaffarnagar, U.P.

Parsons (1954:372) defined profession in sociological terms: 'A profession is a cluster of occupational roles, that is, roles in which the incumbents perform certain functions valued in the society in general and by these activities typically "earn a living" at a "full-time job".' He added that they should have formal training and 'technical expertise' in their specific field and for this reason they enjoy their professional authority in their field.

But it is not necessary that a professional should be engaged in his or her profession full-time and to earn a living. Many scientists and professors perform their duty part-time and/or without remuneration. Parsons disagrees with the differentiation of professions and businessmen on the basis of 'altruistic' and 'egoistic' values, a view to which Ritzer (1971:61) also subscribes. Parsons (ib:34-42) mentioned that both professionals and businessmen were equally acquisitive and altruistic, and that they had three basic characteristics in common - rationality, functional specificity, and a universalistic character. Both also played their social roles within institutionally defined limits. So, according to Parsons, it is very difficult to distinguish between the two since in many situations businessmen also become service oriented (altruistic) as, for example, when they provide denoted property to poor people or for any social service. In this way the contrast between them lies not in the motivation but in the 'definition of the situation' which is

institutionally provided for their respective members. As he also pointed out (ib:42), 'The institutional pattern governing professional activity does not, in the same sense, sanction the pursuit of self interest as the corresponding one does in the case of business.'

Though I agree with Parsons' arguments, the same problem we had with Carr-Saunders also applies to him. Parsons is only concerned with American society, particularly the American legal profession, and it is difficult to apply his arguments to all societies and professions. For instance, the American lawyer's role is different in many respects to that of the British lawyer (see Berle 1963:340-55, Morrison 1982:101).

Barber (1963:671) mentioned four essential attributes of a profession: (i) A high degree of generalised and systematic knowledge; (ii) Primary orientation to the community interest rather than to individual self-interest; (iii) A high degree of self-control of behaviour through codes of ethic internalised in the process of work socialisation and through voluntary associations organised and operated by the work specialists themselves; and (iv) A system of rewards (monetary and honorary) that is primarily a set of symbols of work achievement and thus ends in themselves, not means to some end of individual self-interest. After a review of sociological literature on occupations, Greenwoord (1957:45-55) also identified five common features of a profession: (i) Systematic theory; (ii) Authority; (iii) Community sanction; (iv) Ethical codes; and (v) a Culture.

The following is a brief resume of these attributes:

(i) A body of systematic theory: A systematic theoretical background serves as a base in terms of which the professional rationalises his operations in concrete situation. Thus the preparation for a profession involves considerable pre-occupation with systematic theory, and

this feature is virtually absent in the training of a non-professional. Orientation in theory can be achieved best through formal education in the academic setting. Theoretical knowledge is more difficult to master than operational procedures. For example it is easier to learn to repair an automobile than to learn the principles of the internal combustion engine. The theoretical background develops rationality in the behaviour of professionals (Greenwood 1957).

(ii) The professional authority: In the relationship of shop-keeper and customer, the customer determines what services or commodities he wants, and he has to judge for himself what he needs. In the doctor-patient or lawyer-client relationship, however, the professional dictates what is good or bad for the patient or clients, who has no choice but to accede to professional judgement because clients have no theoretical knowledge and licence and the client derives a sense of security from the professional's assumption of authority. Parsons (1954:42) calls this professional authority 'functional specificity'. It means he has a specific role in the society which not everyone can do. In Weberian terms we can say professional authority is 'legitimate authority'. The professionals possess this authority due to their formal training.

(iii) Community sanction: Anybody can claim that he or she is a carpenter or sweeper, but nobody can say that they are a doctor or a lawyer. For a profession some qualifications are necessary and these may have either formal or informal privileges attached to them. Therefore, when an occupation strikes towards professional status one of its prime objectives is to acquire this monopoly or community sanction. It is important, I believe, to distinguish profession from occupation, since in every modern society there exists a hierarchy of occupations. In this context Turner and Hodge (1970:30) say that a direct method of attempting to measure the degree of public recog-

nition is to ask representative samples of people. This will mean probing for the ways in which people classify and categorise occupations, the images they have of these occupations or professions, their view of the value and utility of the latter, their overall rating of the occupations and their experience of contact with occupational or professional personnel. I believe we will find that ranking by people or professions or occupations will differ according to their culture.

(iv) The ethical codes: The professional ethical codes, partly formal and partly informal, largely define the appropriate professional behaviour with respect to their clients, colleagues and society. Greenwood (1957:45-55) pointed out that through its written and unwritten ethical codes the profession's commitment to social welfare becomes a matter of public records, thereby ensuring for itself the continued confidence of the community without which the profession could not retain its monopoly. Self-regulative codes are characteristic of all occupations, as well as professional ones. However, a professional code is perhaps more explicitly systematic, it certainly possesses more altruistic values and is more concerned about public welfare. Towards the client the professional must assume an emotional neutrality or objectivity. He must provide service to whomever requests it, irrespective of the requesting client's age, sex, caste, class, race, kinship, social status, and so on. He should follow a rational and humanitarian outlook. Parsons (ib:41) calls this elements in professional conduct 'universalism', and gives the example of a heart specialist who has to decide whether a given person who comes to his office is eligible for a relatively permanent relationship with him as his patient. So far as the decision is taken on technical professional grounds the relevant questions do not relate to whom the patient is but to what the matter is with him. The basis of the decision will be 'universalistic', ie, the consideration

of whether he has symptoms which indicate a pathological condition of the heart rather than whose son, husband, or friend he is in this context. The professional must not use his position of authority to exploit or cheat his clients or patients for personal benefit, and he should not discuss the competence of his colleagues with clients or patients. Greenwood (1957) and Marshall (1971:312) mention that the colleague relationship among professionals should be based on positive supportive, co-operative and egalitarian values. Any new information of relevance to that profession should be commicated amongst them or to the professionals' association. Self discipline is also considered a necessity, with mutual respect between senior and junior members. If a lawyer or doctor refers his client or patient to any of his colleagues due to lack of time or skill he should not charge any fee or commission from either for this. They should follow their association's rules and regulations.

So, in contrast to the non-professional, the professionals are seen to be motivated less by self-interest and more by the impulse to perform their role to the best of their ability - they must be prepared to render their services upon request, even at the expense of personal convenience.

(v) The professional culture: What distinguishes one profession from another? or from an occupation? Greenwood (1957) suggests that each may be viewed as a 'sub-culture'. Given that each profession has its own values, norms and symbols we can consider it a culture, which with respect to the culture of the society becomes a 'sub-culture'. Greenwood considers the unquestioned premises of the professional group its 'social values', which can primarily be said to be its consideration of the service it offers the community as unique and absolutely necessary to the latter's welfare and progress and also to the value of rationality - this is its 'commitment to objectivity' and refusal to allow either theory or technique to be 'sacred and unchal-

lengeable'. According to Ritzer (1975:633) Weber regarded professionalisation as an aspect of the process of rationalisation. The effect of these values is to put the profession in a position in which it sees itself as infinitely wiser and more capable in dealing with its subject matter than the public.

The professional culture's norms are how the members should behave in social situations. The guidelines refer to intra-professional relationships, daily routine in acquiring or dealing with clients, the ways of entering, moving through and leaving the profession and so on. Norms also refer to the way the group deals with changing its techniques and theories.

For the third characteristic of a professional sub-culture, its symbols, Greenwood includes its insignias, emblems, dress, history, folklore, heroes and villains, and its stereotypes of not only itself but also those with whom it reacts - the clients and the layman.

The values, norms and symbols of non-professional occupations are not, however, clear enough to allow each to be separately classified as a sub-culture. Durkheim (1957:14) also said that without morality a group cannot function and the sanction of society for any moral rule is essential. How does a newcomer into a profession begin his career? There are certain rules and norms for the socialisation of the professional man, therefore the transformation of a newcomer into a professional is essentially an acculturation process wherein he or she internalises the professional culture. The idea of a 'career' is, as a rule, also an important part of a profession's culture. the main point in the professional career is a certain attitude towards work which is peculiarly professional. Greenwood (ibid) mentioned that a 'career' is basically a calling, a life devoted to 'good work' for the professional, and,

in a sense, his work is his life.

Thus, after examining the different definitions of profession and associated attributes, I have come to the following conclusion. With respect to each of the attributes, the true difference between a profession and a non-professional occupation will be shown to be not a qualitative but a quantitative one. In other words, they are not the exclusive monopoly of the professionals since non-professional occupations also possess them but to a lesser degree. For instance, Goode (1965:902-3) and Barber (1963:637) have suggested that two main features of a profession are prolonged specialised training in a body of abstract knowledge and a collective or service orientation. But occupations may rank high on one of these and low on the other. For instance, nursing ranks high on the variable of service orientation but has been unable to demonstrate that its training is more than a lower level of medical education. Correspondingly, various occupations have been steadily moving upwards on both dimensions. For example, social work, public accountancy and librarianship, etc. Etzioni (1969) categorises such occupations as 'semi-professions' and Barber (1963:676) calls them 'marginal professions'. So the dividing line between 'occupation' and 'profession' is hazy and it varies between cultures and over time. However, it is true that at present usually lawyers, doctors, engineers and professors are classified as professions in all countries. In ancient time in Europe, the vocations which we call professions never formed distinct social groups and they were not in a dependent position. Even in medieval times they were under the dominance of the church. So the church was the only occupation before the industrial revolution in Europe which gave people without unearned income the opportunity to make a living which did not entail commerce or manual work (see Carr-Saunders & Wilson 1933:470-880).

In the 'hierarchy of occupation' of a particular society, those occupations which have high status are usually considered professions by the people and those with low status are categorised as occupations. For example, in England nursing is a profession but in India it has a low status. During the first years of the film industry in India acting was considered a low status occupation, but now people consider it as a profession since it has gained a high status, although in India formal training or a degree is not a necessary qualification for an acting career.

In the Indian context, when we look at the traditional occupational structure, it is indeed difficult to separate the term profession from occupation since in Hindi the terms yayasay, kaam, dhandaa or pesaa all mean 'job' and all have similar connotations. However, chakari is used for those who do a lowly job for their employer. The terms dhandaa and pesaa are used in a bad sense also (eg, for prostitution). Those people who are not familiar with the English term 'profession' use pesaa or dhandaa when referring to the legal, medical or acting professions. The term naukari (in the sense of 'service'), when it is linked to a high status and does not involve manual labour, can be held to mean profession in the same sense as in Europe. Singer (1971:1) rightly pointed out that occupations in South Asian countries are more than just jobs, they are ways of life, or, we can say, 'occupational cultures'. That is, they have distinctive sets of values, beliefs and social institutions that have become associated with the practice of a particular occupation. In India specialisation of work and division of labour are still de-limited by family, caste, religious sect or region, and the ranked hierarchy of occupations in terms of ritual, prestige and power. In contemporary India professions, in the Western cultural sense of the

term, were established over the last two centuries. But this new professional culture was not supplanted wholesale, the Indian version was that produced by the interaction with the traditional occupational culture.

In conclusion, it is difficult to give any definition of 'profession' at this stage. Even Harries-Jenkins (1970:50-9) noted twenty-two attributes of a profession. However, the following constitutes my own 'ideal type' working definition: 'The professions are semi-autonomous, self-organised occupational groups which possess high status in society, a culture of their own, systematic training and rationality in their roles, and a commitment to society's general welfare.'

I will examine this ideal type and its associated attibutes in the 'actual' behaviour of lawyers with specific reference to the lawyer-client relationship in the Indian context. That is, I will look at to what degree the Indian lawyers are ideal professionals and how far they differ from this.

2. Different approaches to the study of professions

In both sociological and anthropological literature three main paradigms or approaches have been used to study professions: the processual paradigm, the power paradigm, and the structural-functional paradigm. Although most scholars treat these paradigms as mutually exclusive, they are basically complementary. Together they provide us with a comprehensive understanding of professions.

The processual paradigm was followed mainly by the sociologists of the Chicago school, with the major work produced by Hughes (1958). It focuses on the historical stages giving rise to professionalisation as well as the ongoing process that characterises contemporary professionalism. This approach identifies the processes an occupation

undergoes as it becomes professionalised and has been further developed in recent writing.

Goode (1965:902-14) pointed out that when an occupation becomes more professionalised it acquires the traits of a profession and more sociological characteristics:

i) The profession determines its own standards of education and training.
ii) The professional student goes through a more far-reaching adult socialisation which is more expensive than for other occupations.
iii) The professional practice is often legally recognised by some form of licence.
iv) The licensing and admission boards are composed of highly qualified members of the profession concerned.
v) Legislation concerned with the profession is shaped by that profession.
vi) The income, power and prestige of a profession determines the quality of recruitment.
vii) The practitioner is relatively free of lay evaluation and control.
viii) The norms of practice are formed by the profession and are more stringent than legal control.
ix) The members are more strongly identified with and attached to the profession than are members of other occupations with theirs.
x) The profession is more likely to be a terminal occupation, members do not care to leave it, and a higher profession asserts that if they had to leave it they are entitled to re-enter it again.

Goode added that these characteristics are closely inter-related. So one important part of the process by which an occupation becomes a profession is the gradual institutionalisation of various role relationships between itself and other parts of society.

Four main areas of analysis which should be pursued to develop useful insights into the process of professionalisation were also suggested by Turner and Hodge (1970:24). These were

i) The degree of independent existing theory and techniques in the practising of professional or semi-professional activities.
ii) The degree of monopoly claimed by professional or semi-professional activities.
iii) The degree of external recognition of the profession or semi-professions.

iv) The degree of organisation of a profession or semi-profession.

Wilensky (1964:141) also described very similar steps. This four-fold scheme is important to understand the character of a movement in America and other European countries whereby several occupational associations lay claim to professional status. However, in the Indian context most so-called professions did not develop from occupations. There were for instance doctors (hakim or vaidh) in ancient India and these still exist, but they do not possess professional characteristics - for example, it is not necessary for them to have a formal training or a degree. For the legal profession the administration of justice in ancient India was purely the concern of the raja and anybody could enter the raja's court to give evidence or arguments. The relatives and friends could defend the plaintiff and the same prevailed during the Mughal period. This history of the modern legal profession in India can be said to have begun in 1872, when the British government established the first court in Bombay.

The processual approach is limited in the understanding it can provide in the Indian context, professions here having emerged in a different way. However, it can be applied to the recent past since their development has tended to follow along Western lines.

In the power paradigm the main focus is on the use of power by the profession to gain and retain its privileged position in the society. Marxists scholars follow this approach and they see professions as a privileged class of society enjoying resources at the expense of the depressed classes (see, for example, Mills 1951, Bottomore 1965, Freidson 1970, Sharma 1982a, Misra 1961, Rowe 1968-9, Ben-David 1964, Schumpeter 1951, and Illich et al 1977).

Misra and Rowe consider that lawyers constitute a 'new middle

class' in India and some call it the 'white-collar class' which emerged during the British period. Nevertheless, at present it is difficult to consider them as part of the class system, as these Marxists would suggest, if we take class as a property relation. They form the professional status group under the wider category of the occupational structure of the society because they enjoy their high status due to their professional authority. Marshall (1950) and Carr-Saunders and Wilson (1933) take the same view. To be considered professional as a status group Weber (1947:428) mentioned four main criteria for a 'social status group', which rests on one or more of the following bases: their mode of living, the formal process of education which may consist in empirical or rational training and the acquisition of the corresponding modes of life; and, lastly, the prestige of birth or of an occupation. The lawyer's professional authority (his power) is based on rational grounds. Carr-Saunders and Wilson saw in the professions a sign of the emergence of a new type of occupational structure exempted from the capitalist relationships of production and regulated by collective control rather than individual competition for profit - as exemplified by the rise of the managerial class. Relationships between clients and professional are conceived as primarily co-operative rather than competitive exchange, but it is also true that in actual practice some professional groups individuals exploit the clients or patients in some situations and in some societies, as I will explain in the context of the Indian lawyer-client relationship in the following chapters.

In the third paradigm, that which uses the structural-functional mode of explanation, professionals are seen as distinct from other occupational groups in terms of specific attributes, value orientations, specialised knowledge, service, ethic and in emphasising the importance

of the colleague relationship and control over their activities. Here the focus is on the structure and function of the professional group, which distinguishes the profession from all other occupations. For example, Parsons (1954) viewed the professional organisation, behaviour, ethic and ideology as (positively) 'functional' for the maintenance of orderly social relationships. Parsons's analysis still relates professions to the total social structure. He writes in regard of the legal profession, 'The sociologist must regard the activities of the legal profession as one of the very important mechanisms by which a relative balance of stability is maintained in a dynamic and rather precariously balanced society' (1954:385). So lawyers through legal codes maintain the total social order of the society.

Most of the studies on professions have been conducted on the basis of the structural-functional paradigm. This approach emphasises the internal structure of the role and its relationship to individual or organisational behaviour. Merton's (1957:368) role-set analysis shows that role performance is a response to different and often conflicting expections, systematised and made explicit. Role analysis seems to be a particularly useful tool for the description and analysis of socialisation into the professions.

Ritzer (1975) and Greenwood (1957) stated that there is a professional continuum with occupations at the professional end of the continuum having more of the defining characteristics than those occupations that stand at the non-professional end. In this way they combined the processual and structural-functional paradigms. Ritzer (1975:627-37) claims that Weber was the first sociologist who understood that a professional group must be viewed from the structural, processual and power perspectives combined. However, this is inaccurate -

Weber (1968:425) considered the priesthood as the ideal-typical profession and this does not fit into the category of 'profession' as used in contemporary society.

In the context of my study the structural-functional paradigm fails to solve the question of how a lawyer recruits his clients for practice ('business') or how a client chooses a particular lawyer. A role-based approach though can deal with this question. It can show, for instance, how both parts of the 'action set' interact within the formal organisation of the legal system and how the lawyer's behaviour becomes increasingly 'non-professional' and lowers the prestige of the profession. I believe a formal organisation may not always be able to operate without informal groups and, moreover, that such ties would prove especially functional in such situations where the formal institutions are less structured, especially at the peripheral parts of the social system. This is certainly so within the Asian context. In India we would find that the roles of caste, kinship, religion, and region are very important in making up informal groups within the functioning of the formal organisation or bureaucratic structure. Blau (1956;1964) also rejected Weber's ideal treatment of bureaucracy as a formal organisation and he pointed out that actual activities (of people in formal organisations) do not exactly follow the formal blueprint. So to understand how bureaucracy functions we must observe it in action.

In short, the static structural-functional paradigm does not work at the level at which real people interact. Boissevain (1974:5) writes that through the structural-functional paradigm we can understand the pattern of social relations and how they are maintained, but we cannot understand how such patterns emerge and how they change.

The 'network' approach

In this context the use of 'social network' as a conceptual tool of analysis has emerged in sociology and social anthropology as a response to a growing doubt as to the adequacy of the structural-functional approach, particularly in the study of complex societies, during the last three decades.

Barnes's study (1954) on class and committees in the Norwegian island of Bremnes is just such an example. The term 'network' was in fact first used by Radcliffe-Brown (1952:190-200) when he mentioned that the social structure was a 'network of actually existing social relations' and it was maintained by a convergence of interests or at least a 'limitation of conflicts' which arise from a divergence of interests. In some cases the structure (the relationship of different parts) could be defined by a single criteria, as for instance in an Australian tribe, where the whole social structure is based on a 'network' of such relations of person to person (on the basis of genealogy). Boissevain (1973:viii) wrote that 'the basic postulate of the network approach is that people are viewed as interacting with others, some of whom in their turn interact with each other and yet others, and that the whole network of relations so formed is in a state of flux. The approach makes no explicit assumptions about the nature of the interactions (linkages), though those who use this concept are constantly seeking patterns and formulating and testing hypotheses regarding such patterns and their effects on behaviour'. Kapferer (1973:84) also gave a definition for the term 'network'. He saw it as a set of points (individuals) defined in relation to an initial point of focus (ego) and linked by lines (relationships), either directly or indirectly, to this initial point of focus.

In fact, the main attraction of the network approach, particularly amongst social anthropologists, is that it promises a way of explaining social process and change.

Barnes (1954) was the first person who used the social network approach in a systematic way in his study of the Norwegian island parish of Bremnes. His main interest was in the analysis of social class and he identified three types of social relationship in the people of the parish. The concepts he used were that of social network and set. He classified two types of social network, the 'unbounded' social network, which centred on a single person, ego, and the 'bounded' social network which he called a 'set'. He wrote that for the people of the island the first type of social relationship was exemplified by their working relationships within the industrial system. The second type of social relationship they were involved in was by dint of their occupying a place in a territorial system of relationships. But in addition to these there was a set of personal relationships which interfused and cross-cut the set of relationships in the industrial and territorial systems. This third type of social relationship was based on friendship, kinship and the neighbourhood, and the most important feature about them was that they were likely to be distinctive for each person in the community, being based on the personal choice of the individual concerned.

Bott (1957) conducted her study using the conceptual framework of Barnes in the context of families in London. She attempted to relate variations in conjugal roles to different kinds of network and distinguished between 'close-knit' and 'loose-knit' networks. A close-knit network is defined as one in which there are many relationships between its component units: in a family which has a close-knit network many of its friends, neighbours and kin will know one another

and such a network has a high degree of connectedness. By contrast a loose-knit network exists where friends, neighbours and kin are not know to each other and the degree of connectedness is therefore slight.

Epstein (1969:110) found this classification inadequate when applied to his Rhodesian field data. His finding suggested that it was not necessary for every link in the network to possess the same density. Thus it may not be connected in its totality, but could still be highly connected in its parts. He classified (1969:77-116) two types of social network: the 'effective' network and the 'extended' network. According to him the effective network was made up of those people known to ego who are also known to each other. In the extended network he included people who were known to ego but not to other members of ego's network and who in turn knew other people. In this way Epstein discussed the question of variation in different parts of a network according to the amount of interaction. But when he mentioned (ibid:111) that in the effective network the nature of relationships is for status differentiation to be minimised and in the extended network interaction takes place between approximate social equals, this is not necessarily true. The nature of relationships will be governed by the group's or society's stratification system. Wheeldon (1969) also used Epstein's typology of networks in his study. He added (p.132) that people with whom ego has a relationship in which may be distinguished three or more strands (a multiplex relationship) were also his effective network. But people with whom ego has a relationship based on only one or two strands were included in his extended network.

Two types of social network were suggested by Trouwort (1973: 113-23) within the exchange theory framework. One is based on

horizontal ties (the beer and food exchange among the Burundi people) and the second is based on the vertical relationship (the client-patron relationship) in which the gift of a cow establishes a lasting relationship between the person who gives the cow - the patron - and the person who receives the gift - the client; and a man can be both patron and client at the same time in relation to different people. He saw both types of network forming the basis for the recruitment of an action-set, but did not explain which type of relationship (horizontal or vertical) would be more important for an ego in recruiting members for his action set or network.

On the basis of the interaction framework Boissevain (1968:542-56) distinguished three zones of a network - the intimate, effective, and extended zones. In the intimate zone he included the persons with whom ego is on intimate terms; the effective network is composed of those people with whom ego has less intimate relationships; and in the extended network were those whom ego does not know personally but who he could contact if he wanted to through other intermediaries or zones. Boissevain (1973:125-50) compared the personal networks of a townsman and someone from the countryside to trace the impact of the macro-environment (both socio-cultural and physical) via this structure on their behaviour and personality. He found a difference of environmental effect between the two in their behaviour and social relationships with others. In other words, he examined the interaction between small-scale society and large-scale society through the network approach based on interaction theory.

Mitchell (1973:15-35) identified three types of relationship with which he suggested we could explain our field data. These were,

(a) 'The structural order', which means the behaviour of people is explained in terms of actions appropriate to the position

they occupy in an ordered set of positions, for instance, in a factory, a family, and in a political party, and so on;

(b) 'The categorical order' of relationships, in which the behaviour of people in an unstructured situation may be interpreted in terms of social stereotypes such as class, race, ethnicity and so on; and

(c) 'The personal order' of relationships, in which the behaviour of people in either structured or unstructured situations may be explained in terms of the personal links individuals have with a set of people and the relationships these people have in turn amongst themselves and with others, such as the social network.

He mentioned that these three types of social relationships are not three different types of actual behaviour, however, but rather three different ways of making abstractions from the same actual behaviour. Further, he suggested that in a social network three kinds of links - contents - can be observed and from these contents we can in turn also distinguish social networks. These contents he distinguished as follows: communication, exchange and normative. In social networks contents are all incorporated together in real social institutions, for all social interaction involves communication, some exchange and evaluation of behaviour in the sense of social norms. So whichever aspect we choose to emphasise in our analysis it will depend upon the nature of the problems in which we are interested.

In the context of the idea of a social network, Mitchell (1974:281) raised a question as to whether there was a network theory or whether it was simply a tool for data collection. It was his personal contention that this approach emerged as a reaction against the over-formalisation of the structural-functional approach by anthropologists who were studying in complex societies and who

originally developed their findings within the framework of a compact institutional analysis typical of the static structural-functional paradigm. Whitten and Wolfe (1974) also argued that there are several modifications to this dissatisfaction with the structural-functional approach and these may be classified as two main types. First there are some scholars who have seen the solution to the inadequacy of structural theories in modifying the existing concepts like role and role-relationships, for example, Merton's work (1957) and Nadel (1957). The second group of scholars are called transactional theorists and they emphasise individual behaviour. There are several different types of transactional theorist. Some, like Wolfe (1966:16), Barth (1966) and Paine (1971), stressed dyadic, patron-client and brokerage relationships. Others, like Trouwborst (1973), Homans (1951) and Blau (1964), developed the social exhcnage approach. All transactional theorists are mainly concerned with the way in which individuals manipulate their social relationships to achieve their ends. These sorts of studies have mainly been conducted in the political field. Mitchell calls them 'action theorists', but Cohen (1974, and confirmed personally) does not distinguish the two, ie, action and transactional theorists. I believe both overlap. Barnes (1972:3) and Kapferer (1969:182) also comment that because the concept of network and other associated concepts have recently become popular the terminological confusion has greatly increased. Kapferer used the term 'rèticulum' instead of the term 'network'.

To sum up, the social network approach has been used in two ways: as a system of relations which impinges upon individuals and influences their behaviour, and as a series of relations through which people achieve their ends. Barnes (1971) and Bott (1957) agree that the idea of a network can be used in many conceptual frameworks.

Kapferer (1973:108) also argues that the notion of a social network is simply a technique of data collection and analysis. He himself followed exchange theory as the basis for network analysis. Wolfe (1970:226-44) also mentioned that, 'it is with exchange and action theory the notion of network would appear quite abstract, divorced from the realities of human life, in a specific social and cultural setting'. But Wolfe and Whitten elsewhere (1974) argued that role theory may possibly provide the basis upon which propositions may be set up in terms of networks, although they themselves did not attempt to do this exercise. Mitchell (1974:283) sees the debate as being more about words than reality. My personal view is that the term social network is confusing simply because there is no consensus on its meaning. It is based on well established theories, and different field research workers have used it in their framework of study, but surely the network approach provides a bridge between sociological interpretation of human behaviour and the personal or motivational aspect. It is my belief that these scholars have mainly been influenced by Weberian action theory and Blau's exchange theory.

Indeed, those social anthropologists or sociologists who have used the network approach used it in the context of the whole social field of ego. It is difficult, however, to study ego's behaviour in any specific field of activity through the network concept. In regard of this present study I am mainly concerned with the study of ego's (lawyer) linkage with that of alter (the client) in a specific field of activity (legal) and not in all social contexts. In other words, I am only concerned with a part of ego's network. Thus the term network will not be useful here. In this respect, Mayer (1966), who analysed the political process in a municipal election in central India, used the 'action-set' concept. He saw a 'set' as

being different in form from the network, for it was centred on a single person - ego - and consisted of the people classified by him according to a certain criterion. So these people only formed part of the network - that part which ego recognised as being contained in the set. He associated the notion of action-set with the concept of a quasi-group. This concept has been criticised by Harries-Jones (1969:297-347) and Boissevain (1971:468-472). The main basis of criticism is that the criteria which are essential to define a quasi-group are already contained in the concept of personal network and action-set, so there is nothing to add to our understanding of social behaviour by identifying the quasi-group. In addition to this criticism I would add a criticism of my own to Mayer's classification of two types of quasi-group.

Mayer distinguished (1966:97) the classificatory and the interactive quasi-group. He mentioned that in the classificatory group all members have common interests, but in the interactive group members interact on different interests. However, I believe that we cannot classify a quasi-group on the basis of interest because in this kind of group we can observe some common interests and some different ones of the persons who are acting within it. Mayer used the term action-set for an interactive quasi-group which is made up of a series of action-sets. Nevertheless he (ibid:99) also wrote that both types of set (classificatory and interactive) are similar in that they are ego-centred and may contain intermediaries between ego and the terminal individuals. Barnes (1954:43) also used the term 'set' with network, as I mentioned earlier. He wrote, 'I find it convenient to talk of a social field of this kind as a network. The image I have is of a 'set' of points, some of which are joined by lines. The points of the image are people or sometimes groups and the lines indicate which people interact with each other.... (A) network of this kind has no external

boundary'. In this analysis Barnes used set in the sense of nodes of a network and Mayer rightly pointed out that Barnes used the word in an indefinite way. So the bounded and unbounded entitites of the action-set are not clear in Barnes's analysis and these sets can therefore be categorised as classificatory sets.

Mayer (ibid) used action-set for the way in which a candidate (ego) mobilised support to win the election through a variety of relationships and the action-set of an ego had a known boundary. Thus he used the action-set in a specific context of an activity (political) which provided the terms of ego's purpose in forming linkages. Some of the features of an action-set that he mentioned were as follows:

i) At any given time the component units of a set have a known boundary, because each is known to each other either directly or through an intermediary;

ii) There are many bases of linkages, eg, kinship, caste, religion, political, and so on. It may even be based - though not always - on group membership;

iii) Those people who have a direct link with ego constitute the simple action-set and the term complex action-set is used for people who are linked to intermediaries who are themselves in direct contact with ego;

iv) The action-set is a bounded entity. However, it is not a group and the action-set could not exist without the ego around whom it is formed; and

v) The action-set is a temporary phenomenon, not like a group, although the 'outward' aspect are those of continuing role-relationships. For example, caste, village membership, and so on. And the 'inward' aspect is that of a linkage based on a specific purposive impulse which is created from ego. He added that in the future some people can remain in the action-set or some can leave it.

Barnes's criticisms do not hold when he writes (1969:69) that some of the characteristics of action-sets which Mayer deduced may not be found in all possible action-sets. Holmstrom (1976:93) found the action-set approach useful in his study of a municipal election in south India. He commented that, 'if links in an action-set have both an ideological and a transactional component, why not build both

into our model?' He analysed the role of ideology in linkages of action-sets. I also think we should consider ideological aspects of linkages when we are dealing with structure and interactional aspects of an action-set.

In the context of the present study this approach appears to be useful for understanding informal aspects of the legal system. Does the social background of lawyers affect the structure (ie, size, composition, field of activity, etc) and interaction aspects of their 'professional recruitment set'? What are the bases of linkage between lawyers and client? How does a lawyer maintain his relationship with clients? What roles do the values of tradition and modernity play in their relationships? To answer such questions I will use the above-mentioned approach, but it needs some modification to give the answers we are looking for. It is true that in the lawyer's (ego's) professional recruitment-set both parties are known to each other directly and they may be in contact through intermediaries (for example, touts, brokers, kin, etc), so this type of set has a known boundary. A lawyer may recruit his clients on many different bases, for example, caste, region, religion, kinship, friendship, and so on, and sometimes the linkage can be based on group membership, for example, the lawyer and client may belong to the same political party or club. The nature of the lawyer's 'recruitment-set' can be simple or complex, and the lawyer's relationship with his client is normally temporary, although it can sometimes extend into the future. My modification to the concept of 'action-set' is therefore as follows.

Normally it is deemed to have formed at a specific time, and when ego's purpose is accomplished, for example after winning the election or performing a religious ceremony, the relationship is broken. However, in the lawyer's case the lawyer recruits his clients

for a specific purpose (to get business) but not at any single time. He continues to recruit his clients throughout his whole professional life. So Mayer's concept of the action-set is not helpful in explaining how ego (the lawyer) maintains his relationships with clients and in what situations they break them. To deal with such types of questions I will use the 'professional recruitment-set' concept. I would like to analyse this process in two ways, from the point of view of ego (the lawyer) and from the view of alter (the client). For the district courts of Muzaffarnagar city, UP, the bases on which the client chooses his lawyer I will call 'resource-set' for analytical purposes, to differentiate it from the lawyer's recruitment-set although theoretically both types of sets are the same. The main emphasis will be from the point of view of ego (ie, the lawyer). I will also look at the interaction between tradition and modernity in the linkage process or, as Parsons put it, the interaction between particularistic and universalistic values. Although I believe that tradition-modernity is not a dichotomy, in explaining the direction of social change I consider it a useful conceptual framework. It is especially important in relation to the Indian legal system. As Rudolph and Rudolph (1967:254) wrote, modernity and tradition were more opposed in the context of the law than they were in the context of social structure and political leadership in India.

Conclusion

I have attempted in this chapter first of all to define the term profession and also to delineate its associated attributes. After a review of the literature I reached the conlcusion that the difference between occupation and profession is a matter of degree which varies between cultures and over time. The given definitions were discovered

to be more in the nature of 'ideal type' pictures of the professions which were slightly different with respect to the actual behaviour concerned. Second, scholars have tended to use three approaches, that of the processual paradigm, the power paradigm, and the structural-functional paradigm. But there is no single study which used the network approach in studying the relationship between the professional and his clients or patient as a process. I am making the present study a part of the network approach by using the notion of the professionals' recruitment-set. It means a set of people (the clients) whom ego (the lawyer) mobilises on different bases for his practice or business.

Mayer (1961) and Boissevain (1973:125-48) found the environment, both socio-cultural and physical, influences the composition and structure of a person's (ego's) social network. So to explain the structure and interactive aspects of the professional's recruitment-set it is necessary to know first their social background. Carlin (1966) also conducted a study on American lawyers and found that structural factors are responsible for non-ethical behaviour of the lawyers. In the next chapter I will therefore deal with the social background of lawyers at Muzaffarnagar city, classified in terms of their caste, age, religion, class, education, rural or urban origins, nature of family, and so on, and explore how it affected their behaviour and relationships with their clients.

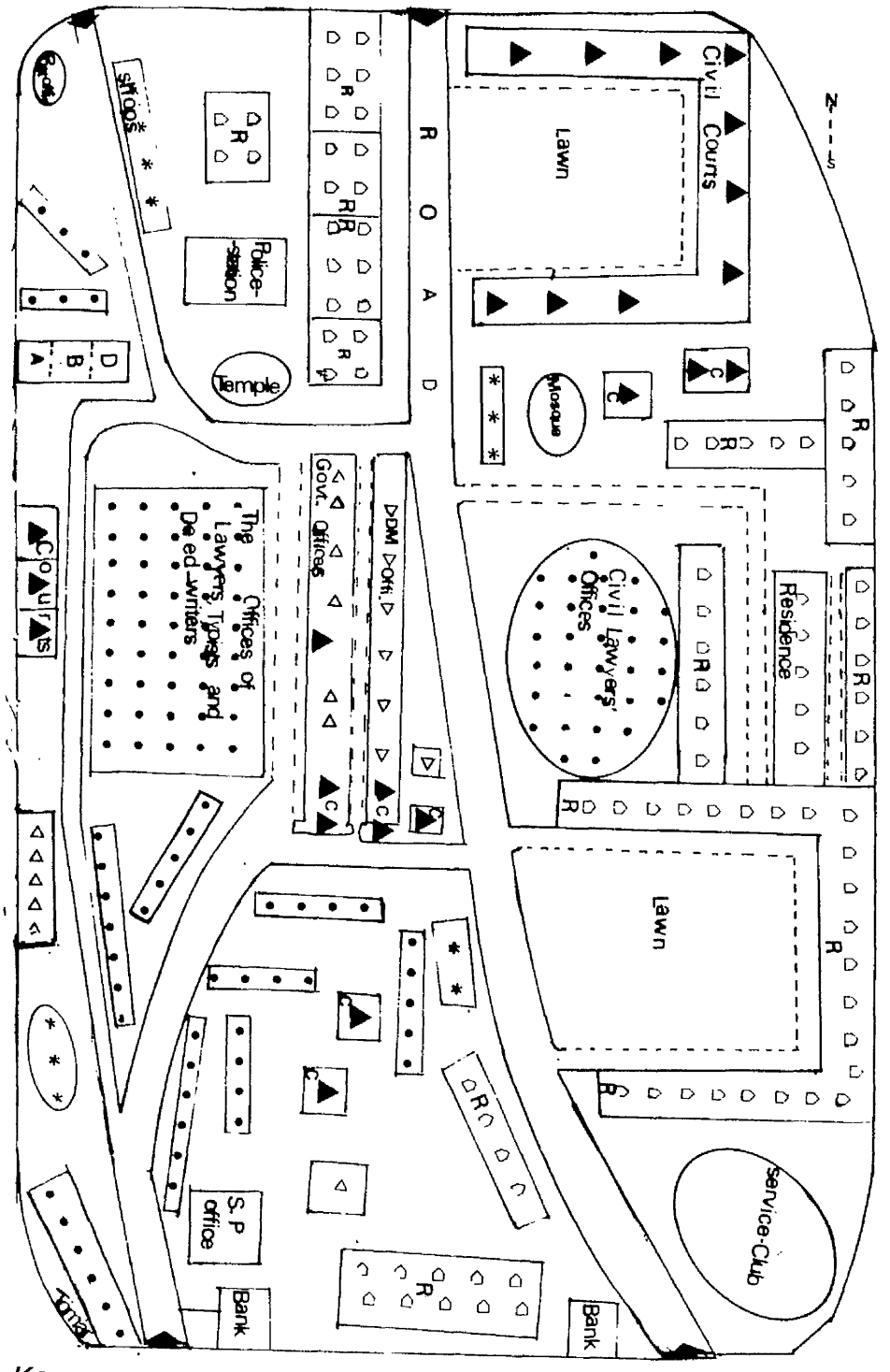
CHAPTER THREE

The kachahri of Muzaffarnagar City

This chapter looks at the physical setting of the kachahri and the history of the District Bar in order to show how these two factors influence the social interaction between the people within the kachahri premises. It will then examine the lawyers' social background before asking why people joined or did not join the profession.

1. The physical setting of the kachahri

The kachahri of Muzaffarnagar city is located in the centre of the city. The term 'kachahri' denotes the walled-in or otherwise demarcated buildings of the district courts, district administrative offices and the bistraas (chambers)[3] of the lawyers (vakil), petition-writers and typists and the offices of the Bar. These, in the kachahri of Muzaffarnagar, are the courts of the district judge, sessions judges and munsifs, civil judges, the chief judicial magistrate, the juvenile judge, the district magistrate, the sub-divisional magistrates (SDMs) and the offices of the district collector, superintendent of police, district information officer, Zila Parisad (District Board), district treasury officer, district consolidation officer, District Bar Association (DBA), and District Civil Bar Association (DCBA). Besides these courts and offices there are some ten restaurants and cigarette-betel shops, a police station, post office and a residential colony for the judiciary and district officials as well as a mosque and a Hindu temple within the boundary of the kachahri. In these latter two some of the litigants go to pray to God for the success of their cases. During lunch-time the Muslim lawyers and litigants go to the mosque for prayer (namaaz)



Key

▶ = court

⌂ = residence

▷ = government office

▭ = lawyers' offices

The sketch map of the kachahri

1. A view over the kachahri

2. A prominant lawyer, who is more than seventry years old, going to the court

and it also serves as a meeting place for all of them. The lawyers, stamp-vendors, petition-writers, oath officers (notary), and typists sit under tin roofs in straight lines of stalls which are called chambers (bistra). The size of these chambers is on average about three by two square meters. The chambers or offices are open fronted without a door or window. In his office a lawyer will usually keep a table, a few chairs and benches (for the clients) and a very low table (chauki) for his munshi to sit on and one tin or wooden box for documents and papers. Some lawyers provide a hubble-bubble pipe (hukkaa) for their clients as well. The spatial location of these offices provides a chance for a lawyer to watch or listen to the conversation of the lawyers adjacent to him with their clients.

A lawyer cannot get a chamber without being a member of the Bar Association, since all kachahri land belongs to the district collector and it is under lease to the Association. This is the main reason why lawyers do not make their bistras in modern officer or chambers. Whenever a lawyer gives up his practice or retires he usually sells his place to a newcomer since land is limited and the physical location is also important in attracting village clients. Over the last two decades the kachahri has become crowded with lawyers and this practice takes place despite the fact that it contravenes the rules of the Bar Association. Typists and petition-writers tend to have their chambers in the (two) lines which exist in addition to the lines of the lawyers. Those typists who cannot afford to buy a set sit at the entrance to the lawyers' chambers and their payment for this is made in cash or through service (eg, free typing work) to the lawyer. Not every lawyer who practises in the kachahri has a chamber; some share one with their colleagues. The chamber is identified by a name-plate. These chambers are very

similar to merchants' stalls in a bazaar - usually the lawyer sits on a chair surrounded by his clients and munshi. In general most kachahries over the whole of north India follow the same pattern, (see Morrison's study on the courts of Ambala city in 1968-69).

In the midst of the lawyers' chambers there is a very big, 150 year old banyan tree whose shade covers nearly 40 per cent of the lawyers' chambers and is very convenient during the hot summer days. Alongside these chambers stands the District Bar Association buildings which contains a canteen, one photographic studio and copier shop, one meeting hall, one restroom and one indoor games room. In the upper storey is found the Bar library. At lunchtime and during their spare time the lawyers sit here and gossip and play indoor games. However, it is only those lawyers with criminal, revenue and general law cases who sit in these premises - those who practise only civil law have their chambers nearly 100 yards away to the east, across the road where the District Civil Bar Association building is situated. Most civil lawyers sit on the verandah belonging to the Civil Bar building and some have their chambers under a big pipal tree (Ficus religosa). The Civil Bar Association building contains a small library, a meeting hall and a small restroom for lawyers. The premises are very small but similar in layout to those of the District Bar Association.

The scene in the kachahri is very like that of a village trade fair. From 10am to 5pm nearly seven thousand people enter through the four entrance gates every ordinary working day. The litigants arrive from all parts of the district in rickshaws, tongas (horse drawn two wheelers) and by bicycle. Others come on motorbikes, in jeeps and cars and by tractors. The kachahri in effect acts as a centre of rural-urban culture and some village leaders and chronic

litigants (mukadmahbaaz) even come when they have no cases to attend but simply to convey the current affairs of their villages to their 'permanent' lawyers and to find out what is happening in the cityand about others' cases. I noticed that Hindu lawyers and litigants prefer to go to Hindu restaurants and Muslims likewise prefer to go to restaurants run by Muslims.

Most of the court buildings were built before 1950 and during my fieldwork most of the civil courts were shifted to a new modern four-storey building. In the kachahri one also finds a social-cum-sports club (called the 'service' club) the members of which are mainly rich businessmen, officials of the judiciary, district administrative officers and rich urban lawyers. Lawyers join usually to get to know judges, who will then favour their cases. Should any demonstration take place in the city it pays a visit to the kachahri since the head of the district administration and the police administration have their offices there. The kachahri also provides a good platform for demonstrators to spread their message amongst the public - who represent all sections of society and come from different parts of the district. During fieldwork I witnessed seventeen political demonstrations and their common feature was that (as I have already mentioned) they were led by lawyers, though these were members of different political parties. Indeed, over the past two to three years there have been a number of demonstrations in the kachahri led by lawyers demanding the establishment of a branch of the high court in the western part of the State.

Thus the whole scene of the kachahri is like a market place, with its specialists in one location so that they can easily compete as well as pass information - just as all potters or blacksmiths congregate in the bazaar.

3. These rural litigants are waiting for their cases to be called

4. A lawyer provides a hukkaa for his clients while they wait in the office for him to return from court

2. The history of the Bar

Historical documents concerning the Bar were unobtainable because, according to officials of the Bar Association, one faction had stolen all documents relating to the Bar a few years before during elections for the Association. Any information concerning the history of the Bar was therefore obtained through interviews with retired lawyers, in particular one named Pandit Brahm Prakash who had been a member of the Legislative Council of the State and who was for many years President of the District Bar Association. When Pandit Prakash had joined the Bar in 1926 it was already seventeen or eighteen years old. It was then known as the Collectorate Bar Association and it had hardly thirty members on its roll since many lawyers were not concerned about joining. The Bar room was then very small, with a small library and a main room ('hall') which was also occupied by members' law offices. Other lawyers sat outside under the banyan tree, some east of the Bar and the rest across the road under the pipal tree on a brick-clay platform (chabutras) or in wooden huts. People called these three places badupuraa, pipal mandi and sepupuraa (puraa meaning location). The lawyers' seats (ie, offices) were scattered haphazardly, according to Pandit Prakash. In the judiciary there were some twenty-three munsifs, one civil judge, the district magistrate and collector, and four sub-divisional district magistrates (SDMs). The district judge's court was in Meerut city.

During the period of Mr J V Lynch, collector and district magistrate in 1950, the name of the Collectorate Bar Association was changed to that of the District Bar Association (DBA). At that time some Civil Bar Association members also joined the DBA. In 1926 the Civil Bar membership stood at twenty-six, and these came from the wealthy families of the city and from the upper castes.

Twenty-two of them were Banias and Jains, three were upper caste Muslim, and one was a Brahman (source: Founding Stone of the Bar Association 1926). In 1950 Mr Anokalal was made president of the DBA and Mr Shyam Lal was secretary (Souvenir 1983). Mr Shyam Lal demolished all the huts and brick-clay platforms at the inspiration of the collector and with the help of his colleagues, and built chambers (ie, offices) in straight lines of tin sheds with the financial help of the Collectorate. They also obtained from the collector a large piece of land for a park beside the Bar building which was named the 'Setalvad Park' in 1953.

This name is a reminder of a more than significant event in the history of the DBA. In 1950 the members of the Association felt aggrieved at the conduct of two judicial officials. The DBA passed a strong resolution against those officials and copies of this were sent to the State Chief Minister, the Chief Secretary to the State government, the commissioner and the collector of the district. Instead of taking action to remove the complaints of the Bar, the government took action against the executive committee of the DBA instead. It filed a contempt of court case in the State High Court against these executive members. The High Court found the Bar members guilty and it asked the DBA to pay Rs.150 (nearly £10.00) to the lawyer of the State government as his fee. However, the DBA went to the Supreme Court against the judgement (faislaa) of the State High Court and they approached Mr M C Setalvad who was Attorney General of India and also President of the All India Bar Association. He took up the case and applied for special leave to appeal, which was given. The bench of judges of the Supreme Court found the members of the DBA of Muzaffarnagar district not guilty. It was a case in which the entire judiciary of the

country and the Bars exhibited interest. After the judgement the DBA celebrated its victory by holding a grand function to honour Mr S C Setalvad. Thus they named the park beside the DBA building 'Setalvad Park'.

The second main event in the history of the Bar were the strikes, hunger strikes, and picketing (dharnaa), which took place in 1981 to get a high court bench established in western UP state. Every Saturday DBA members refused to go to court. A number were arrested in connection with the protests and at the time of my fieldwork a case registered by the government against them was still pending.

The third main event was the celebration of the DBA's platignum jubilee in January 1983. On this occasion they invited the Justice of the Supreme Court, the Ambassador of the Federal Republic of Germany, the Minister for Law (Central Government), and the Solicitor General of India.

3. The social background of the lawyers

The recruitment pattern of the lawyers to their 'profession' is a significant matter which should be investigated, since the social background of a professional may influence his/her professional role, field of specialisation, political orientation and relationships with colleagues and clients (mawaakkil). This involves an inquiry into family background, caste, class, region, religion, kinship, rural or urban origin, educational qualifications, field of practice and the reasons why people enter into the legal profession. Most studies on lawyers have been investigated from this aspect (eg, Hale 1949; Janstoke et al 1967; Shuman 1971; Arthus et al 1971; Tomasic et al 1978; Won et al 1973; and Ladinsky

1976. And in the Indian context, Morrison 1968-69; Rowe 1968-69; Bastedo 1968-69; Kidder 1974; Khare 1971, 1972; Sharma 1981, 1982; Gandhi 1982; and Sathe et al 1983 have conducted field studies into this subject).

In this chapter I will sketch the socio-cultural, educational, and occupational background of the lawyers of the kachahri of Muzaffarnagar city and thus analyse its composition in terms of the above-mentioned concepts. The correlation betwen their age and caste, between rural/urban origin and the composition of their family, between rural/urban origin and the nature of their practice, and so on, will also be looked at. In addition to this the socio-psychological factors which motivate people to study law and join the profession will be outlined.

The organisation of the legal profession in the district of Muzaffarnagar comprises three component parts. First, some lawyers practise at tehsil courts of the district; second, some practise at taxation courts in the city; and third, some practise in the criminal, civil and revenue law courts in the kachahri of Muzaffarnagar city. The present study has been conducted only with respect to the third part, the lawyers who practise in Muzaffarnagar's kachahri in the field of criminal, civil or revenue law (all these lawyers have their chambers in the kachahri itself). As I have said, there are two Bar Associations in the kachahri compound. One is the District Bar Association (DBA) and the other is the District Civil Bar Association (DCBA) of which those lawyers who practise exclusively in civil law are the members. The enrolled number of DCBA members was fifty-eight but only forty-two were in practice during my fieldwork. In the DBA the members practise on both criminal and revenue sides and the majority of the DCBA

members were also members of this Bar. In fact, the DCBA was only nominal or, in other words, a non-active association. At the time of the commencement of this study there were 706 members in the published list of the DBA and during its elections in March 1984 there were 601 members who paid their subscriptions. Since those members who did not pay their subscription arrears for the last three months would, according to a DBA rule, have their membership of the Association removed, some members who do not practise or who have started other jobs still keep up their membership in order to keep their voting rights in the election and also for reasons of social prestige. So both lists of the DBA and the DCBA members were inadequate from which to select the total population of active lawyers for study, as I have already mentioned in the first chapter. During fieldwork I identified 510 active lawyers out of the total number from both Bars. This was done by using as a criteria those who came into the kachahri regularly, without consideration of their membership in either of these two Bar Associations. So the data with regard to social background are based on 510 lawyers and were collected mainly through a questionnaire (given in the Appendix). This sample adopted for study covers the practitioners at the Muzaffarnagar kachahri between August 1983 and April 1984.

If we look at the total number of lawyers who practise at tehsil level, district level (in the kachahri) and in taxation in this district, the number would be roughly one thousand out of a population for the district of Muzaffarnagar of 2,274,487 (Census of India 1981). We can presume that the total population of the district of Muzaffarnagar was roughly 2.4m in 1984 (the population growth rate was 25.69 per cent during the one decade 1971 to 1981

in the State; Census of India 1981). This means that in the district of Muzaffarnagar there was one lawyer for every 2,400 persons compared to the all India average of 3,043 (Madhava Menen et al 1983:557) and the reasons for the higher proportion of lawyers in this district will be made clear over the next few pages.

Caste composition

It is evident from Table 2 that the Jat, one of the socio-politically dominant cultivating castes in the whole of the western part of Uttar Pradesh state, constituted the largest single group with 109 lawyers (21.4 per cent). The Bania (including Jains) caste, which represent the urban trading castes not only in this district but in the whole of India, was next with 105 lawyers (20.6 per cent). The Muslim castes had 70 (13.7 per cent) and the Brahman caste, which is dominant in the legal profession and administrative services on the basis of its all India statistics, had only 55 (10.8 per cent) members in the Muzaffarnagar kachahri. The Chamar, a lower caste, mainly engaged as farm labourers and leather workers in the district, had 22 representatives (4.3 per cent). This was in spite of the numerical dominance of this caste in the district.

It is also clear from Table 2 that the socio-politically dominant cultivating castes altogether, ie, Jat, Rajput, Tyagi, and Gujar, had 40.8 per cent representation in the kachahri. Most of the Muslim castes' lawyers were also from the cultivating castes in this district. Contrary to my data, Morrison's (1972:102) and Gandhi's (1982:63) data, based on their field studies of the district courts in nearby Haryana and Panjab states (both districts are situated within 150 miles of Muzaffarnagar city in the north)

revealed that the district Bars in these states were numerically dominated by Khatri and Bania urban trading castes, although the Jats in Haryana and the Jat Sikhs in the Panjab are numerically and socio-politically dominant castes there. Satha et al (1983:50-1) found in their survey of the Pune City Bar in Maharashtra State that the Brahman caste constituted the largest single group - and this caste was also one of the socio-politically dominant castes in the city. Rowe (1968-69:222) also pointed out from his study of four district Bars that in Puri and Sambalpur districts (Orissa state) Brahmans and in Bhopal (Madhya Pradesh state) and Wardha district (MP state) non-Brahman lawyers were in the majority at the district Bars.

Table 2. Distribution of lawyers by caste

Caste	Number	Percentage
Jat	109	21.4
Bania & Jain	105	20.6
Muslim castes[1]	70	13.7
Brahman	55	10.8
Tyagi	50	9.8
Rajput	29	5.7
Chamar	22	4.3
Gujar	20	3.9
Refugee[2]	18	3.5
Others[3]	32	6.3
Total	510	100.0

Notes:

1. 'Muslim castes' includes all sections & castes of the people who follow the Islamic religion.
2. 'Refugee' includes all people who migrated from Pakistan either a little before or after Partition in 1947.
3. 'Others' covers those castes who are represented by less than eight lawyers.

It means that the numerically dominant caste at the district Bar differs from one place to another and there is no positive correlation between the numerical dominance of a caste at the Bar and its numerical dominance in the district. Although castewise the population data of the district are not available after 1951 in

India the general picture is known. The interesting feature with respect to the caste composition of the lawyers of the Muzaffarnagar kachahri is that it was numerically and socio-politically dominated by the urban trading castes of the Bania and Jain in the beginning but gradually the cultivating castes of this district have grown to dominate it from all aspects and are still growing in influence there (as can be seen in Table 2 above).

Religious affiliation

Table 3 shows that the majority of lawyers were Hindus, these forming 70 per cent of the population of the district. Next came the Muslims, who from 29 per cent of the population of the district, then the Jains and Sikhs, who form 0.2 per cent (Census of India 1981). The majority of Jat lawyers are followers of Arya Samaj, a Hindu sect, and I have included them in the Hindu category. There was only one Christian lawyer, and he gave up his practice in 1982 because he could not get enough clients due to his lack of a 'recruitment-set'; the Christians represent only 0.1 per cent of the population of this district. During my field research the Christian lawyer was running a private English coaching centre in Muzaffarnagar city.

Table 3. Lawyers by religious affiliation

Religion	Number	Percentage
Hinduism	417	81.8
Islam	71	13.9
Jainism	18	3.5
Sikh	4	0.8
Total	510	100.0

There are two main reasons for the under-representation of Muslims as lawyers. One is socio-psychological: they are not interested in modern education, as revealed by the fact that Muslim students were less than 5 per cent of the total number of students in educational institutions. Nor did they wish to give up their traditional occupations. Another reason is an economic one. The lower class Muslim families (usually from the lower castes) cannot afford to send their children to school needing instead their financial support. As a result the children start their traditional occupations at the age of 12 to 18 years. Generally the parents send their children for two to three years to the Koranic schools (madrasas). The higher and middle castes, the latter the cultivating caste, give their children a modern education. These two above-mentioned factors are also applicable to the lower caste and class Hindu families, who are also under represented in the kachahri.

Distribution of lawyers by age

In India the minimum age for completion of law graduation (LL.B) and entry into the legal profession is 22 to 23 years old. It will be seen from Table 4 that the majority of lawyers in the kachahri of Muzaffarnagar city were from the 31 to 40 year age group (41.4 per cent) and the youngest lawyers had the next highest percentage of 30.2 per cent. Lawyers more than 60 years old made up only 5.9 per cent of the total. In effect, the Muzaffarnagar kachahri was numerically dominated by young lawyers. If we look at the correlation between caste and age group it is clear from Table 4 that there were only four Jat lawyers more than 60 years old and Muslims, Brahmans and Tyagis were each represented

by only two lawyers in this age range. There were no lawyers from the Rajput, Chamar and Gujar castes older than 60 years. The three refugees who were more than 60 years old were practising in Pakistan before the Partition of India in 1947. The Banias and Jains were in the majority in this age group.

Table 4. Correlation between caste and the age groups of the lawyers

Castes	Age Groups (years)										Total	
	21 - 30		31 - 40		41 - 50		51 - 60		61 -			
	Number	%	No.	%	No.	%	No.	%	No.	%	No.	%
Jat	36	7.1	49	9.6	13	2.5	7	1.4	4	0.8	109	21.4
Bania & Jain	23	4.5	35	6.9	12	2.4	19	3.7	16	3.1	105	20.6
Muslim castes	24	4.7	28	5.5	14	2.7	2	0.4	2	0.4	70	13.7
Brahman	16	3.1	22	4.3	11	2.2	4	0.8	2	0.4	55	10.8
Tyagi	18	3.5	22	4.3	4	0.8	4	0.8	2	0.4	50	9.8
Rajput	11	2.2	12	2.4	2	0.4	4	0.8	0	0.0	29	5.7
Chamar	7	1.4	10	2.0	4	0.8	1	0.2	0	0.0	22	4.3
Gujar	7	1.4	9	1.8	4	0.8	0	0.0	0	0.0	20	3.9
Refugee	2	0.4	10	2.0	3	0.6	0	0.0	3	0.6	18	3.5
Others	10	2.0	14	2.7	5	1.0	2	0.4	1	0.2	32	6.3
TOTAL	154	30.2	211	41.4	72	14.1	43	8.3	30	5.9	510	100.0

It is clear from the table that the cultivating castes and Chamars have increased their numbers in the last two decades, which indicates their educational and upward occupational mobility. The trading castes of Banias and Jains, however, still have significant numbers in the young age group. Gandhi (1982:62) also found that at district level in the Panjab state the majority of lawyers were in the age group of 21 to 35 years but still the majority of young lawyers were coming from the Khatri and Bania trading castes there. In Ambala city, Haryana state, where Morrison (1968-69) conducted his field study, I observed that the district Bar was still numerically and on the grounds of allocation of work dominated by the trading castes. Now, Ambala city is located only some 50 to

60 miles from Muzaffarnagar city and in their size of population and its distribution castewise and their social and geographical features the two places are very similar. The main differences are that in Ambala district Muslim representation is nominal while in Muzaffarnagar they represent 29 per cent of the population, and that Ambala is a more industrialised district than Muzaffarnagar.

The question is why in Ambala district and in the Panjab trading castes are still in the majority at the district Bar. I think the main explanation could be that in Haryana and Panjab states there are more opportunities for farmers' sons to go into industry. Many farmers have set up their agriculture-based small-scale industries. Second, over the last two to three decades many young men have migrated abroad for better jobs. The people from these two states also have the monopoly in the transport business throughout India. Third, they are a more enterprising people than those of Uttar Pradesh state. So the process of industrialisation and modernisation of agriculture (based on the market economy) provides the new occupational opportunities for villagers. Hence they do not go into law, which is seen as a second best occupation in these two states. In Muzaffarnagar district a nominal number of people have migrated abroad or even to other districts or states in India and there is less industrialisation. During my fieldwork I found that in Ambala district Bar there were only some 200 lawyers while the figures were about three times this much for the Muzaffarnagar kachahri.

The lawyers' educational background

According to the Bar Council of India a student after graduation in an arts or a science subject is eligible to apply for

a three year law degree (LL.B) course, which is the minimum prescribed qualification to practise in a court of law in India. Before 1967 the duration of an LL.B course was two years and one year's compulsory apprenticeship. But after this the Indian Bar Council passed a rule for all law colleges in the country to lengthen the duration of the LL.B course to two years full-time and for those who want to practise, one more year. In other words, an apprenticeship is not nowadays a necessity but it is usual for beginners to be apprenticed under a successful or leading lawyer for a few months.

Table 5 indicates that such a minimum educational qualification was possessed by the overwhelming majority, ie, 73.7 per cent, of the lawyers and only 26.2 per cent have post-graduate degrees either in science subjects or in arts. Only three lawyers have post-graduate degrees in LL.M and eleven lawyers have diplomas in other subjects.

Table 5. Distribution of lawyers by education

Educational qualifications	Number	%
B.A., (B.Com), LL.B	258	50.6
B.Sc., LL.B	118	23.1
M.A., LL.B	115	22.5
M.Sc., LL.B	19	3.7
Total	510	100.0

Note: Among these lawyers three have LL.M degrees and eleven have diplomas in other subjects

Within this classification the largest number, 50.6 per cent, were arts graduates and very few (3.7 per cent) possessed post-graduate qualifications in science subjects. In fact, hardly any science post-graduates like to join the legal profession. More than 80 per cent of the lawyers had earned their LL.B degrees from the local post-graduate college, where most of the law staff members were practitioners in the kachahri of Muzaffarnagar. The law

classes were held in the early and later morning so it was easy for them to teach at these times and many people who were employed in other jobs could join the law classes. Table 6 shows that only 5.9 per cent of the lawyers had obtained their law degrees before 1950 and most of the lawyers had obtained their degrees during the years 1971 to 1980.

Table 6. Distribution of lawyers by their year of law degree (LL.B)

Year of law degree	Number	Percentage
1941 - 1950	30	5.9
1951 - 1960	51	10.0
1961 - 1970	78	15.3
1971 - 1980	281	55.1
1981 - ...	70	13.7
Total	510	100.0

It is also clear from Table 7 that the majority of lawyers (52.6 per cent) had acquired their primary education in villages and 36.9 per cent in cities, mainly from Muzaffarnagar city. The rest, 10.6 per cent had acquired their primary education from small towns, mainly from seven of these in the district of Muzaffarnagar. The majority of the lawyers' parents were illiterate or only had primary education.

Table 7. Distribution of lawyers by their place of primary education

Place of primary education	Number	Percentage
Village	268	52.5
Town	54	10.6
City	188	36.9
Total	510	100.0

The rural/urban background of lawyers

It is difficult to establish a dichotomy between rural and urban. Scholars have usually identified people as rural and urban on the basis of place of birth. But my opinion is that from the point of view of anthropology their way of life is more important than their place of birth. For example, in the case of my study, those lawyers who were born in the villages but who grew up and had all their education in the cities were more urbanised than those who were born in the cities but who had permanent connections with the villages through their families and properties and who frequently visited the villages. So, to go some way towards solving this classificatory problem, I have placed in the rural category those lawyers who got their primary education in the villages, and those who got their primary education in the towns I put in the category of town lawyers. Those who got their primary education in the cities I classed as city lawyers. This means that where a person got his primary education is where he spent his childhood, and we can presume that he had some idea of the way of life of that place. Tables 7 and 8 indicate that most of the lawyers, ie, 63.1 per cent, came from a village and small town background, and that the rest, 36.9 per cent, had city background; more than 80 per cent of the lawyers were born in this district. The rural-urban background is an important factor in getting clients and this will be discussed in the next chapter.

The lawyers' family background

Table 8 shows that 86.1 per cent of the lawyers were members of joint families and only 13.9 per cent belonged to nuclear families. If we look at the relationship between the rural or

urban background and the family structure it can be seen that there is very little difference and this fact justifies the claim that joint family phenomena are still dominant in cities as well as in the villages of India.

Table 8. Correlation between rural-urban background and family structure

Rural-urban background	Family Structure					
	Joint Family		Nuclear Family		Total	
	Number	%	Number	%	Number	%
Village	231	45.3	37	7.3	268	52.5
Town	43	8.4	11	2.2	54	10.6
City	165	32.4	23	4.5	188	36.9
Total	439	(86.1)	71	13.9	510	100.0

It is clear from Table 9 that most of the lawyers weresons of farmers, ie, 53.5 per cent, and next in order come the sons of businessmen, 17.6 per cent. Next comes the group of lawyers who had fathers in government services, 11.4 per cent, and only 8.2 per cent were sons of lawyers. There were six lawyers (1.2 per cent) whose fathers were/are homeopathic or ayurvedic (vaidh or hakim) doctors. None was the son of an MBBS doctor or engineer.

Table 9. Occupational background of the lawyers' fathers

Occupation	Number	%
Farming	273	53.5
Business	90	17.6
Legal	42	8.2
Govt. service	58	11.4
Non-govt. service	15	2.9
Teaching	11	2.2
Medical	6	1.2
Engineering	--	--
Misc.	15	2.9
Total	510	100.0

Bastedo (1968-69:281) also noticed in Bihar state that at district level 52 per cent lawyers were the sons of farmers. In the Muzaffarnagar kachahri 23.3 per cent of the lawyers stated that they had other lawyer(s) in their families. The upper class urban families preferred not to send their sons into law but into the medical and engineering professions, first and second class government services, or into business. The majority of the lawyers from cities came from middle class families, and from the villages they were from upper class families of the village society.

Practice specialisation

The legal practitioners in the kachahri of Muzaffarnagar district practised in three main fields of law: criminal (faujdaari), civil (diwaani) and revenue (maal). All major and minor law cases which can be tried under the Indian Penal Code (latest revised IPC of April 1984) and/or under statutory legislation concerning 'law and order' objectives passed by the state and central governments are included in criminal law (faujdaari kaanun). All litigation related to any one or more of the legal aspects of agricultural land or such land as is charged land revenue are covered under the revenue law and the cases here may be related to partition, sale, inheritance, or revenue of agricultural land. All cases not covered under the above two categories fall under civil law. This may include all types of cases in respect of rent disputes, issues of marriage and divorce, sale and urban property, as well as those included under the personal and social law. The revenue and civil cases are governed by the Indian Civil Procedure Code (ICPC) and the criminal cases are governed

under the Indian Criminal Procedure Code (ICPC).

In connection with these three fields of law, I identified three categories of lawyer in the kachahri of Muzaffarnagar: specialists, semi-specialists, and non-specialists. By 'specialist lawyers' I refer to those lawyers who confined themselves exclusively to one type of legal practice. By 'semi-specialist lawyers' I refer to those lawyers who mainly practised one of the three types of legal practice and one more as a supplementary or secondary specialisation. The 'non-specialist lawyers' are those who practise in all these types of law or in a 'mixed' field. In Table 10 specialist lawyers and non-specialist lawyers are categorised as 'mixed' for convenience's sake in analysing the data.

Table 10. Relationship between lawyers' rural or urban background and practice specialisation

Rural-urban background	Practice specialisation									
	Criminal		Civil		Revenue		Mixed		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
Village	93	18.2	8	1.6	11	2.2	154	30.6	268	52.5
Town	12	2.4	12	2.4	-	-	30	5.9	54	10.6
City	67	13.1	22	4.3	4	0.8	95	18.6	188	36.9
Total	172	33.7	42	8.2	15	2.9	281	55.1	510	100.0

Table 10 shows the responses of lawyers about their field of specialisation, with 44.8 per cent stated as 'specialists' and 55.1 per cent semi-specialists and non-specialists (ie, mixed). Within this classification there were 33.7 per cent in criminal law, 8.2 per cent in civil law, and only 2.9 per cent in revenue law. If we look at their rural-urban background in connection

with this, it is clear from the table that of those 33.7 per cent lawyers who were specialists in criminal law, 20.7 per cent were from the villages of had a town background and 13.1 per cent were from the city. The civil specialists, who form 8.2 per cent of the total number of lawyers, were mainly from the city, while in revenue law the majority were from villages. I found that there was a positive correlation between the number of specialists in a particular field of practice and the number of court cases in that particular field of law. For example, there were only fifteen revenue specialists out of a total 510 lawyers due to the fact that revenue law work has a lower caseload than criminal and civil law. Since the state government brought in legislation on 'pre-emption' and 'declaration', according to which titled land has been clearly defined, the disputes arising out of this matter have been reduced. In civil law, where only 42 specialists were practising, the number was less than in criminal law, because in civil law the majority of disputes are concerned with urban people and urban property. Twenty-one per cent out of the total population of the district were in the cities (Census of India 1981), so the majority of lawsuits in criminal law were from villages and the specialists were also in a majority in criminal law.

It is also clear from Table 11 that there was a positive correlation between the lawyer's field of specialisation and his caste background. The cultivating castes - Jat, Rajput, Tyagi, and Gujar - represented 73 out of 172 in criminal law while, contrary to this ratio, the urban trading castes - Bania and Jain - were in the majority, 25 out of 42 in civil law. Even in the beginning, in 1926, there were 22 Bania and Jain specialist lawyers in civil law, but only three Muslims and one Brahman out

of a total of 26 civil specialists. I also collected superficial data in connection with taxation lawyers and I found that 76 were from the urban trading castes of Bania, Jain and Khatri, and only three were Jats, three were Muslims and one was from the goldsmith's caste (Sunaar) out of the total number of lawyers practising taxation law. All these lawyers were of urban origin and more than 90 per cent of taxation cases concerned urban people. Hale (1949:792) conducted a study on the legal profession in Chicago, USA, and noted that divorce was the principal type of work in which the majority of black lawyers were engaged. Tomasic et al (1978:23-29) conducted a study on Sydney lawyers in Australia and found that the city solicitors and corporation lawyers were specialists in general commercial legal work, while rural and semi-rural lawyers were mainly specialists in litigation.

Table 11. Correlation between lawyers' castes and their practice specialisation

Caste	Practice specialisation								Total	
	Criminal		Civil		Revenue		Mixed			
	No.	%	No.	%	No.	%	No.	%	No.	%
Brahman	17	3.3	4	0.8	-	-	34	6.7	55	10.8
Jat	37	7.3	5	1.0	7	1.4	60	11.8	109	21.6
Bania & Jain	34	6.7	25	4.9	3	0.6	43	8.4	105	20.6
Muslim castes	19	3.7	4	0.8	2	0.4	45	8.8	70	13.7
Rajput	16	3.1	1	0.2	-	-	12	2.4	29	5.7
Tyagi	15	2.9	2	0.4	1	0.2	32	6.3	50	9.8
Gujar	5	1.0	-	-	1	0.2	14	2.7	20	3.9
Chamar	9	1.8	1	0.2	-	-	12	2.4	22	4.3
Refugee	10	2.0	-	-	-	-	8	1.6	18	3.5
Others	10	2.0	-	-	1	0.2	21	4.1	32	6.3
Total	172	33.7	42	8.2	15	2.9	281	55.1	510	100.0

So the above analysis reveals that in the kachahri of Muzaf-

farnagar city there was a positive relationship between the lawyers' fields of specialisation, rural-urban origin and caste-wise specialisation of the legal practice.

While 55.1 per cent of the lawyers called themselves non-specialists I actually noticed through informal interviews, the case diaries and court records that they were mostly semi-specialists. It means the majority of lawyers were semi-specialists in the kachahri of Muzaffarnagar city, which means that these lawyers work in a particular field of law predominantly but also have some work in other field of law. Gandhi (1982:86) also reported from his field study of district courts in Panjab state that 72 per cent of district Bar members were practising as semi-specialists, who he called 'semi-exclusive' lawyers; while Sharma's study (1982) on Jaipur city in Rajasthan state also supports this. But Morrison (1968-69:261) and Rowi (1968-69: 226) suggest from their studies of district courts that most practices were 'mixed', ie, non-specialist at district level in Inida. It may be that Morrison and Rowi have tended to compare the relatively non-specialist Indian lawyers with the highly specialist lawyers of their own country. Ooman (1983:29-30) pointed out in this connection that it is difficult to reconcile these two contradictory sorts of evidence, but it is clear that the Indian lawyer is a 'role-specialist' in all contexts and at all levels, because he plays his role mainly in dispute processing in the courts, whereas in America the lawyers work as advisors, policy-makers and negotiators also.

Gandhi (op cit:76) identified four categories of legal practitioners in his field study of district courts in Panjab state: 'exclusive' (specialist), 'semi-exclusive' (semi-specialist),

'non-exclusive' (non-specialist), and a 'satellite' or residual category. However, I have found this four-fold classification of lawyers on the basis of legal practice to be ambiguous. In the fourth category Gandhi included those lawyers who did not fit into the first three of his classifications. He said (p.93) that the satellite lawyers had the attribute of pursuing mixed (non-specialist) practice and he divided them into three sub-categories which he called: young strugglers, late starters, and poor performers. But the question is: if the 'non-exclusive' and satellite lawyers both do 'mixed' practice, then what is the difference between these two categories? The three sub-categories of the fourth type of lawyer could be the part of the 'non-exclusive' (non-specialist) category.

In connection with these three sub-categories my data suggests that in the kachahri of Muzaffarnagar city young strugglers or beginners were also specialists or semi-specialists. Some even had a sub-specialisation as well. For example, a young Jat Sikh lawyer who had started his practice a few years before was dealing mainly (roughly 85 per cent) with cases concerning Excise Act 60(2) (the recovery of illicit liquor), because the majority of his clients came from his own community - one of whose main activities was making illicit liquor. When he began his practice he mainly obtained this type of work, so he decided to become a specialist in this field. Since two Sikh lawyers were already there dealing with general work, as a specialist he could attract clients from other castes who committed this offence Another young beginner was an 'expert' in cases concerning the Essential Commodity Act and some other young lawyers were specialists in passport and visa matters. Another young lawyer

was a specialist in banking and cases involving bank employees. He had started his practice in 1981. He told me he had become a specialist because, as he put it,

> 'When I started my practice here in 1981 I could not find any case for the first few months. Then one day my maternal uncle (mamaa), who is manager of the local bank, brought a from his bank to me and I won it. Then he appointed me his bank's permanent advocate and after that, through the manager's friends and due to my hard work and success in the cases, I now have four banks as my clients and many bank employees also engage me on their cases, concerning their employers.'

With regard to 'late starters', Gandhi (op cit:96) found three such lawyers in a district Bar, and all these lawyers were practising as non-exclusives (non-specialists). But in the case of my field study I found that 'late starters' were mostly specialists. For example, some public prosecutors (PP) or government counsels (GC) who had joined the profession after their retirement or resignation were specialists in those fields of law in which they had worked as PPs and GCs. One late starter, who had been head clerk in a local college, started legal practice as a specialist lawyer in the cases of educational institutions after terminating his job at the age of forty. Another late starter was a specialist in the cases of a life insurance corporation (a government organisation) and its employees because he had been an employee in this organisation for 20 years. It was true in the case of my study, however, that 'poor performers' were for the most part non-specialist lawyers.

Gandhi (op cit:76) pointed out on the basis of his data that there was a strong and positive relationship between degree of specialisation, degree of professional achievement in careers

and lifestyle. In other words, he did not find any difference between leading lawyers and exclusive (specialist) lawyers and those who had a high standard of living. Although he did not use the actual phrase 'leading lawyer' it is clear from his analysis on 'exclusive' lawyers that he was talking about leading lawyers. For instance, one characteristic of an exclusive lawyer that he gave (p.78) was that the legal business was his monopoly and (p.83) that 'All the exclusive lawyers except the Jat Sikh were of sixty years of age or more.... The Jat Sikh was fifty-two years old. From this it appears that a minimum of twenty-five to thirty years of practice is a prerequisite for a lawyer to reach the top layer of the professional hierarchy at a District Court Bar', and all the exclusive lawyers owned costly landed properties, and posh bungalows (p.82). In addition, all the lawyers with the exception of one were drawn from an urban background.

I found the above-mentioned features applicable to leading lawyers rather than specialist lawyers (ie, exclusive). In other words, my data from the kachahri of Muzaffarnagar city suggest that all leading lawyers were specialists but not all specialist lawyers were leading lawyers, and all leading lawyers had landed property and a high standard of living but many non-exclusive lawyers had also the same or even a better living standard than the leading specialist lawyers because these non-specialists had sufficient enough income from other sources. Even 59.8 per cent of the total number of lawyers themselves accpeted that they had an income from other sources in addition to their income from legal work. I identified some beginners who had come from rich farming and business families and they maintained as good a standard of living as the leading lawyers. The latter will be discussed in

more detail in the next chapter.

Gandhi (1982) does not explain how a lawyer becomes a specialist lawyer. From what I observed in the kachahri of Muzaffarnagar city the main reasons were as follows.

When starting a practice in a specific field of law, lawyers first of all considered which type of client they could easily get. For example, lawyers with a rural background did not usually begin a practice in civil law since, as I mentioned earlier, this involves mainly clients from an urban background. Second, their field of specialisation depends on their apprenticeship, that is, under what type of specialists they first trained. If a lawyer to whom a beginner is apprenticed is a specialist in civil law, it is extremely likely that the trainee would start his own practice in the same field. Third, it depends upon what type of case they get after beginning their practice. Only a few lawyers stated that they had chosen a particular field of law because of their interest in that field. Certainly the majority of sons of lawyers chose their fathers' field of specialisation because they got a ready-made 'clientage bank' from their fathers.

It is clear from the above discussion that the lawyers' fields of specialisation also were related to their relationship with the clients.

4. Why they became lawyers

It is important to know why people entered the legal profession since their reasons for joining it also influenced their professional behaviour, their relationship with clients, their political orientation and their competence to deal with cases and clients. In the following pages I will also discuss the more general motivational factors which encourage and discourage

people to join this profession.

Most of the lawyers of the Muzaffarnagar kachahri had had some other profession as their first preference, namely, medicine, engineering, and administrative government service. Only after their failure to get into these professions did they choose the legal profession, especially in the case of those who had an urban background and graduate or post-graduate degrees in science subjects. Kidder (1974:17) also noticed this in his study of Bangalore city. When I asked them whether they had tried any other profession or occupation, 44.3 per cent of the lawyers themselves actually responded in the questionnaire that before entering the legal profession they had tried for other jobs. It is easy for a student to get admission on an LL.B course because there are no hard and fast rules for admission. Moreover, there is no pre-entry competitive test for admission to LL.B as in the case of medicine, engineering and first and second class government service. Moreover, it was easy for students to attend morning or evening classes in law at the local college in Muzaffarnagar city; most cities in India have this facility. It is mainly these two factors which are responsible for the entry of inferior quality students into legal education (see for details Von Mehren 1964-65). One other interesting point here is that it is not only in India that second class students enter into the legal profession, but the same applies to some other Asian countries - as some participants pointed out at the Conference on the Comparative Study of the Legal Profession with special reference to India at the University of Chicago in 1967. Contrary to this, Zelan (1967:47) found in a survey of American lawyers

in 1961 that those students with high levels of academic performance were more likely to choose law than those of lesser ability.

As I mentioned earlier, the legal profession in Muzaffarnagar district was numerically dominated by agriculturist castes because in the last two to three decades the 'green revolution', decentralisation of political power and the extension of educational and communication facilities have provided them with the possibility of upward occupational mobility. It is an excellent channel of social mobility for village farmers to send their children to the city for modern education and to learn new occupations and professions; they have the feeling that urban life is far better than village life. In comparison with medicine and engineering and government jobs it is easy for them to enter into the legal profession, although they also try to get admission into these professions and the percentage of farmers' sons in medical, engineering and government jobs is increasing gradually. The legal profession is still a more prestigious profession for village people than teaching in a college or a university. It is also not difficult for a lawyer with a village background to get sufficient business (clientage) because the majority of clients also come from villages. In starting a practice, for two to three years or more a village-based lawyer is supported by his joint family. Many lawyers of rural origin actually get financial support from their family for the whole of their lives as a share from their joint landed properties. Of course some lawyers also support their families in villages. In fact, village families frequently have a family member in the city who can take care of family problems and when their children are sent to the city for education they

then stay with the family member residing there.

When starting to practise most lawyers buy the prescribed black coat, white trousers and other clothes befitting the profession, at least one chair, one table and one bench (for clients), some reference books and other office stationery. They also pay a registration fee to the State Bar Council. This may come to a few thousand rupees (some £200.00). If in addition a lawyer needs to construct or buy his own chamber in the kachahri he will have to spend an additional minimum of Rs.2000 (about £150.00). Usually these initial costs are borne by their families and the rich farmers can easily afford it.

I identified some young lawyers with a rural background and who had no clientage or just a nominal one. They came into the kachahri only occasionally for gossip and the latest news about district politics. Even so they still had their permanent chambers in the kachahri while they did not bother about the business (practice) itself. Usually they referred their clients to their colleagues, with or without commission. When I asked them why they came to the kachahri, the general response was that to become a lawyer was only a social status symbol for them, which enabled them to deal with the problems of their families, relatives and friends with the district authorities and police officials without any hesitation. Most of these lawyers were from well-to-do families. In this profession they also had the opportunity to participate in party politics, an activity forbidden to those in government jobs.

Most lawyers with urban backgrounds did not want to join the legal profession, but when they found no success in trying to gain admission to medical, engineering or administrative jobs, and

had not enough money and experience to start a business, they then entered law in the hope that there would be here at least some chance in becoming successful. Second, they would be their own 'boss'. Third, there would not be the need to transfer from one place to another since in other jobs the red-tape and other difficulties involved in moving encouraged (and encourages) corruption within the Indian bureaucracy. Sometimes, after they had been pushed into the legal profession they developed an interest in it, either through ambition or competition and so on. It was mostly the younger urban lawyers who used the kachahri as a 'waiting room' for joining other professions. They appeared in the competitive examinations for government jobs. The beginners even wanted to become 'bank clerks' where they thought there were good working conditions and a good salary. They took the judiciary examinations as well. Won et al (1973:248-58) also found in their study of the Korean lawyers that the younger lawyers were more interested in becoming judges or prosecutors than staying in private practice.

To the question which asked if they were happy being lawyers, 69 per cent of the lawyers stated 'yes' and 31 per cent 'no'. Kidder's (1974:18) study of law students in Bangalore city also revealed that not more than two per cent of them expressed both enthusiasm for the practice of law and a definite intention to practise. Madhava Menon (1979:25), on the basis of an all India survey, showed that only 10 per cent of law students enrolled even in well reputed universities intending to practise law. On the other hand Rowe (1968-69:225), in his study of district courts, found that most of the lawyers said that they were happy being lawyers, and Sathe et al (1983:58) pointed out

in the study of Pune city Bar that 42.79 per cent of the lawyers said they were satisfied with their profession. In response to the question as to whether they would like their sons to become lawyers, 72.7 per cent of them in the Muzaffarnagar kachahri stated their unwillingness and only 27.3 per cent replied 'yes'. Sathe et al (1983:58) also reported that 48.14 per cent of the lawyers in the Pune city Bar stated their 'willingness' to send their sons into the legal profession. Here I would like to make clear one point, that in some situations or on some questions there was a contradiction between the respondents' statements and what the fieldworker observed. For instance, in the case of the above questions I observed through informal interviews that the majority of lawyers were not willing to send their sons into the legal profession which they did not themselves even like. However, they did not like to express their unwillingness; they had no alternative of joining other professions due to their age. I noticed that the only lawyers who wished their sons to be in the legal profession were those who thought or found their sons had poor educational ability or those who had only one son, because it would be easy for their sons to get a ready-made clientage bank and recruitment-set from their fathers. Even the leading lawyers preferred to send their sons into other professions. Rowe (1968-69:324) and Kidder (1974:11-37) also pointed out that lawyers tended to put their sons into the other higher professions.

If we look at the correlation between different age groups and job satisfaction, ie, what age group felt most satisfied or dissatisfied with being a lawyer, Table 12 shows that there was very little variation amongst the age groups. But with regard to those lawyers who stated being 'unhappy' at being a lawyer, I

found through informal interviews with them that the reasons were different between younger lawyers and older ones. Most of the old lawyers complained that nowadays their profession had become overcrowded, corruption had increased in the kachahri and they did not have a sufficient clientage, and the newcomers had little knowledge of law. They blamed all of these things on the younger lawyers and, in all, they felt frustrated about the state of their profession. On the other hand, with the younger lawyers who were mostly 'unsatisfied' with the profession the general feeling they had was that most of the legal casework was in the hands of a few old leading lawyers and their seniors did not like to give them a proper training nor professional support. They accepted petty cases also. They felt themselves to be a burden on their families because they took financial support from the latter which they themselves did not like at all. The relationship between junior and senior lawyers will be discussed in Chapter 5.

Table 12. The correlation between age groups and job satisfaction

Age group (in years)	Age groups & job satisf.				Total	
	Yes		No			
	No.	%	No.	%	No.	%
21-30	91	17.8	63	12.4	154	30.2
31-40	144	28.2	67	13.1	211	41.4
41-50	56	11.0	16	3.1	72	14.1
51-60	33	6.5	10	2.0	43	8.4
61...	28	5.5	2	0.4	30	5.9
Total	352	69.0	158	31.0	510	100.0

On the question 'Who decided you should become a lawyer?' 34.9 per cent of the lawyers said that their parents or other kin

had taken the decision, 1.2 per cent stated that their friends or well wishers had suggested it to them and 63.9 per cent stated that they had decided for themselves. But what I understood through my observations was that in the main students sought and took the advice of their guardians, following it to go into any occupation or profession. I could not identify any single lawyer in the kachahri who had joined this profession because it was his vocation to or due to his 'service orientation'. Even on the question, 'Do you think a lawyer's services are meant for society?', 20.8 per cent said that they did not think that this profession had any role in the welfare of society. My general impression was that most of the lawyers had no idea of 'service orientation' in their profession. I will discuss this issue in more detail later on.

The legal profession is male dominated, not only in the Muzaffarnagar district but in the whole of India. I found only two female lawyers in the kachahri of Muzaffarnagar city out of the total number of 510. One female lawyer was from the Jat caste and another was from the Brahman caste. Both of them were in the thirty-one to forty year age group, and both had an urban background. The Jat female lawyer's husband was a doctor and the Brahman's husband was an engineer, and both husbands were in government service. The Jat had a post-graduate degree in law (LL.M), which out of all the others in the kachahri only two other younger male lawyers possessed. When I asked them why they had decided to become legal practitioners both of them replied that they belonged to modern families and they felt bored at home while their husbands were outside the city on official business; neither husband had objected to their decision to become lawyers.

I found that these two female lawyers had insufficient clients due to lack of a recruitment-set and to being female. They were also very cautious and did not mix in with their colleagues' gossip groups. However, over the last two decades the ratio of female law students has increased, and I think there are two main reasons behind this. One is that they are filling up the time before marriage, since in the last few years the age of marriage has increased and whenever they marry they give up their study, and the other is that for future security (mainly on the death of a husband or in the case of divorce) they can support their children and themselves. All female law students were from an urban background in the local law college. The local culture does not easily permit a female to become a lawyer. It is very difficult to deal with criminal clients and with corrupt court officials. The local culture has only changed insofar as it allows a female to become a doctor but not take up jobs like nursing or engineering. Every upper class families do not allow as yet their female members to teach in schools - only in universities or affiliated colleges.

Conclusion

In sum, the lawyers' social background can be said to influence their joining the profession and their field of practice. The kachahri of Muzaffarnagar, which was dominated by urban Bania castes in the beginning, is at present dominated by peasant castes. These two segments entered into this profession with different 'world views', different possibilities (ie, village lawyers have a greater chance in entering politics) and different aspirations, but both agreed though that law is not a

a vocation it is a second best. This may be the reason why younger lawyers are not committed to high moral-ethical standards. The recruitment pattern into the profession was based mainly on 'particularistic' values rather than 'universalitic' ones, as was their specialisation.

The next chapter will concern itself with how the social background of lawyers influences their professional behaviour and with the bases and patterns of the linkages between lawyers and clients. In particular, it will look at the roles of such para-professional men as lawyer's clerks, touts, and so on, the role of primordial ties, and how lawyers become leading lawyers. Finally, the issue of whether the prestige of the legal profession is on the decline will also be discussed.

CHAPTER FOUR

The bases and pattern of lawyers' professional recruitment-sets

In this chapter on the Muzaffarnagar kachahri I will discuss four questions. First, what were the main bases of the linkage between lawyers and clients (mowaakkil) ? That is to say, how did lawyers recruit and retain their clients in their 'clientage-bank' and how did clients contact particular lawyers through their 'resource-set'? I shall use as the 'bank', people who have been clients and who could be clients in the future, and 'resource-set' for those people who could be used by a person or some persons, particularly when they were unable to obtain that which they wanted by themselves alone. Both lawyers and clients needed resource-sets, the lawyers to get business (clients) and the clients to get to know 'suitable lawyers' and sometimes other para-legal functionaries (eg, touts, munshis, brokers, and so on) to make their views known and finally to win cases. For analytical purposes, to differentiate the client's resource-set from the lawyer's resource-set I will use the term 'professional recruitment-set' for the latter, as I discussed in Chapter Two. Secondly, I will deal with how a lawyer became a 'leading' or successful lawyer. Thirdly I will examine the questions as to what degree the lawyers of Muzaffarnagar kachahri differed from the ideal type of the professional. In other words, what was the relationship between the ideology of the profession and the actual behaviour of these professional men. Finally I will discuss the issue of whether the prestige of the legal profession is declining in India. I will also describe (in Appendix B) a small representative sample of eight lawyers to make the picture of the

Muzaffarnagar kachahri clearer.

In short, in this chapter I am going to analyse the informal social process as it actually operates from the lawyers' as well as the clients' side in the formal legal process. Abel (1980:805) rightly pointed out that the question - what do the majority of lawyers do for their clients on a day-to-day basis - was neglected by almost all scholars. There are two main weaknesses in the studies which have been conducted on the Indian legal profession. The first is that field researchers did not focus on lawyers as professional men and the second is that they treated their social background attributes and their professional behaviour as separate objects of investigation, ignoring their inter-connections. Sharma (1982:528-47) also indicated these points in his article. Not one single study has attempted to relate the social background of lawyers to their role-performance. Gandhi's study (1982) seems to be the only exception but he paid more attention to only one aspect, ie, the touts.

It is clear from the studies which have been conducted on the Indian legal profession that primordial ties such as caste, religion, kinship, family and regional ties play a crucial role in the linkage between lawyers and their clients, particularly at district level and tehsil level courts. For example, Cohn (1965) Morrison (1968-69, 1972), Khare (1972), Gandhi (1982) and more recently Sathe et al (1983) observed this fact in their field studies. However, Rowe (1968-69:223) and Kidder (1974:19) reported a contradictory fact: from their studies at district level courts the clients did not choose their lawyers on the basis of caste and kinship. On the other hand, I found in the Muzaffar-nagar city kachahri that the primordial ties were the main bases

of linkage between lawyers and clients. The main reason for this is that the 'legal literacy' of Indian society is very poor, due to the lack of formal legal-aid agencies. However, the interesting point here is that in American society, which represents a modern industrial society and where many formal legal-aid agencies exist for making contacts between lawyers and clients, there even some degree of advertising by lawyers is permitted. But there primordial ties also play a main role in establishing contact between lawyers and clients, especially at lower court level, as Hale (1949), Johnstoke et al (1967) and Ladinsky (1976) noticed. Ladinsky (ibid:207) said that in American courts clients rely heavily upon informal contact networks and influencial intermediaries.

In the kachahri of Muzaffarnagar city the main bases of lawyers' professional recruitment-sets as well as clients' resource-sets were as follows: caste, kinship, religion, regional ties, political allegiances, reciprocity, profit and para-professionals (eg, munshi, tout, chronic litigants, experienced litigants and witnesses, government functionaries, court functionaries and so on). We can divide these linkage bases into two categories: that of the personnel involved who acted as go-betweens- the munshis, touts, chronic litigants, government officials, court functionaries and experienced litigants and witnesses and so on; and the quality of links that were formed - caste, kinship, religion, family, regional and political ties, reciprocity, profit, and so on.

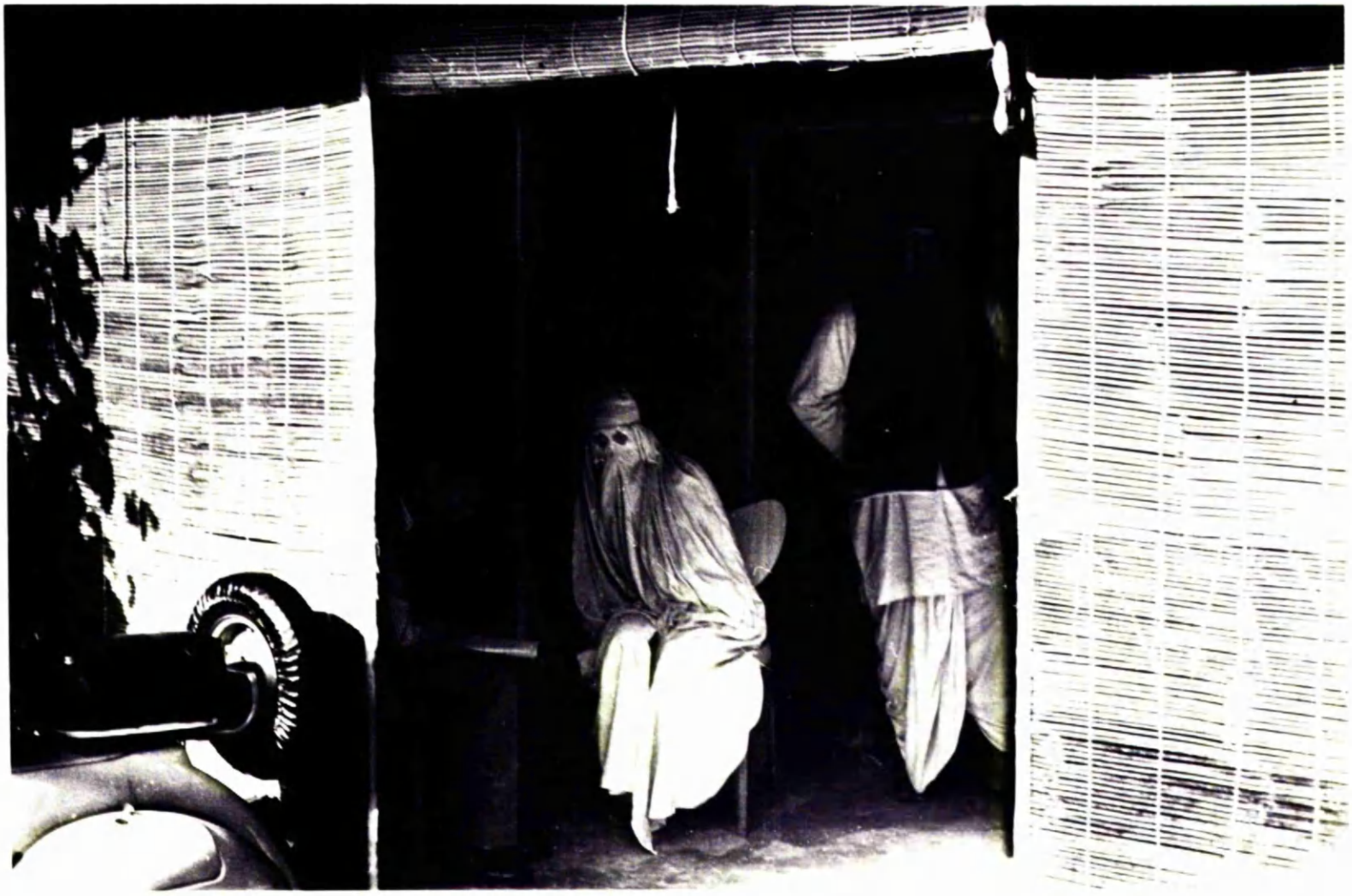
I will first discuss the roles of the persons who acted as linkage points between clients and lawyers, keeping the qualities of the links in mind, then I will deal with the second set in later sections. First of all I will discuss the role and recruitment

of munshis (lawyers' clerks) in the lawyers' professional recruitment-sets.

1. The munshi as a para-professional man

The munshi (lawyer's clerk) has been described as a 'para-professional man' (see Morrison 1972, 1974) who provides role-support and help for recruiting and retaining the clients in the lawyer's professional recruitment-set. In the following discussion I will use the vernacular term munshi rather than the English term 'clerk', because he performs not only an official service but also domestic and other services for his employer. So a munshi is on the borderline between a clerical assistant and a domestic peon, as it will be made clear in the following pages.

The munshi's occupation does not exist in the Indian Advocate Act or in the rules of the Bar Council of India and its sub-bodies, the State Bar Councils and the District Bar Associations. Except for a few leading lawyers' munshis, most of them had very low incomes. The total number of munshis nearly equalled the number of lawyers in the kachahri because almost all lawyers employed them. There were no part-time munshis, although Morrison (1972, 1974) and Gandhi (1982) noticed in their studies of the district Bars in Haryana and Panjab states that some lawyers employed these. Moreover, in the kachahri of Muzaffarnagar city some leading and successful lawyers due to workload had two to three munshis. Some munshis also employed assistant(s) due to this and they gave in turn a commission to the latter from their own commission. Only a few beginner lawyers did not employ munshis individually due to their small clientage. They could not afford to employ munshis, neither could they afford to buy offices.



5. A munshi coaching a female Muslim client in his employer's 'home office' prior to her appearance in court

In that situation a munshi and office were shared by two friends who were beginner lawyers, but their businesses were run separately. On the other hand, some beginner lawyers who also had a small clientage but who could afford munshis employed one for 'impression management' and for the munshi's expertise in court procedures and their resource-sets for bringing in the clients.

The recruitment of munshis

There was much heterogeneity of occupational background, caste, religion, age and education among the munshis. It was confirmed that most of them had an education between primary to high school (ie, fifth to tenth grade) and that they came from low-income families who could not afford further education due to poverty and family responsibilities. They were mostly from the villages of this district as were the lawyers. As no formal educational qualifications or professional training was prescribed for the munshis, they acquired their skills as apprentices under experienced senior munshis for a few months. There was not one illiterate munshi but five to six of the older munshis had a knowledge of reading and writing Urdu and English or only Urdu, while almost all courtwork was done in Devnagri script. The lawyers employed their munshis mainly on two criteria: first, competence to deal with court functionaries (ie, readers (peshkaars), peons, and clerks) and clients; and, second, on the basis of their resource-sets for bringing the clients to their employers. The munshis tended to join the lawyer who had a large number of clients in his clientage-bank or, in other words, who had a good income. Morrison (1972, 1974) found that in Ambala city Bar there was competition over munshis among lawyers, particularly among

leading lawyers for 'leading' munshis. But in the Muzaffarnagar kachahri there was little competition for munshis among the lawyers.

Usually a munshi stayed for a long time with his employer. Some munshis had even worked for two to three generations of a lawyer's family (and vice-versa). There was one unusual case of a Bania-caste munshi and his employer being brothers. Their assymetrical relationship indicated that the caste factor here was not of relevance since the social norm is that a person should not take a job as a subordinate to any of his immediate kin.

The munshis did not have any formal association since they were totally dependent on their employers. Hence they could not take the risk of suggesting opposition through identifying separate interests.

The munshi's role

The daily work of a munshi was to safeguard all documents, complete applications to courts, maintain the lawyer's 'home office' and 'court office', get medical and office aid for clients, copies of opposite clients' lawsuits from the courts, and 'coach' or 'teach' and bargain with clients and court officials. For nearly two hours in the morning and two to three hours at night he worked in the lawyer's home office at his residence also; and he had to reach the lawyer's court office earlier than his employer and leave later. Some munshis also performed domestic services for their employers, particularly if they felt insecure in their jobs. Gandhi (1982:138) noted from his study that a lawyer's munshi undertook three main duties: routine maintenance, tactical manouvering and business promotion. The munshis gave bribes (riswat) and 'tips' (inaam or sukrianaa) to the appropriate

court officials on behalf of their lawyers and clients, because neither the professional image nor the professional ethic and law permitted a lawyer to take on these jobs directly. The lawyers captured some clients through their munshis' personal resource-sets, the munshi playing the role of public relations and information officer on behalf of his employer. In some cases at some stages of the litigation the munshi 'coached' or 'instructed' the clients and witnesses before their court appearance. Sometimes the lawyers discussed the litigation (mukadmah) with their munshis and if the munshi had more experience of the court procedures sought their suggestions.

The munshis also played the personal communicator role for their employers. As Gandhi (1982:140) indicated too, sometimes lawyers wanted to explore the possibility of settling a case (faislaa) outside the court (particularly when the lawyer thought that he could lose the case) between their clients and the opposing clients. With or without the explicit consent of their clients they could try to discover a judge's attitude on a certain case by using their munshis as a link between them and the court officials, or they might want to know in advance through some informant the next move that the opposing client was likely to make. All such activities could not be seen to be done by a lawyer for fear of damaging his professional image and neither were they allowed by the rules of their Bar Association. Hence he used his munshi for the 'un-ethical' work.

The munshis tried their best to recruit and retain clients in their employer's clientage-bank, because both he and the lawyer benefited by this. Strain and tension was not uncommon in the lawyer-client relationship and at that stage the munshi could

function as a mediating agent. Sometime, if a case had had an unfavourable outcome a munshi tried to keep the clients calm. Usually they told them that the outcome of the case had had nothing to do with the lawyer's competence but was unfortunately due to the poor evidence or opposite party (mukhaalif party) having obliged the judge or magistrate with money or other favours. Gandhi (1982:141) quoted a statement by one leading district lawyer from the Panjab state on munshis:

> 'I make no secret of the fact that I have rarely employed a munshi without considering his ability in bringing business.... All of them have always had their due from me.... 'H' has been very successful to me as a munshi. He has been with me for the last 18 years. He is an important man in and around his native village and has brought me scores cases from his friends and acquaintances.... They all trust him.'

This statement was also true in the case of the Muzaffarnagar city kachahri.

Through observation it was obvious that some munshis had enough independence in their work. Occasionally they would render services to the clients without asking their employers. Old experienced munshis sometimes played a greater role in the lawyer-munshi-client triad than the lawyers, particularly when he was very skilled in court-work and when his own resource-set was larger than his employer's professional recruitment-set. During fieldwork I identified six munshis who were so skilled in courtwork and had such large resource-sets that they employed or hired beginner lawyers on the basis of a commission of 30 to 40 per cent, with the object of fulfilling the necessary conditions prescribed in the Advocate Act. The rest of the work they did themselves. So in this situation the nature of the

relationship between a lawyer and munshi was reversed, ie, the munshi was superior to the lawyer. Among these six 'expert' munshis one maintained his 'court-office' and 'home-office' in the same manner as did the lawyers for impression-management towards the clients. He hired lawyers according to the nature of the litigation. Some munshis told me that they knew more about law and court procedure than many beginner lawyers.

If a munshi and a lawyer had had a long relationship and the lawyer retired or died and was replaced by his son, respect would automatically be conveyed to the munshi by the lawyer. In the relationship between the lawyers and munshis the age factor had importance. A young lawyer would not speak casually towards an old munshi in the same way as he might to his young munshi.

The relationship between a lawyer and his munshi was also a business partnership: the munshi was paid a fixed share of the lawyer's fee (mehantaanaa), usually 20 per cent of the total fee of the lawyer which was known by the local term munshiyahaa (mushi's fee). Some munshis got more commission if the client came to their lawyer through them. Apart from commission munshis did not get any extra money from the lawyers; Morrison (1972, 1974) and Gandhi (1982) found in district Bars of Haryana and Panjab states that lawyers paid also a small salary to the munshis in addition to the 10 per cent commission the latter got there from their lawyer's total income. After winning the case a munshi expected an additional tip (sukrianaa, from sukria or thanks) from the client. In some cases a lawyer also got this additional tip (in this case called inaam), although contingent fees for lawyers are prohibited by the Advocate Act and the Bar Council of India.

Tension and instability in the relationship

Income distribution was the main basis on which mistrust and suspicion emerged between a lawyer and his munshi and this mistrust could lead to the break-up of the relationship (see Morrison 1972:309-28; 1974:39-61 and Gandhi 1982:146-7). This happened in two main situations: when the lawyer suspected that his munshi for a higher commission had referred the client to another lawyer or when a munshi suspected that his employer had charged the client a higher fee than that charged in his presence or of which he had been told by the lawyer. Sometimes a lawyer could deprive his munshi of the fee by claiming that a particular client was his kin or a very close friend and that no fee was being charged, then the lawyer appropriated the munshiyanaa. The situation might also be reversed. The munshi might be used by the employer to put pressure on relatives (rishtedaar) or those close to them, or to the lawyer's family members and to whom the lawyer for that reason felt awkward about asking for fees directly. In that situation they would assure the clients that they were not taking any fee except that of the munshi's and other necessary stamps, typing and court expenses, but added under the name of these items were the lawyer's own fees.

When the lawyer-munshi relationship was in dispute and this dispute led to them separating, the client usually followed the person (ie, lawyer or munshi) whom he had most confidence in. For example, in such situations where the client had more confidence in the munshi he would automatically acquire a new lawyer for his case or, in other words, when a munshi moved from one lawyer to another he shifted his 'own clients' too to the new employer's clientage-bank. Low-income munshis could earn

extra income during the holidays and weekends in the kachahri by seeking out illiterate village clients, who had come to the city the day before or had arrived on the day the kachahri was closed to find a 'suitable' lawyer for their cases, and then the munshis would offer them to those lawyers who were prepared to pay the most commission (usually 50 per cent). Thus in this way some munshis worked also as touts. I observed that on weekends and holidays nearly ten to fifteen munshis sat with other regular touts in the kachahri to 'catch' the village litigants for those lawyers who were ready to pay maximum commission. Further discussion about the munshi's role as a tout will be dealt with in the next section of this chapter.

Most of the clients had the feeling that both lawyers and their munshis cheated them with regard to fees. In this they were right, for when a munshi accompanied a client to help him with typing work, coping with case lists, adjourning the hearing date or buying the court's stamps, etc, he often overcharged him. In most cases clients were aware of what was happening but they did not want to cause problems between themselves and the lawyer and his munshi; and almost all lawyers were aware of this practice between their munshi and the clients. There was a mutual consensus between lawyers and their munshis about this practice, but only if a lawyer thought that it was going to harm his business did he forbid his munshi to do this. In such a case it was possible that after some two to three warnings the lawyer would sack his munshi. So the lawyer usually set the limit to which a client could be overcharged: but then they also overcharged the clients themselves. This issue will be discussed in the last section of this chapter in more detail.

However, the well-established lawyers and their munshis were more mutually dependent on each other and the question of mistrust rarely rose between them.

To sum up, we can say that the munshi did not carry out only clerical work for his employer but performed multiple roles for the latter and the whole legal system. For instance, he functioned as manager, public-relations officer, information officer, communicator, business supporter, and so on, and even, in some cases, he acted as a domestic servant too. So in many ways he was a role discharger for his employer. In the following section I will examine the role of touts and brokers in the lawyer-client relationship.

2. Touts as a linkage-node

Touts played an important role in the recruiting of clients to a lawyer's clientage-bank in the kachahri of Muzaffarnagar city. They provided one kind of link between the clients and lawyers. I use the term 'tout' here to refer to a person used by a lawyer to obtain clients in return for a share of the fee received from the client. In their research Sathe et al (1983:70) found that in the Pune city Bar touts took money from both, the clients as well as the lawyers. This is an exceptional case. I will employ the term 'broker' in the following discussion for a person who mediated between the client and lawyer without any fee or commission from either. In north India, the local Hindi term for tout is dalaal, which denotes a person who takes a commission or fee from one side or both sides when he renders service in any sphere of activity, for example in a market transaction between buyer and seller or between wholesaler and retailer, or in the

kachahri between lawyers and clients. The term bichaulia (mediator) is used for both 'tout' and 'broker'. Morrison (1974: 47) and Koppell (1968-69:428) rightly pointed out that intermediation is not limited only to some spheres of activity of the Indian people but extends to their whole social life. In the marriage settlements the broker (here also called bichaulia) has a very important role and people call him a bichaulia, not a dalaal (tout), because he does not receive any money as fee or commission from any side. Due to a confusion of these local terms I shall, for convenience's sake, use the English terms 'tout' and 'broker'.

Both touts and brokers perform the same function for the legal system and for the two different groups (ie, the clients and lawyers). The difference between touts and brokers is that the role of a broker is known to both lawyer and client while that of tout remains concealed from the client. The second difference is that a tout is paid by the lawyer to bring him clients while brokers do not gain financially (see Gandhi 1982:105).

The practice of toutism is not a new phenomenon in the Indian courts. It started at the same time as the British legal system was established in the country, as Ooman (1983:32), Morrison (1972:327), Buckee (1972), and Gandhi (1982:106) pointed out. The existence of touts was officially taken cognizance of in India as early as 1879 when the Legal Practitioners Act mentioned 'this evil'. In 1924-25 the Civil Justice Committee suggested measures for the elimination of toutism. Even Mahatma Gandhi (1962:21) noted in his autobiography that when he started his practice in the Bombay high court, 'I was told that I should pay commission to touts otherwise I could not successed in practice and it was common there. I emphatically declined.' More recently,

the Indian Law Commission of 1958 (see Vol I:555-82) recommended stringent measures against lawyers who sought the help of touts to get clients. Needless to say toutism is mentioned as illegal and unethical in the Advocate Act 1961 and the rules of the Bar Council of India (Section 49(1) of the Act).

In spite of this, toutism exists in almost all Indian courts with the touts 'serving' both lawyers and clients as the evidence from the field studies show (Rowe (1968-69) in Orissa, Madhya Pradesh and Karnataka states; Cohn (1965) and Khare (1972) in Uttar Pradesh; Kidder (1974) in Karhataka, a south Indian state; Sharma (1982) in Rajasthan; Gandhi (1982) in the Panjab; and Sathe et al (1983) in Maharashtra state). Morrison is the only scholar who could not find touts at the Ambala city Bar in Haryana state and he cautioned against imposing Western categories like 'tout' on the Indian legal system (1968-69:428; 1974:48). I suppose his view may have been due to the small number of lawyers in the Bar - he reported that during his fieldwork in 1967 there were only 96 lawyers; or he may have been unable to identify them because people usually do not divulge information about touts. However, I suspect that while touts probably did exist in this Bar in the period of his fieldwork they were fewer than in the other districts of India.

The degree of toutism varies from region to region and with the status of the court. For instance, I found toutism was practised in the Muzaffarnagar kachahri but not to such an extent as Cohn (1965:106) and Khare (1972:91) noticed for the eastern part of the state, when they mentioned that touts waited in the morning for village litigants at the bus and railways atations. I was generally told, and my respondents confirmed, that toutism was greater at the high court in Allahabad city than at

6. Villages sitting on the verandah floor of one court are waiting to attend their cases. The two young touts standing by them (extreme left and right) had just turned to overhear the conversation to find out how best they could attract the villagers to get their custom for a lawyer

7. During the weekends, when the court is closed, some touts sit within the kachahri in order to catch villagers coming to the city to find good lawyers for their cases. In this picture two touts are looking at the villagers' documents related to the litigation

district level. In the high court in Delhi it was also present (Rocher 1968-69:229; Hindustan 22 February, 1984), but at the Supreme Court level it was rarely in evidence. The reason for these variations from one level of court to another and from place to place is that where the knowledge about modern legal culture or legal literacy is greater among clients, there is a lower degree of toutism. This is confirmed from Gandhi's (1982: 108) statement that, 'other things being equal, the greater the gap betwen the cultural systems [used for 'rural' and 'urban'] of clients and that of the lawyers, the greater would be the reliance upon intermediaries on the part of clients'. Ooman (1983:31) also expressed the same view when he wrote that the need for touts arises from the cultural gap between the client and the lawyer. In all probability the tout-client interaction becomes inevitable when the client has one or more of the following features: he is rural, of lower caste, lower class, and a novice to the court system. To such clients, the lawyer's law (the modern legal system) is culturally distant and thus touts appear on the scene. To say that this practice exists in Indian courts due to a lack of formal legal-aid agencies is false, for we find it also in American courts where the formal legal-aid agencies do exist, as Hale (1949:284), Johnstoke et al (1967) and Carlin (1962:87) found in their studies.

At the Muzaffarnagar kachahri touts fall into two categories. The first are those who had their field of activities within the kachahri premises and the second are those who operated outside the kachahri, mainly in the villages. The city people did not usually need the 'services' of touts due to their familiarity with modern legal culture and the functionaries of the legal system.

These two categories of touts can be divided into two sub-categories: the regular touts (peshawar-dalaal, from pesha, occupation, and dalaal, tout) and occasional touts. A regular tout is a person who has this job as his primary occupation and main source of income, while the occasional touts have other main occupations, although whenever they get the chance they also bring clients to lawyers for a commission. Before further discussion of toutism in the kachahri of Muzaffarnagar city I would like to make clear here that most of the clients were brought to the lawyers by brokers on the basis of reciprocity (ie, as a favour), not by touts. My estimate is that less than 20 per cent of the clients were brought by touts in the kachahri of Muzaffarnagar. The public image of touts is very bad in all of north India and due to this they did not like having this name applied to them.

I will now discuss the role of regular and occasional touts who discharged their roles within the kachahri.

Touts within the kachahri

During fieldwork I could identify sixteen touts who came regularly to the kachahri. It was very difficult to recognise them because neither touts nor lawyers would admit to this kind of activity or identify others as touts, and the clients were not in a position know them. I was, however, able to acquire an introducation to two young touts of twenty-two and twenty-six years old through the help of a peon who was employed by a judge who was a friend of mine, and I told them the purpose of my enquiry. After that I struck up a friendship with one of these two touts and he introduced me to his other tout friends. These regular touts had schooling of fifth to tenth grade and they came from low

income family groups. Other factors such as caste, age, rural/urban, religion and so on were not important. In this case there does not appear to be any connection between toutism and the set of 'qualities', and this will be discussed later.

The regular touts reached the kachahri about one hour before the courts opened and left about one hour after closing time in order to catch clients. While the courts were in session, from 10am to 5pm, they walked around the kachahri, stood in the streets or sat under the shadow of the trees. The relationship between tout and client was of a temporary nature but it had many phases. When the tout first met a litigant he gave him the impression that his presence in the kachahri was for his own court work or that he worked as clerk in the court or government office, or as a munshi. If a litigant had realised what his real occupation was, he would never have followed the tout's advice to engage the lawyer suggested to him. When I asked the tout I had befriended how clients were caught, he told me:

> 'We can identify our flying birds [clients]. First of all we can identify by their dress whether they are from the villages or the cities. The city litigants do not fall into our hands because they already know lawyers in the kachahri. We get only those illiterate village clients who do not know any lawyer personally.'

The touts asked the villagers who were passing by (guessing from their dress, speech or activity) whether they were in search of a lawyer. Sometimes these touts stood by them, trying to overhear their conversation in order to find out how best to get the villagers' custom for a lawyer. If they found that a litigant was in search of a lawyer they would say to the litigant, 'Don't worry, I know of a "suitable" lawyer who is very competent and he

charges a reasonable fee', and then give a detailed description of the lawyer's professional competence. In this way the tout established friendly relations with the litigant within a few minutes and put himself in such a position of trust that the latter acted according to his advice and would engage the lawyer suggested by him. During all this time the litigant was unaware of his real job. This kind of situation is not so unusual when one remembers that in India it is very common for a passing stranger to give advice without having been asked to by a person with a problem, and the latter usually pays attention to this.

In general a tout took the client to his 'pet' lawyer with whom he already had a business pact. But in some situations, for instance when specialist knowledge was needed or another lawyer had offered greater commission than the favoured lawyer, he could refer the clients to any lawyer. Normally a tout got 50 per cent commission out of the total fee the lawyer charged, but sometimes this would vary with the nature of the case and on the tout's relationship with the lawyer. The regular touts got their major business in bail cases, for when police took an accused person under custody from the police station or jail to the court the accused had no chance to contact a lawyer himself, so at that moment the tout appeared and offered to get the accused released on bail. The tout then contacted the lawyer and asked him to make an application in court for bail. Some lawyers even provided fake sureties and witnesses, although this was obviously illegal and against the rules of the Bar Council.

As well as these regular touts the typists, police and court functionaries, stamp-vendors, notories, deed writers and government officials who had their offices in the kachahri

premises, and even tea shopkeepers and some munshis and lawyers, worked as 'occasional' touts whenever they got the opportunity. For instance, this might happen when a litigant contacted someone he knew such as a typist or court clerk in the hope that the latter would suggest a suitable lawyer due to his familiarity with the kachahri. One day I was sitting in a deed writer's office and a litigant came who was his neighbour asked the deed writer for a 'suitable' lawyer. The deed writer told the litigant not to worry, that he knew of a Mr Z who was a good lawyer and an expert handling such cases as his (ie, the litigant). 'If you are ready,' he ended, 'I can ask him.' After the litigant had agreed, he went to Mr Z's office, discussed the case with him and his commission (which I confirmed later), and returned to his office, telling the litigant that he had engaged Mr Z for him.

Usually when a lawyer got a client through a tout he charged higher fees than usual because he had to give the latter commission. When I asked the lawyers whether they thought some lawyers used touts or brokers (see Appendix A), out of the total number of lawyers 79.8 per cent stated 'yes', 12.9 per cent 'no' and 7.3 per cent replied 'no comment' or 'don't know'. When I asked them informally if they used touts or brokers themselves all respondants, except two young beginners, replied in the negative. Some lawyers, particularly those who were young, non-specialist and unsuccessful, could do occasional touting among their fellow professional members, especially when they found themselves incompetent to handle a case outside their own field of specialisation or were sometimes hard pressed for lack of time. They referred their clients to more competent or specialist lawyers with whom they had an understanding of this sort and they got a commission

from the referred-to lawyer ranging from one-third to one-half of the total fee charged from the clients.

I observed that when a litigant went to appeal in the high court against the judgement of the district court, or a victorious litigant to defend himself against the opponent's appeal case, they were often advised by their district lawyer as to whom they should engage as a competent lawyer at the high court. In this situation the district lawyer received a commission of approximately one fourth of the fee from the high court lawyer through a money order. I noticed that not only beginners and unsuccessful lawyers engaged in this practice but a few successful lawyers also had this sort of business understanding with the high court lawyers. So a lawyer, due to his influence on a client, could tout between one level of courts and another. The other types of tout could do their business only at the one level of court.

Touts and brokers outside the kachahri

The discussion here centres on the role of the touts and brokers who had their field of activity outside the kachahri; and since urban litigants did not need the 'help' of touts or brokers I shall therefore concentrate on the village.

Most of the field researchers who conducted their studies of district courts in India found that the chronic litigant (see Morrison 1974), or 'sea lawyer' (Cohn 1965:106; Khare 1972), or court's 'bird' (Kidder 1974:23) is a very important para-professional man who brings the clients to the lawyers and spreads the modern legal culture at village level. Morrison (1974:49) wrote that a chronic litigant was one who had acquired the reputation of being litigious and was involved in the prosecution of cases as an end

8. A mukadmah-baz (centre) sitting on the lawn in the kachahri. He is turning his experiences to account in advising an illiterate couple how to pursue their cases and which lawyer to choose.

in itself. Sometimes people called him 'addicted' to litigation, or he was compared to a gambler who could not resist the temptation of cards. He acquired this reputation in the first place in his own village; later he became well known to the lawyers for his persistence, for the complexity of his cases, or for his sequential retention of many lawyers. He might speak of himself as 'known to everyone' or as 'knowing everyone', and he could indulge in toutism. My thesis here is that the chronic litigant often went to litigants to give advice as to how to pursue a lawsuit and engage a suitable lawyer without being asked. But litigants did not like to follow his advice, although they did not openly reject it, because of his reputation for being 'addicted' to litigation in Indian villages. As Khare (1972:78) noted, 'legal fighting is basically immoral because it is always considered to be a display of personal or familial economic pride (abhimaan) and is a result of "short-sightedness"'.

The characteristics of the 'sea-lawyer' have been described by Cohn (1965:106) and Khare (1972:87) in respect of the eastern part of Uttar Pradesh state. I found very few such people in the western part of the state, although Morrison (1974:55) found many sea-lawyers, of the sort Khare described, in the villages of Haryana state. Morrison called them the netaaji (political leader). Khare (1972:87-89) described the common features of the sea-lawyers from Gopalpur village, UP, where five litigants of various castes were known to be experienced, though without law degrees, and shared certain features - they were literate, sometimes college-educated, and had legal, business and kinship contacts in neighbouring towns. Either the sea-lawyers themselves or their families had brought an action in the courts and they had thus

been exposed to city legal specialists. They frequently talked of and about lawyer's law and legal organisations. They walked from hamlet to hamlet in the locality to give advice on pending and forthcoming cases. They gathered facts and explained meanings and always propounded the view that 'what a person is called, what a person is empowered to do and what he can do if properly approached are extremely varied in the lawyers world'. The sea-lawyer, Khare said, always began as an arbitrator of disputes and if mediation proved unsuccessful then much time was spent in counselling and conjecturing and a decision 'to win at court' was reached. They often visited in search of a suitable lawyer the city's kachahri, and the litigant concerned paid for their travel and gave presents to them on suitable occasions during their visits, or just after. The experience and knowledge of a sea-lawyer in legal matters was tested against the actual outcome of the court case. If the result was in favour, the sea-lawyer enhanced his prestige and received some gifts as a token of gratitude. However, if the case was lost, the sea-lawyer and all of those legal agents introduced by him would also lose the litigant's confidence, unless there was a very strong and plausible explanation of what had happened and what actually went wrong; losing a court case was not only a defeat for the litigant but for the sea-lawyer also.

In the villages of western Uttar Pradesh I observed that village litigants sought advice and help from those fellow villagers who frequently visited the cities for any purpose or, in other words, those who had 'modern contacts' with the outside world. These were usually local government officials such as land record-keepers (patwaaris), official village social workers

(graamsewaks), doctors, the chief judge of the village nyaaya panchayat (sarpanch), the elected head of the village council (pradhaan), experienced litigants and witnesses (gavaah), netaas, and so on. Here I would like to make two points clear. First, an experienced litigant is not the same as a chronic litigant and, second, the experienced witnesses had the same importance as the experienced litigants in giving advice to their fellow villagers. This fact has not previously been noted by other field researchers.

Among all these village level legal advisors or, as Morrison called them, 'para-professionals', some worked as regular or occasional touts when they sent or went with the litigants to a particular lawyer with whom they had a touting agreement. To illustrate this I quote an example from a field observation. One day I was sitting in the kachahri in the office of a successful lawyer of criminal law while he and his munshi were in court. A villager entered and I started to chat with him. During our conversation he mentioned that,

> 'You know how times have changed. Today I came here for the fourth time to collect my money [commission] from the lawyer. I have sent two cases from my village and every time the lawyer made promises, and today he is still not here. Seven years ago I worked for Mr 'P' [a leading criminal lawyer], and he always paid regularly without any delay'.

Some permanent clients of a lawyer also acted as touts and often as brokers, and I noticed they were encouraged to do this by their own lawyer. I observed that among the village legal advisors the village political leaders were the main intermediaries between the client and lawyers. Generally these netaas had to wear handloom cotton cloths - kurtaa, paajama or dhoti - a sign of political leadership in India. Sometimes these netaas also

held official positions such as pradhaan, sarpanch, and so on, in the villages, and had contacts with police functionaries and other government officials at tehsil level and at district level. They frequently visited the district headquarters at Muzaffarnagar city and brought information about what was going on in the districts to the villagers. As one informant told Morrison (1974: 56) about his village netaa in Haryana village, 'They are our village newspapers'.

These village leaders depicted themselves as helpers of all needy people or just 'social workers' in the villages. I found in the north Indian villages that the term netaa was referred to in both 'good' and 'bad' senses. If a netaa really helped the people and had political contacts outside the village then people used the term in a positive sense. But the village netaa who engaged in toutism with lawyers and other police and government officials and who tended to create disputes in the village was called netaa in a negative sense, and in this sense also it might also be used for chronic litigant. So a 'good' netaa worked for his pet lawyer as a broker and a 'bad' netaa worked as a tout from the point of view of the people.

As far as government functionaries outside the kachahri were concerned, the police officials were the main recruiting agents for clients for lawyers, particularly in criminal cases. Many lawyers became successful due to their connections with police officials. The police officials' position of power over the accused put them in a situation when they could offer clients to lawyers. When the police arrested a person for a criminal offence they could harass him in many ways. For example, they could assault him and/or charge him with having committed a greater

offence. Some police regularly touted for their lawyer friends and many worked as brokers for return favours. I found that some lawyers in criminal law had permanent contacts with particular police stations for their business. Gandhi (1982:114) also noticed in the Panjab that most of the accused under police custody at a particular police station were subtly directed to a particular lawyer and the commission was collected from the lawyer by one of the junior police officials and then divided amongst them.

The practice of toutism, especially by police officials, exists not only in the Indian courts. It was reported as happening in the American court system also, as Carlin (1962:87) and Hale (1949:284) noticed in their field studies of the Chicago Bar. They mentioned that stylish expression employed both for lawyers and touts operating on the criminal side in America is 'ambulance chasers', ie, they could chase an injured person right from the scene of an accident to the hospital in order to book him or her as a client. To quote Hale (1949:284),

> 'One woman, who along with her sister had been injured in a taxicab wreck, reported on the activities of the police who appeared at the scene of the accident. "The police took us to 'X' hospital and before we got in their car, they were giving us lawyers' cards and telling us not to talk to anybody. But they did not let us stay in 'X' hospital because I guess it is not a co-operative hospital and do not allow these chasers in there. The police came back and got us all the way about 'do not talk to anybody, yes, we know you are in the right, everybody saw it. This lawyer will take care of you', and all that kind of stuff."'

A police officer told Hale (ibid),

> '"In most cases a lawyer can make a deal with a policeman; when we arrest a man we 'charge' him according to regulations and 'book' him,

> but we can book him for a lesser or a greater charge. It is like the difference in being charged with manslaughter instead of murder. In both cases you have killed someone, but there is a helluva lot of difference in the punishment; lawyers often get policemen to book a man on a lesser charge. Then when it gets to court the judge askes the policeman what happened and the way he tells the story may make all the difference in the world. I arrested some fellows for disturbing the peace and one got real nasty and I planend to have him up on an assault charge, which is pretty serious. The next morning a lawyer came to me and said this boy's mother had come to him to get him to go into court with the boy. He told me that he could get me maybe a fine ($5) if I'd let things go easy with him."'

I observed very similar interactions between lawyers and the police officials in Muzaffarnagar district and it is clear from the above analysis that the relationship between police (as touts) and the accused (as litigant) is assymetrical, because a policeman was in the position to insist on the litigants going to a particular lawyer. Other government officials also referred the litigants to particular lawyers but mostly on the basis of brokerage relationships (exchange of favours); very few had touting relationships with lawyers. A few successful lawyers received clients through touts when they themselves realised the touts' capacity for shifting clients from one lawyer's clientage-bank to anothers. Usually the leading lawyers did not require the 'services' of touts.

Touts and brokers not only function as a bridge between clients and lawyers, they fill up the gap between two different worlds, the 'rural' one and the 'urban' one. They disseminate modern legal culture in the villages and a lawyer can easily extend the size of his clientage bank through their services. The

munshi-lawyer dyad is legitimate from the point of view of professional ethics, the tout-lawyer dyad is illegitimate from the point of view of professional ethics and law.

I have discussed in the above section the role of the people as nodes in the linkage between lawyers and clients. Now, in the following pages, I will discuss the role of the qualities on which both lawyers and clients recruited each other. We can divide these qualities into two categories: the primordial ties, ie, fundamental or ascribed qualities such as caste, kinship, religion, region, and so on, and non-primordial ties or achieved traits of their personalities.

3. Caste, kinship and other primordial ties

I found that ties of caste and kinship (rishtedaari) were the most important factors in the linking of lawyers and clients. Other primordial ties such as the family network of kindred kin, ties of common religion, ties of common residence in the village and common ilaaka or ganwaand (region of surrounding villages of their common native village) were also important bases in the lawyer's professional recruitment-sets and clients' resource-sets. But if a litigant was involved in serious litigation, for instance, a murder case or when a large property claim was involved, the primordial ties were less important than the competence of the lawyer. As Khare (1972:93) also noted, 'serious criminal and civil cases... tend to go to more experienced hands, where there may be so much at stake that caste, kinship, and regional loyalties remain of limited influence'. One could almost 'measure' primordiality by this and compare for different castes.

Cohn (1965:107), Khare (1972:92-3), Morrison (1972:106),

9. A Sikh lawyer with his two clients sitting behind him

10. A lawyer (wearing the spectacles) sitting in his office with his apprentices and clients

Gandhi (1982:122) and Sathe et al (1983:67) also found in their field studies that at district level courts, caste, kinship and regional loyalties were the main bases on which lawyers and clients contacted or recruited each other. In contrast to this, Kidder (1973:126) and Rowe (1968-69:223) noticed in their studies of district courts that clients did not appear to choose their lawyers according to caste and kinship ties. In fact, Boissevain (1974:83) rightly pointed out that,

> 'The kinship segment of a network is important for in most societies the relationship between certain categories of kinsman tends to be morally sanctioned. These sanctions are particularly strong in societies in which persons are embedded in corporate groups. Where a person is part of such a kinship system he will have a number of ascribed relations with other members of the same group.... If the kinship segment of his social network, even if not a formal group, coincides with the residential segment, he will have a social network with a high density and a high measure of multiplexity.'

And in this context, Indian society - where kinship, caste and other primordial ties are not only important in the legal process but in most of the activities of their social life - is an 'ideal' society. I noticed that even these primordial ties played a role in the private doctor-patient relationship, though not to the same degree as in the legal situation.

I quote here one case to show the importance of primordial ties in the building up of a lawyer's practice. A young lawyer, who began his practice in 1979 in the kachahri, became a successful lawyer within a few year of starting his practice in criminal law. This was not becuase he was a competent and intelligent lawyer, but because his father, who worked as a police station officer at various police stations of this district till 1982,

had sent many litigants to his lawyer son. After the father's transfer from this district to another district, other police functionaries and the leaders of his caste who were his father's friends regularly sent clients to him. In this way he obtained his clientage.

When I asked the lawyers, 'Which caste do the majority of your clients come from?' (see Appendix A, Q.27), 273 out of a total of 510 (ie, 53.7 per cent) themselves accepted that they got the majority of their clients on the bases of caste and kinship, while 14.5 per cent denied this and the rest (31.8 per cent) state 'no comment' or failed to give a response. When I repeated the question in a different way to cross-check (Q.34), ie, 'on which grounds do clients come to you?', most of them stated that the majority of their clients chose them due to their competence and popularity, especially when clients watched them in courts when they appeared in other clients' cases. In fact, as I noticed through observation, informal interviews with munshis and clients, and through checking some lawyers' daily case-diaries, there was a discrepancy between what the latter revealed and what they had answered to the questionnaire. There is a general tendency in India, particularly among the urban educated, to show that they do not believe in particular-istic values or primordial ties, but in practice the situation is different. The tendency among clients was to approach those lawyers who had a connection with the client's village via family or land first, although the factional politics of village life could restrict choice to only those belonging to the favoured faction (see Khare 1972:92-3). In this way the factional politics of the village was carried into the formal

legal system. Most of the lawyers had clients from their own villages in those cases in which the clients' opponent party (ie, the opposing litigant) was the state government. The lawyers from urban trading castes got clients from both places - rural and urban - but the lawyers with a rural background got almost all their clients from the villages.

The importance of religion as a basis of linking between a lawyer and client became clear to me when I noticed that all Muslim lawyers had more than 90 per cent of their clients from their own Muslim community. A Muslim client's first preference was to engage a lawyer from his own caste (Muslims are also divided into castes in India), then the second preference he gave was to choose a lawyer from any caste of the Muslim community. I noticed that primordial ties were more important in the case of the lawyer-client relationship concerning the criminal and revenue law than in the case of civil law. In spite of this fact, the primordial ties were more important for a beginner lawyer's professional recruitment-set, to help him build up his practice, than in the case of a leading or a successful lawyer.

I shall now discuss the second set of ties, ie, achieved qualities, on which lawyers and their clients contacted each other.

4. Political and other ties

If a lawyer was active in district or Bar politics then he had a better chance for him to get to know people, not only from his own caste and ganwaand, but also from other castes and ganwaands. If he could win an assembly, a parliamentary position or an important post in the Bar election, he would significantly improve

his chances for getting such clients. Many would contact him in the hope that his political position could influence the judges and magistrates. On the other hand, if a lawyer had no political post and he had paid more attention to politics than his legal practice, he could lose some clients from his clientage-bank. So involvement in politics for a lawyer had both a positive and negative side. The lawyers got very few clients on the ties of friendship, through friends of friends and neighbourhood relationships, but it was common for a referred person to be from the lawyer's caste and have a friendship with the lawyer.

The tendency to engage a lawyer who had some type of connection with the judge or magistrate concerned was on the increase among the litigants. One beginner, a non-specialist lawyer, told me that,

> 'Once a litigant came to me from another district to engage me. His case was being held in his district's civil court. The reason he came to me was that the judge for his case was my father-in-law. I however refused.'

Another lawyer who started his practice as a non-specialist lawyer about twenty years ago won many clients within a few months of starting his practice because his uncle was a popular political leader in his ganwaand and he was the only lawyer from his native village. However, he was neither competent in handling the cases nor gave much effort to their preparation, so after some three to four years the size of his clientage-bank had shrunk. By chance he was able to strike up an acquaintanceship with a magistrate who dealt with cases from the lawyer's tehsil; again his clientage-bank rose. At the same time he entered into a partnership with one other lawyer who was considerably more competent, possessing a sound legal knowledge but who was poor

and lacked the necessary professional recruitment-set to build up his own practice independently; he could not even afford to buy an office in the kachahri. So both realised they could benefit from the other's help. After having known the magistrate for a few months, the lawyer started giving him bribes to 'favour' his clients. Thus after five to six years of practice this lawyer had become successful. All his colleagues were jealous and talked about him behind his back. After a few years the magistrate was transferred to another district and again his fortunes suffered a set-back as he failed to deliver the goods. His clientage declined and he later entered into district politics, became a full-time politician and finally gave up his legal practice altogether.

This kind of story was not unusual. Some lawyers reported that in 1975 a Muslim district judge was appointed at Muzaffarnagar and within a few months he had become a good friend of some lawyers from his own community. Naturally they got more clients during his tenure in the kachahri. The same thing happened two years ago. A Rajput district judge, as I was told by some respondants, also favoured in court some lawyers from his community.

In sum, links with the judiciary were also an important factor in getting clients. Another good source for obtaining clients was through any government official with whom the lawyer had any type of relationship. To see more clearly how a lawyer's social background, the nature of his practice, structure of his professional recruitment-set, and size of his clientage-bank were correlated, biographies of a small representative sample of eight lawyers can be found in Appendix B.

5. How do individuals become leading lawyers?

On formal legal grounds Indian lawyers are divided into two categories, as found in the Advocate Act 1961 (Chp 3, 12-13),

> 'There shall be two classes of advocates, namely, senior advocates and other advocates. An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a high court is of opinion that by virtue of his ability (standing at the Bar or special knowledge or experience in law) he is deserving of such distinction'.

From their own point of view, the lawyers and litigants of Muzaffarnagar's kachahri were placed in three main ranks: at the top, the 'leading' lawyers (top kaa-vakil or yadaa-vakil); in the next rank, 'successful' lawyers (beech kaa-vakil or achhaa-vakil); and in the third rank were the struggling beginners or old lawyers (ie, chhotaa-vakil).

The title of leading lawyer was given only to ten to twelve lawyers of this kachahri, while about a hundred lawyers were considered successful lawyers as they had a sufficient income from the legal practice and clients in their clients in their clientage-banks. I asked the lawyers to give the names of five leading lawyers from all branches of law (ie, criminal, civil and revenue; see Appendix A). The five top-ranked leading lawyers out of the total number of 510 lawyers, whom I drew from the questionnaires, possessed some common features. They were all born and had grown up in Muzaffarnagar city and belonged to rich families. Four were from the Bania caste and one was a Brahman. Therefore all of them were from upper castes, the upper class and had an urban background. They were all sons of former leading lawyers except for one, whose father was a small shop-keeper, but eighteen years ago he had been working as a junior

with a high ranking lawyer of criminal law and after the latter's death he had retained his clientage. The respondents told me that this leading lawyer's senior had been the only specialist in criminal law in this kachahri whom clients from other nearby district courts engaged. Among these five top-ranked leading lawyers, three had their sons in practice with them, one had no son, while the fifth leading lawyer's son was a doctor. All of these leading lawyers were in the fifty to sixty-five year age group.

All five leading lawyers had two to four munshis due to workload. The four leading lawyers who were sons of lawyers had one or two former munshis of their fathers and the fifth leading lawyer had his late senior's munshi. These old experienced munshis were very helpful to them in many ways in maintaining their 'reputation' as leading lawyers. Most of the litigants engaged these leading lawyers when they considered that their litigation was of a serious nature. They charged higher fees from their clients than the other lawyers of the kachahri. I noticed that they became leading lawyers due to the combination of four main features: (i) A ready-made professional recruitment-set with which to get clients; (ii) Their skills in, and a sound knowledge of the law; (iii) Their hard work and commitment to their legal practice and clients; and (iv) Their links with the judiciary.

Without a combination of the above-mentioned four features it would not have been possible for any ambitious lawyer to attain the position of leading lawyer. I observed, for example, that some lawyers were hard-working and sincere about their practice and clients and possessed a sound knowledge of law, but could not

become leading lawyers due to lack of a large professional recruitment-set and links with judges and magistrates. On the other hand, some lawyers who had a large professional recruitment-set to get clients and links with the judiciary (see earlier quoted lawyer's case for details), but lacked a sound knowledge of the law and did not work hard, could not get labelled as leading lawyers. At the beginning of their careers the five men were ordinary lawyers and did not hesitate to use the 'services' of touts, but after they had become leading lawyers they were less inclined to make use of them. After they had built up a reputation, their primordial ties retained very little importance as a basis for recruiting clients to their clientage-banks. I would like to elaborate here on one of the five leading lawyers mentioned. Mr 'X', who was the son of a leading lawyer, was an ordinary semi-specialist lawyer at the beginning of his practice for three to four years, but he had his father's ready-made professional recruitment-set, clientage-bank and his father's munshi was helpful in retaining them. After he had been in practice a few years, a district superintendent of police (SDP) was transferred to this district from another one who was related to him, and at the same time the lawyer married the daughter of the chief justice of the high court. Both of his kinsmen helped him, through their influence on the judiciary and government officials, to get more clients. He also had to work hard and acquired a sound knowledge of law. So he became a leading lawyer.

Both lawyers and clients defined a leading lawyer as one who had more serious cases and a higher income through his practice than the other lawyers. He would be honest with his clients and a specialist in any branch of the law.

In conclusion, I would mention that to become a leading lawyer one needed primordial ties and other non-primordial ties to get clients at the beginning, but after one's reputation as a leading lawyer was established, this base was unnecessary. Without all four features, which I mentioned above, a lawyer could not become a leading lawyer. I will now look at to what degree the lawyers acted as professionals, especially within the lawyer-client relationship.

6. Lawyers as professional men

In discussing the issue of whether the lawyers of Muzaffarnagar kachahri were professional men, two questions arise. First, what lawyers should be in the ideal sense, and, second, what they actually do in their professional activities. I have already dealt with the first question in Chapter Two in general terms. In this section I will analyse the actual professional behaviour of lawyers of the kachahri in how far and to what degree they followed the professional ethic, law, and the rules of their Association, especially in their relationship with clients.

At the apex there is the Bar Council of India, which lays down the standards of professional conduct and etiquette for legal practitioners and safeguards their rights, privileges and interests, and it also lays down the procedure to be followed by each State Bar Council which comprise it. All district Bars in a state are in turn a part of the State Bar Council. In this way these three Associations are hierarchically interconnected and follow the rules laid down in the Advocate Act 1961. To practice in the high court or any of its subordinate courts (eg, district and tehsil courts) a lawyer should be

a registered member of the State Bar Council.

Before continuing, I would like to point out that the lawyers of Muzaffarnagar kachahri were to some extent familiar with what the ideal concept of their profession was. It is clearly laid down in the rules of their State Bar Council and the Advocate Act 1961 (1983, Chp 4-5) that,

> 'The legal profession is a para-public institution which deserves the special confidence of and owe ones greater responsibility to the community at large than the ordinary run of agency...'(p21)
>
> '...the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which don't attach to other men and which do not attach even to them in a non-professional character... he [a legal practitioner] is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action.' (p23)

According to the rules of the State Bar Council (1982:6):

> '...It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequence to himself or any other.'

It is therefore clear that a lawyer should be service rather than profit oriented and that he should uphold the interests of his clients. But in practice the situation was different. It was observed that lawyers seemed little interested in serving the interests of their clients. They treated them as mere sources of income and sought to extort from them whatever they could. Gandhi (1982:153) found the same in his study

of a district Bar in the Panjab and he called this behaviour 'unprofessionality'. The lawyers recruited their clients through different types of intermediaries (eg, touts, munshis, government officials, brokers, etc) on the basis of money-transaction or favour-exchange (as I have discussed in earlier pages) which was in total contradiction to their professional ideology and the rules of their association, as mentioned in the rules of the State Bar Council (1982:14) where it states that 'An advocate [lawyer] shall not enter into a partnership or any other arrangement for sharing remuneration with any person or legal practitioner who is not an advocate.' In reality the lawyers cheated their clients in many ways. In the following dicussion I will describe some instances of this which I observed in the kachahri of Muzaffarnagar.

Both lawyers and litigants bargained over the fee. Although it was not prescribed in the rules of the State Bar Council or the Advocate Act 1961 as to how much should be charged for different types of cases, it is very clear from the rules and according to the professional ethic that the fee which a lawyer charged should not be seen as the 'profit' from his 'business'. It should be his 'remuneration' (mehantaanaa, from mehant, labour) for the 'services' which he had rendered the client. In this he should charge a reasonable fee. And if a client was not in a position to pay the fee the lawyer should render his 'services' free of charge, as it is mentioned in the State Bar Council rules (1982:12),

> 'Every advocate shall in the practice of the profession of law bear in mind that anyone genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for

> it fully or adequately and that within the limits of an advocate's economic situation, free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society.'

So they should charge their fees according to the paying capacity of a client and the labour involved; but in practice the lawyers charged their fees according to the client's paying capacity and the seriousness of the litigation (for the client).

According to the professional ethic lawyers should treat all clients in the same manner without consideration for the latters' socio-economic backgrounds. In actual practice they maintained a horizontal relationship with the rich clients and vertical ties with the poor ones and the interesting point is that both rich and poor clients paid the same fee for a particular type of case. To those clients whom they looked upon as of higher socio-economic status than themselves they paid respect while treating with contempt those lower on this scale. Kidder (1974:15-16) found the same for the Bangalore city Bar. In effect, the lawyer's position in the social system outside the kachahri determined the 'professional' relationships with clients inside the kachahri.

Clients usually paid in instalments, but lawyers were careful to collect the full amount of the fee before the final judgement since they did not trust the clients. They occasionally extracted more than the due amount on the pretext of rendering miscellaneous services such as typing, submitting a new application to the court on behalf of the client, taking some copies of documents on a given case in progress, or giving 'tips' to the court officials, and so on. Regardless of the

outcome, on every hearing date they managed to charge a little extra, as did their munshis. Not only this, they frequently over-charged for the presumed services. For example, one munshi on behalf of his employer and client paid Rs.15 (approximately £1.00) to the court clerk for stamps, but he told the client that he had paid Rs.30 (ie, some £2.00). The clients were often aware of this over-charging, but they did not wish to antagonise their lawyers becuase they needed the latters' expertise. If a lawyer was not able to attend the court on the hearing date of his client's case due to personal reasons then he sent an application for an adjournment to the court through his munshi and the 'tip' was paid by the client to the court clerk.

According to the State Bar Council rules (1982),

> "An advocate shall not adject fees payable to him by his client against his own personal liability to the client, which liability does not arise in the course of his employment as an advocate... [He] should keep accounts of client's moneys entrusted to him, and the accounts should show the amounts received from the client or on his behalf, the expenses incurred for him and the details made on account of fees with respective dates and all other necessary particulars...' (p7)
>
> '...Where moneys are received from or on account of a client, the entries in the accounts should contain a reference as to whether the amounts have been received for fees or expenses, and during the course of the proceedings, no advocate shall, except with the consent in writing of the clients concerned, be at liberty to divert any portion of the expenses towards fees.' (p7-8)
>
> .'...Where any amount is received or given to him on behalf of his client the fact of such receipt must be intimated to the client as early as possible ... the balance if any shall be refunded to the client ... a copy of the client's account shall be furnished to him on demand provided the necessary coping charge is paid.' (p8)

In actual practice, lawyers did not maintain any accounts.

Neither did they give receipts to the clients nor did the latter ask for them since they did not realise they should be given. Even in the form of power of attorney (vakaalatnaamah) the amount of how much the lawyers were going to charge was not stated, although the form gave it as a requirement. It was rare for a lawyer to refund the balance owed to a client. During fieldwork, when I was one day at the office of a successful Chamar lawyer, a Chamar litigant told the lawyer how his 'own' lawyer (also a Chamar) had cheated him. He said,

> 'I had been in jail on a theft charge, but before going into prison I had given Rs.400 [about £26.00] to my lawyer for my bail. While I was inside he asked my family for extra money towards my bail. When I came out of jail I asked him why he had taken this extra money and demanded to know what he had spent it on. My lawyer replied that he had spent it all on my bail (zamaanat), but he was unable to show me the accounts indicating where he had in fact spent the money'.

In this case, both client and lawyer were from the same socio-economic stratum in their community. A poor client would never have had the courage to approach the lawyer in this way.

In a situation where a plaintiff (muaddi; vaadi) and the defending litigant (mudaa; pretivaadi) agreed amongst themselves to settle out of court, the lawyers preferred that such a settlement would take place after two to three hearings (peshis) since they could then extract a fee from them. A lawyer might advise a client that a spot-inspection was necessary and in this way gain extra money for travelling expenses and so on as well as a chance to see other people at the site of the dispute (for impression management). One day I observed a lawyer insisting to a litigant before being engaged that,

> 'In your case, it will first of all be necessary to have a spot-inspection carried out in order to understand the facts of the dispute, and I would like to go by taxi, not by bus, to your village [the litigant had had the dispute with his neighbour concerning the joint wall to their houses]. It will cost you Rs.400, excluding my fee'.

The client argued back that he had already described the physical details of the site of the dispute and that, in any case, he could not afford the proposed expense of a taxi ride. Since the lawyer was obviously determined to inspect the site, the litigant left for another lawyer.

It was a common practice for the public prosecutors (PP) to take bribes from the opposite party in a dispute and consequently not pursue their clients' cases properly in the courts. Hence the government counsels lost an overwhelming number of cases. On one occasion I observed in a civil court that a government counsel was not participating fully in his client's case and after the hearing, outside the court, another (private) lawyer whom the litigant had engaged privately remarked to the government counsel that, 'You did not conduct your client's case properly because the opponent client's lawyer was from your own community'.

Some respondents told me how some lawyers, particularly 'unsuccessful' lawyers, cheated their clients. When a litigant came to a lawyer to engage him, or after a number of hearings, the lawyer could notify the client that his case was very weak on certain legal grounds or that the judge concerned was corrupt and that the opponent party was in a position to offer him a bribe. So if the client was serious about winning the case, the lawyer would suggest, he could try to approach the judge. In this way the lawyer would take money in the name of the judge,

keeping it, of course, for himself. If he lost the case then he returned the money to the client, deducting an appropriate amount for expenses, telling him that the opponent party had already offered to the judge more money or that the latter was not ready to accept it. In another situation, when two different lawyers had approached their clients (plaintiff and defendant) in the same manner as above but one had to win the case, the lawyer usually made a 'pact' with the opposing side's lawyer so that the winning lawyer would give 50 per cent of the money to the 'loser' while the 'loser' would then refund the bribe money to his client, minus expenses. It was common in the bribe-money transaction that when a lawyer gave a bribe to the judge or magistrate concerned, he usually took a cut without the knowledge of either the judge or the client since they had no direct transaction. Sometimes clients might be able to offer the judge a bribe through other connections and it might even be that a client upon engaging a lawyer asked him whether he had any connections with the judge or magistrate concerned.

When I asked the lawyers whether they thought some lawyers managed to give bribes to judges to win cases (see Appendix A), 79.9 per cent stated 'yes', 13.9 per cent 'no' and 9.2 per cent stated 'no comment'. This practice was strictly against the Advocate Act 1961, the rules of the Bar Council and the ethics of their profession. Some lawyers when referring a client to another of their colleagues or to other courts might even receive a commission from the referral lawyer (as I have already discussed in earlier sections). Kidder (1973:126) also reported this malpractice in his study of Bangalore city Bar. In America people referred to a 'finder's fee' (see Johnstoke et al 1967), as when a

lawyer got a commission from another lawyer. In the Muzaffarnagar kachahri the lawyer appointed by the state government to the position of court-marriage officer should have charged Rs.15 for each court marriage. However, he in practice charged the fee on the grounds of the paying capacity of the applicants and in accordance with the 'sensitivity' of the matter (because in India most parents do not allow their children to marry without their permission).

Delay in the workings of the machinery of the court is common at all levels of the legal system all over India. Besides the delays due to the shortage of judicial staff, political interference and mis-administration of the courts, the lawyers also were responsible for delay in the judgements of cases (see Kidder 1973:127, 1974:28). The lawyers participated in this enterprise mainly in order to extract more money from their clients. For after a settlement of fee they charged more per hearing, regardless of outcome. Sometimes a lawyer could insist that his wealthy client file another false case on a poor oppsoing litigant to delay the original case (ie, in a situation where they presumed they were going to lose the case) and in the meantime the opponent would come to an agreement out of court. On one occasion, in observing the proceedings of a civil court (diwaani-adaalat), I noted that one lawyer had come with his client for the hearing of the client's case, but the opponent lawyer had already submitted an adjournment application to the court for a further date. Then the lawyer asked the judge, in an informal manner, when he was going to give a judgement in that case. The judge replied that it was not up to him, that it depended on the lawyer and his opposing lawyer.

> 'On one hearing you come, then your opponent lawyer sends in an adjournement application, and on the next hearing if your opponent came then you would send in an adjournment application, and this process has been going on for one year. So whenever the both of you decide, the outcome will come.'

The lawyers often invited their clients for refreshments in the restaurants and expected the latter to foot the bills. When an announcement of a court decision in favour of a client was made, the lawyer expected (or would ask) to be invited to a big tea-party in which he could in turn invite his lawyer friends also. Munshis also reminded the winning client about their tips, and both munshi and lawyer insisted that the client give a 'tip' to the court functionaries (see Gandhi 1982:158).

What tactics did lawyers use for 'impression management' in the Muzaffarnagar kachahri? According to the ethics of the profession, if a lawyer thoght that he was not sufficiently competent to handle a particular case, or his 'permanent' client brought a case beyond his specialisation, then he should suggest another lawyer to the client whom he considered competent. In practice he took the case himself and the client probably lost it due to the lawyer's incompetence. According to the rules of the State Bar Council (1982:9),

> 'An advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertsiements, touts, personal communications, interview not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photograph to be published in connection with cases in which he has been engaged or concerned. His sign-board or nameplate should be of a reasonable size. The sign-board or nameplate or stationery should not indicate that he is or has been president or a member of the Bar Council or of any Association or that he has associated with any person or organisation

> or with any particular type of work or that he has been a judge or an advocate general'.

Again, in practice the situation was quite different. Some lawyers had a very large nameplate and usually they mentioned on it their other statuses, their field of specialisation and their native village's name, all for impression management. They advertised their names through touts, political links and brokers, etc. The physical location of a lawyer's court office was also important in catching the clients. The price for those offices which were located at the entrance gates of the kachahri, on the corners of streets and on the opposite sides of the courts, was therefore higher. This occurred despite the prohibition to sell the office, according to the rules of the DBA, because the Association had the exclusive right to allocate the offices. So if a lawyer wanted to leave his office for any reason it was his duty to return the ownership of the office to the DBA.

Many lawyers stocked out-of-date law books and journals in their 'home office' solely for the purpose of impressing the clients. Some lawyers who owned cars and lived at a walking distance of five to fifteen minutes from the kachahri premises usually travelled there by car for the same reason (see Kidder 1974:14-17, Ooman 1983:37-9). It was also not uncommon for the lawyers to present without relevance some very long arguments or to read the sections of law from the books and journals which they brought to support their arguments or to speak loudly in the courts to impress their clients and other onlookers into thinking that they were very competent and sincere - and thereby preventing clients from changing sides and also to attract potential clients. They would speak some sentences in English to impress the judge and the client (in north India knowledge of

English is still a status symbol). Some lawyers used vulgar language and made scurrilous attacks on the opposite lawyer in the courts. Some young beginner lawyers told me of their senior lawyers' attempts to harras them during the hearing of cases. For instance, they could say to a beginner lawyer that he didn't have a proper knowledge of the law and needed more training. Some old lawyers I saw used this tactic with the result in some cases of the younger lawyers losing their tempers and replying in an abusive language.

Although it is clearly laid down in the Advocate Act 1961 (1983:23) that, 'An advocate will not be justified in making a personal attack upon the complainant or witnesses or matters not borne out by the record nor in using language which is abusive or obscene or in making obscene or vulgar gestures in court', only the young beginner lawyers used to wear the prescribed uniform and well established lawyers did not bother about it The young lawyers did it only to impress, rather than from a strict adherance to the rules and the ethics of their Association.

The leading and successful lawyers were not interested in giving apprenticeships to the beginner lawyers because they feared that one day an apprentice would come in competition and shift some clients from their clientage-banks to his own clientage-bank. (It was not necessary to take an apprenticeship according to the State Bar Council.)

Explanation of unprofessionality

It is clear from the above discussion that lawyers of Muzaffarnagar kachahri were more like businessmen that 'professionals'. They differed to a degree in structural features but

from the functional aspect they were the same. For a lawyer a systematic education with a degree (LL.B) was a specific feature - but otherwise both businessmen and lawyers had a semi-autonomous association, written and unwritten ethical codes, a sub-culture and profit-oriented values. Lawyers used tact for impression management as a shopkeeper would for his customers (see Oster 1982:19-61).

When I asked the lawyers if they thought a lawyer's services were meant for society (Q.32), out of a total of 510 lawyers 79.2 per cent stated 'yes' and 20.8 per cent 'no'. One day, during field research, when an old lawyer was filling up the questionnaire, he remarked in the context of the above-mentioned question,

> 'You are asking me about a lawyer's service orientation? We are all like prostitutes. A prostitute waits at her kottaa (a prostitute's residence) for her customers and we likewise sit here in our bistra for clients. They have dalaals to bring businessness and we also take services of dalaals.'

Two main explanations of the unprofessional behaviour of lawyers are possible. In the first, the legal profession is very competitive since entry into it is far easier to achieve than for other professions such as medicine or engineering. Therefore, when lawyers do not have a sufficient number of clients they do not hesitate to break the stated norms, rules and law of their profession. This is the reason why leading lawyers were less unprofessional than the rest. 'The legal practice in litigational context is an entrepreneurial activity creating an entrepreneurial career' (Kidder 1974:189). In the second explanation, the values of the traditional Indian culture are seen to be in conflict with the values of the modern legal culture. Therefore it is a

result of 'culture conflict'. (This will be discussed in Chapter Six).

In conclusion I would like to say that in a society where the gap between its general value-system and the legal culture is small there will be less 'un-professionality' or malpractice in the behaviour of legal functionaries. But there is no country where we can see the 'ideal type' lawyer as an actual pattern of behaviour. It is a difference of degree. For instance, in America and in other Western countries lawyers overcharge their fees and cheat the clients in some way. Hale (1949:285) reported from her study, the Chicago Bar,

> 'Chicago is a corrupt town and in the courts - especially the municipal court - judges are on the "take". In the state attorney's office the same thing applies, almost all the municipal courts are corrupt. The judges take money, not directly from the lawyer, but through their bailiffs.'

One respondant lawyer told her (ibid:297),

> '"...There are ways of getting fees from clients without them knowing it. You are entitled to money for your services and frequently the client can't see it. For instance I recently handed a $1000 tax for closure deal for an organisation. I included my fees and told them that the deal was for $1400. They never raised a whisper, but they'd have called me a robber if I'd told them my fee was $400".'

Even in England where the general value-system of society and the legal culture is very similar, in 1984 Parliament passed a law after receiving many complaints in the context of cheating, delay, overcharging, etc, by the barristers and solicitors of their clients that now the Law Society has the power to inspect the files of solicitors accused of bad performance. But in the Indian context the corruption and unprofessionality are part of the informal institution of the legal system. For instance,

the DBA in the Muzaffarnagar kachahri has never received any complaint against a lawyer from his client in respect of unprofessional behaviour. The clients had a low opinion of both lawyers and court functionaries with respect to their financial honesty. For the village client it was a mysterious world the corruption of which he could not escape.

7. The standing of the legal profession in India

A number of scholars have pointed to the former high standing of the legal profession in India and its domination of public life before Independence, particularly during the years of the Independence movement. Since this period, however, its professional prestige and public influence have gradually declined (Cree, Schmitthener 1968-69:381; Dhavan 1977:6; Bastedo 1968-69: 286; Galanter 1984:515; Kidder 1974:17; Koppell 1968-69:419). Even the fourteenth report of the Law Commission of India (1958: 556) refers to this.

It is, of course, well known that lawyers who took their legal education in England played a very important role in the anti-British rule movement and enjoyed great respect and public influence. But Levy (1968-69:418) has challenged the idea that the legal profession as a whole lost its prestige after Independence. He said that lawyers still dominate the Parliament and other significant realms of Indian public life, and he warned that statements about decline should be qualified. Recently, an Indian sociologist, Ooman (1983:3-9), submitted that the public position of Indian lawyers had not been on the wane since Independence, and he quoted M K Gandhi in his argument that lawyers facilitated British rule as much as they acted against it: '"My firm opinion is

that the lawyers have enslaved India... and have confirmed English authority. But the greatest injury that they have done to the country is that they have tightened the English grip. Do you think that it would be possible for the English to carry on their government without law courts,"(1938:54-6).' Ooman's second point was that the lawyers' prestige had not derived from their professional status but their status as freedom fighters. Third, what was valued was not their technical expertise as lawyers but their 'spirit of sacrifice and service' in the freedom struggle. Fourth, the prestige accorded to them after Independence was due to their presence in legislatures and in ministries and thus as public men. Fifth, lawyers were well represented amongst those who fought the authoritarian impulses of the government during the internal emergency declared in June 1975. Lastly, and more recently, an increasing number of those in the legal profession, including lawyers, judges, legal journalists, and so on, have been acting especially through public interest litigations to aid the fight against exploitation and poverty and for change and development. He further added that their role as public men differed qualitatively in the colonial and post-colonial periods.

I would agree with Ooman, that the public influence of lawyers did not decline after Independence and go even further to suggest that the part they play in public life is increasing. In Muzaffar-nagar, for example, there appeared to be no social or political agitation in which they were not involved or were not the leaders. They were always ready to raise public issues and were the most influential members in all the political parties. In effect, a legal background is a very useful asset for those aspiring to political leadership since it provides a practical means for

solving public problems. However, my interpretation of the public image or standing of the legal profession differs from that of Ooman. He gives several reasons for why people treated lawyers ambivalently and with suspicion, that

> 'The legal profession deals with situations of conflict and ultimately only one of the contending parties can "win" while the other should "lose". The losing party invariably attributes the failure to the incompetence, indifference or even the strategy played by the lawyer.'

and also that

> 'The public image of the profession is reinforced partly because the profession is associated with certain classes or ethnic/primordial collectivities as disputes are more common among them. Not only that, even a person who offends the collective conscience can hire a lawyer. From the lawyer's point of view a person is not guilty until it is established that he has committed the crime. But from the perspective of the public the lawyers accept "any brief simply for the money". This adversely affects the service orientation image of the profession.'

My main criticism of Ooman is his lack of empirical study of the popular view of legal practitioners. From my own observations and informal interviews with the lawyers and the litigants in the district of Muzaffarnagar the public image of the legal profession did not seems as good as was enjoyed in the past, this due to greater public knowledge about court procedures and lawyers' actions because of better communications and wider education.

Previous chapters have discussed how lawyers displayed non-professional behaviour in their dealings with their clients. The lawyers overcharged and instigated their clients to file false suits against their opponents. They produced false witnesses

and facts and deliberately delayed the outcome of a case in their own interests. Thus if litigants are aware of the precise ways and occasions when their lawyers cheated them, they were hardly likely to consider them as ideal professionals. However, what alternative did they have to the technical-legal authority of the lawyer in the courts? Several litigants remarked that where the dacoits usually did their job at night, lawyers were the daytime robbers. Moreover 89.4 per cent of the lawyers stated themselves that the prestige of their profession was decreasing when asked the question, 'Do you think the prestige of the legal profession is decreasing? If "yes" then what do you think are the reasons?' (see Appendix A). The reasons for the decline which they mentioned reflect their social and professional prejudices. Lawyers from the upper castes, for example, blamed the declining status of the profession on the lower caste lawyers whom they considered uncivilised and poor practitioners. The old and successful lawyers blamed the newcomers on the grounds that they did not have enough patience, a proper knowledge of law and their unwillingness to work hard in preparing their clients' cases. Hence they engaged in non-professional activities. On the other hand, newcomers blamed old successful and leading lawyers since they were not ready to give them proper guidance and training and kept to themselves even the minor law suits which should have been left for the beginners.

Here I submit, that in a society where primordial ties play a crucial role in formal organisations, these organisations cannot function according to the ideal. In this situation it is difficult for the actors in a formal organisation to maintain their image according to that ideal. Von Mehren (1964-65:1184) rightly

pointed out that,

> 'In societies in which the law in the books does not reflect fairly accurately the community's accepted and operative values, the lawyer tends to be looked upon as a manipulator. Individuals turn to law and to lawyers when their behaviour and their values are not those that are generally accepted. The law and the the lawyer provide official sanction and support for such deviant behaviour.'

Thus the litigants are also responsible in some degree for the decline in the image of the legal system and the legal profession.

In the next chapter I shall deal with the politics of the Bar in order to examine the bases of grouping amongst lawyers. There it will be shown that the lawyers' non-professional behaviour was not solely limited to the dealings with their clients but reached into both the organisation and the functioning of their Association.

CHAPTER FIVE

The politics of the district Bar

In this chapter I shall discuss the politics of the district Bar of Muzaffarnagar city, how different types of informal groups emerged and operated among the lawyers and how these informal groups were involved in the recent election of the managing (executive) committee of the DBA. This Bar election took place in March 1984 during my fieldwork, which provided me with a good opportunity to get a clear picture of informal socio-political relationships among the Bar members. Finally, the judiciary's involvement in Bar politics will also be discussed.

Studies of the Indian legal profession in the sociological and anthropological literature are rare; those discussing the internal political structure of the legal profession are scarcer still. Only Morrison (1968-69:251-66) has touched on the subject and I therefore think it is valuable to provide further data. The issue is, however, a complex one and would need a separate thesis to do it justice. Given the lack of space available here I will restrict my discussion of the Muzaffarnagar city Bar politics to looking at what degree the lawyers followed the rules and ethical norms, that is, to what degree they acted as professional men in their 'associational' behaviour.

1. The District Bar Association: its organisation and rules

Each year the members of the DBA elect a managing committee of twenty-five members from amongst themselves. This managing

committee consists of nine office-bearers - one president, two vice-presidents, one secretary, four joint-secretaries and one treasurer - and sixteen ordinary members. This managing committee is responsible for all activities of the DBA. According to the rules of the DBA, the election should be held in the last week of March in each calender year. This managing committee usually meets once in a month for the executive and managerial business of the DBA, but in an emergency the president or the secretary can call a meeting at any time. It is also mentioned in the DBA rules that a member of the Association who is in arrears of subscription or other dues is not entitled to to participate in elections. If a member fails to deposit the dues of the DBA for three months his DBA membership is revoked.

The main aims and objects of the said committee which are laid down in the Rules of the District Bar Association are as follows:

1. To maintain a library, a reading-room and a common-room and to provide and maintain such other amenities for the members as may be deemed necessary.
2. To watch the state of law, the progress of legislation and the civil liberties of the people and also to take the necessary steps to safeguard the rights of the people.
3. To provide and maintain a high standard of professional conduct among the members of the Association; and
4. To safeguard the interests of the legal profession.

Now I come to the point as to what degree the members of the DBA followed the ethics and rules of their Association in Bar activities. Morrison (1968-69:253-4) reported from his study of Ambala city Bar,

> 'In the day-to-day relations among member of the Bar, caste is unimportant as a determinant factor of social behaviour. It is, of course, a factor in recruitment to the profession. An urban Aggarwal [a sub-caste of the Bania caste] boy stands a better chance than does a rural Chamar [a lower caste] boy of coming from a family in which literacy is high and other members are in government service or professions and where opportunities for law study are possible. But once both Chamar and Aggarwal become lawyers their common professional identity tends to cancel the differences of caste identity.'

But this was not true in the case of Muzaffarnagar kachahri where, as I shall show, caste was the main determining factor in social relationships among the lawyers. For instance, an urban Aggarwal lawyer would maintain a social distance from a Chamar lawyer in the kachahri although not to the same degree as they would have maintained outside the kachahri.

The Bar politics of the Muzaffarnagar kachahri was based on caste-factionalism (jativaad). Each caste had its own caste-faction (gut), ie, the Jat faction, the Bania faction, the Muslim faction and so on. The main features of these caste factions were: They were paramount; the criterion for recruiting the members was solely the caste tie; and each caste-faction had its own leader but it was not possible for a leader to get the support of all members in every conflict situation due to their personal interests and sometime due to personality conflict.

In the beginning, about twenty years ago, Bar politics were based on rural-urban ties and the cohesion of caste-factions was very loose. At that time all lawyers were from the upper and middle castes with both rural and urban backgrounds. When I had an interview with an old Jat lawyer (who came from a village) he told me that about twenty years ago when he started his practice he had one day gone to see the president of the

DBA, who was from the urban Bania caste, to get an application for membership of the DBA signed. This took place during the lunch break, when the president was in the restroom of the DBA building. The president refused to sign and said that the lawyer was a ganwaar (ie, uncivilised, since he was a villager) and did not know the correct time to see the president. The latter asked the lawyer to return during office hours and with an appointment. Trading castes like the Bania, Jains, Khatri and the Brahman were considered urban castes by the people, and the rest of these castes were considered to be rural based.

Now the situation has changed. Not a single lawyer from the urban Bania caste would have the courage to behave in this way to a Jat lawyer. The rurals from peasant castes have more members and influence and since they started settling in the city the rural-urban base of the social relationship has disappeared. Caste rather than urban residence has now become the strongest basis of social relationships amongst the lawyers.

The cliques

The main characteristics of a clique which have been described in sociological and anthropological literature (ie, Boissevain 1974:174-81; Mayer 1966:166; Sharma 198 :180; Cooley 1909:23-31; Homans 1951:133) are as follows:

1. A clique is a very small informal group.
2. It is based on a high rate of interaction among members which gives them a degree of organisation
3. Generally it is considered non ego-centred or leaderless.
4. It has no clear common goal other than the exchange of confidences, chit-chat and other emotional experiences between its

members but it may, however, become specifically goal-oriented in some situations. (Eg, if all members decide to support a particular party or candidate in an election.

5. A clique normally shows little or no internal stratification among the members.
6. Members of a clique very often have similar interests and aspirations, are generally of the same age and sex and come from the same socio-economic background.
7. Members of a clique maintain a pattern of of norms in their behaviour and a sense of common identity.
8. Cliques are not necessarily rivals of or in competition with other cliques.
9. Compared with some other informal groups, a clique has a permanent nature.

In the muzaffarnagar kachahri a lawyer would most frequently interact with a very small group of about four to six of his colleagues in the kachahri during leisure time and in the evenings they would gather at the residence of one of them to share common feelings, chit-chat and to discuss politics from Bar level to national level. I call this small group of close colleagues a 'clique'. The members of such a clique were roughly in the same age-group and they very often had the same caste and class background and had similar hobbies and aspirations. A very few lawyers, who had a 'modern, secular' outlook or could not get recognition from their own caste fellow-lawyers for personal reasons, formed cliques without caste and religious considerations. Thus there were a few non-caste based cliques as well. If two lawyers were in competition to recruit the same clientage to their own clientage-banks they would not become members of a common clique due to their conflict of interests. Notwithstanding that they belonged to the same age-group, the same caste and class background and had similar hobbies and

11. A clique of young lawyers sitting during lunch-time on the lawns of the DBA building

12. The members of the Jat faction discussing electoral strategy amongst themselves

aspirations.

Morrison (1968-69:259) observed that in the Ambala city Bar the classmate tie was the main base of cliques . But in the kachahri of Muzaffarnagar city this tie had very little importance in the formation and maintainance of a clique. The reason for Morrison's observation may be that generally educated people do not want to show their caste feelings. Throughout. India they tend to project themselves as 'secular-democratic' value orientated. For example, in response to the question, 'Please list your four colleagues' names' (see Appendix A; verbally I told the respondants that 'colleagues' meant their close friends among the lawyers), one young Rajput gave names of four lawyers from different castes. But I knew from observation that all members of his clique were from his own caste. So to confirm my observations, when one day he requested me to take his photograph I asked him to call all his close lawyer friends since I wished to take a photograph of them together in a group. The friends whom he called were all from his own caste, as well as being of the same age group and having the same class background. In the same way, Morrison's lawyers may have said one thing, but acted differently. In sum, in the Muzaffarnagar kachahri, caste loyalty was important not only outside the kachahri but also in the social relationships among the lawyers in the kachahri.

Factions and coalitions

The factions were made up of cliques, and because cliques were usually of one caste, the faction was a single caste - though there were exceptions, just as there were a few multi-caste cliques.

It is evident from the data on caste composition of the Bar (see Chapter Three) that a candidate could not be elected with the support of a single caste faction since no caste was in an overall majority. Hence pressure would come on a caste faction to form a coalition (gatbandhan) with other caste factions to win the Bar election. Thus above the cluster of caste-based cliques which formed a caste-faction was a coalition formed by several of these caste factions. A coalition has been defined (see Boissevain 1974:170-73; Thoden Van Velzen 1973: 219-50) as a temporary alliance of distinct parties or groups for a limited purpose(s). It may disappear when a certain goal(s) is achieved, or it may convert into a formal group. Boissevain (ibid:171) said that alliance meant joint use of resources by the members of a coalition to achieve their common goals. But the resources remained linked with the persons or groups who brought them into a form of coalition and might even collapse the alliance. The rights and duties of the members of a coalition vary from member to member on the basis of their contribution to the coalition and the normative structure of the coalition. The groups which emerge in a coalition usually remain distinct and their specific identity within the coalition will not be replaced by the coalition identity.

The type of coalition with which I am concerned in this chapter, Thoden Van Velzen (ibid) called a 'levelling coalition'. The main features of this type of coalition have been described by Thoden Van Velzen on the basis of a study of a Tanzanian village as follows:

1. The levelling coalition will be target-

oriented because it becomes 'visible' through its activities against a target and the only basis for membership is shared aversion of this target.

2. The levelling coalition is not ego-centred at least not centred around an instrumental leader because no member will be in the position to take authoritative decisions.
3. It is a single-purpose unit and loosely structured because coalition members often have nothing in common except to achieve a specific target (eg, to win an election) when the target disappears, generally the coalition collapses.
4. A coalition cannot mobilise all individual members in every conflicting situation from its allied groups and cliques.

Now I would like to discuss the recent DBA election in Muzaffarnagar city in the conceptual frame of reference outlined above.

2. The Bar election: a case study

As I mentioned earlier, at the beginning of this chapter, Bar politics was based on caste factionalism. For over fifteen years the different caste factions formed rival coalitions for winning the most seats in the election of the managing committee of the DBA. A coalition would nominate the candidates from its allied members (caste factions) on the basis of their numerical strength. The caste faction would choose its candidates on the basis of an individual member's popularity in the kachahri, his loyalty to the caste faction and his ability to attract cliques from the rival coalition. Generally caste factions had shifted from one coalition to another in past elections. But the two bigger caste factions, ie, the Jat and Bania factions, had never made a coalition, and other caste factions joining and leaving these two. Thus the Jat and Bania

factions were as two opposed 'core' factions, with shifting allies. These two castes had also opposed each other in parliamentary and State Assembly elections. But for the first time, in the Bar election held in March 1984, these two caste factions formed a coalition to win the election.

This happened because a leading Bania lawyer, who was the leader of the Bania faction, and some other members of his caste-faction felt that their faction was not well represented on the outgoing managing committee of the DBA. Notwithstanding that it was the second largest caste faction, it had only one officer and one ordinary member. Therefore the leader of the Bania faction bargained with the leader of the Jat faction - the biggest faction in the Bar - suggesting that a coalition between them would enable them to win all seats, and he offered the Jat leader the highest post, ie, the presidency. Both agreed and then contacted the leader of the Rajput faction to join their coalition. The latter also agreed, because he felt that if these two biggest caste-factions were going to contest the election jointly they would certainly win and, secondly, should there be any conflict between these two caste factions about the distribution of tickets for the election at the final stage then there would be a strong possibility that he would be chosen as a candidate for the presidency, a post which he had long sought. Some young Jat and Rajput lawyers who were very enthusiastic about election activities and who felt that their cliques were not well represented on the outgoing managing committee also supported the idea that their factions' leaders should join hands. In this way the Jat, Bania and Rajput factions formed the 'X' coalition and the 'refugee' faction also joined it.

The rest of the caste factions formed the 'Y' coalition, since if they joined the 'X' one it was unlikely that they would be well represented in the distribution of tickets and because the Jat, Bania and Rajput factions had already decided the tickets for high posts amongst themselves. It was therefore better for the rest of the factions to form another (the 'Y') coalition, where a lawyer might then have more of a chance of getting a position later on. Thus the Muslim, Tyagi and Gujar factions formed the 'Y' coalition. Some members of the Brahman, Chamar and other small factions and multi-caste cliques joined the above coalitions. Some caste-based cliques who were dissatisfied with the distribution of tickets or the alliance of their caste faction in a certain coalition joined the opposing coalition. For example, some Brahman faction cliques were against the alliance of their caste faction with the 'X' coalition. They felt that in this coalition they would not get enough tickets, but because the leader of the Brahman faction had had his apprenticeship under the leader of the Bania faction and for whom he had great respect, he therefore followed him. The second in command of Brahman faction, who desired the post of secretary and who was a rival of the reigning leader, managed to mobilise some Brahman faction cliques who would support only Brahman candidates but without consideration of coalition membership. The Chamar faction had no single leader so they also allied themselves with one or other of the coalitions.

Thus there were many reasons for particular allegiences. A member of a coalition who greatly desired a ticket but who did not succeed in getting one and at the same time had enough support in his

caste faction joined the opposing coalition after being offered a ticket. A coalition would use its tickets to attract votes from their own caste factions who were allies of the opposing coalition. Table 13 thus appears to indicate that candidates were not selected in either coalition on the basis of caste faction, but the majority were aligned on the basis of caste in a coalition. The Brahman faction, which had divided, could not obtain enough tickets, ie, candidates, for a position. Moreover, the Chamar faction did not get even a single ticket in either the 'X' or the 'Y' coalition. In the last election, the Bania, Gujar, Rajput, and Brahman factions had formed one coalition and the Jat, Muslim and refugee factions formed the opposing one (see Table 14). The remaining smaller factions had joined either of them. The former coalition, 'A', then won all the posts in the last election except for the one of vice-president and two membership posts despite the fact that the president's caste faction was the ally of the opposing coalition, ie, 'B'.

Table 13. List of the outgoing managing committee of the DBA by caste

Post	Caste (with numbers)
President	Jat
Vice-president	Rajput
Vice-president	Saini
Secretary	Tyagi
Joint secretary	Rajput
Joint secretary	Muslim
Joint secretary	Gadaria
Joint secretary	Tyagi
Treasurer (1)	Bania
Members (16)	Jats (5); Rajput (3); Muslim (2); Tyagi (2); Bania (1); Brahman (1); Gujar (1); Refugee (1)

Table 14. The composition of the coalitions in the two Bar elections

Past election		March 1984 election	
Main allies of Coalition 'A'	Main allies of Coalition 'B'	Main allies of Coalition 'X'	Main allies of Coalition 'Y'
Bania faction Gujar " Rajput " Brahman " Tyagi "	Jat faction Muslim " Refugee "	Jat faction Bania " Rajput " Refugee "	Muslim faction Tyagi " Gujar "
Chamar faction Other minor factions		Brahman faction Chamar faction Other minor factions	

Note: The approximate sizes of the rival coalitions in the recent election were: Coalition 'X': 335; Coalition 'Y':266.

In the March 1984 election, the Jat faction was the biggest, next in order were the Bania, Muslim, Tyagi and other factions, on the basis of their numerical strength in the DBA (see bottom of Table 15.

Table 15. The total number of candidates by coalition and caste

Post	Coalition 'X' Candidate's caste	Coalition 'Y' Candidate's caste
President	Jat	Jat
Vice-president	Rajput	Rajput
" "	Sikh	Tyagi
Secretary	Bania	Muslim
Joint-secretary	Bania	Gujar
"	Jat	Jat
"	Brahman	Brahman
"	Rajput	Rajput
Treasurer	Saini	Tyagi
Ordinary members (16)	Jat (5); Rajput (3); Bania (0); Jain (3).	Jat (2); Tyagi (7); Gujar (3); Muslim (4).
One Independent candidate for secretary was from the Jat caste.		
Approximate caste composition of all the voters: Jat (130), Bania & Jain (115), Brahman (60), Muslim (80), Tyagi (60), Rajput (35), Chamar (22), Gujar (21), Refugee (20), Others (58). Total number of voters: 601.		

It was a responsibility of the outgoing managing committee

to select two or three returning officers with the concensus of all the candidates at a general meeting of the DBA. The president of the outgoing committee, who was in coalition 'Y', proposed three men whom he considered to be unbiased towards both rival coalitions, but many young lawyers from coalition 'X' objected to them and barracked the president. Some of them used abusive language and the meeting became a free for all with no holds barred. In fact this was common practice at these general meetings, as I observed on several occasions. Some lawyers from coalition 'X' suggested that the returning officers should be selected on the basis of the coalitions, alleging that the president had proposed his own men as returning officers. The situation became very tense, but finally the majority of lawyers from both coalitions accepted the president's proposed list.

The candidates

Coalition 'X' nominated Mr 'S', a Jat lawyer, for president and a Bania lawyer for secretary. Mr S was a semi-specialist (dealing with civil and revenue law) and a successful and leading lawyer in his community. He had been living in Muzaffarnagar city for about thirty years, but had maintained a relationship with his native village and ganwaand through land ownership, kindred and family ties. He joined this Bar in 1954 and had been president of the DBA for four terms, as well as having once had the post of secretary. He was leader of the Jat faction in the kachahri and had three young apprentices from his own caste who worked hard in his election campaign. He had once been general secretary of the district unit of the Communist Party,

with his colleagues calling him 'comrade' as a result, but during my fieldwork he was not a member of any political party, although he did support Charan Singh (ex-prime minister of India).

The candidate for the post of secretary was a successful non-specialist middle-aged lawyer from a business family in the city. He was not a popular figure in the kachahri, even within his own caste faction. However, the leader of the Bania faction, a good friend of his, proposed his name to the combined leadership of the 'X' coalition which they accepted.

The leaders of the 'Y' coalition selected for their candidate of president Mr 'H', who was the outgoing president of the DBA. Like Mr S he was a Jat, but his following in his own caste faction was small since the Jat lawyers doubted in his loyalty to his caste. This was on account of his 'secular-democratic' outlook and his role as president of the outgoing committee. The majority of Jat lawyers belonged to Mr S's clan rather than his. He was offered a ticket for the highest post, ie, president, and so it profited him to remain in coalition 'Y'. Secondly there were personality differences between him and Mr S and as a result of them both belonging to the same caste both competed with each other for clients; Mr H always joined the coalition which opposed that one to which Mr S belonged. Both had a similar social background, Mr H belonging to a farming family from one of the villages of the district. He had been practising in the kachahri for about the last twenty years and was a successful, semi-specialist lawyer (criminal and civil law). He was a member of the Janta Party. Coalition 'Y' had chosen him as their candidate in the hope that at least he would

manage to attract some Jat lawyers from the rival coalition 'X', or at least those who were his kind and came from his lineage (gotraa). The second advantage in choosing him was that he had been elected in the previous election.

Coalition 'Y' had chosen a non-specialist Muslim lawyer as a candidate for the post of secretary. He too, like Mr H, was not a popular figure in the kachahri, nor in his community, as the candidate of a rival coalition. But the leader of the Muslim faction had recommended his name to the leaders of 'Y' coalition and the Muslim faction was the largest in 'Y'.

Both coalition 'X' and 'Y' selected their candidates for other less important posts on the basis of their allied caste factions' and cliques' numerical strength within the respective coalitions. The posts were distributed to the allied factions and cliques and it was the job of these to choose particular candidates. A Jat lawyer of about thirty-eight years old, who had stood for secretary in the last two Bar elections, again stood for the same post as an independent. He had never before won an election because of his belief in non-caste based politics. In this election he promised in his manifesto to abolish casteism (jativaad), factionalism (gutbandi), and corruption (bhrastaachar) in the Bar. But this time also he was unsuccessful.

The election scene

The whole scenario of the DBA election was like one for an assembly or parliamentary election. For example, both changing sides and forming coalitions went on. The main difference of course was that a Bar election was on a very small scale and there were not many transactions between candidates and voters. All the

candidates and votes had at minimum a law degree and there were no outside middlemen amongst them.

Most of the candidates and their supporters put up posters and painted slogans at night on the walls of the kachahri premises. They distributed pamphlets to the voters. In both coalitions the young lawyers were more enthusiastic than the older ones throughout the electioneering process. The candidates and their stronger supporters went campaigning from door to door in all quarters (muhallas) of the city. As I have stressed before, all these activities were against their professional code.

Morrison (1968-69:293) observed in his study of Ambala city Bar that the personalities of the leading lawyers tended to be the main issue at the time of Bar elections and all the three candidates for the post of president were leading lawyers. But in the case of the Muzaffarnagar kachahri, the personalities of the leading lawyers were an unimportant issue and with only one exception the leading lawyers did not participate openly in the electioneering process but just worked behind the scenes. Moreover they rarely attended Bar meetings.

The day before the election both coalitions called election meetings of their supporters and candidates. Coalition 'X' arranged its meeting at the residence of the leading Bania lawyer, who was the leader of the Bania faction. As I have already pointed out, he was in fact the moving force behind the formation of this coalition. About seven to eight speakers addressed the meeting who represented different caste factions of 'X'. All these speakers emphasised the issue of the unity of the coalition and outlined their election strategy - how they would

13. A general meeting of the DBA

14. The day before the Bar election at the home of one of the coalition leaders where electoral strategy is being discussed by the members of the coalition

collect the votes from the different towns of the district at night or early in the morning before the election day: and they would check that voting went according to the rules and canvass the voters at the time of polling as well. The leaders of the coalition allocated duties to some members for the polling and vote-counting activities. Finally, before the customary tea party, the host Bania lawyer said in his valedictory speech,

> 'This is the first time in the history of our Bar that the snake [the emblem of the Jat faction] and mongoose [that of the Bania faction] have formed a party [coalition]. I'm sure we'll win the election and I hope this party will continue even after it.'

However, most of the lawyers doubted that the coalition would continue after the election, largely due to the fact of the opposing images the Jat and Bania castes had among the people in general. Where the Jats, a village-based cultivating caste, are considered courageous, hard working, but impolite by the other castes, the Bania, an urban trading caste, have the image of being soft-spoken, profit-oriented, but also selfish and cowardly in public life.

Coalition 'Y' arranged its election meeting at the residence of Mr H, the candidate for the post of president. The same issues were discussed at this meeting as at the meeting of coalition 'X', ie, the unity of the coalition, how to mobilise votes and collect them before the election, the allotment of duties for election day, and so on.

Polling took place in the DBA building between 10am and 5pm, and vote counting began the same day at 7pm. It continued throughout the night and was completed in the morning. All the

candidates and their supporters stayed up the whole night for fear that their rivals would steal ballot-papers or would engage in unfair practices in the vote counting. This had happened in past election, as I was told by some respondants. But the whole electioneering process on this occasion took place peacefully.

Coalition 'X' won the election. Only the treasurer (Tyagi), and five ordinary members were elected from 'Y' coalition, which shows that these could manage to get some votes from the 'X' coalition. Out of the total electorate of 601, 562 cast their votes and six votes were declared invalid. Coalition 'X' celebrated their victory with a procession which went around the kachahri. Mr S from coalition 'X' was elected president with a margin of 76 votes, and the secretary was also elected from the same coalition, though with a margin of only four votes. Some electors from both coalitions did 'cross voting', ie, gave their vote to the candidate(s) of the rival coalition, because the rival candidates belonged to their caste or clique. But most of the Jat lawyers voted in favour of their coalition's candidates as they do in assembly and parliamentary elections as well. A young Brahman candidate from coalition 'X' who lost the election for membership of the managing committee felt that he was only defeated because the leaders of his coalition had not bid his surname along with his name on the posters and pamphlets, and for this reason many voters from his caste could not identify his caste. Otherwise he thought he would have got many votes from the rival coalition, as many Brahman lawyers voted only for candidates from their own caste without having any loyalty to either coalition.

The most popular daily Hindi local newspaper, Bulletin

Samachaar, covering the Bar election results on the front page wrote (15/4/84),

> 'For the first time in the history of the Bar election, the two main most active rival guts [ie, Jat and Bania factions], after forming their gutbandhan (coalition), have defeated the third gut. As a result of this coalition a Bania candidate has been elected secretary for the first time after a fifteen year gap.... The Bar election has been conducted purely on the basis of jativaad (castism), so the majority of lawyers voted on the basis of their caste loyalty.' [My translation]

The advantages of being an office bearer

What did a lawyer gain from becoming a DBA office bearer? He got honour and recognition from his fellow members of the DBA, and it implied that he was a popular and influential figure in the Bar to the judiciary (judges and magistrates). This position automatically enabled a lawyer to recruit more clients, because many of them, especially the urban clients, realised that those lawyers who held the key posts in the DBA were successful in forging extra-judicial ties with the judiciary. The officials of the DBA often used to meet the judiciary in connection with Bar-Bench matters, which promoted their informal or extra-judicial relationships. For their part, the judiciary also used to try to maintain good relationship with Bar officials, mainly the president and secretary, because they were afraid of being criticised by them at meetings of the DBA, and also of being transferred to another place, as the DBA could request the government to do this. Thus the relationship between judiciary and Bar officials was reciprocal. Not only the judicial officals but also other government officials did not like to be transferred from this district to other ones in the State since their sources of 'extra income' (bribes, commissions, etc) were

higher in Muzaffarnagar. The prosperity of this district enabled people to pay out more to government officials.

For these reasons the judges and magistrates used to participate in Bar politics but indirectly. For instance, some of them would try to influence the voting pattern of the Bar elections through their close friends or fellow caste members among the lawyers, taking into cognizance their official position. During meetings of the DBA, I observed that whenever a judge or magistrate came in for criticism, he was safeguarded by his fellow caste members and his close friends (mostly those who had business relations). All such activities involving the judiciary in the Bar or in forming extra-judicial relations were of course totally against the rules of the DBA and the ethics of their profession.

Another consequence of attaining office is a better possibility of gaining political positions in the government: for instance at the time of writing this thesis I heard that Mr S, president of the DBA, stood at the recent parliamentary election for the Dalit Mazdoor Kisan Party headed by Charan Singh, although he could not succeed. And a Gujar lawyer who had been president of the DBA at one time in the past stood for MLA (member of the legislative assembly) in the recent State Assembly election for the Congress party and won the election to become a Minister in the State Assembly.

The importance of the caste factor

Now I would like to cite three examples which will illustrate how the caste factor was dominant in the relationships of Bar members and how these were influenced by judicial authorities.

A female Brahman lawyer had her own law case in the district judge's court. The case was about the repossession of her own house. The tenant was from the Bania caste and a close friend of one local MLA, who was also from the same caste. The MLA in turn was a good friend of the district judge, who was also a Bania. The basis of this triad lay in their common caste tie. So the female lawyer suspected that the issue would not be decided in her favour, although her case was strong on legal grounds. One day, at the hearing, she felt that her suspicions were confirmed when the district judge asked her why she had not come to a compromise with the tenant. She replied that he had no right to make such a suggestion, that she was in court to gain possession of her house on legal grounds, and that, if she wished, she could take the case to the high court too. After this event she contacted the president, secretary and some other members of the DBA, asking them to convince the judge that he should give a fair judgement on her lawsuit. But the DBA officials ignored her. Then the members of her clique suggested to her to enter for the Bar election, which was only one month away. If she could become an office bearer of the DBA she would easily be able to mobilise the other office bearers to put pressure on the district judge. At the time of the Bar election her clique approached their caste faction (ie, the Brahman faction) to nominate her as a candidate in the election and so the Brahman faction proposed her name for a membership ticket to the leaders of 'X' coalition, as the majority of the Brahman faction's members belonged to it. Finally she got a ticket and won the election with the largest margin - in spite of the fact that

only two female lawyers, herself included, were members of the DBA. It was a historical event in the history of the DBA that a female lawyer should contest the election and defeat her rival with the biggest ever margin . Along with her photograph it made front page news in the local daily Hindi newspaper, the Muzaffarnagar Bulletin (issue dated 1/4/84). There were three main reasons for this success. First, being a female, people had sympathy with her. Second, she worked very hard throughout her election campaign; she was the only candidate who stood near the booth and who asked every voter to cast a vote in her favour. Third, both coalitions thought she would not cause problems in Bar politics, being in a minority, hence many voters from both coalitions voted for her without consideration of the caste factor and coalition loyalty.

Before the final judgement was given on her lawsuit I left the field, but she had been very optimistic that now she would be able to win the case.

The second case involved a dispute which took place a few months before my visit to the field between the Jat and Gujar factions. The Jat faction accused the chief judicial magistrate (CJM) of givin undue favour to the lawyers and clients of his caste (he was a Gujar). The Jat lawyers shouted slogans critical of him outside his court. In turn the Gujar faction shouted slogans against the Jat faction and alleged that in the past Jat judicial officials likewise always favoured Jat lawyers and clients.

The third event concerned a member of the DBA practising at tehsil level in a town of the district who complained to the president of the DBA that he had been arrested by the police

while on a criminal case, handcuffed and forcibly removed from his residence to the police station. In the ensuing furore, the president immediately called an emergency meeting of the DBA. All members condemned the behaviour of the police inspector concerned and decided to protest to the district police superintendent (SP) that he should be suspended. In the meantime, during the meeting, some members of one particular caste faction insisted that they should first know the caste of the police inspector before taking any decision because their past experiences suggested that in such cases the lawyers from the caste of the police officials or judges did not co-operate against these officials.

The above three events clearly reveal how caste loyalty was important in the Bar and how the judiciary was also involved on the basis of caste. After the Bar election, coalition identity had little importance in relationships among the Bar members. Afterwards the important factors in their social relationships were their personal interest, clique and caste loyalty and membership of a political party.

The Bar members were not only concerned to safeguard the interests of their Bar, but the interesting point is that they used to launch strikes concerning public problems only to further their own vested interests and not in order to serve the public. For instance, if they decided to hold a strike in favour of farmers getting higher prices for their crops, only those lawyers would participate who were from farming families. During my fieldwork, all opposition political parties launched combined demonstrations in different parts of the country against the ruling Congress Party on the issue that during its regime

some vegetable oil manufacturing factories had been found guilty of adulterating their products with beef fats. The lawyers of Muzaffarnagar kachahri also went on strike on this issue, but only lawyers who belonged to the opposition political parties participated in the strike.

It was a historical event when in March 1981 all lawyers without regard to caste and affiliation to political parties agitated for the establishment of a Bench of the State high court in the western part of UP. Because everybody was going to benefit if they achieved their goal, they all courted arrest and staged hunger strikes. They suspended their work for nearly five months and were still suspending their work every Saturday, normally a working day, when I was there. In connection with this demand a suit was pending in the court, which was filed by the State government over this agitation against some members of the DBA.

Conclusion

In this chapter I have attempted to show on what basis the three informal groups, ie, clique, caste faction and coalition, operated in Bar politics and in the social relationships among the lawyers and the judiciary. A clique was a very small and highly interactive informal group of lawyers. The caste, age, and class links, and that of similar personalities, were the main bases of clique formation, although a few cliques were non-caste based. A caste faction was an ego-centred informal group with the caste tie as the single criterion of its membership. Both clique and caste factions were of a permanent nature and without any specific goal. The coalition was a

temporary alliance of different caste factions and multi-caste cliques with a combined leadership. The coalition had a specific goal - to win the election. Caste was the most important element in the formation of all these three informal groups, even when voters cross voted due to caste loyalties and for personal reasons. It was difficult for a candidate to win the election on the basis of secular-democratic values without caste consideration.

To become a key office bearer in the DBA gave a member the opportunity to make a reciprocal relationship with the judiciary, gave his clients the impression that he was popular, and an influence in the DBA. Approaching the voters on the basis of primordial ties, advertising oneself, exchanging favours with judges and so on in Bar politics were totally against the ethics of the legal profession.

The next chapter will be concerned with the relationship of the lawyer's law (ie, modern court system) to the people's law (ie, traditional panchayat system) in the context of the ideas held about the provision of justice and on what grounds people choose a particular type of system.

CHAPTER SIX

The relationship between the traditional panchayat and the modern legal system

Anthropologists and sociologists have been studying the informal legal systems of tribal and peasant societies ever since both branches of the social science became established. For example, the nature of law, procedures of dispute settlement or conflict resolution were looked at through the structural-functional approach (eg, Hoebel 1964, Gluckman 1955, Malinowski 1962, Beattie 1957, Bohannan 1957, Cohn 1955). It has been observed that most of the newly independent countries, particularly in Asia and Africa, which have adopted formal modern legal systems based on English common law still retain the 'informal' methods of dispute settlement which are operated in disregard of or without any outside or government interference. India provides just one such example of different types of informal dispute settlement operating beside the formal legal system. Many studies have been conducted on the informal dispute settlement methods in the context of village India by political scientists, sociologists and anthropologists, and some of them have written on the interaction between lawyer's law (the modern legal system) with customary law (eg, Cohn 1965, Mayer 1960, Singh 1976, Ishwarn 1964, Khare 1972, Srinivas 1955, Berreman 1963, Rudolph & Rudolph 1964-65, Gough 1955, and Pradhan 1966).

Several questions are of interest here, some of which relate to my own observation and some which test the veracity of the findings of other field researchers in the different parts and communities of India.

First, what is the relationship between the traditional panchayat and the modern legal system? Are they opposed or complementary to each other in the context of ideas about the provision of justice. Second, who are those who are prepared to take their disputes to the courts rather than to the panchayats and who are those who prefer to settle their disputes through the latter ? Third, in what situations and on the basis of what values does a disputant go to a particular legal system? These three questions are interlinked. Unfortunately a detailed discussion of them would require a separate thesis and as I have limited room my discussion will therefore be brief. Primary data were mainly collected through informal interviews with the village litigants when I visited their villages in connection with gathering information on their opinion of their lawyers. I also discussed these issues with a number of judges, magistrates, lawyers and with several government officials. However, before I start tackling the above questions I shall first describe the different levels of panchayat which operated in the district of Muzaffarnagar.

1. The different levels of panchayat

Like in other parts of India, many levels of traditional panchayat exist in the countryside of Muzaffarnagar. Functionally their tasks are very similar - to dispense justice and maintain law and order, (see Mayer 1960, Cohn 1959, Pradhan 1966). In addition some panchayats discharge social, political and economic roles. In the villages of Muzaffarnagar district the system operated as follows.

If both parties (ie, defendant and plaintiff) belonged to

the same family or khaandaan then the panches (judges) were also appointed from the same joint-family and khaandaan and sometimes kin from other villages were also included. This type of panchayat is called a khaandaan-ki panchayat (lineage council) and if only the panches were relatives then it is called rishtedaro-ki panchayat. If the disputants did not belong to the same family or khaandaan but were of the same caste, then the panches were chosen from that particular caste and this panchayat is called jati-ki panchayat or biradari-ki panchayat (caste council). If the disputants belong to different castes of the village then the judges would be from the different castes and this is called gaon-ki panchayat (village council). When the disputants belong to the different villages and castes then the judges would be from the ganwaand and this panchayat is called ganwaand-ki panchayat (council of the province).

It is feasible for disputants from the lower and middle castes to request influential persons (badaa-aadmi) from the dominant caste to settle their own disputes or the latter may themselves offer to settle them, but this does not work the other way round and in disputes among the dominant or middle castes panches from the lower castes were never chosen to sit in their panchayats. Cohn (1959) observed that the Thankurs as a dominant caste were important in settling disputes of all castes in the Banares region and Srinivas (1955) tells us about the role of the dominant caste of Rampura village in south India in the social life of the village and in settling disputes due to its socio-economic and political dominance in the village. 'The elders of the dominant peasant caste in Rampura administer

justice not only to members of their own caste group but also to all persons of other castes who seek their intervention,' (Srinivas 1955:18). In the past, in the region of Muzaffarnagar district, if the peace was in danger or the disputants themselves petitioned the local ruler or zamindaar, he could intervene to settle the problems.

Pradhan (1966) accounted in detail for the above-mentioned panchayats of Muzaffarnagar district with reference to the political system of the Jat caste. However, the sarv-khap panchayat (supreme body of the Jat council) can be said to have less influence nowadays. My own observations suggested that selecting the panches from the same group of disputants was not a hard and fast rule. Any person could be asked to be a panch, or an influential person from within the village or even outside it could himself offer to act as such and he would be acceptable provided that both parties were satisfied that he had the capacity and ability to resolve their dispute. If either party objected to the appointment of a person chosen by the opponant to act as judge, then in this situation there were two options: the party who objected could ask his opponent to suggest another person (in whom he had the confidence that he would act in his favour) or the objectionable person would not be appointed as panch. The ideal number of judges was five: 'The ideal, "panch panch-parmeshwara" ("five panches or council members are like five Gods or where five panches are sitting there is God"), epitomizes the ethos of Jat society' (Pradhan 1966, p.ix).

2. The panchayats and the modern courts

In the 18th century, during British rule, the government established a uniform modern legal system which was based on the English legal system under the necessity of maintaining law and order and for revenue collection purposes (see Singh 1976:18). This was essentially different from the traditional panchayat system. Where customary law was considered sacred and personal, the modern law was secular and universal (impersonal). Therefore customary law can be said to have belonged to the people while this modern law was alien. The attitude of the people towards the two legal systems was different. The modern legal system was formulated, controlled and enforced by those who were unfamiliar with the villages. Consequently people suspected and often avoided going to the modern courts. Where in a panchayat the dispute was settled on the basis of compromise, in a modern court one party had to 'lose' and another had to 'win'. The panchayats reflected the harmony and unity out of the diversity of the society. The modern courts on the other hand, aiming at universality, might ignore some of the local customs and institutions. The machinery to enforce modern law was formal and organised and there was no question of spontaneous mobilisation of public-opinion on the decision and enforcement of it. In the case of the panchayats, public opinion was a basic element in the decision-making process. In the panchayats there was no room for legal practitioners, whereas they were a necessity to the modern legal system. The whole idea of the panchayat was based on the wider concept of dharma (righteousness) which comprises rules of morality, good behaviour

and customary rules, whereas the modern legal system was mainly based on rational, democratic and universal principles.

In this way the two legal systems were based on opposite values. And both systems still exist side by side in India. The government does not usually interfere in the functioning of the panchayats when they deal with petty cases relating to personal law.

3. The nyaaya panchayats: A middle way

After Independence in 1947 the big issue of debate in the Constituent Assembly of the Indian government was what type of legal system would suit Indian society. The legislators had seen the weaknesses (eg, expensive, encouraging corrupt practices, etc) of the British legal system. MK Gandhi, the father of the nation, and some socialist-minded congressmen were in favour of including the panchayat system in the national legal system at the village level. As Galanter (1972:56) writes,

> 'Restoration of panchayats was proposed as one phase of the reconstruction of India's villages, in which faction and conflict, bred by colonial oppression, would be replaced by harmony and conciliation. Critical discussion focussed almost exclusively on adjectival law - on court administration (delay, expense, corruption), complexity of procedure, unsuitability of rules of evidence, the adversarial rather than conciliatory character of the proceedings and (occasionally) the nature of penalties.'

However, the lawyers and judiciary were not in favour of restarting the panchayats. For them, the modern legal system - notwithstanding its foreign roots and origin - was absolutely Indian in outlook and operation (see Galanter 1968-69:215-6). Even the president of the Constituent Assembly, Dr Ambadkar,

was not in favour of introducing the panchayats in a formal way in the villages. He held the opinion that the panchayats would create factional politics at village level. However, Gandhi and his supporters' suggestion was accepted. Basically the British legal system was kept with slight changes and at village level a new form of panchayat system called nyaaya panchayat (nyaaya meaning 'justice') was also included in the national legal system in the hope that the nyaaya panchayats could remove many weaknesses of British legal system. It was thought that since they would be administered by local people, who had knowledge of local customs, habits and attitudes of the disputants, people would not feel that they were alien to them. The idea visualised them as media for the effective delivery of modern justice rather than as a means to revive the traditional panchayats (see Galanter 1978:44-5).

Structural and functional aspects of the nyaaya panchayats

The nyaaya panchayats were introduced under the local self-government scheme of 1947 in all States. In Uttar Pradesh, according to the Panchayat Raj Act 1947, the nyaaya panchayats were established in the villages. According to this Act, each district was divided into electoral gaon-sabhas (village councils). At present a gaon-sabha consists of a minimum of 775 members on the basis of adult franchise. Its executive committee (gaon-panchayat or adalati-panchayat) is formed from ten to twenty-five members according to the population of the gaon-sabhas. The gaon-panchayat is a formal administrative body for development programmes in the gaon-sabha. A nyaaya panchayat consists of the members of surrounding gaon-panchayats (usually seven

villages). At least two members must be selected from each gaon-panchayat in a nyaaya panchayat. The membership of a nyaaya panchayat may vary between fifteen to twenty-five members. The members of a nyaaya panchayat elect two officials, the sarpanch (chief judge) and sahyak-sarpanch (assistant judge) from amongst themselves.

The judicial power of a nyaaya panchayat is very limited. It can settle only very minor disputes and cannot give a sentence of imprisonment. Moreover a nyaaya panchayat may impose only a maximum five or Rs.100 and on the civil side a nyaaya panchayat can only settle disputes in which a maximum of Rs.500 claim lawsuit has been filed. The DM in the whole district and at tehsil level the SDM have the power to withdraw a case from a nyaaya panchayat and dispose of it himself. The decision can be overturned or recommended for retrial or transferred to other courts. A lawsuit is presented before the nyaaya panchayat in writing and for hearing the case the sarpanch nominates a bench of five panches of whom at least one should be from the plaintiff's gaon-panchayat and the defendant may petition the sarpanch for one of the panches on the Bench to be from his gaon-panchayat. The plaintiff presents the case before the nyaaya-panchayat under oath and the proceedings of the case are recorded by the secretary, who is the only government salaried member of the nyaaya panchayat. Both parties may cross-examine (jireh) each other and present witnesses (gavaah) and other evidence to support their claims. The decision is taken on the basis of a majority vote. Legal practitioners are not allowed to plead the case. The procedure of the proceedings is governed by the Indian

Penal Code (IPC) and Civil Penal Code (CPC), but the local customs are also considered (see Robins 1962, Singh 1976, Misra 1961:310, 1983:305).

Studies which have been conducted on the functioning of the nyaaya panchayats reveal that this institution has failed in its aims (Robins 1962:245, Galanter 1972:59, Srinivas 1964, Berreman 1963:271-82, Baxi & Galanter 1979, Merschievitz & Galanter 1982, Derrett 1982:135). The main criticism is that the panches tend to be elected on the bases of caste, religion, kinship and factional politics of the village and therefore favour their own people. Second, as the nyaaya panchayats have very limited judicial power, the people themselves are reluctant to take their disputes before them. I noticed in the Muzaffarnagar district that it was usually those disputes which had already been settled by the traditional panchayats which were brought to the nyaaya panchayats at the request of its officials, just so they could demonstrate to government officials that their nyaaya panchayats were in fact working well - so the result was to give the latter a good image. To become a panch or sarpanch of a nyaaya panchayat was a socio-political status symbol rather than to be a judge for the people. Very few disputes were brought before the nyaaya panchayats. The panches were elected on a factional basis and in most of the cases were members of both the nyaaya and the traditional panchayats since only an influential person could be elected to the nyaaya panchayat.

The failure of the modern legal system: Culture conflict

The disputants preferred either the traditional panchayats or modern courts. But though the nyaaya panchayats are

ineffective in settling disputes in Muzaffarnagar district people still considered them as an alien system since they did not fit in with their socio-cultural system.

It has been pointed out that the ineffectiveness of the modern legal system in India is due to the cultural-conflict between indigenous and British culture (see Cohn 1959, Rowe 1968-69:235, Van Muhren 1964-65:1180, Iswaran 1964, Rudolph & Rudolph 1967:234, Galanter 1966:153-7; Singh 1976, Kidder 1973, Derrett 1984:124). For instance Cohn (1959:90) rightly pointed out that on the basis of his field data,

> 'It is my thesis that the present attitude of the Indian peasants was an inevitable consequence of the British decision to establish courts in India patterned on British procedural law. The way a people settles disputes is part of its social structure and value system.. In attempting to introduce British procedural law into their Indian courts, the British confronted the Indians with a situation in which there was a direct class of the values of the two societies; and the Indians in response thought only of manipulating the new situation and did not use the courts to settle disputes but only to further them.'

However, Mendelsohn (1981:823-63) stressed in a long article that Cohn's argument is not sufficient to explain the 'pathology of the Indian legal system'. He says (ibid:860), 'The relevant clash was not over values to do with status and culture and between native and alien judicial procedures, but an economic clash'. And the basis of this economic clash was the new land policy which was introduced by the British government in India, and which changed land-relations in Indian village society. Therefore the failure of the modern legal system in India must be explained within the sphere of the structure of land relations.

In support of his argument he mentioned a case history of Jagat Singh's lawsuits in connection with land disputes from the Alwar district of Rajasthan state - how one Jagat Singh was forced to get involved in at least ten lawsuits during the years 1965 to 1972 concerning land disputes with his kin and neighbours.

My observations in the Muzaffarnagar district lead me to disagree with Mendelsohn's treatment of the 'pathology of the Indian legal system'. He overemphasised one factor, that is, material values in the context of disputes. I agree with him that the majority of lawsuits are filed in the courts in relation to land disputes, but the number of lawsuits related to other matters is also very significant, as it can be seen from Appendix B. Second, the British government and later the indigenous Indian government interfered more in land related law than in personal law. The law of sastras and the law of the Koran were administered in the courts in matters of marriage, adoption, succession, joint-family, maintenance, religious and caste-related disputes, guardianship and other closely allied matters. The Indian government have also maintained the same system with Hindu law for Hindus and Muslim law for Muslims in relation to socio-religious matters. The new land-related law did not fit in the socio-cultural value system. Land disputes are not a new phenomenon in Indian village society, but in the past the elders of the villages, castes and families were able to resolve the disputes according to their local value-system. Even the British government after realising the difficulties in administering the modern legal system introduced in 1920

statutory panchayats in some provinces to bring back some features of the traditional administration of justice. However, these panchayats were structurally different from the traditional panchayats, because judges were formally elected and selected by the government and the latter could also intervene in them. Third, were Indian peasants as material minded as Mendelssohn's theory suggests, they would not have spent more money in litigation than the actual cost of the land in dispute. I witnessed many such cases in Muzaffarnagar district and I found that several peasants spent more money on court cases than the actual cost of the land, and many more peasants were ready to follow suit rather than give up their land. When I asked some peasants whether they were ready to sell a small piece of their land to start a business or to buy another type of property, they were not ready to do it. For a farmer to sell land is still, nowadays, to court loss of prestige in the eyes of other villagers.

In Indian village agriculture is still a 'way of life' rather than a business. However, profit-oriented values are on the increase due to Westernisation and modernisation processes. If 'Jagat Singh' went to his village with modern values, after having spent many years outside, and challenged the status-quo of his kin and neighbours, then it was naturally a clash between him and his kin and neighbours. But if he was living in the village then there was a greater possibility that he would have been involved in a lesser number of lawsuits. In one place Mendelsohn (ibid:835) himself accepted that 'beyond these material factors there are elements on individual psychology and

culture which have also shaped the conflict'. So here my submission is that the cause of the failure of the modern legal system in Indian village society is because it did not fit in with the indigenous socio-cultural value system.

It was observed in the Muzaffarnagar city kachahri that most of the lawsuits filed in the courts resulted from village factional politics and sprang from the hope of one person to teach a 'costly lesson' to another. In this way courts were being considered more an arena to harass the opponent rather than a place to get justice. In other words, the litigants used the modern courts with both value orientations: to get justice and to harass their enemies. The people had the feeling that lawyers' law was a game for the rich (see Rudolph & Rudolph 1967:262, Kidder 1973, Khare 1972:126, Bailey 1957:254, Sharma 1982:43-6, 1982a). As Kidder put it, 'Without spending money, one is not sure of getting justice' (Kidder 1973:126). This phenomenon is indicated particularly in criminal cases. The party involves not only the accused but also members of his family who had nothing to do with the litigation in an effort to prevent the consolidation of the opponent's case against him and thus force the party by such harassment to come to a compromise. Counter-suits are filed with this aim in mind as well. An instance of this is indicated in the rivalry existing between two peasant families for generations. Both families tried to create situations in which they could teach a costly lesson in the courts to each other. For example, in 1982 the head of one family on catching red-handed a Chamar stealing the wheat crop beat him up. Thereupon the rival family instigated the Chamar

to file a lawsuit against their opponent. The Chamar refused, but two months later, when his wife had a miscarriage, he was again instigated to bring a suit falsely accusing the rival family of beating up him and his wife. Financial and other aid was provided, false medical certification procured and false witnesses also brought in, with the result that the accused was given a sentence of six months by the court. This particular episode typifies the socio-political rivalry rampant in the villages, and I have evidence from many of them of the chain of lawsuits in which rival families were involved.

4. Choosing a particular system

It was observed that the disputants used both legal systems (traditional panchayat and modern legal courts) in accordance with their own calculations of propriety and benefit (see Srinivas 1964, Ishwarn 1964, Berreman 1963:271, Cohn 1965:108-9). I found that a disputant preferred to go to the courts rather than panchayats if he felt that his case was strong from the point of view of lawyer's law, if he had the capacity to afford the court expenses and lawyer's fees, had the moral support and approval of his well-wishers, and had the feeling that the traditional panchayat would not be able to give the decision or penalise his opponent as he desired. Naturally in this situation his opponent favoured the settling of the dispute through the panchayat. A person who had acquired the reputation of being litigious and going to the courts lost his prestige in the village and people called him a mukadmah baaz. Of course the situation was different when a person was forced to involve himself in many court cases by others and when people considered him in the right on the basis of customary law. In cases where both parties were

really desirous of getting justice and they succeeded in finding the right persons as panches and whom both considered impartial, then they preferred to settle the dispute by traditional panchayat. Those people who settled their disputes in the villages through panchayats were appreciated by the people. I quote here one example.

I observed in a village that when a temporary farm labourer lost his right arm in the wheat threshing machine, he did not file a lawsuit against the farmer for compensation as he knew that on legal grounds he was not entitled to it. On the other hand he was entitled to compensation according to customary law, and accordingly he approached the influential persons of the village who decided the amount of compensation through the gao-ki panchayat and both parties were satisfied with the decision. In another case a few years ago, in two villages the farm labourers refused to work during the rice-planting season because they wanted a 25 per cent increase in their wages. But as the farmers were not ready to increase their wages they brought farm labourers in from the other villages to work on the field. Consquently the disputants managed to call a gao-ki panchayat and in the panchayat (in which all castes were included) both the farmers and labourers agreed that they would abide by the panchayat's decision. The panchayat declared in its decision a 15 per cent increase in the wages which both parties accepted. So there are many situations when lawyer's law cannot help but customary law can succeed in providing a solution.

I found that litigants did not like to go to the courts for disputes related to personal law. This was because they thought that to bring such types of dispute to the courts would

be to lose their social prestige. Moreover the lawyers also would usually suggest to their clients that such type of cases should be settled through informal ways, though this was only after two to three hearings, ie, after they had extracted their fees. I would like to quote another example here. A person filed a law-suit in a district court against his son-in-law and his parents on the grounds that they had harassed and caused physical harm to his daughter on several occasions one year after the marriage. Moreover they were now demanding extra dowry which he could not afford. His daughter as a result wanted a divorce from her husband. Both parties engaged lawyers from their common caste and their witnesses were from common kin. A counter lawsuit was filed from the son-in-law's side on the basis that his father-in-law threatened to kill him. After three hearings the lawyers of both parties suggested to the disputants and their witnesses that they settle their dispute through a traditional panchayat. Afterwards both parties and their witnesses sat under a tree in the kachahri premises and discussed the issue. They blamed each other according to their customary law and in the meantime the father of the boy pointed out the folly of the quarrel which would bring their daughter or wife to the kachahri. It would bring shame and indignity not only to both families but to all kin, caste and the village too. As it was a question of prestige he further suggested that if reconciliation between husband and wife would not be possible, he was willing to take back the girl as his daughter to live with him. In the end both parties reached an agreement to withdraw the cases from the courts and they were subsequently decided by a panchayat in which the panches would be from their

kind and the lawyers of both sides would also be asked to become panches (as members of the caste rather than as lawyers). Later, after intensive investigation I found that the real story was a little different. Extra dowry had not been demanded after the marriage and nor had his father-in-law as was also originally alleged threatened to kill him. The fact was that the husband had had doubts about his wife's virginity on marriage and suspected that whenever she visited her parents after the marriage she resumed her sexual relations with the original boyfriend. The husband confirmed his doubt through a female maternal cousin who had married into his wife's native village.

It was observed that in many cases lawsuits were often withdrawn from the courts and settled through the traditional panchayats. In one case, a law suit was pending for eight years in a civil court in connection with a land-boundary dispute between two cousins and it was then withdrawn from court and settled through the traditional panchayat. On the other hand it was also found that whenever a disputant was not satisfied with the decision of a panchayat he brought his case from the panchayat to the court. In this way, the legal systems are not in opposition but are complementary to each other in the context of the dispensing of justice and the satisfaction of the disputants. The number of disputes which are brought to the courts from the traditional panchayats is less than the number of disputes which were withdrawn from the courts to be settled through the traditional panchayats.

I observed that traditional panchayats were less effective in those villages which are situated near the urban centres

because of the impact of the urbanisation, education and communication facilities. On the other hand the traditional panchayats were more effecitve in those villages which had little contact with the outside world. In the east the river Gangaa and in the west the river Yamunaa separates the district from the nearby districts to the city of Muzaffarnagar. Those villages which are situated on both sides of these two rivers have very little influence from urbanisation and most of the people are non-literate. In these villages the majority of disputes, particularly those related to personal law, are settled on the basis of customary law. Cattle-lifting was a common practice in these villages because the thieves could cross the boundaries of this district across the rivers with the cattle. The cattle owners were averse to taking these cases to the courts as they had learnt through experience that whenever they filed a lawsuit against the culprit they never recovered their cattle. Either the thieves were acquited by the courts due to lack of evidence or they were sent to jail if found guilty but the cattle was never recovered from them. So people always tried to negotiate with the cattle-lifters through influential persons of the region and their kin. Another reason for avoiding a court case in this respect was also because it would simply result in making the thief an enemy of the initiating litigant with the threat of harm in the future.

5. Recent trends and conclusion

I would like here to make a few points in regard to the changing nature of the traditional panchayats.

First, the effect of modernisation has been to reduce the

effectiveness of the traditional panchayat. Second, where in the past the binding force to follow the decision of a panchayat was a desire to preserve the 'group sentiment' or 'collective responsibility' nowadays utility and social pressure are the main forces. Third, in the past in some villages there were some permanant panchayats where the panches could be appointed on the basis of heridity, age, and elected by the people (see Pradhan 1966) but, at present, after the settlement of disputes these panchayats are dissolved and there is no permanent traditional panchayat for settling disputes in this district. Fourth, any person can be appointed as a panch in a panchayat when both parties agree to his selection. Fifth, in the past the traditional panchayat had adjudicative authority (ie, the panches possessed a degree of authority to impose their decisions). At present, however, the panch's role is only as negotiator or mediator between the disputants. Sixth, sometimes the lawyer's law is also taken into account in a traditional panchayat, especially if any person in a panchayat has knowledge of lawyer's law. For instance, whenever a lawyer or educated person is selected as a panch he can explain the lawyer's law. The terms used in the latter are often used as well. For example, in one village when three brothers wanted to partion their parental property after the parents' death, their widowed sister also demanded her share as she was told by the people that she had the right of share on modern legal grounds. The brothers refused to give her her share and she then threated to file a lawsuit against them. In this case the brothers agreed to settle the dispute through the kinship-panchayat. The panchayat

decided to her 75 per cent of her share - the lawyer's law here prevailing, if only to 75 per cent of the legally required share.

In sum, while the prestige of the legal profession is on the decrease, the popularity of the modern legal system is, overall, on the increase. We may also conclude that where the panchayats are based on particularistic attributes, it is also clear from the evidence that the workings of the modern legal system and the Bar - as seen in the kachahri of Muzaffarnagar city - are also kin and caste based.

CHAPTER SEVEN

Conclusion

This thesis has largely dealt with a comparison of the ideal of legal professionalism and legal behaviour actively carried out, as exemplified by the lawyers of a north Indian kachahri, that of Muzaffarnagar city, Uttar Pradesh. The lawyers of this kachahri have been shown to be 'profit-oriented' rather than 'service-oriented', the latter a basic element of the ideology of professionalism. They did not hesitate to break the written and unwritten codes and the ethics of their profession. They cheated their clients in many ways. They bargained and over-charged the fees and were ready to offer bribes to the judicial officials in order to get court decisions in their favour. Many of them used the services of touts. They encouraged their clients to take out further litigations and presented false witnesses and facts in the courts. They used many tactics to impress and therefore attract clients by means which were totally against the rules of their Association and the ethics of their profession. In sum, the lawyers behaved more like businessmen than professional men.

There are two main explanations for this 'unprofessionaltiy'. First, since entry into the legal profession is far easier to achieve than for other professions such as medicine and engineering it is as a result very competitive. When lawyers do not have a sufficient number of clients or income they do not therefore hesitate to break the norms and rules of their profession to gain them. This was just one reason why leading lawyers were less

likely to indulge in these activities than the others. The second explanation is that the values of traditional Indian culture conflict with those of the modern legal culture and we can summarise this reason for the existence of 'unprofessionality' as culture conflict. Where the standing of the legal profession has deteriorated in the district of Muzaffarnagar, the popularity of the modern court system has been on the increase due to dissemination of legal literacy. Whereas in the past the litigants tended to take their disputes to the traditional panchayats due to 'moral' values, nowadays 'utilitarian' values predominate in the decision-making process about where to take their disputes. Where the traditional panchayats are based on particularistic attributes the Bar is also based on the same. With regard to dispensing justice, both systems are complementary to each other rather than in opposition. And from the point of view of the litigants modern courts are used with both values, to get justice and to harass their enemies.

The general recruitment pattern into the profession was based mainly on particularistic values rather than universalistic ones. As a whole the peasant castes numerically and politically dominated the district Bar and, among the peasant castes, it was the Jats who dominated; this was in spite of the numerical dominance of the Chamars in the district. Thus no posititive correlation can be said to exist between the numerical dominance of a caste at the Bar and its numerical dominance in the district. In the beginning the district Bar was in fact dominated by the urban trading castes of Bania and Jains, but gradually, due to the modernisation of agriculture and the extension of education

and communication facilities, the sons of the peasants entered the profession. The majority of lawyers in the kachahri (during 1984) were Hindus, young and usually having arts degrees, from joint families and with a rural background. Civil law specialist lawyers were almost all with an urban background and in criminal and revenue law the majority of lawyers were from villages. It was also found that there was a positive correlation between the number of specialists in a particular field of practice and the number of court cases in that particular field of law. There was a positive correlation between the lawyer's field of specialisation and their caste background. The majority of lawyers were semi-specialists. They were generally unwilling to send their children into the profession.

It was found that to become a leading lawyer a combination of four main features was necessary:

i) He should have a ready-made professional 'recruitment-set' to get enough clients when starting the practice.

ii) He should have skill in handling cases in court and possess a sound knowledge of law.

iii) He should be prepared to work hard and have a commitment to his legal practice and his clients.

iv) He should maintain the 'links' with judicial officials and the judiciary should recognise his professional and socio-political status.

All of the leading lawyers in the Muzaffarnagar kachahri achieved their position on the basis of the above-mentioned combination.

To become an office bearer of the DBA enabled a lawyer to get to know the judiciary and create possibilities of obtaining favours from them in court, gain popularity among fellow members,

acquire influence within the Association, and attract more clients.

For the lawyers their munshis played a very important role set - as a manager, clerk, public-relations officer, mediator, business promoter, servant, advisor, information officer, and so on. In this way munshis could be considered 'role-dischargers' for their employers. The brokers, such as expert litigants and witnesses, old clients, village-level leaders and government officials, played a more important role as linkage nodes between the lawyers and their clients than did the touts and chronic litigants because these two types of persons had a bad public image. Despite this, toutism was still active in the kachahri of Muzaffarnagar city.

Three types of informal groups operating among the lawyers in their Bar politics were identified in the thesis - the clique, caste faction, and coalition. A clique is a very small and highly interactive informal group of close lawyers. Caste, age, class and having similar personalities were the main bases of formation of a clique, although a few were multi-caste based. A caste faction was an ego-centred informal group and caste tie was the single criterion of its membership. Both cliques and caste factions were of a permanent nature, without any specific goal. The coalition, on the other hand, was a temporary alliance of different caste factions and multi-caste based cliques with a combined leadership. The coalitions were formed for a specific goal, ie, to win the Bar election. After this they were to all intents and purposes disbanded. In the formation of all of these informal groups, caste was the most important factor.

It was clear after a consideration of the three main approaches used in the study of professional groups - those of the processual, power and structural-functional approaches - that in the Indian context these were inadequate. It was the network approach which proved most useful in studying the legal profession and the links between lawyers and clients. Through this approach I identified a part of the social network of lawyers which I called the 'professional recruitment-set'. It means a set of people whom a lawyer (ego) mobilises on different bases for a specific purpose (practice or business). Those clients, whom he was able to retain for future business, I called his 'clientage-bank'. The main features of a professional recruitment-set which the present study showed were as follows:

In a lawyer's professional recruitment-set both parties (ie, the lawyer and the client) were known to each other directly or they were in contact through intermediaries (eg, touts, brokers, kin, etc). Therefore this professional recruitment-set had a known boundary. There were many bases of linkages between ego (lawyer) and alter (client), for example, caste, kinship, region, religion, and so on. Sometimes the linkages could be based on group membership, for example, lawyer and client could belong to the same village or political party. But the main role was played by primordial ties. The features of professional recruitment-sets were very similar to those of Mayer's (1966) 'action-set', but the main difference was that normally an action-set was deemed to have formed at a specific time, for example, at the time of an election when ego's purpose was met (eg, after winning the election) the relation-

ship was broken. However, in the lawyer's case, the lawyer recruited his clients for a specific purpose - to get business - but not at any specific time, and he continued to recruit his clients and tried to retain them in his clientage-bank throughout his whole professional life. Therefore, whereas an action-set was a temporary phenomenon, the professional recruitment-set was relatively permanent. However, some components of the professional recruitment-set and the clients from the clientage-bank could leave it; but it could not exist without the ego around whom it was formed, as with an action-set. The people who remained for a long period in the lawyer's professional recruitment-set and the clients in the clientage-bank depended on to what extent ego was able to satisfy their needs.

In general, this study reveals that to understand the functioning of a formal organisation in a complex society, it is necessary to study the role of informal groups. These informal groups play both a functional and dysfunctional role but their effect is mainly dysfunctional to the workings of a formal organisation. The recognition of such groups as the lawyer's professional recruitment-sets and their clientage-banks not only adds to our knowledge of the Indian legal system as it actually operates, but can also give us the basis for further comparative work. Just one example would be the use of these concepts in an analysis of how the businessman operates, for example, with the business recruitment-set and the customer-bank, or, even for doctors, with the doctor's professional recruitment-set and his patient-bank. All could be usefully compared to enlarge in a more specific manner our knowledge of the social networks of one society.

APPENDIX A

Questionnaire for lawyers

Dear Sir,
The number of lawyers is rapidly growing in India. But there is a scarcity of studies on the legal profession. So I have undertaken a research project on the legal profession as a part of my research degree in Social Anthropology. In this connection, you are requested to go through this questionnaire and give your most genuine response for each question. If you find any ambiguity, please let me know before giving your response. I assure you that the information given by you will be kept confidential and it is to be used for research purposes only. You may answer questions in Hindi or English.

Thanking you.

1. Name: 2. Age: 3. Caste:

4. Religion: 5. Education: (pre-legal) (legal):

6. Where did you receive your primary education?
Village/Town/City:

7. Where did you pass your law degree ? (University):

Year:

8. Who decided you should become a lawyer?

9. What is/was your father's occupation?

10. Are/were there other lawyers in your family?

11. Are you a member of a joint family?

12. Are you a member of any political party? If 'Yes', which one?

13. Why did you start practice here?

14. Where do you get most of your clients? rural/urban:

15. How did you get your first client?

16. Do you have an income from other sources also?

17. What is the nature of cases that you get?

18. Please write your Munshi's name & address:

19. Do you think some lawyers use touts or brokers?

20. Are you happy being a lawyer? Please mention reasons:

21. Do you think the prestige of the legal profession is decreasing? If 'Yes' then what do you think are the reasons:

22. Would you like your son to become a lawyer? If 'No' then what would you like him to be:

23. Please list five leading lawyers in this court compound:

24. How have they become leading lawyers?

25. How would you define a leading lawyer?

26. Please list your four colleagues' names:

27. Which caste do the majority of your clients come from?

28. Do you think there is any difference between 'occupation' and 'profession'? If 'Yes' what is it:

29. Do you think some lawyers manage to give bribes to judges to win cases?

30. Do you think that the rise and fall of sugar-cane prices control a number of court cases in this district?

31. Please give a list of any five of your clients? Names, castes & addresses.

32. Do you think a lawyer's services are meant for society? If 'Yes', in what ways:

33. Please give Numbers 1 to 9 to the following professions in order of priority basis?
Lawyer/Police Inspector/Bank Manager/Degree College Lecturer/ Bank Clerk/Income Tax Inspector/PCS Officer/Sales Tax Officer/Defence Service Commissioned Officer.

34. On which grounds do clients come to you ?

35. Have you tried any other profession or occupation? If 'Yes', what type of job? If 'No', why do you like this job?

THANKING YOU FOR YOUR CO-OPERATION

APPENDIX B

Biographies of eight lawyers

This sample was selected on the basis of caste, religion, nature of practice, age, rural or urban origin, and position as leading or beginner lawyer. Those who volunteered the most reliable information about their professional life were chosen. The information of those new and pending cases that they had attended in different courts in the kachahri during January 1984 were collected from their daily-case diaries for the same month.

This sample revealed that political membership and social background were very important factors in the recruiting process of clients and for the lawyers' field of specialisation. The majority of their clients were obtained through primordial ties.

Although I have detailed data about these lawyers' cases for January, due to lack of spcae I will mention them only in brief. Most clients were obtained in different ways, but I was able to identify the premier link governing the client's engagement of a lawyer through interviews with munshis, lawyers and clients.

Case no. 1. Mr 'A'.

Mr A was a 38 year old Jat lawyer who held BA and LL.B degrees. He was a resident of a village in the Muzaffarnagar district and belonged to a rich farming family. He started his practice in 1969. He had been active in student politics and during my fieldwork he was also active in district and Bar politics.

He had originally wanted to become an army lieutenant, and although the chance to do this was open to him his father had directed him to become a lawyer, which he did. He served his apprenticeship under a successful lawyer from his own caste and his munshi was also from his community and performed his domestic duties. Previously his munshi had worked with his [Mr A's] senior, but after the senior's death the munshi continued to work with him and therefore shifted some of the clients of Mr A's senior with him to Mr A's clientage-bank. Most of his clients were obtained from his own caste, kindred, and from his ganwaand. He had a wide family network in his community and the ganwaand and at weekends he often visited his home village to see his (extended) family and farm and then had the chance to meet other villagers.

In 1975, a Jat deputy superintendent of police (DSP) was appointed in the district who had become a friend of Mr A on the basis of class within the caste boundary. He helped in many ways to extend the size of Mr A's professional recruitment-set and clientage-bank. At the same time Mr A did not hesitate to use the services of touts. His preference overall, he said, being for poor clients, because they did not bargain over fees and they paid respect to lawyers. His practice was mainly in criminal law, but if he got petty civil and revenue cases he was prepared to take them. His performance in court, however, was very poor. Indeed, on one occasion I was able to witness him losing his client's case through poor representation.

During the last eight years he had been an active member of the Lokdal Party, but had recently left and joined the Congress Party in the hope of getting an MLA ticket in the forthcoming assembly election. All his friends who were lawyers were also from

his own community and from the same class background. After courtwork he would spend his free time in district politics.

During January 1984 he attended the courts in 24 criminal, two revenue and two civil old and new lawsuits. He obtained 20 clients on the basis of primordial ties, four via touts, three through his political ties, and one by his munshi.

Case no. 2. Mr 'B'.

A 36 year old Gujar from a very rich farming family and a native resident of a village from the neighbouring district, Mr B had joined the district Bar in 1973 after completing his B.Sc and LL.B degrees. He had wanted to become a medical doctor, not a lawyer, but did not pass his entrance examination for the medical course. During his student days in Muzaffarnagar City he had been active in student politics and sports and after joining the legal profession became involved in the district, Bar and caste politics. He was joint-secretary in 1978 and secretary in 1979 and in 1980 of the DBA. During my field research he was secretary of the Motor Operator's Union, president of the district gymnasium club, and a district panel lawyer of criminal law, apparently obtaining this post through his high level links (see below). He owned a transport business, a life-insurance company and a share in a rice factory.

Mr B had a partner from the same community and in the same age-group. He was in fact a former classmate from his LL.B course, but was from a poor family of a status lower than that of Mr B's family within their own community. The relationship between them was, therefore, assymetrical; Mr B's partner could not even smoke in his presence. In this way their social relationship outside

the kachahri affected their professional relationship. Mr B gave 30 per cent commission to the partner and 20 per cent to his munshi for each case. His munshi was from a lower caste, that of the Nai (barbers). Both Mr B and his partner had got their training under the same successful lawyer of criminal law who was also from the same community. Mr B mainly handled the criminal cases but he had started to take civil cases also as he had a relative who was also the district civil judge.

It is clear that most of Mr B's dealings were done on the bases of primordial ties. When I asked him why he had started his practice in this district as opposed to his own, he replied that,

> 'One of my cousins and I passed the LL.B in the same year and I wanted to join the district Bar in my home district. My cousin, however, suggested to me that it would be better for both of us if we started in different districts since we would be getting our clients from the same sources. Thus if we had started practising at the same Bar there would have been competition between us. I followed his advice, and because I had had all my education in this city I therefore knew many people in this district, particularly from my own caste, and I have many relations here as well. So I started my practice here, and my cousin started his practice in our native district Bar.'

The main bases upon which he got clients were caste, kinship, family-network, and socio-political. He also usually insisted that clients of his life-insurance company bought an insurance policy through him, even though lawyers were prohibited by the rules of the District and State Bar Associations from carrying out any other business. During fieldwork the district civil judge, the relation of his rishtedaar, apparently favoured him in court,

according to the complaints of other lawyers. For this reason he had acquired many clients from other castes and ganwaands. This tie (according to the same sources) had also enabled him to increase the size of his clientage-bank over the last two to three years, despite his poor court performance. In spite of these feelings about him, however, Mr B was a very popular and influential lawyer amongst the younger lawyers; out of a total of 20 lawyers from his community in the kachahri I estimated that some 18 of them were related to him.

During January 1984 he attended the courts in respect of a total of 34 pending and new cases (30 of them concerned with criminal law, three with civil and one with revenue). Out of the total of 34 cases, he got 26 litigants on a primordial basis, four by his munshi, two by touts and two on the basis of political links.

Case no. 3. Mr 'C'.

A specialist lawyer in civil law, Mr C was by caste a Bania, nearly 55 years old, and came from a rich old zamindaar family of Muzaffarnagar city. The son of an ex-leading lawyer himself, he had his own son doing his apprenticeship under him, one of his brothers was a notary lawyer, and his father- and a brother-in-law were also practising in criminal and revenue law. All these kin helped each other in the recruiting of clients for their clientage-banks. His graduate degree, however, had been in chemical engineering (the only lawyer in the kachahri to have such a one) and he had not originally been interested in becoming a lawyer. Health reasons though had encouraged his decision to join the legal profession, in addition to which he now had a money-

lending business, a share in a factory and was a landlord over several buildings.

His clients were acquired mainly on the bases of his reputation as a leading lawyer in civil law, his father's old clientage his family network, kinship and urban background. This last was due to most of the civil law cases he had (and their connection with the urban sector). Mr C had four munshis due to his workload, two of them having worked previously with his father and were helpful in retaining his father's old clients for Mr C's clientage-bank. He had been a part-time lecturer in the law department of a local college for the past 15 years. Most of the younger lawyers were his ex-students and they paid respect to him in the kachahri as well as outside it as an ex-teacher (the traditional teacher-student bond is considered to be akin to the father-son relationship). Sometimes they referred clients outside their field of specialisation to him and those complex cases which they could not themselves handle.

Mr C was a non-active member of the Janata Party and had membership of some reputable social clubs, where he got the opportunity to befriend judges and other administrative officers from the district administration. His contacts with judges were good, particularly with those from his own community.

During January 1984 he attended the civil courts in 15 pending and new cases. Among this he obtained 10 on the basis of the popularity he had as a leading lawyer and five were concerned with ex-clients. Except for two of the clients, all were from the city. He had been elected president of the District Civil Bar Association many times and without opposition.

Case no. 4. Mr 'D'.

By caste Mr D was a Chamar (a scheduled caste), 58 years old, and a native resident of a village of the district. While his father was a farm labourer, he himself now owned a farm.

He had started his practice in 1973 after serving in various jobs in government offices. Now he was classed a successful lawyer and a popular political leader of the Chamars in district politics. He had stood on three occasions for the State Legislative Assembly (MLA) on different party tickets. During fieldwork he was in the Lokdal Party in the hope of getting a ticket for the MLA seat. He was also president of the district Harijan Association and the chairman of the district Harijan hostel. Most of his time, it appeared to me, was spent with people from his own community at his home-office and court-office, and was concerned with non-legal work.

He practised criminal law and had two young beginner lawyers as partners, one from the Bania and the other from a low Muslim caste. They dealt with civil cases and miscellaneous legal work. His munshi was only a boy of eighteen years old, from the Nai caste, and was very skilful in court proceedings and in bargaining with clients about fees. He coached them and their witnesses on behalf of Mr D before they appeared in court. He also maintained the lawyer's daily case diary.

His clients came from all parts of the district, from his community due to his popularity as a political leader and as a successful lawyer. The general bases of recruiting clients for him were caste, kinship, chronic litigants, political links, touts, and so on. Having partners from other communities had enabled him to get clients from these places. Should his client

lose in court he would encourage the latter to file other cases against their opponent, thus assuring himself a more prosperous business. He also got the benefit of his professional recruitment-set and clientage-bank in the political elections. He helped his clients in various ways, for example, by going to the government office or police stations with them. However, few of his clients were from the upper castes.

During January 1984 he attended the courts for a total of 73 pending and new cases (68 were concerned with criminal law, one with revenue, and four civil cases) and of these he got 14 clients due to his political ties, 10 on the basis of caste and kinship ties, four by touts, three by his partners and two by his munshi.

Case no. 5. Mr 'E'.

Mr B was a Brahman, 58 years old, with an urban background. His father had been a schoolteacher. He had graduated in biology subjects and had wanted to become a medical doctor, but was not able to. Then he did an MA in Political Science and an LL.B and so joined the legal profession.

Mr B was active in district politics and spent more time in this, in fact, than practising at the Bar as a semi-specialist lawyer. During fieldwork, he was general secretary of the Congress Party at district level and administrator of the District Co-operative Bank for a couple of months, these position held by favour of a local State Cabinet Minister. During the past fifteen years he had worked as the chief election agent of the Congress Party. So even without a rural background he had enough contacts with leaders at village level to get most of his clients, mainly

for cases concerning election petition disputes. Many people, such as government officials and police officials who owed him a favour through patronage, would refer clients to him and thus act as brokers. It is important to mention that the political leaders who referred clients to him were only from the Congress Party. He was the personal legal advisor to the local State Minister and therefore had a further link to acquire village clients on the Minister's residence.

Most of the clients engaged him because of his political position and they hoped that he would be able to influence the judges and especially the magistrates. However, he denied that he got most of his clients on this basis, telling me that due to his involvement in politics he was not able to get sufficient clients. His munshi, who had been working with him for the last thirteen years, was also from his community.

During January 1984 he appeared in the courts in connection with a total of 29 pending and new cases (23 concerned with criminal proceedings, six with civil) and of these cases he acquired 19 clients on the basis of political ties, three through primordial ties, four from ex-clients, and three from government officials.

Case no. 6. Mrs 'F'.

Mrs F was 35 years old and a Jat. She had MA, LL.B., LL.M (PG degree in law) degrees. Apart from her, only two other younger lawyers possessed the LL.M degree. Born into a business family in Muzaffarnagar city, she married a medical doctor from the nearby Meerut district when she was 15 years old. During my field research her husband had a post in a local government hospital,

where he had been for the past four years. At that time she was therefore living in the city.

Mrs F had joined the profession in 1981. At the beginning she started her apprenticeship in criminal law under a successful Jat lawyer, but after a few months she left criminal law because she found that the conversations between the lawyer and his clients were conducted in very abusive language and she did not like to talk to clients who were involved in crimes. So she decided to take up the practice of civil law under another Jat lawyer. During my fieldwork she was still doing her apprenticeship in civil law. She had only five clients, who contacted her through her husband and a tenant, and she offered them to her senior.

When I interviewed her she emphasised the issue of the status of women in the professions more than other issues. She told me that she was involved in legal practice because her husband had a 'modern outlook'. If this had not been the case there would have been a great deal of opposition to her entering such a profession. She took care over her meetings with colleagues, she said, so that people could not make the wrong assumptions which could have harmed her family life and her prestige.

> 'My husband has the final say in whether I go to practise from one day to another. If he ever gets a transfer from this district, I shall give up my job. In fact I came here just to pass my time. I never attend any Bar meetings although I am a member of the DBA.'

She told me that whenever a female client came to her senior's office with her guardians (local custom dictated that a woman should not go into public places alone) then she felt very comfortable about talking to her. She got 50 per cent commission

on the cases she brought to her senior.

Case no. 7. Mr 'G'.

Mr G was 32 years old and a Jat-Sikh lawyer from a farming family of a village in the district. His family had migrated from Pakistan to where they now were in 1946. He had originally wanted to join the army after his graduation in Arts, but one of his father's friends, who was in the police, suggested that he join the legal profession. This he did in 1977 and was now a member of the executive committee of the DBA.

The main bases on which his clients were engaged were caste, religion, kinship, ganwaand, and through ex-clients. Most of them were, in fact, from his own community and from different ganwaands of the district. He was the only lawyer who represented the Jat-Sikh community in the kachahri. The Jat-Sikh people who were living in the border villages of the district had a reputation for being drinkers of alchohol and illigal distillors. As a result most of his clients were concerned with Section (60-63), Making Illegal Liquor, for which he used sub-specialist lawyers since he himself was a semi-specialist, and Section (25), Arms Act and the illegal possession of arms or ammunition. Some of his regular clients contacted him to seek advice on matters concerning visas, passports and arms licences. He charged fees indirectly for this service.

During January 1984 he attended the courts in connection with 35 pending and new cases (20 concerned with criminal law, three with civil, and two with revenue). All these cases came to him through primordial ties such as caste, religion, region, and so on.

Case no. 8. Mr 'H'.

Mr H was a successful lawyer and one of the leading Muslim lawyers. He joined the profession in 1949 and belonged to a rich Muslim Saiyid farming family of the district. He had been active in student politics in his university life and after joining the legal profession became active politically in the district and Bar politics. In 1981 he contested a parliamentary election but was unsuccessful. His loyalty lay not towards any particular political party, but to a Jat friend who was a well-known political leader at State level politics in the district and who had in fact been a lawyer in the kachahri before going into politics. In 1983 both friends were in the Congress Party and in 1984 they both joined the Lokdal Party. Mr H was hoping to get a ticket for the State Assembly from the Lokdal Party and was the party's district president. He had been secretary of the DBA in 1965, its vice-president in 1967 and its president in 1973. He was the leader of the Muslim faction in Bar politics and he was associated with some Muslim welfare institutions.

Mr H had a good reputation amongst his colleagues and clients due to his honesty in dealing with the latter as well as due to his successful practice, which dealt mainly with revenue and civil cases but with a few criminal cases also. He was well-known amongst the Muslims from all parts of the district and more than 95 per cent of his clients were from his Muslim community.

Three juniors trained under Mr H and received a monthly salary. Of these two were Muslims and one was from the Kayasth caste. His munshi, who only spoke Urdu, was from his own

village and community and lived at his residence like a family member. both were the same age and held a great respect for each other.

During January 1984 Mr H attended different courts in connection with 36 pending and new cases (23 concerned with revenue law, ten with civil and three with criminal). His clients mainly engaged him on the basis of caste, religion, political and ganwaand links, as well as on the basis of his reputation as an honest and competent lawyer.

Conclusion

It is to be hoped that this description of a small representative sample of eight lawyers present a clear picture of the lawyers of the Muzaffarnagar kachahri, particularly with respect to the correlation between a lawyer's social background, the nature of his practice, and the bases for recruiting his clients.

The above studies revealed that primordial ties had a very significant role in linking lawyers with clients.

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GLOSSARY

Achhaa-vakil (beech-kaa-vakil)	successful lawyer; middle-ranked lawyer
Adaalat	court of justice
Bhrastaachar	corruption
Bichaulia	mediator
Bistra	bedding; lawyer's office
Chakari	lower-ranked job
Chauki	low square or rectangular seat; a post; check-post
Chhotaa-vakil	lowest-ranked lawyer
Dalaal	tout; broker; commission agent
Diwaani-adaalat	court of civil and revenue jurisdiction
Duaab	basin formed by the Gangaa and Yamunaa rivers
Faislaa	decision; judgement; settlement; resolution
Faujdaari-adaalat	criminal court
Ganvaar	an uncivilised person (applied to a villager
Ganwaand (goawand)	a group of neighbouring villages
Gavaah	witness
Gut	clique; faction
Gatbandhan	alliance, a coalition of factions
Gutbandi	factionalism
Hukkaa (hookah)	'hubble-bubble' pipe
Ilaaka	area
Inaam	gift
Jativaad	castism
Jireh	cross-examining; cross-questioning
Kaam	work; job; occupation; function; performance
Khaandaan	minimal lineage; clan; genealogy
Kaanun (quanun)	law
Kanungo (qanungo)	official in charge of a group of patwaaris
Kachahri (katchehri)	court compound; "a court of justice; tribunal; a public-office; a town house - the people assembled; the business proceedings in a court or in an office" (A dictionary of Urdu, Hindi and English by JT Platts, London: Crosby Lockwood & Son, 1911.)
Kasbaa	a small district town
Maal	revenue, goods, commodity; cargo; wealth; property; produce
Mamaa	maternal uncle; mother's brother
Mehantaanaa	remuneration of a lawyer; wages
Mowaakkil (muakkil)	client
Muaddi (vaadi)	plaintiff
Mudaaleh (pretivaadi)	defendent; respondent
Mukadmah	litigation; law-suit
Mukadmah-baaz	chronic litigant

Mukhaalif	opponent
Munshi	lawyer's clerk; teacher
Munshiyanaa	remuneration of a munshi
Naukari	official or non-official service; job
Netaa	leader
Nyaaya	justice
Nyaaya-panchayat	judicial-council in the local self-government system
Panch	five; member of a judicial council
Panchayat	Skt. "Coming together of five persons", hence council meeting; court consisting of five or more members of a village, caste, clan, etc., assembled to judge disputes or determine group policy. Each member is a panch.
Pardaah	seclusion of women
Pargana	administrative and revenue sub-division of a tehsil
Pesaa (dhandaa)	a profession; vocation; an occupation;
-karnaa	(said of a woman) to take up prostitution
Peshi	hearing of a law-suit; presentation
Peshkaar	a court-official; head clerk of a judge or magistrate
Patwaari (lakhpal)	'village-accountant' who collects land revenue and is in charge of land records
Pradhaan	elected head of a village; chief
Rishtedaar	kin
Rishtedaari	kinship
Riswat	bribe
Sarpanch	president or chief judge of a nyaaya-panchayat
Sukrianaa	tip from sukria, ie, thanks
Tehsil (teshil)	administrative and revenue sub-division of a district
Top-kaa-vakil (badaa-vakil)	leading lawyer
Vakaalatnamah	credentials; a letter of authority from client to lawyer
Yayasay	occupation, profession, work; job
Zamanat	surety, bail, security; guarantee
Zamindaar	landlord
Zila (zilla)	district