

**CHAPTER - II**

**THE BAR COUNCIL OF INDIA AND PROFESSIONAL LEGAL EDUCATION.**

## CHAPTER - I I

### THE BAR COUNCIL OF INDIA AND PROFESSIONAL LEGAL EDUCATION

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## II.1 INTRODUCTION :

It is the Bar Council of India that regulates the pattern and standards of professional legal education in India. The Bar Council of India is a statutory body, established under the Advocates Act, 1961. Since the researcher is concerned with the new scheme of professional legal education prescribed by the Bar Council of India to the Indian Universities and law colleges, the researcher feels it necessary to examine the role played by the Bar Council of India in regulating legal education in India. In the present Chapter the researcher has dealt with the establishment of the Bar Council of India, how this Council regulates legal education, the objectives of regulating the legal education and so forth.

## II.2 ESTABLISHMENT OF BAR COUNCILS :

During the British Rule in India, in different Indian Provinces, and after the independence, in various States of the Indian Union there have been different grades of legal practitioners. In these different areas, the qualifications entitling a person to practice legal profession were quite dissimilar. Migration by one High Court to another of a legal practitioner was entailed by various technical difficulties and sometimes it was impossible, too. These difficulties led to a demand for an

All-India Bar. Accordingly, a All India Bar Committee was constituted to consider the demand. The Committee in 1953 recommended a unified Bar Council for the whole of India. In 1955, the Law Commission under the Presidentship of then Attorney General of India - Mr. M.C. Setalwad upheld the recommendations of the All India Bar Committee

In accordance with the recommendations, the Advocates Act was adopted in 1961. Prior to 1961, there was the Bar Council Act of 1926 which had established Bar Councils in various States in respect of the High Courts. These Bar Councils were given authority by Section 9 to regulate legal education and necessary qualifications for entry to the Bar, within the respective States.<sup>1</sup> Obviously, there was no uniformity in the rules regulating legal education adopted by various Bar Councils in India.

The Advocates Act of 1961, established two types of Bar Councils in India. Section 3 of the Act established "State Bar Councils" in various Indian States. Section 4 of the Act established "The Bar Council of India." Naturally, the Bar Council Act of 1926 was repealed and the old system was abolished to give its way to a new unified and more

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1. The Bar Council Act 1926, Section 9 : Qualification and admission of advocates : (1) The Bar Council may, with the previous sanction of the High Court, make rules to regulate the admission of persons to be advocates of the High Court.

comprehensive system regulating the legal profession in India. (However, it may be mentioned here that the Act of 1961 is not applicable to the State of Jammu and Kashmir in view of the special status conferred by the Constitution of India on that State).

### II.3 THE BAR COUNCIL AND PROFESSIONAL LEGAL EDUCATION :

The main function of the Bar Councils is to regulate the legal profession in general, such as admitting advocates on its rolls, deal with cases of advocates' misconduct, safeguard the rights and privileges of Advocates, promote law reforms and so forth.

From the point of view of legal education, the most significant function of the Bar Council of India is laid down in Section 7, Clause (h) of the Act. It reads as follows :

"Section-7 : Functions of Bar Council of India : The functions of the Bar Council of India shall be - .....  
(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils."

Further, Section 24 of the Act specifies the category of persons who may be admitted as advocates. The relevant provisions of this section says that a person who has

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obtained a degree in law from any University in the territory of India or elsewhere, if the degree is recognised for the purpose of the Act by the Bar Council of India, may be admitted as an advocate. (Here the phrase, 'may be admitted' is intentionally used because the Bar Council has authority to refuse enrolment of a person as an advocate even though he has undergone a prescribed and approved course of professional legal education, if he does not fulfil other conditions, such as age, citizenship etc.)

Again, the Act of 1961 empowers the Bar Council of India to make rules under Section 49 for the purpose of laying down the standards of professional legal education in India. The relevant provisions of that section are as under :

**"Section 49 : General power of the Bar Council of India to make rules : The Bar Council of India may make rules for discharging its functions under this Act, and in particular such rules may prescribe .....(d) the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose."**

#### **II.4 SOME OBSERVATIONS REGARDING PROFESSIONAL LEGAL EDUCATION :**

The foregoing discussion throws light on some fundamental aspects of legal education.

a) The profession of law, one of the most ancient and essential professions for social peace and stability, is entirely governed at present by the Bar Council of India and the State Bar Councils with mutual cooperation. It is quite obvious that the legal profession being a very important profession should have some standards. Not only this, but these standards should also be uniform throughout India so that advocate from one State may appear before the Courts of another States or even the Supreme Court of India and other National Tribunals and be able to conduct cases. Thus the Bar Council of India and that of the States are entrusted with the responsibility of promotion of legal profession. To maintain the decorum and dignity of this profession, the Bar Council of India is entitled to lay down standards of professional conduct and ettiquate for Advocates. (Although the responsibility of framing rules of professional ethics and ettiquate lies on the Bar Council of India, yet no such rules have been framed since it is very difficult to prepare an exhaustive list of acts amounting to professional misconduct. However, in cases of misconduct of an advocate, disciplinary action can be taken by the State Bar Council by a disciplinary committee established under Section 9 of the Advocates Act, 1961).

In short, it may be said as regards the role of the Bar Councils, that they govern the legal profession comprehensively and to the exclusion of any other authority.

b) Since the Bar Council of India is entrusted with the task of governing the legal profession, obviously it is the responsibility of the Council to lay down criteria for admission to the Bar of Advocates. Now, basically, these criteria should include the educational requirements. Other aspects as regards age, nationality etc. are also envisaged, but the researcher is more concerned about the educational criteria.

Having entrusted the task of laying down the educational requirements for admission to the Bar to the Bar Council of India, the Indian Parliament has placed the Bar Council of India at the apex as regards regulation of professional legal education in India. This position of the Bar Council is statutory and as such, the Universities in India are obliged to consider recommendations of the Council while framing their professional law courses. Nevertheless, the Indian Universities may frame law courses in whatsoever manner they decide, but the Bar Council may not allow a person who has undergone such a course to practice law, unless the course meets the standards laid down by the Bar Council. Obviously, the Universities will



frame their law courses in accordance with the specifications of the Bar Council in order to attract more and more students who can join the profession of law after completing the law course. Therefore, the Indian Universities, desirous of framing professional law courses are under a boundened duty to follow strictly the specifications and directions laid down by the Bar Council of India. If the Council makes any changes from time to time in its specification in exercise of the statutory power, the Universities are obliged to make necessary changes in their law courses.

c) The Bar Council of India is concerned with maintaining the standard of legal education. Since our society is dynamic, law has to keep pace with the changing social circumstances. Naturally the body of law has to be, to some extent, flexible and should develop progressively to cater the needs of our changing society. When the body of law changes, naturally such changes may require appropriate and progressive training of new entrants to the legal profession and consequently some changes in the methods and contents of law training may become essential. To keep pace with these changes, the scheme of professional legal education may also need upward revision. This may compel the Bar Councils to introduce some changes in the existing pattern of legal education. The practice of the Bar Council

of India over the last two decades shows that from time to time this body introduced changes in the pattern of professional legal education and our Universities have accordingly modified their courses of professional legal education to accommodate the new directives.

d) By way of conclusion, it may be pointed out that it is the responsibility of the Bar Council of India to fulfil the objectives of legal education in India.

The objectives of legal education have been pointed out by Dr. G.S. Sharma in following words :

"The goals and objectives of the professional, technical education in law should be -

- a) to acquaint the student with the goals and ideals of the Indian society,
- b) to give him a thorough grounding in the doctrines, precepts and the rules of the substantive, procedural and adjectival law of the country,
- c) to give him some practice in the use of the rules and formulae of the law for securing the ideals of the society."<sup>2</sup>

After having examined the role of the Bar Council of India in regulating professional legal education in

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2. S.K. Agrawala (Editor) - Legal Education in India, p. 19, 1973.

India, we may proceed to discuss the old scheme of professional legal education which was in effect until 1st June, 1982, and which scheme is allowed to be continued by the Bar Council of India upto the year 1985-86 for the benefit of those who will graduate by that year and for whom the new scheme of professional legal education was not made available when they completed 10+2 years of their education.