



**FOR MEETING THE GLOBAL CHALLENGES  
THE ADVOCATES ACT, 1961 REQUIRES AMENDMENTS**

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**INTRODUCTION**

In its judgment in the case of Mahipal Singh Rana Vs State of Uttar Pradesh (2016)8 SCC 235 the Supreme Court stressed the “failure” and “inaction” on the part of the Bar Council of India and the state bar councils, and noted in its order:

**THE ORDER**

.....We request the Law Commission of India to go into all **relevant aspects relating to regulation of legal profession** in consultation with all concerned at an early date. We hope the Government of India will consider taking further appropriate steps in the light of report of the Law Commission within six months thereafter.....

**ACTION BY THE LAW COMMISSION OF INDIA**

The Law Commission on 22 July, 2016 asked for comments from the BCI, state bar councils and advocates associations by 21 August, 2016 in a notice on its website.

**OUR SUBMISSIONS**

1. That the regulation & representation cannot be done by the same body.

**ROLE ALLOCATED TO BCI UNDER THE ADVOCATES ACT 1961**

2. That under the Advocates Act, 1961 the role allocated to BCI was limited to promote legal education and to lay down minimum standards necessary of legal education only in the context of 'practice in courts'<sup>1</sup>.

3. However, over the years Bar Council of India has assumed the Role of Regulator of Legal Profession, professionals & institution imparting the legal education. Not only this, BCI has also assumed the role of representing the Advocates. Nowhere in the World an act create a body which can simultaneously perform two functions.

4. Thus, the Advocates Act, 1961 needs to be amended to this extent.

**SUPREME COURT JUDGMENTS**

5. That the Supreme Court in India, in O.N Mohindroo v. BCI [AIR 1968 SC 888] and Bar Council of UP [AIR 1973 SC 231] the subject covered by the Advocates Act, 1961 is preferable to Entries 77 and 78 in List I of Schedule VII of the Constitution of India. These two entries deal, among others, with

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<sup>1</sup>State of MP v. Nivedita Jain AIR 1981 SC 2045; Premchand Jain v. R.K Chhabra AIR 1984 SC 981; Osmania University Teachers Association v. State of A.P AIR 1987 SC 2034; University of Delhi v. Raj Singh AIR 1995 SC 336; Medical Council of India v. State of Karnataka AIR 1998 SC 2423; Dr. Preethi Srivastava and Another v. State of M.P and Others AIR 1999 SC 2894



the subject: persons entitled to practice before the Supreme Court (Entry 77) and persons entitled to practice before the High Court (Entry 78).

6. Thus, it is cleared that BCI was only conferred with limited powers but apparently it has been exercising more powers by virtue of its Resolutions, Rules and Regulations, has taken over the entire body of powers in relation to legal education which is not the intention of the Advocates Act, 1961.
7. It is to be noted that while the statement of objects and reasons and the preamble of the University Grants Commission Act, 1956 and of the Indian Medical Council Act, 1956 refer to the constitution of bodies for maintain 'standards of education', there are no such words in the Statement of Objects and Reasons and the Preamble of the Advocates Act 1961.

**NATIONAL KNOWLEDGE COMMISSION 2006**

8. That the Report of the National Knowledge Commission 2006 proposed to have an Independent Regulatory Authority for Higher Education (IRAHE) with several Standing Committees including one for legal education.
9. That the new Standing Committee on Legal Education would represent all the stakeholders. Their recommendations would be taken into account by the new regulator. This way the Legal Education would be revamped to meet the challenges of all sections of the society in the next five decades
10. That the Advocates Act 1961 would have to be amended accordingly.

**184<sup>th</sup> REPORT OF THE LAW COMMISSION**

11. That the Law Commission in its 184<sup>th</sup> Report (2002) ( Para 5.16) has pointed out that there are revolutionary changes which have come into legal education by reason of developments in information, communication, transport technologies, intellectual property, corporate law, cyber law, human rights, ADR, international business, comparative taxation laws, space laws, environmental laws etc. And that: the very nature of law, legal institutions and law practice are in the midst of a paradigm shift.
12. That the aim of transnational legal education is not to create individuals who can "practice" law in a number of jurisdictions. Although graduates of such a program may well wish to do so, such ability should not be seen as an objective in itself, but merely as an incidental result. Our Legal Education must help students specialize in international trade practices, comparative law, conflict of laws, international human rights law, environmental law, gender justice, space law, bio medical law, bio- ethics, international advocacy etc.; they must also acquire a general knowledge of American, French, German, Chinese and Japanese Law.
13. That the Globalization does not merely mean addition or inclusion of new subjects in the curriculum as stated above. While that is, no doubt, an important matter, the broader issue is to prepare the legal profession to handle the challenges of Globalization.



14. Apart from expanding the curriculum, law schools have to improve their libraries; the students and faculty must be able to draw regularly from the internet. Use of computers and internet must be made compulsory in all law schools. So far as faculty is concerned, experience in other countries show that video conferencing of lectures by foreign faculty can help in overcoming the shortage of teachers having knowledge of new subjects. The next thing that is being done elsewhere is the exchange of faculty for short periods, wherever finance permits.

15. Indian National Bar Association proposes following amendments to the Advocates Act, 1961.

16. **Section 2**

(a) In clause (a) of sub-section (1) the following words shall be added: -  
“and it shall include a law firm registered by the State Bar Council under this Act and a Lawyer registered outside India and also registered under the provisions of this Act.”

After amendment clause (a) shall read as follows: -

“(a) “Advocate” means an advocate entered in any roll under the provisions of this Act and it shall include a law firm and it shall include a law firm registered by the Bar Council of India under this Act and a Lawyer registered outside India and also registered by the Bar Council of India under the provisions of this Act

“(aa) “Law Firm” means a legal entity formed and registered under the partnership Act, 1932 or under the Limited Liability Partnership Act, 2008 or a private or public limited company incorporated under the Companies Act, 2013/Companies Act, 1956 for carrying out practice in law with limited or unlimited liability and it includes such other partnerships which are formed for carrying out practice in law but are not registered under the aforesaid Acts;”

(b) The following clauses (o) to (t) shall be added after existing clause (n) in sub-section (1) of section 2: -

“(o) „Roll of Law Firms” means a roll of such law firms as are registered by State Bar Council;”

(p) “Legal Services” includes the rendering of any service in the conduct of any case or other legal proceedings before any court, tribunal or any other authority and giving advice on any legal matter;

17. **Section -7**

(a) The following clause (hh) shall be added after the present clause (h) of sub-section (1): -



(hh) to provide for an independent National Legal Education Board in order to meet the challenges in very nature of law, legal institutions and law practice are in the midst of a paradigm shift and to look after the „Continuing Legal Education for advocates“in the Country;“

(b) In sub-section (1) of section 7 the following clauses to be added

(a) to provide for quality and efficient “legal services” to the persons belonging at the disadvantageous including but not limited to Scheduled Caste and Scheduled Tribes, women, divyangs and victims of acid attacks, gang rapes, honour killing, riots, natural calamities etc. ,

(b) engage law students, retired law officers and NGO’s for spreading legal literacy and legal awareness amongst the people

(c) to devise & formulate “apprenticeship scheme” for pre-enrolment training and apprenticeship of a person desirous of enrolling himself as an Advocate after having obtained degree in a law, which is recognized as a qualification for enrolment as an advocate under the Act, for a period not exceeding one year;”

(d) to provide for continuing legal education for advocates;

(e) to provide for recognition and registration of law firms & foreign lawyers.

(f) to provide for recognition and registration of foreign lawyers, if they are desirous to practice law in Indian Courts.

(g) To provide mechanisms for ways to express & air grievances by the persons providing legal services and govern by this Act

**18. Section 9**

(a) Sub-section (1) of section 9 of the Act shall be omitted and substituted by the following sub-section (1): -

(1)There would be an 7 member independent Board of Discipline comprising of eminent jurists, retired judges, social activists, and other persons of eminence to, the working & functioning of this Board shall be not influenced by Bar Council of India and all decision as far as possible be taken by consensus.

**19. Section 22**

There would be a National electronic Register of the Advocates enrolled by the State Bar Council and each member must provide a self declaration in every three years on the electronic portal.

Provided non submission of self declaration would automatically place the name of the Member in the Non verified list for a period of 12 months. If the name is not revived within the period of next 12 months, it shall be treated as suspended. A list of suspended Members shall be displayed on the Official website.



20. **Section 24**

(a) In sub-section (1) of section 24 of the Act, clause (d) shall be added after the existing clause (c): \_

“(d) he has successfully completed the following programmes:

i. has undergone a course of training in law for a minimum period of three months from a Training Centre which is duly recognized by the State Bar Council with the prior approval of the Bar Council of India;

ii. has passed All India Bar Examination under All India Bar Examination Rules, 2010 of Bar Council of India;

iii. has been an apprentice for a period of 9 months with an advocate and a law firm, who had been on the Roll of advocates for a period of not less than ten (10) years.

21. **Section 33**

Section 33:

**Advocates alone entitled to practice\_** Except as otherwise provided in this Act and any rules made thereunder or in any other law for the time being in force, no person shall be entitled to practice in any Court or before any Authority or Tribunal or person legally authorized to take evidence on oath unless he is an advocate enrolled with a State Bar Council under this Act. However, practice by law firms and foreign lawyers recognized and registered by the Bar Council of India shall remain confined to the extent provided for in such registration and subject to the terms and conditions of his/its registration.