

UNDERSTANDING THE POWERS OF THE BAR COUNCILS AND THE UNIVERSITY GRANTS COMMISSION VIS-À-VIS LEGAL EDUCATION IN INDIA

The Bar Council of India (BCI) is a statutory body created to regulate and represent the Indian legal fraternity. It acts as a regulatory body by prescribing standards of professional conduct and etiquette and exercises disciplinary jurisdiction over the Bar. It also sets standards for legal education and grants recognition to universities and institutions, whose degree in law will serve as the qualification for enrolment as an advocate. Also, the Bar Council of India performs certain representative functions by protecting the rights, privileges, and interests of advocates and through the creation of funds for providing financial assistance to organize welfare schemes for them.

The BCI derives its power to set standards for legal education from **section 7(1)(h) of the Advocates Act 1961**. It also regulates legal education and professional standards in India by managing the State Bar Councils, standardizing law education and course framework at the universities and law colleges in India as well as conducting the All India Bar Examination (AIBE). The section entrusts the BCI with a duty to promote legal education and to lay down standards of such education *in consultation with the Universities in India ('The UGC') imparting such education and the State Bar Councils*. Section 7(1)(h) cannot be treated as in conflict with the UGC Act, 1956. The major reason for the same is that under section 7(1)(h) the law mandates that a consultation has to be done with the universities before making any changes in the legal education system. This 'consultative' process is an essential part of the section, clearly underlying the intent of the legislature to make sure that all the stake-holders are on-board. It is amply clear that no unilateral 'instructions' can be issued by anyone of the three mentioned in the section, i.e: The Bar Council of India, the Universities or any of the State Bar Councils.

Very recently, the BCI passed an order and directed the universities to promote all law students based on the previous year's marks and/or internal examinations, except for the students who are currently in the final year of their law school. The circular was sent to all the universities of the country. Within a time frame of a few days, the BCI Secretary Mr. Srimanto Sen sent fresh guidelines that the final year law students of 3 years and 5 years curriculum may be allowed to participate in online examinations. An option was given to the universities to adopt any other

appropriate method which they feel adequate to satisfy the requirements of regular examination. The universities were given the option to even allow students to write a project report/research paper for each final year paper or to adopt a uniform method to double the internal marks of the mid-semester examinations, which have already taken place for that year. In the case of students from final year LL.B who have not cleared all papers from previous years and are required to sit in the supplementary examination but have been promoted to final year, such students from final year LL.B may be allowed to write a project report or appear in the online examination regarding the pending/supplementary papers, so that they shall have to clear the same before they are granted the degree. In the case of students who have been promoted to the final year, they shall have to pass all papers to obtain their degree. However, the universities were also cautioned that they must adopt an alternative strategy for conducting examinations for those students who are unable to take advantage of the online examinations for any reason whatsoever. For intermediate semester students, the BCI asked institutions to promote them on the basis of previous years' performance and marks obtained during the current year's internal examinations. The universities have been directed to conduct the examination at the end of the semester within one month of the college reopening. The 'instructions' so issued did not mention any provision of law under which such sweeping instructions were given to Universities all over the Country. Moreover, the State Bar Councils were not even marked on this communication, consulting them was a far cry. It seems that the BCI has formed a habit of issuing such diktats, but what provision of law gives them such powers is unknown and nobody seems to have dared ask that question. The BCI members are elected through an electoral process and may or may not be the best persons to dictate terms in matters like these. While they are well within their rights to initiate discussions with regard to such matters, whether they have the exclusive rights to take such decisions remains unanswered. A bare perusal of S.7(1)(h) seems to suggest otherwise.

Thus, the instructions issued by the BCI in the above-mentioned situation do not seem legally valid because there was no prior consultation with the UGC and the State Bar Councils. Also, the circular does not seem in sync with the UGC's latest circular which was released on 6 July 2020 wherein it is mention in the Standard Operating Procedure (SOP) that the end semester examination would be conducted by September 30, 2020 in pen and paper mode (offline), online mode, or blended mode. The preamble of the UGC specifies the mandate of the body, which is "to make provision

for the coordination and determination of standards for universities”. According to section 2(f) of the UGC Act, UGC can control both all the universities and law colleges, in the matter of maintaining legal education. The Advocates Act 1961, does not expressly refer to the ‘standards of legal education’ as do the preamble and statement of Objects and Reasons of the UGC Act 1956. In the view of the UGC, so far as law courses in the universities which offer certain law degrees or diplomas (and where such students are notified that those degrees or diplomas will not entitle them to practice are concerned) which do not enable a person to practice, the Bar Council of India cannot impose mandatory conditions. The UGC has the prerogative in such cases.

The direct issue of non-consultation with the universities and the State Bar Councils arose in *Gopal Krishnachitrath Vs. BCI*¹ The court held that the perusal of section 7(1) (h) and section 49 (1) 9(d) definitely leads to the conclusion that for promoting legal education and for laying down the standards of legal education, the universities in India and the State Bar Councils were required to be consulted and that the said consultation had to be effective consultation because the universities are engaged in imparting legal education. There was no consultation with the universities in India for the promulgation of the amendment carried out under rule 2(1) of the challenged Rules. Thus, the Court held that the amendment promulgated under rule 2(1) of the Rules was not sustainable and stood in violation of section 7(1) (h) being not promulgated with the consultation of universities in India and State Bar Councils.

It is amply clear that the BCI did not hold any prior consultation with the UGC or the State Bar Councils before releasing the circular, which is an ‘instruction’ that leaves no scope for any views to be accommodated. Section 7(1) (h) expressly states that there has to be consultation with the UGC and State Bar Councils before taking any decision relating to issues such as the one at hand. This circular therefore, does not seem to have the backing of the law and appears to have been issued without following the proper procedure. It seems loud and clear that the BCI has no exclusive authority to direct the legal education institutions on policies regarding examinations alone.

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