

ROLE OF BAR COUNCIL IN PRACTISING LAW

Mohak Agrawal*

INTRODUCTION

The Advocates Act, 1961 established the legally mandated Bar Council of India. The Bar Council of India's authority and duties are also mentioned in the statute. Its main goal is to supervise and control legal education and practice in India. Furthermore, it conducts the All India Bar Examination (AIBE) every year, which acts as a screening procedure for anyone who wants to practice law in the nation's courts. In addition, the Bar Council carries out its regulatory function by creating standards for professional behavior and manners among Indian lawyers. Protecting the privileges, rights, and interests of advocates across India is its primary goal. The Advocates Act, 1961 created the Bar Council of India, a statutory and regulatory body whose duties include the legal profession and education in the nation. It also acts as the Indian legal community's representative organization.

The Advocates Act of 1961 which was formulated based on recommendations, from the All India Bar Committee set up the Bar Councils of India. These councils operate at both state and national levels. Section 3 of the Act laid down the framework for the State Bar Councils. The Bar Council of India comprises members such, as the Attorney General of India Solicitor of India and representatives selected from each State Bar Council. Other members are appointed automatically. Members of State Bar Councils are elected every five years. The Council holds the authority to elect its Vice Chairman and Chairman who serve two-year terms.

POWERS OF BAR COUNCIL OF INDIA

One of the entities that has been enabled under the formation of BCI is the regulating authority which has control over many things. The BCI members are elected to hollow out the provisions of the Advocates Act where separate committees are formed. The provision of Section 9 is that the Legal Education Committee is established, whereas, in Section 10, the Executive Committee is also established. Chapter III of the Bar Council of India Rules authorises the

*BBA LLB, SECOND YEAR, UNIVERSITY OF MUMBAI LAW ACADEMY.

Council to set up more committees other than those mentioned in this Act. In addition to this, the Council is given the right to assign obligations or authorities to committees.

- As a Legal Education Committee, we can move the recommendations to the council based on the standard of legal education. The committee keeps on visiting different universities and giving reports to the BCI.
- BCI's Disciplinary Committee is the final forum for hearing applications seeking reconsideration against the dismissal of complaints against advocates for professional misconduct, by the State Bar Councils.
- The Executive Committee in relation to the financial administration of both funds and that of the staff, disbursements, audit, account, library and legal publication delegation is entrusted with all the questions concerning administrative issues.
- Advocate Welfare Committee is an autonomous advisory body chaired by a senior member and established under the Advocates Welfare Act, 2001. Such a committee is concerned about procedures made by advocates for the grant of welfare funds. In addition, it verifies applicants' documents and makes payments.
- Legal Aid Committee has the law to allow the needy, who cannot pay the lawyer's fee, to enjoy the services. The work of the court in the procedure of the case through the charges of drafting, filing and providing support which is given to this committee is the source of the payment for the court.
- The other committees ensure the infrastructure of the council's office throughout the country. All these committees operate under the BCI. BCI can, in certain special cases (as proposed by the Legal Education Committee), deprive a University of recognition. BCI too deals with all the appeals which come after the Disciplinary Committee has heard them.
- The right to practice law can be given to the candidates through BCI by conducting the All India Bar Examination (AIBE) since 2010. For one to become an advocate, he/she must pass through the examination to practice in any court.
- BCI even holds the National Moot Court competition meant for law students so that their advocacy skills may be promoted through the Bar Council of India Trust (public charitable trust). An Indian Bar Review is a quarterly journal of the BCI and happens to be one of the leading legal periodicals in the country.

LEGAL BASIS

The Advocates Act 1961 provisions for the establishment of bar councils and the All-India Bar.

- Section 3 deals with the State Bar Council in the State Bar Act, whereas, Section 4 of the Bar Council of India Act handles the establishment of the Bar Council of India. Section 4 of the act also explains who will be the members included in the structure of BCI. The Attorney-General of India and the Solicitor-General of India shall be the ex officio members. It also explains that one representative will be appointed from each Bar Council.
- Section 5 of the Act stipulates that the BCI Corporation will be an entity under corporate law and will be able to successfully and perpetually sue through the name which it is known.
- (Section 7 of the act includes all the functions that BCI has to perform). The second amendment to the Act was done by Act 60 of 1973. Further functions were inserted in Section 7. Part 7 also provides for BCI to become a member of any of the international legal bodies, say the International Bar Association. The Act in Chapter II tells many things about the council with the help of various articles. In Chapter II, the establishment of the different committees, member disqualification criteria, staff of the Bar Council, etc are written.
- Rules of the Bar Council of India have also been provided under the rules made by BCI under the Advocates Act, 1961, by the rulemaking authority of BCI. The Bar Council of India Rules provide instructions on the election and termination of the council members. It also mentions the powers of the chairman and vice-chairman of the council. Additionally, it discusses the method of the council meetings or the meetings of the committees and the reports of the committees. Chapter IV of the rules includes the criteria and terms of service of the secretary, accountant and other staff members.

FUNCTIONS OF BAR COUNCIL

Advocates Act of 1961, which was enacted by the Parliament, led to the formation of the Bar Council of India. The Bar Council's regulatory and representative mission for the legal profession and legal education in India is covered by the following statutory tasks under Section 7:

- To formalize, the rules of conduct and decorum for advocates.

- The purpose of the paragraph is to lay down the procedures to be followed by the disciplinary committee of the organization and of each State Bar Council.
- The authority is committed to protecting the advocate's rights, advocacy and advocates' interests.
- To promote and implement law reform advocacy.
- Handling and disposal of any matter which may be referred by the Council of the State Bar either in the ongoing case or from past decisions.
- Legal education is for the sake of promotion and also to set standards of education in legal. This shall be done through agreements with the Universities in India providing legal education and the State Bar Councils.
- To acknowledge the authority of the universities whose degrees in law shall serve as a condition for the enrolment of advocates. The Bar Council of India makes visits and inspections in universities or gets Universities inspected by State Bar Councils.
- To convene seminars and discussions on legal topics by well-known attorneys and also to publish journals and papers of interest to the law community.
- To commence legal services for the poor.
- To give the returning a reciprocal base, the foreign law qualifications received abroad are for admission as an advocate in India.
- To manage and deal with the financial resources of the Council of Bar.
- To conduct elections of their own members who shall assume the office as the Bar Councils.

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ELIGIBILITY FOR ENROLLMENT OF ADVOCATES TO THE BCI

Section 24 of the Advocates Act, 1961 specifies the qualification needed for an individual to be enrolled by the BCI. It is this Section which has it that the provisions of the Act shall apply and the rules framed thereunder shall be taken into account. The conditions to be met for one to be qualified and eligible to be enrolled as an advocate on a State roll are given below.

- They should be Indian citizens; a foreign national can be allowed to practice law as an advocate in the State role provided Indian citizens are qualified to practice in the other nation (and notwithstanding other limitations).
- They should be a minimum of 21 years.
- Secured a law degree, after having passed a 3-year law program from any university recognized by BCI for the purpose and motive. In very few cases, even an advocate can

be admitted after having studied at any University outside India, and if the Degree is recognized for the purpose and aim of this Act by the BCI, he may be admitted.

- They must satisfy such other prerequisites as stipulated in the rules made by BCI.
- Currently, an individual wanting to enroll in advocacy must first qualify for the BCI test. Further, the person may register him/ herself with the SBC (State Bar Council). Admitted eligible individuals become respondents on the rolls of the SBCs. SBCs can promulgate their own rules consisting of the admission of advocates as stipulated by the Advocates Act. The Council's admissions committee will assess a candidate's application. The distinct SBCs have formulated their own norms regarding the symbolization of an advocate. However, many of the SBCs are demanding their candidates produce their law degree and mark sheets together with the judicial stamp paper and the necessary fees.
- The candidates have to send the application fee for enrolment with SBC and BCI through the separate Demand Drafts to each.
- Those who graduate and become advocates by any SBC can be called to appear for the AIBE (the All India Bar Exams conducted by the BCI) The AIBE awards state-enrolled advocates with the Certificate of Practice (COP) and that gives them the right to handle any court in the lower courts and High Court in the country.

ALL INDIA BAR EXAMINATION

- AIBE is a national-level exam organized by the BCI and the test to evaluate the skills of advocates who wish to fully practice law in India is its main aim. The examination, conducted twice a year, is aimed at testing the advocates on procedural as well as substantive law. AIBE is set to assess skills at the fundamental level and fix a minimum competence to practice law entry requirements. Once you pass the examination, BCI issues you with the Certificate of Practice (CoP) and you can commence the practice of law in India.
- The All India Bar Examination was introduced by the Bar Council of India in 2011 to ensure that professionals practising law enter into the profession legitimately and earn definite rights to practice law anywhere in India. Political issues in India have on many occasions been the subject of judicial scrutiny where as many as 1700 law colleges all over India graduating 4-5 lac lawyers every year it becomes impossible to allow just anybody to practice law at all levels of courts. This examination occurs two times a

year and it is conducted to check the lawyer's readiness by their peers and seniors to practice the profession. It aims to evaluate one's (legal) knowledge at a primary level as well as (an applicant's) analytical skills.

- Left to the All India Bar Examination is the responsibility to ensure that all law graduates, desiring to practice at the bar, shall appear in the examination. As a first step, a trained legal counsel has to file an application for registration as an advocate under Section 24 of the Indian Advocates Act, 1961 and thereafter clear the examination so as to obtain a Certificate of practice from the Bar Council of India, which enables one to practice law in the courts of law.

CASE LAWS

Bar Council of Maharashtra v. M.V Dabholkar and others

Facts:-

The subjects were lawyers practising in the local Criminal Courts. Besides that, they were charged with professional misconduct under Section 35(1) of the Advocates Act, 1961. It was said that they were found to have been engaged in unethical activities outside the Magistrate courts. They would manoeuvre to grab briefs from the parties that were coming to court, and sometimes they would even be involved in physical fights. They also ensured the charge-less facilities to the litigants to secure more cases for themselves. Through the High Court, the Bar Council of Maharashtra became aware of this matter. The Bar Council looked into this complaint and then referred it to the Disciplinary Committee of the Council for further study.

Judgement:-

The court opined that the ethics Code for advocates does not permit them to advertise and also prevents them from repulsive activities like soliciting, etc. Thus, the respondents were held accountable for professional misconduct. Instead of being banned from practicing for three years, they were punished by suspension.

D. Saibaba v. Bar Council of India and another

Facts:-

In this case, Smt. Ans. D Mrs. Anuradha, the spouse of D Mr Saibaba, complained about Section 35 of the Advocates Act alleging professional misconduct. The complaint said that the appellant D Saibaba had been admitted as an advocate but ran a telephony shop under handicapped quota which was against provisions of the rule. The appellant contended that he was indeed disabled and began shoemaking as an advocate because he could not afford it. He held that he was just running the place for his aged parents. He argued the complaint was false and malicious and that it had been filed by his unhappy wife against whom he had also lodged false criminal charges.

Judgement:-

The appellants were ordered to surrender the telephone booth by the Bar Council of India. The Bar Council concluded that the taint of his conduct as a lawyer would be removed by his surrender of the booth which was duly registered to him to create allocation in the handicap quota irrespective of who was handling it. The appellant asked for a period so that he could retrieve certain dues with difficulties that would necessitate the telephone box installation to be ended. To conclude, the appellant was unsuccessful as he did not surrender the booth and so still on the Bar Council's orders the State Bar Council, under which the appellant was registered, removed him from the advocates' lists.

CONCLUSION

The jurisdiction and duties of the Bar Council of India. The premier objective of the Advocates Act 1961 registered under the Act of Parliament is to regulate and uphold legal standards of the legal profession in India. The Council's powers which enable it to make standards of professional conduct help it to ensure ethical practices among advocates. It even deals with the issues of both the safety of their rights and interests and with the reform of the law. Additionally, the Bar Council of India through its multiple areas of operation like legal education, exhibits its powers. This ensures the quality of legal systems and legal education by recognising law degrees as well as competent lawyers. Also, the Council organizes courses, publishes legal journals, and provides legal aid, among other programs, to ensure justice for all.

Along with this, the Council channels the funds, ensures financial transparency, and invests in social schemes (for example, supporting indigent defence attorneys and setting up law

libraries). It is the body that imposes discipline on professional misconduct and appeals oversight.

