

BAR COUNCIL OF INDIA

INTRODUCTION

The Bar Council of India is a statutory body that regulates and represents the Indian bar. It was created by Parliament under the Advocates Act, 1961. It prescribes standards of professional conduct, etiquettes and exercises disciplinary jurisdiction over the bar. It also sets standards for legal education and grants recognition to Universities whose degree in law will serve as a qualification for students to enroll themselves as advocates upon graduation.

Section 4 of the Bar Council of India provides:

(1) There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members, namely:—

- (a) the Attorney- General of India, ex officio;
- (b) the Solicitor- General of India, ex officio;
- (c) one member elected by each State Bar Council from amongst its members.

Section 4(1-A) of the Act makes it clear that no person shall be eligible for being elected as a member of the Bar Council of India unless he possesses the qualifications specified in the proviso to sub- section (2) of section 3.

Provided that such person shall continue to carry on the duties of his office until the Chairman or the Vice- Chairman, as the case may be, of the Council, elected after the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977), assumes charge of the office. Section 4(3) of the Act provides that the term of office of a member of the Bar Council of India elected by the State Bar Council shall-

- (i) in the case of a member of a State Bar Council who holds office ex officio, be two years from the date of his election 2 [or till he ceases to be a member of the State Bar Council, whichever is earlier]; and
- (ii) in any other case, be for the period for which he holds office as a member of the State Bar Council:

- (ii) Provided that every such member shall continue to hold office as a member of the Bar Council of India until his successor is elected.

Section 10-A of the Act provides that The Bar council of India shall meet at New Delhi or at such other place as it may, for reasons to be recorded in writing, determine. A State Bar Council shall meet at its headquarters or at such other place as it may, for reasons to be recorded in writing,

determine .The committees other than disciplinary committees constituted by the Bar Councils shall meet at the headquarters of the respective Bar councils. Every Bar Council and every committee thereof except the disciplinary committees shall observe such rules of procedure in regard to the transaction of business at their meetings as may be prescribed. The disciplinary committees constituted under section 9 shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at their meetings as may be prescribed.

Section 10-B of the Act provides that an elected member of a Bar Council shall be deemed to have vacated his office if he is declared by the Bar Council of which he is a member to have been absent without sufficient excuse from three consecutive meetings of such Council, or if his name is, for any cause removed from the roll of advocates or if he is otherwise disqualified under any rule made by the Bar Council of India.

Section 14 of the Act provides that no election of a member to a Bar Council shall be called in question on the ground merely that due notice thereof has not been given to any person entitled to vote thereat , if notice of the date has, not less than thirty days before that date, been published in the Official Gazette.

HISTORY

After the Constitution of India was established on January 26, 1950, the Inter-University Board passed a resolution emphasizing the need for an all-India Bar and the importance of uniformly high standards for law examinations in different Universities. In May 1950, the Madras Provincial Lawyers Conference, held under the presidency of Shri S. Varadachariar, resolved that a committee appointed by the Government of India should evolve a scheme for an all-India Bar and amend the Indian Bar Councils Act such that it conforms to the new Constitution. On April 12, 1951, Shri Syed Mohammed Ahmad Kazmi, a Member of Parliament, proposed a bill to amend the India Bar Councils Act. The Government of India concluded that it was necessary for the Government to sponsor the Bill. In August 1951, a Committee of Inquiry was set up to consider the feasibility of a unified Bar in India, the continuance or abolition of the dual system of counsel for each state, possibility of a separate Bar Council for the Supreme Court and the revision of enactments related to the legal profession.

STRUCTURE OF THE BAR COUNCIL OF INDIA

The Bar Council of India consists of 18 Members. The Attorney General of India and the Solicitor General of India are Ex-officio Members of the council and the other 16 Members represent the

16 State Bar Councils in the country. The Members are elected for a period of five years and the Chairman and Vice -Chairman are elected for a period of two years from among the Members of the Bar Council of India. The Bar Council further consists of various committees viz., Legal Education Committee, Disciplinary Committee, Executive Committee, Legal Aid Committee, Advocates Welfare Fund Committee, Rules Committee and various other Committees formed to look into specific issues arising from time to time.

FUNCTIONS OF BAR COUNCIL OF INDIA

The Bar Council of India was established by Parliament under the Advocates Act, 1961. The following statutory functions under Section 7 cover the Bar Council's regulatory and representative mandate for the legal profession and legal education in India:

1. To lay down standards of professional conduct and etiquette for advocates.
2. To lay down procedure to be followed by its disciplinary committee and the disciplinary committees of each State Bar Council.
3. To safeguard the rights, privileges and interests of advocates.
4. To promote and support law reform.
5. To deal with and dispose of any matter which may be referred to it by a State Bar Council.
6. To promote legal education and to lay down standards of legal education. This is done in consultation with the Universities in India imparting legal education and the State Bar Councils.
7. To recognize Universities whose degree in law shall be a qualification for enrolment as an advocate. The Bar Council of India visits and inspects Universities, or directs the State Bar Councils to visit and inspect Universities for this purpose.
8. To conduct seminars and talks on legal topics by eminent jurists and publish journals and papers of legal interest.
9. To organize legal aid to the poor.
10. To recognize on a reciprocal basis, the foreign qualifications in law obtained outside India for the purpose of admission as an advocate in India.
11. To manage and invest the funds of the Bar Council.
12. To provide for the election of its members who shall run the Bar Councils.

The Bar Council of India can also receive grants, donations, and gifts for any of these purposes. With respect to the point 6, (stated above) the Supreme Court has made it clear that the question of importing legal education is entrusted to the Universities in India and not to the Bar Council of India. All that the Bar Council can do is to suggest ways and means to promote such legal education to be imparted by the Universities and for that purpose it may lay down the standards of education. Sections 7 do not entitle the Bar Council itself to frame rules laying down pre-enrolment as Advocate.

In *Raveendranath Naik v. Bar Council of India*, the resolution passed by the Bar Council of India

directing advocates not to participate in any programme organized by the Legal Services Authorities in any LokAdalat or any legal aid programme has been held illegal and void. In Ex-Captain Harish Uppal v. Union of India, the court held that section 7 provides in respect of the functions of the Bar Council of India, but none of its functions mentioned in section 7 authorizes it to paralyze the working of the Courts. On the contrary it is enjoined with a duty to lay down standards of professional conduct and etiquette for advocates. No Bar Council can ever consider giving a call of strike or a call of boycott. In case any association calls for a strike or boycott the concerned State Bar Council of India must immediately take disciplinary action against the advocates who gives a call for a strike. It is the duty of every advocate to ignore a call of strike or boycott.

COMMITTEES OF BAR COUNCIL OF INDIA

The Bar Council of India has various committees that make recommendations to the Council. The members of these committees are elected from amongst the members of the Council. The Advocates Act mandates the creation of a Disciplinary Committee (under section 9), a Legal Education Committee, and an Executive Committee (under section 10). Chapter III of the Bar Council of India Rules permit the Council to appoint from amongst its members, one or more committees in addition to those specified in the Act. The Council can delegate powers, duties, and functions to these committees. The term of the members of the committees of the Council has been specified in Chapter III of the Bar Council of India Rules. A different term can be specified at the time of election.

LEGAL EDUCATION COMMITTEE

The Legal Education Committee consists of five members of the Bar Council of India and five co-opted members to represent the judiciary, the Law Ministry, the University Grants Commission, and academia. This committee makes recommendations to the Bar Council of India on all matters pertaining to legal education in the country. The committee elects its own Chairman.

The Legal Education Committee has the power:

- To make recommendations to the Council for laying down the standards of legal education for Universities.
- To visit and inspect Universities and report the results to the Council.
- To recommend to the Council the conditions subject to which foreign qualification in law obtained by persons other than citizens of India may be recognised.

- To recommend to the Council for recognition of any degree in law of any University in the territory of India.
- To recommend the discontinuance of recognition of any University already made by the Council.

DISCIPLINARY COMMITTEE

The disciplinary committee of the Bar Council of India hears applications for revision by persons against summary dismissal of their complaints against advocates for professional misconduct, by the State Bar Councils.

Appeals lie before the Bar Council of India against orders of the disciplinary committees of the State Bar Councils. Every such appeal is heard by the disciplinary committee of the Bar Council of India, which may pass an order, including an order varying the punishment awarded by the disciplinary committee of the State Bar Council.

Each disciplinary committee consists of three members. The term of the members of this committee is three years.

EXECUTIVE COMMITTEE

The Executive Committee is the executive authority of the Council, and is responsible for giving effect to the resolutions of the Council.

Members of the Executive Committee are elected from amongst the members of the Bar Council of India. The committee elects its Chairman and Vice-chairman.

The Executive Committee has the power:

- To manage the funds of the Council,
- To invest the funds of the Council in the manner directed by the Council from time to time,
- To grant leave to members of the staff, other than casual leave,
- To prescribe books of account, registers and files for the proper management of the affairs of the Council,
- To appoint and supervise the work of the members of the staff and prescribe their conditions of service
- To appoint auditors and fix their remuneration,
- To consider the annual audit report and place it before the Council with its comments for its consideration,
- To maintain a library and under the directions of the Council, publish any journal, treatise or

pamphlets on legal subjects,

- To prepare and place before the Council, the annual administration report and the statement of account,
- To provide for proper annual inspection of the office and its registers,
- To authorise the Secretary to incur expenditure within prescribed limits,
- To fix travelling and other allowances to members of the committees of the Council, and to members of the staff,
- To delegate to the Chairman and/or the Vice-Chairman any of its aforementioned powers,
- To do all other things necessary for discharging the aforesaid functions.

CONCLUSION

The Bar Council of India has a lot of functions vested within itself, whereby exercising those functions it can restructure and reframe the entire legal arena in the country. In fact, it can be more predominantly envisaged that in modern times it has hardly contributed constructively in the improvement of law in India. There are certain loopholes in the legal arena in India today which the Bar Council must look into, in order to protect the law standard from degradation and to maintain the same standards.