



REGULATION OF LEGAL EDUCATION IN INDIA: CONJOINT ROLE OF THE BAR COUNCIL OF INDIA AND THE UNIVERSITY GRANTS COMMISSION

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ABSTRACT

This article makes an attempt to analyse the conjoint responsibility of the Bar Council of India and the University Grants Commission towards the regulation and promotion of professional legal education in India, through a consultative process. The article makes out a case for a harmonious construction of the responsibility of the Bar Council of India in ensuring 'standards of legal education' and that of the University Grants Commission in ensuring 'standards of education', towards achieving the common goals with regard to regulation and promotion of professional legal education.



Keywords : *consultative process, professional legal education, 'standards of education'.*

INTRODUCTION

Traditionally, legal education in India was being imparted by universities which accorded law degrees like any other graduate degree.

Law departments and affiliate institutions of these universities referred to and taught the curriculum prescribed by the Bar Council of India, however, they functioned under the overall control and supervision of the University Grants Commission, which was established under Section 4 of the University Grants Commission Act, 1956, and has the power to recommend to any university¹ the measures necessary for the reform and improvement of university education and to advise the university concerned upon the action to be taken for the purpose of implementing such recommendations.

¹ Section 2(f) of the University Grants Commission Act, 1956 defines "university" to mean a university established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the university concerned, be recognised by the Commission in accordance with the regulations made in this behalf. Consequently, as a necessary implication, university would also include any such institution as may, in consultation with the University concerned, be recognised by the University Grants Commission in accordance with the regulations made under the University Grants Commission Act, 1956. It is by virtue of this provision that even affiliated colleges are included within the domain of regulatory powers of the University Grants Commission.

Role of the University Grants Commission in regulation of “education” in India

The University Grants Commission has to act as an expert body to advise the Government of India on problems connected with the coordination of facilities and maintenance of standards in the universities². The University Grants Commission, in consultation with the concerned university, has the power to cause an inspection or inquiry to be made of any university, and to advise on any matter which has been the subject of an inquiry or inspection.

While re-affirming the regulatory character of the University Grants Commission, the Supreme Court in **Prof. Yashpal v. State of Chattisgarh**³, has held thus:

“46. Entry 66 which deals with coordination and determination of standard in institutions for higher education or research and scientific and technical institutions is in the Union List and Parliament alone has the legislative competence to legislate on the said topic. The University Grants Commission Act has been made with reference to Entry 66 (see Prem Chand Jain v. R.K. Chhabra and Osmania University Teachers’ Assn. v. State of A.P.). The Act has been enacted to ensure that there is coordination and determination of standards in universities, which are institutions of higher learning, by a body created by the Central Government. **It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and coordinate the standard of teaching curriculum and also level of examination in various universities in the country.** In order to achieve the aforesaid objectives, the role of UGC comes at the threshold. **The course of study, its nature and volume, has to be ascertained and determined before the commencement of academic session. Proper standard of teaching cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well- equipped teaching staff of requisite calibre and a proper student-teacher ratio”** [Emphasis added]

In view of the above-detailed position, the Bar Council of India and the University Grants Commission are required to conjointly work towards the regulation of the standards of legal education in India, through consultative relationship.

Law Commission of India’s Report on Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956

In the year 2002, the Law Commission of India undertook a comprehensive study and review of the structure and regulation of the professional legal education system in India, which culminated in the 184th Report of the Law Commission of India on the ‘Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956’⁴.

² The Supreme Court of India, in **University of Delhi v. Raj Singh** reported in **1994 Supp. (3) SCC 516**, while dealing with the issue of the role and responsibility of the University Grants Commission with regard to the regulation of standards of higher education in India in an extensive manner, has held that the regulations framed by the University Grants Commission, prescribing qualifications for teaching staff would override and prevail over all other legislations in this regard, even parliamentary enactments.

³ **Prof. Yashpal v. State of Chattisgarh** reported in **(2005) 5 SCC 420**.

⁴ **184th Report of the Law Commission of India on the ‘Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956’** can be accessed at:

The Report, in Chapter II, comprehensively analyses the conjoint responsibility of the Bar Council of India and the University Grants Commission towards the regulation of professional legal education in India. The Report analyses, in detail, the process of consultation between the Bar Council of India and the University Grants Commission for regulation and promotion of legal education in India and notes that the responsibility of the Bar Council of India in ensuring 'standards of legal education' and that of the University Grants Commission in ensuring 'standards of education' are, in fact, not in conflict with each other, but have to be harmoniously construed.

The Report, while noting that, the process of consultation between the Bar Council of India and the University Grants Commission further the position that both the statutory bodies share common goals with regard to regulation and promotion of professional legal education, records thus⁵:

"Harmonisation between powers of BCI and UGC:

2.14 It must be noted that the Bar Council of India depends on the Universities for imparting legal education which is necessary for the profession. The Universities prepare students for professional practice except where the law course is one for those who cannot practice. This raises a question for application of the principle of harmonious construction. Section 7(1)(h) of the Advocates Act, 1961 does enable the Bar Council of India to lay down 'standards of legal education'. Section 7(1)(h) cannot be treated as in conflict with the UGC Act, 1956. The reason is that under section 7(1)(h) the BCI has to consult the Universities. The UGC can lay down 'standards of education' and the Bar Council of India can lay down the conditions for eligibility of a law graduate to enter the legal profession. If a student who joins a law university desires to enter the legal profession but is taught law in a manner not acceptable to the Bar Council of India, the law schools will not be serving the career class of students and, in fact, will find few takers. Therefore, as a practical proposition, the law schools will have to conform to the conditions set by the Bar Council of India, if they have to supply prospective lawyers to the Bar. At the same time, the Universities and UGC are concerned equally with standards of legal education, whether for practitioners or otherwise. The Universities are answerable to the UGC in the matter of standards of legal education and so are the affiliated colleges. **In other words, the subject of legal education comes within the purview of two entities, the UGC and the Bar Council of India. Precisely to ensure harmony, the Advocates Act in sec. 7(1)(h) has required consultation by the Bar Council of India with the Universities. The two are partners with a common goal.**

2.15 Yet another aspect is that the Universities and affiliated colleges employ thousands of law teachers at various levels. A large number of these teachers are highly qualified. A good number among them have Doctorates or Masters degrees from India and several of them have Doctorates or degrees from reputed universities in the world like, Cambridge, Oxford, Yale, Harvard and Stanford and so on. Several of these teachers have been teaching law for ten to twenty years or even more. It is incumbent, therefore, that these law teachers, who have ultimately to perform the function of teaching are consulted or allowed to express their difficulties or problems particularly when a new curriculum is introduced. The obligations of consultation are reciprocal and not one way. There is ample need for the Universities to consult the Bar Council of India and likewise for the Bar Council of India to consult the Universities. **A fine balance has to be established with the mechanism of**

<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081076.pdf> and

<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081032.pdf>.

⁵ **Ibid**, pp. 22-23.

sec. 7(1)(h) of the Advocates Act which requires consultation with the Universities. Consultation means 'effective' consultation." [Emphasis added]

The Report notes that there are practical and logistical difficulties in the Bar Council of India consulting the large number of Universities and other institutions imparting legal education. Consequently, the Report recommends that instead of requiring 'effective consultation' with each University, the Advocates Act, 1961 shall instead be suitably amended to enable the Bar Council of India to consult a representative body constituted by the University Grants Commission, thereby ensuring that both the entities remain equal partners in regulating and promoting legal education in India. In light of the above, the Law Commission of India proposed "a procedure which will ensure "closer interaction' between" the Bar Council of India and the University Grants Commission thus⁶:

"2.19 While the obligations on both bodies are reciprocal in nature, however, one cannot ignore practical difficulties in the present form of sec. 7(1)(h) which requires the Bar Council of India to consult all the Universities. The Universities in which law is taught either directly or through affiliated colleges are large in number and make it practically impossible for the Bar Council of India to consult every one of the Universities whenever it takes important decisions relating to legal education. If it has to consult each University, it will be a time consuming process. The Bar Council of India appears to have bona fide felt that requirement of sec. 7(1)(h) is satisfied if some of the professors working in the Universities are invited to speak at certain seminars dealing with revision of curriculum. In our view, such a procedure has to be modified in as much as a professor or two invited to a conference, may not be representative of the views of all the Universities.

2.20 In as much as the Bar Council of India cannot be required to consult all Universities, the provisions of sec. 7(1)(h) have to be amended by prescribing that the Bar Council of India must consult a body which effectively represents all the Universities.

2.21 In order to solve the practical problem and make consultation easy and meaningful, the Commission has felt it necessary to formulate a simple and effective procedure for consultation. The consultation procedure between the Bar Council of India and the Universities must be simple and effective. In this process, the Bar Council of India and the Universities have to cooperate and, as already stated, work as equal partners having a common goal....

2.22 We accordingly recommend as follows:-

"Inasmuch as the Bar Council of India cannot be required to consult all universities, as stated in section 7(1)(h), the provisions of section 7(1) (h) have to be amended by prescribing that the Bar Council of India must consult a body which effectively represents all universities and that such a body should be constituted by the University Grants Commission. This requires amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956." [Emphasis added]

The Report, in Chapter 3, deals with the composition the Legal Education Committee of the Bar Council of India provided for under Section 10 of the Advocates Act, 1961.

Regarding the concerns raised by the academia over their perceived under-representation in the Legal Education Committee of the Bar Council of India, the Report notes that the roles of the Bar, Bench and the academia in the regulation of legal education in India should be balanced and negates the suggestion that the Bar Council of India's role should be limited to regulating entry into the legal profession and maintenance of professional standards.

The Report recommends that the Legal Education Committee of the Bar Council of India should consist of 5 (five) members elected from amongst the members of the Bar Council of India, one (1)

⁶ *Ibid*, pp. 26-27.

retired Judge of the Supreme Court of India, one (1) retired Chief Justice/Judge of a High Court and three (3) active law teachers holding the rank of Vice-Chancellor/Director/Principal/ Professor in a law college. The inclusion of the Attorney General for India as an ex-officio member is also recommended.

The Report, accordingly, recommends⁷:

“(2) Clause (b) of subsection (2) of sec. 10 has to be amended to provide for membership of Legal Education Committee of the Bar Council of India representing different classes of persons. The Committee shall comprise of 5 members from the Bar Council of India, one retired Judge of the Supreme Court of India, one retired Chief Justice/Judge of a High Court both to be nominated by the Chief Justice of India and three academicians in law to be nominated by the University Grants Commission and these three should be members of the proposed UGC Committee on Legal Education and all three of them must be in office and one of them must be Director/Vice-Chancellor of a statutory Law University. The Chairman of the Committee, namely, the retired judge of the Supreme Court, shall have a casting vote.

(3) The Attorney General for India can, at his option, participate in the meetings of the Legal Education Committee of the Bar Council of India and the Chairman of that Committee shall be entitled to request the Attorney General to participate in the proceedings of the Committee and when he so participates, he is entitled to vote.

(4) All questions which come up before any meeting of the Bar Council Legal Education Committee shall be decided by a majority of the votes of the members present and voting and in the event of an equality of votes, the Chairman shall have and exercise a second or casting vote. It requires insertion of sub- section (2A) in section 10 of the Advocates Act, 1961.

(5) The Bar Council Legal Education Committee should meet at least once in every three months.

(6) In section 10A of the principal Act, in sub-section (4), for the words, “every committee thereof except the Disciplinary Committees”, the words “every committee thereof except the Bar Council Legal Education Committee and the Disciplinary Committees”, shall be substituted.”

The Report, in Chapter 4, elaborating on the subject of the University Grants Commission’s Committee on Legal Education and the consultation process between the Bar Council of India and the University Grants Commission, deals with the following issues:

- i) to represent the academia, the Report recommends the constitution of a University Grants Commission’s Committee on Legal Education, comprising a total of ten (10) members, with six (6) members being law teachers in office and two (2) members being Vice-Chancellors/Directors of statutory law Universities. The Report envisages three (3) faculty members to be common to both the Legal Education Committee of the Bar Council of India and the University Grants Commission’s Committee on Legal Education, in order to ensure better coordination between the said Committees;
- ii) the Report recommends ‘effective consultation’ between the Bar Council of India and the Universities through a three-tier process: the first consultation on a proposal regarding legal education would be between the Bar Council of India, through its Legal Education Committee, and the State Bar Councils, after which the proposals would be considered by the University Grants Commission’s Committee on Legal Education. As the final stage of the consultation, the proposals would once again be deliberated by the Legal Education Committee of the Bar Council of India;
- iii) the Report recommends that the proposals of the Legal Education Committee of the Bar Council of India would be binding on the Bar Council of India; and

⁷ *Ibid*, pp. 34-35.

- iv) the Report accords primacy to the Bar Council of India in matters relating to regulation of professional legal education in India.

In respect of the above-detailed matters, the Report records⁸:

“Section 7(1)(h) to be amended so that consultation by BCI will be, not with all Universities (which is impracticable) but with a new body to be nominated by UGC, representing the Universities:

The UGC Committee on Legal Education to be constituted: proposed sec. 10AA

4.0 As stated earlier, section 7(1)(h) of the Advocates Act, 1961 requires the Bar Council of India to consult the “Universities” for the purpose of laying down standards of legal education. We have already pointed out that there are practical difficulties if the BCI has to consult each and every university which confers degrees in law. It is one of the statutory functions of the UGC to deal with co-ordination and the laying down standards of education in the universities and therefore, for the purpose of sec. 7(1)(h), the UGC can constitute a Legal Education Committee which is representative of all Universities and affiliated law schools. Consultation under sec. 7(1)(h) must then be with an academic body of law teachers to be nominated by the UGC. In our view, that Committee should consist of ten eminent law teachers of whom six shall be law teachers in office, two law teachers who have retired and two vice-chancellors or Directors of statutory law universities. The said body can be called the UGC Committee on Legal Education. It must also be ensured that the UGC nominates three law teachers who are members of the UGC Legal Education Committee and who are in office as teachers, to be members of the Legal Education Committee of the Bar Council of India, so that they can co-ordinate the decisions taken by the UGC Committee on Legal Education with those taken by the Legal Education Committee of the Bar Council of India. One of these three must be a Director/Vice Chancellor of statutory Law Universities.

Consultation Process:

(i) First stage of consultation should be with the State Bar Councils under sec. 7(1)(h), as at present:

4.1 It will be seen that sec. 7(1)(h) presently requires consultation between the Bar Council of India and Universities and the State Bar Councils. It is not proposed to make any change in regard to consultation with the State Bar Councils. But, the consultation with Universities, i.e. with the proposed UGC Committee of academicians under sec. 7(1)(h) must be effective consultation. Obviously, it will be convenient if the Legal Education Committee of the Bar Council of India first consults the State Bar Councils and the decisions arrived at as a result of the said decisions are sent to the UGC Committee on Legal Education for its views. The proposed amendment would be that the Bar Council of India will, through its Legal Education Committee, consult the State Bar Councils and after receiving their responses, will finalise the proposals which have to be sent to the Legal Education Committee of the UGC, as stated in this chapter:

(ii) Second stage of consultation thereafter should be with the body nominated by UGC, as now proposed:

4.2 The consultation by the Bar Council of India with the UGC Committee on Legal Education will be after the consultation with the State Bar Councils and will have to be as follows.

4.3 As stated above, the Legal Education Committee of the Bar Council of India will consult the State Bar Councils and will have to provisionally finalise its proposals. This will be for the purpose of the further consultation with the UGC Committee on Legal Education. The said proposals will then have to be sent by the Legal Education Committee of the Bar Council of India to the UGC Committee on Legal Education. That Committee will have the benefit of the views of the three academicians who are also in the Bar Council of India's Legal Education Committee and once the views of the UGC Committee are finalized,

⁸ *Ibid*, pp. 36-46.

the decision of the UGC Committee will have to come back to the Bar Council of India's Legal Education Committee for discussion. Once again the three academician members can explain the views of the UGC Legal Education Committee to the Bar Council of India's Legal Education Committee. The two members from the Judiciary will also consider these views. Once the Bar Council Legal Education Committee considers these views, a collective decision has to be taken in the said Committee by all the ten members, including the Chairman (the retired Judge of the Supreme Court). In the new scenario, it is expected that the BCI Legal Education Committee and the UGC Legal Education Committee will give due and proper consideration to each other's views and arrive at a consensus. Of course, in the absence of a consensus, the majority view of the Legal Education Committee of the Bar Council will have to prevail. It is expected that at such a meeting, all the members and, in particular, the retired/sitting Judge of the High Court, will invariably be present to help in the emergence of a satisfactory solution to any problem arising out of differences between the BCI Committee and the UGC Committee.

4.4 In certain situations, the Faculty may like to initiate and place some suggestions before the Bar Council of India. There must, therefore, be a separate procedure whereby the UGC Committee on Legal Education may initiate and send its suggestions to the Legal Education Committee of the Bar Council of India. In that event, the latter Committee shall first consult the State Bar Councils and then after arriving at a provisional view, refer the same to the Legal Education Committee of the UGC. The said Committee will give its final views and forward the same to the Legal Education Committee of the Bar Council of India.

4.5 The second aspect which the Bar Council has to take care of is that whenever a new curriculum is introduced – sufficient advance notice must be given to the law schools so that they can take steps to conform to the prescriptions. Let us assume that new subjects in intellectual property or cyber law or environmental law are proposed to be introduced. It may be noted that all the 460 law schools may not immediately be able to get 460 law teachers in each of these subjects who are duly qualified and who can take up these classes. There may be other difficulties like non-availability of standard books which can meet the requirements of students. There have been serious complaints from managements and faculty that some of the Bar Council's directives tend to be arbitrary. These reactions of the law schools cannot be treated as resistance or disobedience. The practical difficulties in the way of law schools must also be taken into account.

4.6 For example, in the recent curriculum which has been circulated by the Bar Council of India, there are quite a good number of matters which perhaps require a second look. The manner in which some important subjects have been put in the list of optional subjects and the manner in which two subjects which have not much of connection, have been joined together in one paper, appears to require correction. In a number of conferences and articles published by the Faculty, these anomalies have been pointed out. It appears to the Commission that there is considerable force in the view of the Faculty that effective consultation and greater interaction with the Faculty would have eliminated such anomalies....

4.7 It must be noted that standards of legal education relate to various aspects of legal education. They are known to the Bar as well as to the Faculty. Hence, they must be arrived after a thorough study and after an effective interaction between the Bar Council and the Faculty. Bar Councillors and Judges and faculty members of the Legal Education Committee must make an in-depth study of the subject of 'Legal Education' which is a specialized branch by itself. It is not sufficient either for the Bar or Faculty to have a general or vague idea about Legal Education....The recent curriculum prepared in 2001 by the National Law School University, Bangalore is said to be on the basis of the Mac Crate Report and Harvard models. Of course, whatever is adopted must suit Indian conditions. New courses are necessary in the light of liberalization, privatization and globalisation. The standards of legal education concern the entry to the college, the curriculum, as also the method of examination at the time of entering the college and leaving it or entering the profession and the qualification of teachers etc. There must be full coordination between the Bar Council and the Faculty on these matters.

4.13 It is hoped that, if the Bar Council of India and the faculty implement the proposals made in Chapters III and IV, the difficulties faced by the Bar Council of India in regard to consultation with all Universities and the grievance of the faculty in regard to insufficient consultation, will get resolved.

4.14 The proposals are, therefore, for the constitution of the Legal Education Committee of the University Grants Commission of ten members, of whom six would be academicians in office of the level of Professors, Deans or Principals or of equal rank and two law teachers of similar ranks who have retired and two should be Directors/Vice Chancellors of statutory Law Universities.

4.15 The further proposal is in regard to consultation between the Legal Education Committee of the Bar Council of India and the Legal Education Committee of the UGC and its acceptance and implementation by the Bar Council of India.

4.16 Provision is also to be made for the Legal Education Committee of the UGC to initiate and make suggestions to the Legal Education Committee of the Bar Council of India, and the latter shall then follow the procedure of consulting the States Bar Councils and the UGC Legal Education Committee.

4.17 It is also proposed that the Legal Education Committee of the Bar Council of India shall, while passing resolution concerning standards of legal education, have regard to the following factors:

- a) the time required for the law schools to provide the necessary infrastructure;
- b) availability of books or faculty members who are qualified to teach any new subject that may be introduced in the curriculum;
- c) availability of funds with the law schools to implement the resolution or the time required to gather the necessary funds.”

CONCLUSION

As is evident from the above discussion, the respective roles of the Bar Council of India and the University Grants Commission in regulation of legal education in India is effectively demarcated by the statutory provisions and by judicial pronouncements. A harmonious construction of the provisions relating to the jurisdiction of the Bar Council of India and the University Grants Commission in regulation of legal education in India is imperative so that both the statutory entities can conjointly work towards effective regulation and promotion of legal education in India, through consultative relationship.