

Accreditation of Legal Education in India: Crucial Issues

Prof RAJA MUTTHIRULANDI¹

¹Hon Project Director, Human Rights Education, WCCI, Tiruchirapalli (TN-India) (Associated with NAAC Peer Teams as Member-Coordinator for assessment and accreditation of HEIs in India)

E mail : wcciprojectdirector.hre@gmail.com

Abstract: The Bar council of India (BCI) had to struggle with the Ministry of HRD, Govt of India to retain hold over 'laying down standards for legal education' recognized as eligibility qualification for enrolment of Advocates. Many Commissions on Legal Education have come out listing the failure of BCI in the matter of maintaining standards. In the wake of its failure on several fronts, it will not be justified to retain BCI as one of the agencies to assess and accredit legal education programmes and there is need to have multiple agencies that are recognised and monitored for accrediting legal education programmes in India.

Key words: Bar Council of India, Legal education standards, accreditation,

Introduction

The Bar Council of India (BCI) wrangled with the Ministry of Human Resources Development (HRD), Government of India, over the issue of its powers to lay down standards for grant of degree leading to professional practice and to accredit such programmes. The BCI stoutly opposed two Bills introduced by the Ministry of HRD in the Parliament- the Higher Education Bill 2011 (HE Bill) and the National Accreditation Regulatory Authority for Higher Educational Institutions Bill 2010 (NARA Bill) - holding that the Bills attempted to take away its power in the sphere of 'laying down standards' and 'accreditation of legal education programmes' that fall under the field of professional practice as Advocates. It is to be noted that the BCI resorted to show off its muscle power and went on a nation-wide, two-day strike in July 2012 to retain its hold on legal education. The BCI has finally managed to extract a letter from the Joint Secretary of the Ministry of HRD, that it will be retained as 'one of the designated accrediting agencies' with powers 'to lay down minimum standards for grant of degree leading to professional practice'.² But it is sad to note that the track record of BCI since 1961 and the recent happenings involving its highest functionaries getting booked for malpractices in accreditation for monetary gains³ have totally eroded its credibility. In the overall interest of legal education and for ensuring fair accreditation process in the field, the BCI doesn't stand competent and reliable to be allowed even as 'one of the designated accrediting agencies' in the domain of legal education in India.

Position in Legal Education in India

The poignant observation of Dr. S Radhakrishnan, a few decades back, about the country's law colleges that they do not 'hold a place of high esteem either at home or abroad'⁴ is true even today. There are at present 900 recognised law colleges, including 12 National law Schools (NLS) and about 145 university departments,⁵ offering courses in law. Except perhaps in the NLS, the course content of law programmes remain nearly archaic; the teaching method in most institutions are through the outdated lecture- method; the equipment and competence of the faculty (most of them are part-time) is not rated high; learning continues to be unscientifically evaluated for testing memory of sections and Acts; research in the field of law is not so much visible; the library resources and other infrastructure in many institutions are mediocre and feudal patterns of governance of institutions continue. Students' preference for law courses and enrolment in institutions reflects the continuing 'low esteem' for law courses and its institutions. Compared to the general enrolment and admissions in other professional courses, the enrolment of students in law courses in the country is at a very low percentage, i.e., 1.84%.⁶

² Vide Letter No D.O No 9-4/2012-U.Policy Dt 27 March 2012 of the Jt Secretary (HE), Ministry of HRD, Govt of India

³ The BCI vice-chairman himself was caught in the CBI net along with another member of the Delhi Bar Council in a graft case for their alleged involvement in a law college accreditation bribery case.[

<http://www.legallyindia.com/201102151806/Bar-Bench-Litigation/bail-for-accused-in-bci-law-school-bribery-case-denied-again>]

⁴ Report of Commission on Higher Education headed by Dr S. Radhakrishnan (1949)

⁵ source: <http://www.frontline.in/static/html/fl2714/stories/20100716271403800.htm>

⁶ vide UGC Annual Report 2011-12. In the year 2011-12, total enrolment in law is only 373246, out of the overall national enrolment of 20327478, i.e., 1.84%

Justice A.S. Anand, a former Chief Justice of the Supreme Court of India, has observed that “after the enactment of Advocates Act, 1961, there was a mushroom growth of sub-standard law schools, with hardly any regard to the quality of legal education. Admission to these law schools was easy. Minimum marks prescribed for eligibility for admission to the law course were as low as 40% anda student who could not get admission in any other course would join law course.”¹ The BCI Rules on eligibility for entry to law courses confirm this.² Continuing poor conditions pertaining to facilities, courses, instructors, infrastructure, patterns of governance of institutions etc up to recent times prompted the Supreme Court of India in 2009,³ to strongly express its concern about the ‘diminishing standards of professional legal education provided at various Law Colleges across the country.’ The Supreme Court, in particular, identified ‘the quality and standard of infrastructure, library and faculty as core areas that need to be redressed.’⁴ The National Knowledge Commission⁵, in its report (2007), presented to the Prime Minister, has also lamented that institutions offering law courses in India are ‘far from standards.’ Coming out very strongly against the BCI, the NKC report has declared that “in light of the changed scenario in the last fifty years and the existing gaps and deficiencies in overall quality, it is clear that the BCI has neither the power under the Advocates Act, 1961 nor the expertise to meet the new challenges both domestically and internationally.”⁶

But the BCI has made feeble and non-specific claims contending that it has made “effective changes” and “created a slow revolution in improving the quality of legal education” since 1961 by i) making the law degree as a three year programme, in the place of existing two year courses, ii) introducing Five year Law Degree programme (1986) and iii) the experiment of establishing a National Law School at Bangalore (1987)⁷. Beyond these three, the BCI has no claim for any more concrete achievement except stating that “all steps to maintain high standards in legal education” and “revolutionary steps for the said purpose” have been taken.⁸ Going a step further, the BCI passes on the entire blame for ‘deterioration in standards of legal education’ to the Ministry of HRD and Universities stating that it is “due to the negligence and slackness of the Ministry of HRD” and also because “the universities in the country are not acting properly.”⁹

Reasons for the confusion

We should partly concede that there is some ground for the blame game in the matter of ‘standards’ of legal education, as the planning of legal education and setting its ‘standards’ in India is multi-institutional. Both the UGC and the BCI, statutory authorities created under the Central Acts along with various creations of different Central/State Acts – the Universities and Boards of Studies /Academic Councils of universities¹⁰ exercise jurisdiction over the subject of law and its standards. A revealing survey undertaken by the Research Foundation for Governance in India (RFGI) concludes that “there is complete lack of coordination between the norms of BCI, UGC and the Government as far as legal education is concerned. The position of law colleges is that of a ‘sandwich’ between the rules of the BCI, the UGC and the Government, who are unable to impart quality legal education.....”¹¹

¹ Justice A.S. Anand, ‘Legal Education in India – Past, Present and Future’, H.L. Sarin Memorial Lecture, 31 Jan 1998, at *Chandigarh*

² Rule 7 of the BCI Rules of Legal Education (2010) -Part IV- Minimum marks in qualifying examination for admission: ‘*Bar Council of India may from time to time, stipulate the minimum percentage of marks not below 45% of the total marks in case of general category applicants and 40% of the total marks in case of SC and ST applicants, to be obtained for the qualifying examination, such as +2 Examination in case of Integrated Five Years’ course or Degree course in any discipline for Three years’ LL.B. course, for the purpose of applying for and getting admitted into a Law Degree Program of any recognized University in either of the streams.*’

³ S.L.P. (C) No. 22337 of 2008, Bar Council of India vs. Bonnie FOI Law College & Ors

⁴ Bonnie Law College case (cited above)

⁵ Constituted by the Government of India in 2005 under the Chairmanship of Mr Sam Pitroda.

⁶ Report (2007) of the Legal Education Committee of the National Knowledge Commission.

⁷ Vide BCI Memorandum Dt May 17,2012 (Submitted to Chairman and Members of the Parliamentary Sub Committee of Ministry of HRD, Govt of India)

⁸ BCI Memorandum, May 17, 2012.

⁹ *ibid*

¹⁰ The University Grants Commission (UGC), a body constituted by the University Grants Commission Act, 1956, and the Bar Council of India (BCI), a body established by the Advocates Act 1961, are empowered to lay down and improve the standards of legal education in India. Similarly, a Board of Studies in Law (BOS) and an Academic Council (AC), functioning under the respective University Acts are also expected to set and maintain standards of legal education in their respective Universities.

¹¹ <http://www.rfgindia.org/legal%20report.html> [Survey was conducted by RFGI in Law colleges in and around Ahmadabad.]

Though since 1961, the BCI has the responsibility “to promote legal education and lay down ‘standards’ of such education in consultation with the Universities imparting such education...”¹, it has failed in effectively carrying out the ‘consultation process’ with the universities and in discharging its responsibility for ‘standards’ in legal education. Legal Academics feel that the BCI “ has never consulted legal academics meaningfully. Rather, it has gone on to make derogatory remarks against the capabilities of legal academics in its recent submission to the Parliamentary Committee on HER. It is high time the BCI appreciated that legal education norms are best framed by those that engage in legal education full-time.”² The cumulative result of all such happenings is that the “low esteem” for courses and institutions in the field of law has not changed a bit, except perhaps, as Prime Minister Dr Manmohan Singh has observed: “Indian legal education is characterized by a few islands of excellence amidst a sea of institutionalised mediocrity.”³

All India Bar Examination

It is to be admitted that the BCI, formed under the Advocates Act 1961, has miserably failed to maintain standards in legal education over the years. The recently introduced All India Bar Examination (AIBE) by the BCI - to decide on the eligibility of law graduates for enrolment as Advocates and to practice in courts – is, in a sense, a direct admission of the BCI's failure to maintain the quality of legal education in the universities it has granted recognition.⁴ The pass percentage of the candidates in the AIBE held in January 2012⁵ also reflect the poor condition of the legal education in states where the institutions enjoy BCI approvals and accreditation.

Conclusion

The BCI, is after all a body comprising of ‘learned’ Advocates elected from among themselves in various state Bar Councils in India. Apart from being a body ‘lacking technical competence or personal resources for accreditation’⁶, BCI is in a condition of ‘complete credibility bankruptcy’ and has no locus to impartially assess and accredit institutions offering programmes in law.

With such a background of failure and current standing with loss of credibility, it will not be justified at all to retain BCI as ‘one of the designated accrediting agencies’ for legal education courses recognised for enrolment as Advocates. There is urgent need to bring up a number of ‘competent and reliable accrediting agencies’ and they must also ‘be recognized, monitored and audited for academic competence through an independent but accountable institutional mechanism’ as rightly envisaged in the NARA Bill 2010.

¹ Section 7 (1) (h) of the Advocates Act, 1961:“promote legal education and to lay down standards of such education in consultation with the universities in India imparting such education and the Bar Councils of the States”. Section 49(d) of the Act, enables Rules to be framed by the BCI in regard to the standards of legal education to be observed by the universities in India and the inspection of universities for the purpose. The BCI first enacted its Rules in 1965 to deal with the standards of legal education and recognition of degrees in law for admission as advocates. Latest, at its meeting held on September 14, 2008 , the BCI, has approved the Rules on Standards of Legal Education and Recognition of Degrees (‘BCI Education Rules, 2008’) -Resolution no. 110/2008.

² Shamnad Basheer, Ministry of HRD professor in IP Law, NUJS, West Bengal, vide : http://articles.timesofindia.indiatimes.com/2012-07-23/news/32803202_1_legal-education-bci-ncher

³ Dr Manmohan Singh’s address at the National Consultation on Second Generation Reform in Legal Education 2010 organized by the BCI and Ministry of HRD, Govt of India.

⁴ see <http://www.frontline.in/static/html/fl2714/stories/20100716271403800.htm>

⁵ As per the results of the AIBE (All India Bar Examination) conducted in January 2012, the pass percentage are as follows. 1. Chhattisgarh (39.53%).2. Andhra Pradesh (41.38%) 3. Gujarat (45.7 %), came third from the bottom.

[Source: <http://tabrezahmad.typepad.com/blog/2012/04/alarmed-situation-of-legal-education-in-few-states-of-india.html>]

⁶ NKC report (2007)

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