

6 June 2015

Dear Mr Mishra,

Further to your letter received by email on 21 May 2015 (the “**Letter**”), the responses of <http://www.legallyindia.com> (“**Legally India**” or “**LI**”) on behalf of the addressees Kian Ganz (“**Kian**”) and Prachi Shrivastava (“**Prachi**”) are set out below.

For the avoidance of doubt, your Letter, which you have circulated to at least 147 addressees by email, including journalists, and purportedly to all Hon'ble Judges of the Supreme Court of the high courts, the Prime Minister of India and many others, is riddled with factual errors, patent absurdities, unsubstantiated allegations and damaging imputations that are highly defamatory and appear either motivated by ignorance of the facts, malice or worse.

The Bar Council of India (BCI) is a great and respected institution that will always command respect by virtue of the vital role it has in supporting and advancing the legal profession. Your allegation that Legally India has ever set out to malign the image of the BCI is patently false and an attempt to distract from the fact that, if anything, it have been your actions as the BCI's elected chairman that have tarnished the image of the institution.

Legally India's response will first set out the facts, which are fundamentally at odds with the allegations made in your Letter, and second, rebut the legal claims raised by you.

Every allegation against Kian, Prachi and/or Legally India is denied unless specifically admitted.

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## (I) Chronology

29 May 2012	Bar Council of India (“ <b>BCI</b> ”), under then-solicitor general and chairman Gopal Subramaniam, <a href="#">signs</a> letter of intent with Rainmaker Pvt Ltd (“ <b>Rainmaker</b> ”) to hold the first All India Bar Exam (“ <b>AIBE</b> ”) <sup>1</sup> .
2 June 2010	BCI formally <a href="#">announces</a> collaboration with Rainmaker, the AIBE and new BCI website <sup>2</sup> .
6 March 2011	AIBE 1 is held by BCI and Rainmaker <sup>3</sup> .
9 July 2011	Gopal Subramaniam resigns as solicitor general of India, which means he can't be BCI chairman anymore <sup>4</sup> .
24 July 2011	AIBE 2 is held by BCI and Rainmaker <sup>5</sup> .
24 July 2011	Ashok Parija elected BCI chairman <sup>6</sup> .
8 January 2012	AIBE 3 is held by BCI and Rainmaker <sup>7</sup> .
15 April 2012	Manan Kumar Mishra (“ <b>MK Mishra</b> ”) takes over as BCI chairman <sup>8</sup> .
22 June 2012	BCI issues request for tenders for new AIBE contract by deadline of 30 June 2012 <sup>9</sup> .
28 July 2012	BCI holds meeting and states that it has received bids from four agencies – Rainmaker, Pearson VUE (“ <b>Pearson Vue</b> ”), Aspiring Minds (“ <b>Aspiring Minds</b> ”), and Manupatra Information Services together with Universal Law Publishing (“ <b>Universal</b> ”) <sup>10</sup> .

<sup>1</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/revealed-rainmaker-had-entered-into-wide-letter-of-intended-jvs-with-bci-but-most-never-took-off>

<sup>2</sup> <http://www.legallyindia.com/20100602910/Law-schools/rainmaker-might-run-bar-exam-relaunches-barcouncilofindiaorg-today>

<sup>3</sup> <http://www.legallyindia.com/201103061881/Law-schools/bci-claims-96-attendance-but-unrest-derails-chennai-bar-exam>

<sup>4</sup> <http://www.legallyindia.com/201107112204/Bar-Bench-Litigation/gopal-subramaniam-no-show-today-as-sg-post-quit-could-lose-bci-chairmanship-but-bench-ambitions-rumoured>

<sup>5</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/mass-advocate-protests-reported-in-chennai-over-todays-bar-exam>

<sup>6</sup> <http://www.legallyindia.com/201107252229/Bar-Bench-Litigation/bci-elects-orissas-ashok-parija-as-chairman-to-continue-with-bar-exam>

<sup>7</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/bci-ramps-up-bar-exam-difficulty-grads-fail-to-finish-aibe-protests-in-tn>

<sup>8</sup> <http://www.legallyindia.com/201204172750/Bar-Bench-Litigation/new-bci-chair-mishra-vows-to-start-compulsory-training-lawyer-insurance-continue-hrd-fight>

<sup>9</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/bci-sticks-with-august-aibe-date-formally-tenders-old-rainmaker-contract> and <http://web.archive.org/web/20120625083842/http://www.barcouncilofindia.org/notification-for-holding-next-all-india-bar-examination-to-be-held-in-the-month-of-august-2012-through-bar-council-of-india/>

<sup>10</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/all-india-bar-exam-aibe-unlikely-before-october-4-agencies-in-running>

30 July 2012	BCI interviews prospective bidders. The name of a fifth bidder, ITES Horizon Pvt Ltd (“ <b>ITES</b> ”), appears for the first time on the minutes.
26 August 2012	BCI rejects the bids of Rainmaker, Pearson Vue, Aspirings Minds and Manupatra, and decides to award the AIBE contract to ITES.
26 August 2012	BCI chairman Manan Kumar Mishra enters into “binding MOU” with ITES (the “ <b>MOU</b> ”).
9 December 2012	AIBE 4 held by BCI and ITES <sup>11</sup> .
25 August 2013	AIBE 5 held by BCI and ITES <sup>12</sup> .
19 January 2014	AIBE 6 held by BCI and ITES <sup>13</sup> .
17 April 2014	Manan Kumar Mishra's term as BCI chairman expires, replaced by BCI member Biri Singh Sinsinwar <sup>14</sup> .
7 September 2014	AIBE 7 held by BCI and ITES <sup>15</sup> .
20 October 2014	Legally India reporter Prachi Shrivastava, who is an Indian citizen, files a right to information (RTI) request with the BCI.
9 November 2014	Manan Kumar Mishra re-elected as BCI chairman <sup>16</sup>
12 December 2014	Document inspection appointment confirmed. Prachi Shrivastava and Legally India publishing editor Kian Ganz attend BCI. MK Mishra denies request to take photographs of documents made available for inspection.
15 December 2014	Legally India <a href="#">publishes</a> story about failed inspection and lodges formal request for supply of copies of documents <sup>17</sup> .
16 December 2014	Prachi Shrivastava files an <a href="#">appeal</a> to the BCI's RTI appellate authority along with three lawyers who file identical RTI requests with the BCI <sup>18</sup> .
20 January 2015	BCI agrees to <a href="#">supply documents in hardcopy</a> <sup>19</sup> . Requests Rs 3,172 from Prachi to cover costs of copies.

<sup>11</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/aibe-day-only-mild-chaos-as-possibly-32000-students-breeze-through-4th-bar-exam>

<sup>12</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/how-was-the-all-india-bar-exam-aibe-for-you-today>

<sup>13</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/bar-exam-2013-postponed-to-2014-january>

<sup>14</sup> <http://www.legallyindia.com/201404114601/Bar-Bench-Litigation/next-bci-chairman-likely-to-be-rajasthan-member-biri-singh-sinsinwar>

<sup>15</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/bar-exam-7-registration-date-extended-to-13-august>

<sup>16</sup> <http://www.legallyindia.com/201411115288/Bar-Bench-Litigation/mk-mishra-back-as-bci-chairman-with-madras-senior-s-prabakaran-as-co-chair>

<sup>17</sup> <http://www.legallyindia.com/201412155428/Bar-Bench-Litigation/li-mischievously-asks-bci-chairman-mk-mishra-why-he-s-trying-to-hide-bci-minutes-listen-to-his-response>

<sup>18</sup> <http://www.legallyindia.com/201412175442/Bar-Bench-Litigation/2-lawyers-file-rtis-for-bci-minutes-li-files-appeal-over-mishra-s-decision-to-hide-bci-documents>

<sup>19</sup> <http://www.legallyindia.com/201501285530/Bar-Bench-Litigation/bci-legally-india-rti-appellate-order>

20 April 2015	Prachi Shrivastava <a href="#">obtains photocopies of requested minutes under RTI</a> <sup>20</sup> .
19 May 2015	LI publishes minutes of meetings related to BCI's 2012 AIBE tender in an article entitled " <a href="#">RTI'd minutes of BCI reveal how multi-crore bar exam contract was awarded to mystery 5th bidder ITeS Horizon #longread</a> " <sup>21</sup> (the " <b>19 May 2015 Article</b> ").
21 May 2015	MK Mishra emails <a href="#">the Letter</a> to Kian Ganz and Prachi Shrivastava and at least 146 other addressees <sup>22</sup> .
24 May 2015	AIBE 8 held by BCI and ITES <sup>23</sup> .
31 May 2015	MK Mishra sends an <a href="#">unsolicited email</a> to Kian Ganz, asking LI to be "positive" in its coverage of the BCI, while stating that "nobody can prove any sort of malpractice or any incident of corruption" in the last three to four years <sup>24</sup> .

<sup>20</sup> <http://www.legallyindia.com/Bar-Bench-Litigation/six-months-after-li-s-mischief-rti-bci-finally-shares-1-600-pages-of-meeting-minutes>

<sup>21</sup> <http://www.legallyindia.com/Pre-law-student/rti-d-minutes-of-bci-reveal-how-multi-crore-bar-exam-contract-was-awarded-to-mystery-5th-bidder-ites-horizon-longread>

<sup>22</sup> <http://www.legallyindia.com/Bar-Bench-Litigation/bci-sends-legally-india-6-page-defamation-notice-over-bar-exam-rti-story-cc-s-pm-all-judges-journalists>

<sup>23</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/surprise-council-decides-to-postpone-bar-exam-aibe-by-two-months-to-24-may-2015>

<sup>24</sup> <http://www.legallyindia.com/Bar-Bench-Litigation/bci-mishra-emails-li-to-be-positive>

## (II) The Facts

### (A) Legally India is not a part of Rainmaker, its agent, associated with it, or vice versa

1. You repeatedly, variably and vaguely claimed in your Letter:
  - a. that Rainmaker is LI's "agency";
  - b. that LI published articles about the BCI at Rainmaker's behest;
  - c. *"the fact that being part of M/s Rainmakers" ... "of which you are still a part";*
  - d. *the fact that (i) you were a part and parcel of M/s Rainmakers is admitted and known to all";*
2. Your allegations of any such nexus between LI and Rainmaker are utterly and categorically untrue on all counts. Your repetition of these falsehoods that you claim are "known to all" does not make your statements any less defamatory, ridiculous and completely devoid of any evidence other than your repetition.
3. Neither LI nor any of LI's connected parties are or have ever been connected to Rainmaker in any way that you allege.

While Rainmaker, as many other companies and organisations has been an advertiser on LI since 2013, LI has always transparently disclosed this fact on any story where this is even remotely relevant. LI's relationship with Rainmaker is arms-length and the same as it is with any of dozens of other advertisers such as Pearson Vue, that use or have used LI to reach out to the legal community and more than 2 lakh visitors per month.

Rainmaker also advertises on several other legal portals but that does not make them each others' agents, just as a company advertising in a newspaper does not make the newspaper an agent of that company.

Making extraordinary claims such as yours without any evidence, suggests either a reckless disregard for the truth, or malice.

Your allegation is therefore clearly defamatory because it alleges a compromise of LI's, Kian's and Prachi's integrity, which are all fundamental to LI's brand that has been built up over more than six years by solid and unbiased reportage of the legal profession.

4. And while previous LI stories, as well as the rest of this response, will contain facts that could support the bids of Rainmaker and companies other than ITES for the AIBE contract, these are objective truths based on publicly available information that are not influenced by LI's arms-length relationship with Rainmaker, Pearson Vue or any other advertisers, companies or persons.

## (B) The ITES tender process was neither fair nor transparent from the start

5. You wrote in your Letter:

**“The Bar Council of India has acted in a more fair and transparent manner and then decided to allot the work to M/s ITES Horizon Pvt Ltd as back as in the year 2012, finding it to be most suitable for the Council and for the lawyers of the country.”**  
(emphasis LI's)

The only possible explanation for you calling the 2012 tender “fair and transparent” is if you are unaware of what these words mean.

The BCI's minutes raise serious concerns about the 2012 bidding process for the AIBE project, right from the start.

### (B.i) ITES appears to have missed the tender deadline, according to the BCI's minutes, which appear to have been doctored

6. The deadline to receive applications with a demand draft of Rs 2,000 was 30 June 2012<sup>25</sup>, with the invitation on the BCI website stating (Annexure 1 – BCI's Tender Notice dated June 2012):

**“Tenders are invited from the consultant expert agencies to hold next All India Bar Examination (AIBE) through Bar Council of India. Agencies will have to abide by the terms and conditions of the sub-committee of the Bar Council of India. In the matter of selection of agency, decision of the Bar Council of India (and the High Level Committee) shall be final and shall not be questioned before any forum or any court of law. AIBE is to be held under the control and supervision of High Level Committee of Council consisting of Hon'ble Judges of Supreme Court of India and High Court (viz. the Board of Directors for this purpose), Legal Luminaries, Members of the Bar Council of India and State Bar Councils. Agencies are required to submit full details of ways and means to hold the examination along with the draft of rupees two thousand (2,000/-) in favour of Secretary, Bar Council of India payable at New Delhi on or before 30th June, 2012. The past experience, reputation, performance, infrastructure of the agencies would be the criteria for selection of the agencies.”** (emphasis LI's)

7. On 28 July 2012, your minutes only recorded four bidders – Rainmaker, Pearson Vue, Aspiring Minds and Manupatra<sup>26</sup> (see Annexure 2 - BCI 2012 meeting minutes relating to AIBE).

8. By 30 July 2012, your minutes (Annexure 2 - BCI 2012 meeting minutes relating to AIBE) included only the same four names in a numbered list, with a printed sentence stating “Subsequently ITES Horizon Pvt. Ltd was represented by Ms. Rubab Khan”. However, this sentence is completely out of alignment with the preceding sentence, which is nearly

<sup>25</sup> <http://web.archive.org/web/20120625083842/http://www.barcouncilofindia.org/notification-for-holding-next-all-india-bar-examination-to-be-held-in-the-month-of-august-2012-through-bar-council-of-india/>

<sup>26</sup> <http://www.legallyindia.com/Pre-law-student/rti-d-minutes-of-bci-reveal-how-multi-crore-bar-exam-contract-was-awarded-to-mystery-5th-bidder-ites-horizon-longread>

impossible to achieve in a Word Processor or by printing error.

The only possible explanation could be an alteration of the minutes after they were printed and first signed by the other bidders: it appears that this sentence was printed out separately, cut out with scissors and inexpertly pasted manually to the end of the minutes after the page was printed.

9. Was this line added after the first set of minutes of 30 July 2012 were finalised? If so, when and why were the minutes, that were signed by all other bidders, apparently doctored?
10. Only the second set of minutes relating to the 30 July 2012 meeting included ITES as one of the five bidders in a numbered list. Despite those minutes being dated 30 July, this set of minutes could only have been prepared after 30 July, since it included revised bids requested and received by companies after the initial tender between 30 July and 2 August 2012, according to those minutes.
11. This really leaves one massive question that must be answered if you wish to claim fairness and transparency in the 2012 tendering process: was ITES' application ever received before the deadline? If not, did you extent the deadline for ITES alone? Were the other bidders aware that this had happened?

### **(B.ii) ITES did not comply with the terms of the tender to submit a demand draft**

12. The 26 August 2012 minutes also noted that ITES was the only bidder to have supplied the BCI with an “account payee cheque” as opposed to a demand draft, as was explicitly required under the tender terms (see Annexure 1 – BCI's Tender Notice dated June 2012).
13. What was the date on ITES' cheque? When did the BCI receive ITES' cheque? And why did the BCI accept the tender despite not complying with the tender terms? Are you aware that banks will refuse to issue backdated demand draft while a cheque can easily be backdated?
14. Contrary to what you assert, the process followed by the BCI in 2012 was far from transparent and even after seeing the minutes, which you were so loathe to share for fear that LI would cause “[mischief](#)”<sup>27</sup>, you are miles away from a satisfying answer to whether ITES was even legitimately part of the bid at all.

### **(B.iii) The losing bidders were rejected for vague and illogical reasons**

15. According to the 26 August 2012 minutes, you awarded the contract to ITES, rejecting all four other bidders. But some of the reasons for the rejections are either opaque or premised on faulty logic.
16. Rainmaker was criticised in the minutes for having reduced its price from the first three AIBEs in the new tender:

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<sup>27</sup> <http://www.legallyindia.com/2014/12/155428/Bar-Bench-Litigation/li-mischievously-asks-bci-chairman-mk-mishra-why-he-s-trying-to-hide-bci-minutes-listen-to-his-response>

“It is surprising how this agency [Rainmaker] which was charging Rs 900/- [in the first three AIBEs] has gone down to Rs 650/- suddenly, while the Hon’ble Members asked about this, the representative kept mum.”

17. In your Letter you also stated:

“In the year 2010 M/s Rainmakers was awarded the work to conduct AIBE @ Rs 900 per candidate and in the year 2012 when fresh tenders were invited, M/s Rainmakers expressed its readiness to do it @ only Rs 560/- per candidate. Meaning thereby, that it had cheated the candidates for 2 years. And this was also one of the reason for non-grant of work to your agency.”

18. Other than some dubious logic this actually appears to be a mischaracterisation of the bid received and a basic lack of understanding about how the AIBE actually works, which can only be deliberate if it is not incompetent (your Letter also misstates Rainmaker's bid as Rs 560 per candidate, when in fact it bid Rs 650, according to the meeting minutes).

19. First off, here's a table summarising all the bids received, according to your minutes (see Annexure 2 - BCI 2012 meeting minutes relating to AIBE):

	Initial bid with materials (Rs / candidate)	Initial bid without materials	Final bid with materials	Final bid without materials
<b>Rainmaker</b>	900	500	650	500
<b>Manupatra</b>	850 (1 <sup>st</sup> exam) 800 (2 <sup>nd</sup> exam) 700 (3 <sup>rd</sup> exam)	400		
<b>Pearson Vue</b>	670	590 (1 <sup>st</sup> year) 640 (2 <sup>nd</sup> year) 690 (3 <sup>rd</sup> year)		
<b>Aspiring Minds</b>	675	500		
<b>ITES</b>	695	675	650	600 without materials / 500 for repeat candidates

20. In the first three AIBEs, Rainmaker had also charged the BCI Rs 900 per candidate, having agreed to prepare and dispatch to candidates printed study materials<sup>28</sup>.

According to the minutes of the 2012 tender, in the first round Rainmaker again offered to conduct the exam for Rs 900 for each fresh candidate, including study materials. In the same bid, Rainmaker offered Rs 500 for repeat candidates. Because repeat candidates generally do not require preparatory materials because they would still have study materials in the last exam, the Rs 500 bid can only be read as a bid without study materials.

In the second round, in which you appear to have specifically solicited quotes without study materials, Rainmaker again quoted Rs 500 without materials for fresh and repeat candidates according to your minutes. This is in fact the same quote as their initial 2012 quote for

<sup>28</sup> <http://www.legallyindia.com/201103071886/Interviews/subramanium-full-bar-exam-marks-in-a-week-rainmaker-fees-revealed-exam-decentralisation-future-plans>

repeat candidates.

The BCI minutes state that “an increase of Rs 150/- has been proposed by its representative for study materials in course of interview”, which would have taken Rainmaker's bid to Rs 650 per candidate including study materials.

The argument that Rainmaker reducing its price is evidence of it having “cheated the candidates for 2 years” and being “also one of the reason for non-grant of work” to it is a failure to understand the realities of competitive bidding (as will be explained in more detail below).

21. Furthermore, if objectively examining the other tenders it is obvious that preparing and dispatching study materials to candidates could reasonably cost several hundred rupees per candidate and does not necessarily have to be evidence of cheating.

One of the bidders, Manupatra, offered to do the first exam for Rs 850 with creating completely new study materials, reducing to Rs 800 for the second exam and Rs 700 for the third exam.

Bidding jointly with one of India's largest law book publishers Universal Law Publishing Pvt Ltd, the Manupatra bid had arguably very good experience out of all bidders to judge the costs of printing, creating and distributing new preparation materials.

Did you know how Manupatra's quality of study materials would have compared to Rainmaker's or any of the other bidders?

Did you ask them about that during the tender? If so, what did they say?

22. The BCI's records of the other bids are not entirely clear as to whether study materials are included and if the bidders would be required to create those themselves, or merely print and distribute old materials.

- Aspiring Minds, for instance, quoted Rs 675 per fresh candidate (which presumably includes study materials since its quote for repeat candidates was only Rs 500, but this is not spelled out in the minutes).
- Pearson Vue in its first bid quoted from Rs 590 to Rs 690 with online “model test papers”, and Rs 670 “if study material provided” according to the minutes. Why the minutes would record a lower quote from the company with study materials is not clear.

The winning bidder, ITES Horizon Pvt Ltd, quoted Rs 650 with study material and Rs 500 without study materials.

23. Particularly in light of the BCI's decision recorded in the 26 August 2012 minutes that no study materials would be provided for the upcoming exam due to a scarcity of time, there appeared to have been a general lack of clarity in the bids recorded in the minutes about whether study materials were required, and if so, whether a company would be expected to produce those itself or whether it could re-use the materials prepared by the BCI and Rainmaker in the first three AIBEs.

As reported in the [Mint](#) feature written by Kian in December 2012<sup>29</sup>, one issue surrounding preparation materials was that Rainmaker and the BCI held joint copyright to the preparatory materials, which Rainmaker was unwilling to surrender after it lost the contract. The article noted: “Chairman Mishra said the BCI was not influenced by the copyright issue but had internally decided not to issue study materials in August for the open book exam because this would test students’ knowledge of law better.”

When, if at all, were bidders told about any potential copyright issues? Did the BCI make it clear to all bidders whether they would be expected to produce new materials from scratch or whether they could just distribute the old ones?

24. In addition to any of the above, there is another perfectly reasonable explanation for why Rainmaker would have “expressed its readiness to do it @ only Rs 560 (sic) per candidate”: you held a competitive tender with at least three other bidders.

As you may be aware, the nature of competitive tenders is that bidders face competition and undercut each other so that the BCI ends up with a better deal.

25. As such it is surprising that in a competitive tender, in which you admitted you disqualified Rainmaker primarily on the basis of their previous price having been too high compared to their new lower price, whom you rejected.

For instance, you rejected Pearson Vue, which was ready to do the exam for you at Rs 545 per candidate in the first year, Rs 595 in the second year, and Rs 645 in the third year.

In aggregate, even over three years, that works out at less than the winning bid of Rs 600 by ITES.

Also, did you know that Pearson Vue is one of the biggest global companies in the field of learning and examinations, which has conducted regular law school entrance tests for thousands in India? Surely you must have been aware, since they must have told you about themselves quite a bit during the tender, or at least you would have asked, right? It would also have been reasonable to assume that holding the AIBE would have been a fairly easy exercise for a company such as Pearson.

So why didn't you give it to them? It would have been difficult for anyone to have been able to question such a decision.

Others too certainly must have looked promising on price and credentials. Aspiring Minds, a company that told you it generates “over 22 crores in the field of assessment”, bid Rs 675 per new candidate and Rs 500 for repeat candidates. It is not clear from your minutes whether the Rs 675 amount includes study materials though it would be logical to assume it did.

That's only Rs 25 more than the winning bidder ITES wanted with study materials, or Rs 100 less than ITES without study materials. It also seems as though Aspiring Minds, seeing as it specialises in assessment, would have had the experience to do the job and their bid

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<sup>29</sup> <http://www.livemint.com/Politics/Z9HH7jg4q8Any5PILN9Ffp/The-India-bar-exam-a-regulators-rocky-road.html>

would have deserved a second look.

And did you even look at the final price offered by Manupatra and Universal without study materials? They offered Rs 400. That would have meant an extra Rs 200 per candidate that the BCI could have used for the “welfare of lawyers”, which the 26 August 2012 minutes note about what the BCI and state bar councils would do with the AIBE proceeds.

Instead, those additional Rs 200 per candidate went to ITES (which works out to more than Rs 1.1 crore from AIBE 4 and 5 alone from 58,000 candidates – a figure you disclosed under an RTI filed by an advocate in 2014<sup>30</sup> - and probably at least Rs 1 crore again over AIBE 6, 7 and 8 for which you never disclosed the number of candidates).

(Alternatively, you could have also contributed to the “welfare of lawyers” by reducing the price of the AIBE to Rs 1,700, saving young struggling lawyers at the beginning of their careers some money they could have spent on their personal welfare.)

26. However, in your Letter you wrote:

“One thing more is important to be noted that Hon'ble Apex Court has held it on so many occasions that it is not necessary to award the contract always to the lowest tendered and it is upon the organization (seeking work from the different contractors/agencies) to examine and decide the overall suitability and many other aspects before awarding work or contract to any agency.”

While this is a misunderstanding of the law on the issue, please explain what was the deciding factor if it was not cost.

27. According to your minutes dated 26 August 2012:

“representatives of M/s Aspiring Minds, M/s Pearson Vue and M/s Manupatra Information Solutions Pvt Ltd. flatly refused to give a place to a representative/staff of Bar Council of India for proper coordination and answer the queries of the candidates which has been a big problem for the Council during the last two years. They declined to have their offices in the premises of Bar Council of India even for the purpose of liaising” (emphasis LI's)

and

“M/s ITES Horizon Pvt Ltd has agreed to set-up its one small liaising office in the premises of Bar Council of India for the purpose of proper coordination with the candidates and its employees. Moreover the rate quoted by it appears to be reasonable and practical. The proper liaising between Bar Council of India and the agency was felt necessary during the last two years.” (emphasis LI's)

First of all, it is hard to believe that those three companies that spent time and effort bidding for the AIBE tender, would knowingly lose a multi-crore contract by deciding to “flatly refuse” what doesn't seem like a very onerous request to depute some of its staff to the BCI offices and vice versa.

<sup>30</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/rti-reveals-bci-contractor-made-record-rs-10-cr-out-of-2-bar-exams-in-2012-13-as-pass-rates-rose-to-highest-ever-levels>

Did they know that this would be the main criteria that you seem to have based your final decision on (other than a “reasonable and practical” rate)? Rainmaker must presumably have known about this condition, since they had partly worked from the BCI's offices in the last three AIBEs and the minutes don't seem to mention any flat refusal from Rainmaker.

But were Aspiring Minds, Pearson Vue and Manupatra informed before the tender that this would be a critical condition to their winning the contract? At what stage of the tender were they asked about this? What were their exact responses? What was ITES told?

In the second set of minutes prepared about the 30 July 2012 tender at a later date, after companies had submitted their revised bids, you don't mention anything about flat refusals by the other three vendors, despite it apparently having been such a critical condition to winning the contract.

Yet those minutes mention that ITES CEO Robab Khan “has personally appeared and expressed her willingness to conduct the exam, saying that she can run her office in the premises of Bar Council of India itself”.

Did the BCI request Robab Khan to confirm that she would run her office at the BCI or did she volunteer that information herself? Did ITES have information that the other three bidders did not?

28. About the fairness of the process, you also wrote in your Letter:

“That it was because of the frequent allegations being set-up by some of the unsuccessful agencies particularly M/s Rainmakers through some unknown persons (who started making frivolous and motivated allegations) that the Bar Council of India had to resolve to refer the matter of allotment of work of All India Bar Exam to be enquired through a former Hon'ble Judge of Supreme Court of India in the year 2013 itself. The enquiry committee has examined everything and has found the allotment perfectly fair. Therefore, the Council does not require a 'CERTIFICATE OF FAIRNESS' from a unwanted/undesirable media like 'Legally India' in this regard.”  
(emphasis yours)

That is indeed interesting. First of all, this statement of yours seems to imply that these are “frequent allegations” were made by someone other than LI?

Do you have any proof that such “frivolous and motivated allegations” were made by “unsuccessful agencies” such as Rainmaker, Manupatra, Pearson Vue or Aspiring Minds?

What was the substance of those complaints?

Moreover, if the allegations were “frivolous” as you put them, why did the BCI see the need to create an inquiry headed by a Supreme Court judge? Could the BCI not have ignored frivolous complaints, of which it must receive hundreds?

The inquiry you refer to is presumably the inquiry by Hon'ble Justice Deepak Verma (ret'd)? Why have you not shared a copy of this with advocates, the media or anyone else if it gave the BCI a clean chit?

LI understands that as of 15 January 2015, Justice Verma's inquiry was still pending. When exactly did Justice Verma issue this “certificate of fairness”? And what exactly did it say? And what was the scope of his inquiry?

29. Purely from the minutes and the information you have shared in your Letter, it appears that the process that ended up selecting ITES was anything but fair and transparent, and this is a conclusion that is obvious even without looking at ITES' suitability for the role.

### (C) ITES was not qualified to assist the BCI in holding the AIBE and appears to have misrepresented its revenues and experience

30. You claim that the BCI “*decided to allot the work to M/s ITES Horizon Pvt Ltd as back as in the year 2012, finding it to be most suitable for the Council and for the lawyers of the country*”.

31. In the binding MOU that ITES signed with you, it undertook to create and distribute study materials for the AIBE 5, for effectively Rs 50 per candidate (Rs 650 in total per candidate).

Did you not ask yourself the question whether a software outsourcing company without any apparent legal or testing experience to speak of, could promise to create materials that can prepare lawyers for their entry into the profession?

What was it exactly that made you think ITES was qualified when compared to four companies that specialised either in running this very exam, other competitive exams and/or had major experience of dealing with the legal profession?

32. According to your minutes, ITES quoted a revenue of “around Rs 5.4 crores” when tendering, with experience of 13 years according to its website. You also stated in an interview with legal website *Bar & Bench*<sup>31</sup>, when asked how ITES was appointed:

“ITES has been in service for the past 13 years and they have the relevant expertise in conducting such exams. We are satisfied with the way they are doing it and now everything is both online and offline. The number of candidates has increased and is around 35,000. It has become very easy for the candidates and the BCI through the bank challan system.

Have you ever had a look at ITES' accounts that are available via the Ministry of Corporate Affairs (MCA), even online? If such elementary due diligence had been carried out, it would have been obvious that ITES was a company with a paperthin history.

You not having carried out such basic checks is strong evidence of negligence, at the very least.

#### (C.i) The ITES promoter had only joined the company in 2010

33. According to the company documents publicly available with the Ministry of Corporate

<sup>31</sup> <http://web.archive.org/web/20121128185236/http://barandbench.com/brief/2/2989/conversation-with-bci-chairman-manan-kumar-mishra-aibe-foreign-law-firms-legal-education>

Affairs, ITES Horizon Pvt Ltd was founded on 11 November 1999 by Puneet Tandon and Sheetal Sachdeva, who each held 49.5% equity shares in the company (see Annexure 4 – ITES directorship histories).

Robab Khan, who fronted the tender as ITES' CEO on 30 July 2012, only became a director of ITES in on 5 August 2010 alongside Alamgir Mohammed Khan.

Robab Khan held 99.9% of issued shares in the company; Alamgir Khan held 0.1%.

On 27 August 2012, one day after you awarded the contract to ITES and entered into the binding MOU with Robab Khan, the company's original founders, Puneet Tandon and Sheetal Tandon (as Sheetal Sachdeva was then called, presumably after marriage to her co-founder Puneet Tandon) resigned from the board of directors.

Alamgir Khan, who became co-director with Robab Khan in 2010, resigned from the company's board of directors on 29 September 2012, only one month after the AIBE contract was awarded.

### (C.ii) ITES Horizon was a non-operational company for the majority of its claimed '13-year' lifespan, and never had Rs 5.4 crore of turnover

34. ITES Horizon Pvt Ltd's financial statements available with the Ministry of Corporate Affairs throw up what should have been red flags in any due diligence of an IT company that claimed “around Rs 5.4 crores” in revenues and to have been operating for 13 years.

Find below a tabulation of ITES' revenue, profits, losses and assets, extracted from the publicly available financial accounts where such figures were available (table and all original financial statements also in Annexure 3 – ITES accounts):

	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002
Revenue	N/A	N/A	0	0	0	0	0	0	0	0	4,85,000	N/A
Expenses	N/A	N/A	48,802	2,500	4,000	4,000	4,000	3,700	3,700	1,79,753	6,78,000	N/A
Profit / Loss	1,542,005	(19,760)	(48,802)	(2,500)	(4,000)	(4,000)	(4,000)	(3,700)	(3,700)	(1,79,753)	(1,93,310)	N/A
<b>ASSETS &amp; LIABILITIES</b>												
Expenses payable	702,775	51,900										
Other payables	4,383,893											
Unsecured loans from directors		421,682	397,082	372,082	342,932	342,932	342,932	342,932	342,932	342,932	919,524	
Directors' current account	1,121,682											
Profit and loss account balance	1,001,361	(540,645)	(520,884)	(472,082)	(469,582)	(465,882)	(462,182)	(458,482)	(454,782)	(451,082)	(271,329)	(85,451)
Cash and Bank Balances	3,745,312	5,745	5,785	0	0	0	0	0	0	0	63,314	307,600
Trade receivables	2,387,645	0										
Fixed Assets: Furniture & Fixture	101,397	17,280	8,600							29,772	33,364	40,744
Fixed Assets: Office equipment	88,788	9,912	3,013									
Fixed Assets: Computers	55,794									464,302	138,698	231,163
Total Fixed Assets	245,979	27,192	11,613	0	0	0	0	0	0	528,713	230,873	340,217

A summary of the historical financial data, before the AIBE tender:

- Between 2004 and 2011, ITES had zero revenues.
- Between 2005 and 31 March 2010, ITES was essentially a non-operational company, with its only expenses being its auditing and related fees ranging from Rs 2,500 to Rs

4,000 per year.

- Between 2005 and 2010, ITES had no assets, according to its balance sheets, with a bank balance of zero.
- ITES recorded a loss every year for which records are available, from 2003 until 2012. Its only source of funds appears to have come from directors' loans in 2003.

As at 31 March 2012, four months before it was bidding for the AIBE tender and two years after Robab Khan became a director of the company:

- The 2011-12 financial year accounts were confirmed by the board, including Robab Khan, on 27 August 2012 (that is, one day after entering into the AIBE MOU with you).
- ITES had total fixed assets of only Rs 27,192 and not even computer equipment on its books, according to its balance sheets of that year. It owned only Rs 17,280 worth of “furniture and fixtures”, and Rs 9,912 worth of “office equipment”.
- “No person was employed by the company hence Provisions of Gratuity Act, Provident Fund Act and ESI are not applicable”, according to item number 5 in the “other notes” section to its balance sheet dated 31 March 2012.
- ITES was running a loss of Rs 19,760 that year, while still carrying forward historical losses of Rs 540,645 from previous years. A full profit and loss account for that year, including the company's revenues, have not been published in the accounts.

As at 31 March 2013, after ITES had conducted the first AIBE, the picture looks radically different:

- The company turned its first profit since 2003, and perhaps since its incorporation in 1999: it made profits of Rs 15.4 lakh.
- Its bank account balance jumped from Rs 5,745 the previous year to Rs 37.5 lakh.
- ITES finally owned computers on its balance sheets again, for the first time since 2004, holding Rs 55,794 worth of computers as fixed assets. ITES also bought furniture & fixtures worth around Rs 1.01 lakh, and office equipment worth Rs 89,788. The value of its fixed assets were nearly 10 times the value of its total fixed assets a year earlier.

It is clear that your minutes' description of ITES' tender, as well as your later public statements about ITES, were an utterly unrealistic portrayal of the company that does not tally with publicly available financial data.

In 10 years, ITES had never had revenues that even approached “around Rs 5.4 crores” - in fact, revenues were zero for the majority of the company's life.

Furthermore, there is no way that the company's financial history can support your and ITES' claim that it had 13 years of relevant experience.

In fact, the financial statements leave precious little, if any, room to imagine that the company had any relevant experience at the time of the tender.

### (C.iii) ITES did not appear to have a website for most of its life

35. ITES' website at <http://www.iteshorizon.com/> stated in September 2012: “We are ITES Horizon Private Limited, an organisation founded in 1999 well grounded in IT implementation and delivery for nearly 13 years.”<sup>32</sup> (see Annexure 5 – ITES Horizon archived website).

ITES' website stated in September 2012:

“Our area of operation involves Website Designing Website Development, Automation of Office via Internet or Intranet, Financial Software Development, Inventory Management and also Graphic Designing including printing and publishing.”

36. For an IT company that claimed “website designing” and “website development” as its top areas of operation, revenues of Rs 5.4 crores and a track record of 13 years, it is conspicuous that it did not appear to have a website at the <http://www.iteshorizon.com/> domain between May 2002<sup>33</sup> until perhaps as late as September 2012, according to the Internet Archive's Wayback Machine, which preserves websites for posterity.

37. Historical domain name registration records of iteshorizon.com, which are available for a small fee via the website domaintools.com, show that the domain name expired around 2001 (Annexure 6 – ITESHORIZON.COM domain name registration records).

The domain appears to have been without an owner until 2004, with records from 2008 stating that the domain name was owned by a design company based in Taiyuan, China.

On 14 July 2012, ITES Horizon via Rakesh Neelam appears to have registered the domain name.

LI and Kian reported on the obviously short-lived domain ownership history of ITESHORIZON.COM as early as 20 November 2012<sup>34</sup> after the official allindiabarexamination.com website went offline for three days. The article stated:

The internet Whois database, which records the details of web domains' registrants, states that the company's website at iteshorizon.com was registered in July 2012, and lists the name, telephone number and email address of Rakesh Neelam, based in Noida.

Neelam told Legally India he had entered into a franchise agreement with the owners of ITES Horizon around July 2012 for only one month. “After that I found it was not a reputed company I can work with”, he said, adding that he has since founded his own web and mobile technology company.

The person Neelam had liaised with in buying ITES' domain was Alamgir Khan, who heads up another technology company in Hyderabad according to his Linked-in profile.

However, Alamgir Khan told Legally India that he was not involved in ITES at all.

<sup>32</sup> <https://web.archive.org/web/20130626073409/http://www.iteshorizon.com/>

<sup>33</sup> <https://web.archive.org/web/20020524232514/http://www.iteshorizon.com/>

<sup>34</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/bar-exam-website-offline-for-3-days-til-tonight-as-ites-horizon-remains-a-mystery>

ITES' current director Robab Khan had left Alamgir Khan's company before joining ITES, but Alamgir Khan declined to confirm the date of her departure.

He said: "Information [about when she left] I can not provide you. I can not give any sort of explanation. We are not in touch with her. We have our own stuff."

38. Even ITES' September 2012 website contained reams of meaningless placeholder text, and links to its "Projects", "Clients" and "Testimonials" pages were not functional according to the Internet Archive's historical copy of its website.

It's "[Contact Us](#)" [page](#)<sup>35</sup>, for instance, had the following text under "Stories and Testimonials":

We live in a rational, left brain world with global technology at our fingertips. Yet as human beings, our soul is still fired by color and imagination. Our minds are storehouses of images and memories and through them God works in our hearts. Praying with our imaginations can create a deeper and more personal intimacy with Jesus, Mary, the disciples and others written about in scripture. We can take the familiar stories we know and let them flow through our own imagination and see where the Lord guides it.

Some text towards the bottom of ITES' contact us page stated:

It consecetur adipisicing elit

Now we begin to imagine the scene we read about. Who is in it? What conversation takes place? What is the mood – tense? joyful? confused? angry?

Both pieces of text have been plagiarised from a [religious university website in Nebraska, USA](#)<sup>36</sup>.

39. In December 2001, when the ITES website was last properly operational before September 2012, according to the Internet Archive<sup>37</sup>, the domain hosted a website that provided "medical transcription services", describing itself as a: "Technology leader of Internet-based healthcare information services, ITES Horizon has intimate knowledge of state-of-the-art medical transcription technology and a vision for the future. We provide cost effective support to medical professionals."

Did you try Googling ITES Horizon Pvt Ltd when they submitted their tender? Did you ask them for a portfolio of websites or projects they had managed over the past 13 years?

Interestingly, even now, ITES' website's portfolio section only lists that it has<sup>38</sup>:

- a. "developed software for Logistics Company", which is unnamed;
- b. "developed software for schools" to "easily maintain all the details of school like as attendance detail, fee detail, student detail, transport detail, library detail, holidays detail,

<sup>35</sup> <https://web.archive.org/web/20120913053342/http://iteshorizon.com/contact.html>

<sup>36</sup> <http://onlineministries.creighton.edu/CollaborativeMinistry/Imagination/Intro.html>

<sup>37</sup> <https://web.archive.org/web/20011211135931/http://www.iteshorizon.com/aboutus.htm>

<sup>38</sup> <http://iteshorizon.com/Portfolio.aspx>

functions detail, events detail or many more” (sic). The school's web site linked to at <http://school.saisodaking.com/> was not operational as of today;

- c. “developed software for university”, which is unnamed, but “is successfully running for previous five years” and maintains “all the records of university”;
- d. “developed a amazing software for restaurants” that “calculate the sales and purchase of restaurants and inform owner of restaurannt” (sic);
- e. “developed a reliable software for hotels”, which seems to do the same as the above restaurant software and again lists no company names;
- f. “Exporters Software developed for an Brazil client”, having “build the backend Dashboard that can easily calculate total sale purchase of compnay” (sic). This does contain a functioning web link to <http://hosindia.in/>, though rather than a Brazilian company that is a company with an address in Delhi.
- g. “developed a software for dental hospitals.This software made for an US Client.Use of this software user can manage whole work of hospital on fingers.” (sic). No client name supplied. and
- h. Built “[Quickfixer.com](http://Quickfixer.com) is an free post classified web application.We use microsoft technology to build this Web application.” That website is not operational as of today.

Its work on the AIBE with the BCI, which should clearly be ITES' biggest and most complex project to date, is conspicuous by its absence in its portfolio section, as is the work ITES claimed to have done with Global Open University.

40. In its tender as recorded in the 30 July 2012 minutes, ITES claimed that its “experience of holding examination other than AIBE” was that it had “conducted exam of Global Open University”.

According to news reports from December 2013, a Global Open University in Nagaland was probed by the police for allegedly issuing fake certificates<sup>39</sup>, and in April 2015 the pro-chancellor of the college was reportedly arrested for an alleged “fake degree racket”<sup>40</sup>.

Of course, those news items only surfaced after you award the tender, but they do cast doubt on the credibility of ITES experience in conducting exams.

Did you receive detailed information at the time of ITES' tender about exactly what its exam at Global Open University entailed? Did you do any due diligence of or try to verify ITES' claims to examination experience?

41. To clear up any doubt, you must publish the complete tender documentation and all correspondence relating to the tender of all bidding companies, including ITES, on the BCI's website.

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<sup>39</sup> <http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/fake-certificates-case-takes-a-turn/article5464784.ece>

<sup>40</sup> <http://www.hindustantimes.com/bathinda/punjab-police-bust-fake-degree-racket-of-nagaland-varsity/article1-1334038.aspx>

In light of ITES' nearly non-existent *prima facie* credentials and track record, disclosing everything is the only way that remains to explain why, according to the BCI's minutes, ITES was the “*most suitable for the Council and for the lawyers of the country*” to run the AIBE when surely there must be thousands of technology companies in India that must be more professional, experienced and competent.

#### (C.iv) The last AIBEs had enough defects to warrant investigation

42. You gave several examples, claiming that since 2012 the AIBE has been conducted “*without any complaint or grievance from any corner and except a person / the so-called media like you, up till now, nobody else has found any sort of defect in the functioning*” of ITES, and give several justifications for repeated delays and postponements.

This is not supported by evidence.

The BCI has been running the AIBE for five years now and it still can't seem to find a date first time around that does not interfere with LLB exams or otherwise conflict with something else. The BCI can not fix a date and simply stick to it, without postponing it every single exam in the last three years?

Postponements cause hardship to practising advocates and students, who may be completing master's degrees abroad and need to reschedule trips due to last minute changes to the schedule by the BCI. That belies a serious lack of organisation or competence, either on the side of the BCI or of the contractor or both.

You never adequately explained the reason for the fee hike from Rs 1,300 during AIBE 1, 2 and 3, to Rs 1,900 and now Rs 2,500. Why is it necessary, other than the BCI needing increased funds because it does not receive money from the Centre? If you are claiming that the court has exonerated the price rise, please provide a case citation and reference of such an order.

Why did you backtrack on your plans to provide useful study materials to students from AIBE 5?

The “provisional permission” to practice was introduced to deal with the delay between AIBEs. According to its minutes, the BCI undertook to hold three AIBEs per year. The only 12 month period that has ever seen three exams were AIBE 1, 2 and 3, conducted by Rainmaker.

The only ITES-conducted AIBE that was held within five months of the previous one, was AIBE 6. The others faced delays of 11, 8, 8 and 7 months. Why have you and ITES not been able to hold the AIBEs more regularly to reduce the hardship of young advocates and the dependence on temporary practising certificates?

Those are only the tip of the iceberg of problems with the most recent AIBEs but those are sufficient to establish the main, unanswered point: the BCI has been conducting the exam for five years now, surely these problems should have been solved by now in order to reduce the hardship and inconvenience of young practising lawyers.

## (C.v) Breach of data privacy

43. There are further question marks about the effective conduct of the exam. When you met with Kian on 30 October 2014, shortly after your term as chairman came to an end and just before you were elected by the other BCI members again in [November 2014](#)<sup>41</sup>, you told Kian that an individual contractor of the BCI was caught red-handed emailing 6,000 AIBE candidates to get them to purchase study materials in a scam operation. You said that the contractor's access to the candidate database was immediately blocked and the contractor was removed, though no criminal action had been taken.

Your conduct in not pursuing legal action against the parties concerned regarding serious breach as explained above casts serious doubts over the integrity of the examination process conducted by the BCI.

Additionally, the opaque regime perpetrated by you at the BCI ensured that the candidates to the bar exam weren't aware of any breach committed by those contractors who were engaged by the BCI.

44. Kian also told you at that meeting that he had been contacted by an anonymous party via email, asking him to buy a database of AIBE candidates. You said that you were not aware of this specific incident having happened but did not seem overly concerned.

45. That person going by what was presumably a pseudonym - Lloyd Brinkley - had offered Kian the purchase of 18,638 applicant names of AIBE 7 on 8 July 2014, including candidates' email addresses, date of birth, full address, phone number and whether they were fresh or repeat applicants, at a cost of US\$0.50 per contact (\$500 for 1000 advocates) requesting payment to a Paypal account. The person was able to supply a small number of candidates' sample data that appeared to have been genuine and even claimed to have been able to procure data of AIBE candidates who had applied for the exam after 8 July.

The information offered either suggested that someone close to the BCI was leaking the information to them, or that they had compromised the security of the AIBE's internet servers.

This episode demonstrates either a lack of operational or information security by ITES and/or the BCI in dealing with confidential information entrusted to them by AIBE candidates, and calls into question the suitability of ITES and/or the BCI to conduct the tender.

## (D) Even compared to the first AIBE tender, the ITES tender is suspect

46. You claim in your Letter:

“In the year 2010 M/s Rainmakers was awarded the work to conduct AIBE @ Rs 900

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<sup>41</sup> <http://www.legallyindia.com/20141115288/Bar-Bench-Litigation/mk-mishra-back-as-bci-chairman-with-madras-senior-s-prabakaran-as-co-chair>

per candidate and in the year 2012 when fresh tenders were invited, M/s Rainmakers expressed its readiness to do it @ only Rs 560/- per candidate. Meaning thereby, that it had cheated the candidates for 2 years. And this was also one of the reason for non-grant of work to your agency.”

47. Are you seriously claiming that Rainmaker and the BCI, which awarded the contract to Rainmaker, were cheating candidates for two years between 2010 and 2012?

You were a member of the BCI when the first AIBE contract was awarded to Rainmaker, were you not? Why did you not raise your voice then? Do you bear responsibility for 'cheating candidates' or who else was responsible, if not you?

Have you made any investigation into that tender? What did you conclude?

48. In your letter, you appear to refer to the email Kian wrote to you on Friday, 15 May 2015, requesting a comment on why ITES was picked in the tender. You alleged in your Letter:

“In the letter written to me vide your email dated 15.05.2015 in which you had made several queries and had sought certain answers from me with regard to allotment of work to M/s ITES Horizon Ltd. in the year 2012. It is relevant to point out, at the very outset, that while you have quoted the names of M/s Aspiring Minds, M/s Pearson VUE and M/s Manupatra Information Solutions Pvt. Ltd, **you have deliberately and purposely left the name of your agency i.e. M/s Rainmakers which was also one of the aspirant for the work of All India Bar Exam in the year 2012.** Certainly, since, you were/are a part of M/s Rainmakers and you know it fully well that if this fact is known to the viewers, they will immediately realize the truth of your misdeeds and mischief and your oblique motive with which you have been publishing your stories against Bar Council of India from July, 2012 onwards.” (emphasis yours)

Your statement is a defamatory and gross misreading of Kian's email and the logic of your argument or how your conclusion follows from your premise is non-existent.

In any case, this is what Kian actually wrote to you on Friday, 15 May by email, that had copied in Prachi:

Dear Mr Mishra,

I hope you are well.

We just had a few quick questions about the AIBE contract that was awarded in 2012.

According to the BCI meeting minutes of 30 July 2012:

“representatives of M/s Aspiring Minds, M/s Pearson Vue and M/s Manupatra Information Solutions Pvt Ltd. flatly refused to give a place to a representative/staff of Bar Council of India for proper coordination and answer the queries of the candidates which has been a big problem for the Council during the last two years. They declined to have their offices in the premises of Bar Council of India even for the purpose of liaising...

“M/s ITES Horizon Pvt Ltd has agreed to set-up its one small liaising office in the

premises of Bar Council of India for the purpose of proper coordination with the candidates and its employees. Moreover the rate quoted by it appears to be reasonable and practical.”

Was this requirement communicated to all other four contractors before they applied for tender? When were the companies asked to give a place to the BCI or have an office in the BCI premises?

Also, Pearson Vue had lower quotes than ITES but arguably had much more real world experience and credentials than ITES in carrying out an exam, also in the legal field - why were they not selected, other than the office issue?

Finally, was ITES part of the original 4 tendering companies? We reported at the time in several stories, that the four were rejected and ITES came in later. Did they submit their tender and payment by the 30 July deadline?

We'll be publishing a story on the minutes soon - please email me if you have any queries or call me on 0900 405 6651.

Best regards,

Kian

It should be perfectly obvious why Rainmaker was not mentioned in Kian's email: the minutes specified that Rainmaker was willing to work in the BCI offices (as indeed it had done during the first three AIBEs) but that the BCI had rejected Rainmaker because they had decreased their quoted cost from Rs 900 to Rs 650 / 500.

As subjective as your decision to disqualify Rainmaker may have been, the questions posed to you pertained to why the BCI rejected the other three bidders, which allegedly “flatly refused” to work out of the BCI office.

Needless to say, despite giving you ample time and opportunity to clarify your position, you did not respond. We published the following article four days later, on Tuesday 19 May 2015, on the minutes and the 2012 tender:

[RTI'd minutes of BCI reveal how multi-crore bar exam contract was awarded to mystery 5th bidder ITES Horizon #longread](#)

Nevertheless, the questions of Kian's email are worth reiterating since you have provided no rebuttal of the facts or satisfactory explanation to the question: were all the bidders told that working at the BCI's office was critical or apparently the most important criteria to winning the contract?

## (D.i) The contract you entered into with ITES was unadvantageous to the BCI

49. That said, purely as a matter of common commercial sense, conceptualising and setting up an AIBE for the first time must have been a far riskier and expensive endeavour for a

company and the BCI back then.

For the cost of Rs 900, on top of what is now the normal AIBE procedure, the BCI (and candidates) got from Rainmaker:

- a. a new BCI website at <http://www.barcouncilofindia.org> ,
- b. a complete set of printed study materials running to several hundred pages for each candidate,
- c. a set of practice questions,
- d. a commercial entity taking the risk that the AIBE would never happen due to the numerous legal challenges of it and other obstacles a first-time AIBE faces.

50. Now please compare that to the bargain you struck with ITES Horizon Pvt Ltd (“**ITES**”), the contractor that you selected to replace Rainmaker for the fourth and subsequent AIBEs from 2012 onwards.

According to the binding memorandum of understanding (the “**MOU**”) that you personally entered into with ITES on 26 August 2012, as disclosed to us via RTI by the BCI, you agreed to pay ITES Rs 600 per candidate.

This is what the BCI and candidates got from ITES (or, in fact, didn't get):

- a. No new BCI website to date, no updates at all to the BCI website's functionality (despite ITES undertaking in the MOU to build one),
- b. No study materials, printed or otherwise to date (despite ITES undertaking to provide such materials in the MOU from AIBE 5),
- c. No practice questions for candidates to date (despite ITES undertaking to upload five model question banks on the BCI website by the time that AIBE 4 admit cards were supplied),
- d. ITES taking over a tried-and-tested AIBE that had already been held three times, where most of the legal risk had been dealt with, and that was a guaranteed cash cow to any winning contractor.
- e. According to your MOU, ITES and the BCI would share copyright in the preparation materials (these are the same copyright restrictions that Rainmaker and the BCI had, which had earlier resulted in the unfortunate position of the BCI not being able to re-use Rainmaker's study materials and having to ask for contractors to re-create those materials. You were aware of this issue and the problems<sup>42</sup> it caused, so why did you surrender joint copyright to the contractor again?).

51. Almost nothing in the bargain struck with ITES seems like you, the BCI or the legal profession got a particularly great deal, particularly when you had four other companies with a wealth of experience of the legal profession or in conducting competitive examinations on-

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<sup>42</sup> [www.livemint.com/Politics/Z9HH7jg4q8Any5PILN9FfP/The-India-bar-exam-a-regulators-rocky-road.html](http://www.livemint.com/Politics/Z9HH7jg4q8Any5PILN9FfP/The-India-bar-exam-a-regulators-rocky-road.html)

and off-line.

**(D.ii) You increased the cost of the AIBE by nearly 100% despite supposedly having saved money on the contract**

52. Continuing on the topic of 'cheating candidates' out of money at the start of their careers when they need it most, as you alleged when faced with Rainmaker's audacity to reduce their bids, you might like to remind yourself of the following.

Under Rainmaker the AIBE cost candidates Rs 1,300, including the printed test materials and all the other things mentioned under above.

After you awarded the AIBE 4 contract to ITES, candidates paid Rs 1,900 each, despite ITES apparently charging Rs 300 less than Rainmaker used to. Please explain why this price rise was necessary and how you did not 'cheat the candidates' by hiking the cost?

In November 2012, you said in an interview<sup>43</sup>, when asked why the price was raised:

The students have raised no objections. Otherwise the number of candidates appearing for the upcoming exam would not have increased to about 35,000. Only some particular elements with vested interests are raising bogus allegations and objections. You see the entire expenditure of the Council, right from the BCI up to State Bar Councils, the advertisements; the cost of the staff etc. have increased.

The BCI has also decided that a part of this income from the AIBE will go for the welfare of the lawyers. Now, the candidates who are going to join the profession will also be benefited. This income is not for any particular individual. This is an institution and we have certain duties under the Advocates Act, which includes welfare of lawyers for which we don't receive any grant or aid from the government. Therefore, this increase cannot be questioned.

See, for writing the CLAT the total fee is Rs. 3,500, but nobody is raising his or her voices against this. All this hue and cry is being made for the AIBE fee of Rs. 1,900. Only a few persons who could not succeed in the tender are doing this. They are setting up persons and making these bogus objections through the media. We were ignoring it, but now they are crossing the limit.

None of the above, or any other reasons you have listed so far, are valid or fair.

Also, please then explain why for AIBE 6 you increased the price yet again to Rs 2,500 each, despite presumably ITES' charges remaining the same.

You do realise that candidates now pay nearly 100 per cent more than what they used to while, as you alleged, Rainmaker was 'cheating candidates', right?

You may claim that the increased fees went straight to the BCI and the state bar councils who used the money for the "welfare of lawyers", according to the minutes you shared with us via RTI (at Rs 1,900 per candidate, that translated to Rs 800 for the BCI, Rs 650 to ITES,

<sup>43</sup> <http://web.archive.org/web/20121128185236/http://barandbench.com/brief/2/2989/conversation-with-bci-chairman-manan-kumar-mishra-aibe-foreign-law-firms-legal-education>

and Rs 550 for the state bar councils).

Notwithstanding the apparent arbitrariness of the price hikes, it goes without saying that at the very least you must then provide a full itemisation of how the funds from the AIBE have been utilised by the BCI and the state bar councils for the “welfare of lawyers” or otherwise.

The lawyers who voted for you in state bar council elections and the young lawyers who paid increased AIBE fees have a right to be informed of this information, other than your general duty of accountability as the chairman of a body created by statute.

### (D.iii) Another wrong, which has already been reported on, does not make you right

53. You write:

“So far your attempt regarding the manner of allotment of work to your agency (M/s Rainmakers), I don't want to say anything else, except the fact that the allotment of work to M/s ITES Horizon Pvt. Ltd. is much more fair and transparent than that of M/s Rainmakers. And apparently it was due to this reason that you did not ask for the minutes of Bar Council of India of the year 2010 containing the allotment of work to M/s Rainmakers and you have deliberately asked for and published the copies of minutes (through your RTI application only after June, 2012. This itself speaks volumes. The comparative study of the processes adopted by the Bar Council of India in the year 2010 and 2012 will reveal the truth.”

Are you admitting to wrongdoing by the BCI in the tenders awarded in 2010 to Rainmaker? If so, what action have you or the BCI taken against those who acted in a "less fair and transparent manner" during the tender? And who are you accusing of not having been fair in 2010, seeing as you were also a member of the BCI at the time?

And why did you say in a November 2012 interview<sup>44</sup> that:

The agreement with Rainmaker actually concluded in March 2012. The BCI simply decided not to extend the agreement with Rainmaker because several questions were being raised about some irregularities with regard to Rainmaker although there was in fact no irregularity.

Was this, in fact, not a fact at the time? And have you received any new information since then?

54. Second, it is surprising that you seem to have such selective memory about LI's reporting. You must remember that LI reported many stories about the difficulties experienced by AIBE 1-3 under Rainmaker and then-chairman Gopal Subramaniam, whom LI repeatedly questioned about the lack of a tender process in selecting Rainmaker.

In fact, LI wrote around three times as many articles about AIBEs 1, 2 and 3, as it did about AIBEs 4, 5, 6, 7 and 8.

<sup>44</sup> <http://web.archive.org/web/20121128185236/http://barandbench.com/brief/2/2989/conversation-with-bci-chairman-manan-kumar-mishra-aibe-foreign-law-firms-legal-education>

To aid your memory, here are just a few of the dozens of stories LI did between 2010 and 2012 that highlighted some of the problems with the first three AIBEs (full archives available at <http://www.legallyindia.com/bar-exam?lang=en&limit=25&limitstart=75>):

- a. [Bar exam RTI appeal: BCI flip-flops on service provider tenders; still no financials](#)
- b. [BCI deflects RTI on bar exam fees, admits no process to select Rainmaker](#)
- c. [82% of 2010 grads want bar exam dead](#)
- d. [BCI members postpone bar exam to 2011, subject to Subramaniam sign-off; Rainmaker off next exam \(UPDATE-1\)](#)
- e. [A fine mess: Bar exam cases still in limbo as 4 of 6 respondents inactive in apex court](#)
- f. [State bar councils speak out against bar exam, to support writ petitions](#)
- g. [BCI replies to more LI readers' bar exam FAQs](#)
- h. [Bar exam Q&A with Gopal Subramaniam: Postponing exam 'disastrous'; Concession being discussed](#)

55. Notwithstanding the above, you do make one correct point: the process to select Rainmaker for the first AIBE was far from transparent.

That said, in light of the process disclosed by the BCI's minutes, the bids received and how difficult it was to get those minutes from the BCI via RTI, it is hard to take your assertion at face value that your 2012 tender was more transparent or fair than the 2010 tender.

Addressing 2010 first: in September 2010 the [BCI admitted in an RTI response filed by advocate and academic Anup Surendranath](#), which was published on LI at the time, that “no public notification was issued inviting proposals” to conduct the AIBE.

Strangely, by January of 2011 [Surendranath's RTI appeal that was also published on LI](#) yielded a different response from the BCI, claiming that Tata Consultancy Services, Sify and Imaging Solutions had been contacted for tenders.

To any reasonable mind, the mystery that remains around the 2010 tender is far smaller and has been extensively reported on already. Furthermore, Subramaniam has always provided fairly candid answers on the issue, even if they did suggest that the process was not transparent or broad-based enough.

And as set out in point above, if, as you allege, the 2010 tender was so terrible, why didn't you do something about it and launch an investigation when you became chairman?

56. There's another simple answer for why LI only requested minutes from 2012 onwards: you have been running the most opaque and secretive BCI in years.

Subramaniam was committed to publishing the BCI's minutes on the website, which he did several times before he left office due to ceasing to be solicitor general.

His brief successor and your predecessor, Ashok Parija, [promised](#) in April 2012 that that

meeting minutes would be published again soon<sup>45</sup>.

And in fact, when you took office as chairman in 2012, you may recall that LI, Kian and Prachi asked you several times to publish the minutes of various committees on the BCI's website, which you promised you would do but never did.

One [reader's comment](#) on LI<sup>46</sup> asked this following in November 2012:

“Also, the next time you meet with [Manan Kumar Mishra], would you please ask him why the Legal Education Committee meeting minutes haven't been updated in almost two years on the BCI website. He talks about 5-10 colleges being de-recognized, but the general public has no way of knowing if the minutes are not published. Is there a special reason why? If BCI doesn't have the technical acumen to put up copies of minutes online, the least they could do is to give LI a paper copy, and you guys can post it. Of course, I mean that in a silly way, but really, why the delay. The last minutes from the LE committee are from April 2011??

Kian, could you please take this up with BCI. The last time you interviewed then BCI chairman Parija, he said the minutes will be up on the BCI website "soon." Here is what he said "The Bar Council of India (BCI) is set to get a new chairman, as current chair Ashok Parija has said that he would not run for a second term in the 16 April elections, as Parija said that the BCI closed 100 colleges since former chairman Gopal Subramaniam's tenure and that it would publish its meeting minutes again." Why the delay?"

Kian responded in the comments, after having talked to you about it many times:

We have asked, and asked, and asked for the minutes at least have a dozen times, and kept being told, yes, we'll upload them soon.

We're filing an RTI to get them, we'll see what happens.

Well, Prachi did file an RTI in April 2013 for the minutes, which you successfully managed to delay by asking us to come to the BCI for an inspection without ever confirming a concrete time. We got distracted at the time and our application lapsed.

You might also recall that even this latest RTI request (that restricted itself only to the last three years) took six months to succeed, mostly due to delay at your end and promising inspection of documents but then refusing to allow Kian and Prachi to take copies.

And since you mentioned transparency in the Letter, why did the BCI in January 2015 contractually try to force AIBE takers from waiving their statutory rights under the RTI Act? ( [Thin ice: BCI forces bar exam takers to waive RTI rights & pay BCI's costs if losing legal challenge](#)<sup>47</sup> ).

Why can you not be transparent in what you do in your elected position at the BCI? Don't you think the lawyers who voted for you don't deserve to know what it is that you do in

<sup>45</sup> <http://www.legallyindia.com/201204132737/Bar-Bench-Litigation/outgoing-bci-chair-parija-says-100-more-law-schools-been-shut-young-lawyers-trained>

<sup>46</sup> <http://www.legallyindia.com/201211273276/Bar-Bench-Litigation/bci-chairman-mishra-slams-academics-remains-anti-foreign-firm-shutting-more-law-schools-several-plans-on-ice#comment-36046>

<sup>47</sup> <http://www.legallyindia.com/201501075475/Bar-Bench-Litigation/bci-aibe-undertaking>

Delhi?

57. And just because you claim without any evidence that the 2012 tender was fairer than the 2010 tender, does not absolve the 2012 tender from scrutiny but actually puts the onus on you to investigate both tenders.

It does not put any obligation on LI or anyone else to investigate potential historical wrongdoing at the BCI and your vague attempts to point towards 2010 appears like a diversionary tactic to shift blame from what happened on your watch.

58. Anyone with half a brain was shocked when the award of the tender to ITES was announced in August 2012 as only cursory web searches and common sense cast serious doubt over the qualifications of the company you entrusted to carry out a national exam that affects the futures of lakhs of young advocates.

It was every lawyer's and journalist's professional duty to cover the award of the tender critically, despite your obvious resistance to such coverage.

## (E) Your tenure at the BCI has been nothing but opaque

59. You write:

“You are wrong in saying that Bar Council of India cannot disclose the pass-rate or the number of candidates. In fact, in order to avoid the multiple and large number of litigations throughout the country, the Bar Council of India has taken certain resolutions.”

Everyone understands that BCI budgets are limited and the BCI is a heavy target for litigation, but the pass rate needs to be available to the public at large and candidates for scrutiny.

Furthermore, if you conducted the exam more transparently with better technology, giving all candidates instant electronic access to answer sheets without any additional charge, for instance, that would no doubt considerably reduce the litigation and RTI requests that you currently have to deal with.

60. The BCI, despite being a statutory body, has under your tenure as its chairman never voluntarily published any of its minutes, audited accounts or any other information about what you do with the AIBE or other funds in any accessible or transparent manner.

This is in stark contrast to BCI chairman and then-solicitor general Gopal Subramaniam, who between 2010 and 2011 made it a point to publish minutes of important BCI committees on the BCI's website.

61. The *Times of India* reported that you complained at a national seminar on the RTI Act 2005 at Patna Law College that “the BCI's examination department has to deal with at least 10 RTI cases, relating to all India bar examination, every week ever since it has been introduced.”<sup>48</sup>

<sup>48</sup> <http://timesofindia.indiatimes.com/city/patna/RTI-Act-being-misused-by-some-says-BCI->

That is not surprising, since under your tenure you have voluntarily released as good as no information about the AIBE, leaving candidates and advocates in an information vacuum.

The Central Information Commission (CIC) too directed the BCI to proactively disclose AIBE question papers and answer keys on its website, in accordance with its obligations under RTI, as reported by the [Press Trust of India](#)<sup>49</sup>.

The CIC held in its [order](#)<sup>50</sup> dated 17 March 2015:

The Commission observes that it was not proper on the part of Bar Council of India for not providing the copies of AIBE IIII question papers on the excuse that they were not handed over by Rainmaker. It is the bounden duty of the Bar Council of India to make all the previous question papers available to the young lawyers. If the firm which conducted tests has not handed over the copies of examination papers, the Bar Council of India should have initiated legal action to recover them.

The Commission requires the Public Authority to collect the copy of question papers with key for first three years from the Rainmaker firm which conducted examination, and keep the same on official website for the use of young lawyers. The Commission also requires the Bar Council of India to provide question paper along with the key on the official website immediately after completion of every Examination, which will avoid exploitation of young lawyers by the commercial elements through selling the question papers with key at exorbitant rates. The Commission directs the Bar Council of India to report the compliance within one month of the orders above. The appeal is disposed of.

Needless to say, that order has not been complied with by the BCI, more than two months after that order.

And in [January 2015](#), you changed the terms and conditions for AIBE candidates, requiring them to waive their statutory RTI rights and to promise to pay the BCI's costs if they filed a legal challenge against the BCI and lost<sup>51</sup>.

Under your chairmanship, the BCI also had a regular track record of ignoring, avoiding or misreading RTI requests, such as this one filed by a lawyer on [28 February 2014](#) about the AIBE, which the BCI chose to answer in what was at best a lackadaisical manner<sup>52</sup>.

There are many more examples of advocates who elected you and to whom you should owe a duty of accountability, being refused reasonable information.

62. In light of your statements and track record, the only reasonable explanation is that keeping the BCI as secretive and opaque as possible is a deliberate policy decision that intentionally violates the BCI's statutory and moral obligations.

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[chief/articleshow/46809135.cms](#)

<sup>49</sup> [http://www.business-standard.com/article/pti-stories/post-bar-examination-question-papers-keys-on-website-cic-115032300365\\_1.html#top](http://www.business-standard.com/article/pti-stories/post-bar-examination-question-papers-keys-on-website-cic-115032300365_1.html#top)

<sup>50</sup> [http://www.rti.india.gov.in/cic\\_decisions/CIC\\_SA\\_C\\_2014\\_000434\\_M\\_150428.pdf](http://www.rti.india.gov.in/cic_decisions/CIC_SA_C_2014_000434_M_150428.pdf)

<sup>51</sup> <http://www.legallyindia.com/201501075475/Bar-Bench-Litigation/bci-aibe-undertaking>

<sup>52</sup> <http://www.legallyindia.com/201501155495/Bar-Bench-Litigation/textbook-obfuscation-how-the-bci-dealt-with-one-lawyer-s-rti-by-misreading-ignoring-89-of-questions-twice>

63. Finally, in an [unsolicited email](#) sent by you on 31 May 2015 to Kian<sup>53</sup>, around one week after your Letter, you stated:

Nobody can prove any sort of malpractice or any incident of corruption in any of the activities of BCI in last 3-4 yrs. Some people who are having some personal vendetta against BCI may utter any baseless thing, we damn care & when needed we take appropriate action also.

If your strongest defence to questions of unfairness and opacity in the 2012 tender is that “nobody can prove any sort of malpractice or any incident of corruption in any of the activities of BCI” during your tenure as chairman, that is an exceedingly feeble argument.

The facts being as they are, and even without LI, Kian or Prachi ever having accused you of corruption, the onus must be squarely on you to prove fairness by providing complete and unequivocal transparency to all media and any others who are interested of all of the BCI's activities during your tenure as chairman.

## (F) Bar exam prep courses are 100% legal

64. You claim in paragraph 1 of your Letter that LI has published news articles:

“at the instance of the earlier agency and only because the Council has virtually stopped the sale of some study material/guess papers which was being published and sold @ Rs. 2800 by a few people attached with Legally India and M/s Rainmakers [sic, etc]. It is therefore resolved that the Council shall take appropriate legal action against 'Legally India' and all other concerned or individuals who are responsible to issue defamatory and objectionable statement against the Bar Council of India. Hon'ble Chairman [Manan Kumar Mishra] is authorized to take appropriate action.”

65. This statement is factually inaccurate, defamatory and illogical on nearly every level.

66. First, specify any instance in which the Council has “virtually stopped” the sale of any “study material/guess papers”. To the best of Kian's knowledge, the BCI has never stopped or attempted to stop the sale of any preparation materials.

67. LI can not speak for Rainmaker, as it is literally a completely different and independent company to LI despite your unfounded assertions to the contrary, as rebutted above in paragraph 2 and subsequent paragraphs). But to the best of LI's knowledge, Rainmaker, having been the BCI's official contractor to the first three AIBE, never offered or sold preparation materials to the AIBE other than what was mandated in its contract with the BCI to be provided to students (the terms of which were revealed [via an RTI filed by a journalist in 2012, which LI re-published in October 2012](#)<sup>54</sup>).

Furthermore, your allegation that “a few people attached with” Rainmaker were selling preparation materials is serious and potentially defamatory, and reflects badly on the BCI and Rainmaker: it would have been deeply unethical and an obvious conflict of interest for

<sup>53</sup> <http://www.legallyindia.com/Bar-Bench-Litigation/bci-mishra-emails-li-to-be-positive>

<sup>54</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/revealed-rainmaker-had-entered-into-wide-letter-of-intended-jvs-with-bci-but-most-never-took-off>

the BCI to allow the contractor entrusted by it with setting the test to also sell additional materials and courses to allow examinees to pass it.

68. You claim:

“When you (M/s Rainmakers) were denied the work of All India Bar Exam, you adopted another malpractice to make money from the candidates and in order to exploit them, you started selling study material online for an exorbitant price (approximately Rs. 2800/- per candidate) and you tried to mislead the students using the name of M/s Rainmakers and other agencies. You have admitted this fact in your conversation made on 15.12.2014 with me. We have ample material to establish this fact.”

LI would absolutely love to see such “ample material” establishing the facts that:

- a. LI is Rainmaker,
- b. LI, through Rainmaker, pitched for the AIBE,
- c. LI tried to mislead the students using the name of M/s Rainmakers and other agencies, and
- d. That Kian admitted in a conversation between you, that was recorded and published with your consent, anything other than the fact that Barhacker, which has NOTHING to do with Rainmaker, makes AIBE preparation courses. Please feel free to refresh your memory by listening to the conversation on LI<sup>55</sup>.

69. Furthermore, you seem to labour under the misapprehension that iPleaders and Rainmaker are the same entity. In fact, they are direct competitors: iPleaders and Rainmaker's MyLaw platform both offer online legal education courses.

A single visit to iPleader's homepage at <http://www.ipleaders.in> and to its AIBE preparation course at <http://www.barhacker.in> would have clarified the origin of Barhacker for you. Having apparently not done even this basic piece of research before making your allegations, belies either a reckless disregard for the truth or malice.

Furthermore, your entire argument is devoid of logic: an AIBE preparation service such as Barhacker would actually benefit from a badly-run AIBE conducted by an agency that does not supply model questions, past exam papers, preparatory materials or anything else that would make students feel more at ease about what they are likely to face.

It is therefore logically nearly impossible to see what incentive there would be in LI opposing the appointment of ITES, and why you would keep advancing that argument.

70. The actual story of Barhacker, for your future reference, is that on 27 February 2010, Legally India launched the BarHacker bar exam preparation course with Intelligent Legal Risk Management Solutions LLP (“**iPleaders**”), a company started by two students at NUJS Kolkata at the time<sup>56</sup>.

<sup>55</sup> <http://www.legallyindia.com/201412155428/Bar-Bench-Litigation/li-mischievously-asks-bci-chairman-mk-mishra-why-he-s-trying-to-hide-bci-minutes-listen-to-his-response>

<sup>56</sup> <http://www.legallyindia.com/201102271847/Law-schools/prepared-for-all-india-bar-exam-stop-worrying-well->

Before the very first AIBE students were under considerable stress and apprehension about the upcoming first AIBE.

Coincidentally, on a visit to Kolkata for a conference held by NUJS Kolkata, a few weeks before the first AIBE, Kian met two very entrepreneurial final year students of NUJS Kolkata – Abhyudaya Agarwal and Ramanuj Mukherjee.

Other than starting a successful company while they were still in college (called iLeaders, a.k.a. Intelligent Legal Risk Management Solutions LLP) they had also created original preparation materials and model questions to help students prepare for the first AIBE with academic assistance from a number of researchers they hired. The work they had done was impressive. However, they had no easy way of reaching those most in need of the materials. We decided to work together and use our joint technical know-how to create an online learning platform in record time. We also used the Legally India platform to advertise the course, which we christened Barhacker.

All of the students who took the course passed and were very happy with the product, which included original question banks, original materials to help students make better use of the BCI-provided preparation materials and even live doubt clearing sessions and coaching over telephone.

Barhacker has gone from strength to strength and has been updated with up-to-date laws and curriculums created by the BCI for every single AIBE held by the BCI, and continues to boast a nearly perfect pass record and alumni satisfaction. A large number of alumni have shared positive testimonials in praise of the material in writing a few of which are shared publicly on the BarHacker website itself.

71. Since the Barhacker story is essentially a positive story, it has been puzzling that since 2012 you have repeatedly expressed your displeasure about Barhacker to Kian in conversations and in one public interview. Why should the BCI have a problem if lawyers are happy paying for a service that helps them pass an exam, study effectively and calm their nerves with online mock exams?

For instance, you said in an interview in November 2012<sup>57</sup>:

See, for writing the CLAT the total fee is Rs. 3,500, but nobody is raising his or her voices against this. All this hue and cry is being made for the AIBE fee of Rs. 1,900. Only a few persons who could not succeed in the tender are doing this. They are setting up persons and making these bogus objections through the media. We were ignoring it, but now they are crossing the limit.

We also found that these people were selling all the study material and the model

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[help-you-crack-it-sponsored](#)

<http://www.legallyindia.com/201103011857/Law-schools/bar-exam-writ-hits-delhi-hc-on-new-grounds-to-disclose-exam-results>

<http://www.legallyindia.com/201103021865/Law-schools/barhacker-indexes-go-viral-with-associates-bar-exam-grads-like-the-course-sponsored>

<sup>57</sup> [http://web.archive.org/web/20120915000000\\*/http://www.barandbench.com/brief/2/2989/conversation-with-bci-chairman-manan-kumar-mishra-aibe-foreign-law-firms-legal-education](http://web.archive.org/web/20120915000000*/http://www.barandbench.com/brief/2/2989/conversation-with-bci-chairman-manan-kumar-mishra-aibe-foreign-law-firms-legal-education)

question papers for AIBE for Rs. 2,800. We don't want a shop should be set up for this (AIBE) and therefore we won't be giving out any study material this time. These people are trying to pressurize ITES Horizon and the BCI to give the model question papers on the website. We are not giving out any study material. The students will be asked simple questions from their LL.B course and no other study material or model questions is required. We will issue our model questions 3-4 days before the exam just to make the students acquainted with the pattern and nothing else. We have already disclosed the syllabus which includes the subject list and marks for each subject.

Since you brought up the Common Law Admission Test (CLAT) in that interview, your statements about bar exam preparation courses are akin to the CLAT committee being upset about CLAT coaching institutes.

Then, after literally years of mystery about why you were so opposed to bar exam preparation courses, the binding MOU you entered into with ITES finally provided something that could remotely explain your hostile attitude to a valid and much-needed commercial venture.

As reported on LI on Tuesday 19 May 2015, clause (g) of the MOU stated:

**“ITES Horizon shall have the exclusive right to publish official test preparatory question papers and model answers for the Qualifying Examination (“Test Prep Series”),** both electronically and in print, which shall include the right to create any electronic interface, software programmes, and hardware-linked solutions for the same.

**“ITES Horizon shall, in writing, enter into a mutually agreed upon revenue share with the BCI prior to the release of the Test Prep Series.** BCI agrees and permits ITES Horizon to use the phrase 'Accredited and Approved by the Bar Council of India', or variants of the same, along with the logo and name of the BCI and ITES Horizon on Test Pres. (sic) Series.” (emphasis LI's)

Furthermore, the MOU stated that:

“the copyright in the Test Prep series shall belong exclusively with ITES Horizon”.

That sounds nice in theory as another revenue source for the cash-strapped BCI. But it's just slightly ironic that you accuse Barhacker of selling AIBE prep courses “in order to exploit” students, when ITES and the BCI signed an agreement to apparently do exactly the same thing.

It also raises a horrifying potential for conflict of interest when the entities that are running and setting an exam, also want to sell students a course that will help them pass that very exam. If that's not the definition of exploitation of a captive and vulnerable audience, it would be hard to see what is.

Perhaps it is therefore just as well that ITES' “Test Prep Series” is yet another project contained in the ITES MOU that has never taken off.

## (G) LI's stories about the BCI are fair and factual

72. You claim in your Letter several times and in loaded language that:
- LI has “*ill motive with which [LI has] published such stories against the Bar Council of India*”;
  - “*because of the fact that being part of M/s Rainmakers you were deliberately doing the mischief and were trying to defame the Bar Council of India*” and “*There were several sorts of allegations against M/s Rainmakers (of which you are still a part) and it was on account of the substantive informations against the misdeeds of your agency (M/s Rainmakers) that the Bar Council of India decided not to allot the work to your agency*”;
  - “*that you have been committing mischief with Bar Council of India from the day M/s Rainmaker was denied the ward of work to hold All India Bar Exam is obvious*”
73. LI, Kian and Prachi deny in the strongest terms possible that LI, Kian or Prachi have ever defamed or intended to defame the BCI, since LI respects the institution of the BCI as a necessary and vital part of the legal system and profession.

All of LI's reports relating to the BCI or you were based on fact, were published for the public good and in good faith without malice.

Your allegation that LI's reporting is motivated, is itself defamatory of LI's brand, Kian and Prachi.

Neither you or the BCI ever alerted LI to any serious factual inaccuracies in its reporting on the BCI, which has always been fair and has gone out of its way to seek your comment and perspective to provide balance (LI's full archives are covering the BCI are available at <http://www.legallyindia.com/tag/bar-council-of-india-bci> and relating to you personally at <http://www.legallyindia.com/tag/manan-kumar-mishra> )

74. According to your Letter, BCI Resolution No 127/2012 on 16 December 2012 authorized you personally:

“to take appropriate legal action against 'Legally India' and all other concerned or individuals who are responsible to issue defamatory and objectionable statement against the Bar Council of India”

What action did you take after passing this resolution on 16 December 2012?

75. Since 16 December 2012, LI has published at least 121 articles relating to the BCI<sup>58</sup> and at least 34 articles relating to the AIBE<sup>59</sup>. Kian wrote an in-depth investigation about the troubles faced in the conception by the AIBE (including the three AIBEs prior to your chairmanship that the BCI had awarded to Rainmaker). The article was published in *Mint*<sup>60</sup>

<sup>58</sup> <http://www.legallyindia.com/tag/bar-council-of-india-bci>

<sup>59</sup> <http://www.legallyindia.com/tag/bar-exam>

<sup>60</sup> <http://www.livemint.com/Politics/Z9HH7jg4q8Any5PILN9FfP/The-India-bar-exam-a-regulators-rocky-road.html>

and on [LI](#)<sup>61</sup> on 27 December 2012 and 1 January 2013 respectively.

The articles were headlined: “The India bar exam: a regulator’s rocky road”.

Please also note that in accordance with the highest ethical and journalistic principles, the following disclosure was carried prominently alongside the article in *Mint* and LI - “The author has an interest in a bar exam preparation service” - as it has been in every AIBE-related story on LI where appropriate.

Since you did not take any action or ever raise any objection as to the veracity of the facts contained in that or any other article (other than the 19 May 2015 Article) in a timely manner, despite having had authority from the BCI to take “appropriate action”, it is reasonable to assume that those articles were accurate and factual.

## (H) Kian is not a foreign agent

76. You write that Kian is a

“foreign agent with the sole motive to pressurize the Bar Council of India and the lawyers of the country to succumb to allow the foreign lawyers and foreign law firms to practice in India”

Your statements are untrue and highly defamatory of both Legally India and Kian, who have at all times fairly [reported](#)<sup>62</sup> both sides of the liberalisation debate, including repeatedly giving space to your very [own comments](#)<sup>63</sup> against the entry of foreign lawyers, as well as comments of others opposed to the process.

In fact, you yourself told Kian via email, in an article published in *Mint* and on LI in March 2015, that:

“Government is waiting for the opinion of Indian lawyers. We are thinking in positive direction, but it all depends on the attitude of foreign countries: how they reciprocate? It can't be one-sided. We can't put our lawyers or law firms in loss.”

Similar statements have been made by other traditional opponents to the entry of foreign law firms too<sup>64</sup> and the reason is not LI or Kian, but you should take up your grievance with the Hon'ble Prime Minister of India, Narendra Modi, instead who recently [said](#): “Why should we need to go outside the country for global arbitration? We shouldn't think that if foreign lawyers come here, they will take away our jobs.”<sup>65</sup>

You might also want to discuss your views with commerce secretary Rajeev Kher, who has been [working](#) hard on a practical approach to the phased entry of foreign law firms<sup>66</sup>.

<sup>61</sup> <http://www.legallyindia.com/Graduates-Bar-Exam/the-all-india-bar-exam-aibe-a-regulators-rocky-road>

<sup>62</sup> <http://www.legallyindia.com/tag/liberalisation>

<sup>63</sup> <http://www.legallyindia.com/201211273276/Bar-Bench-Litigation/bci-chairman-mishra-slams-academics-remains-anti-foreign-firm-shutting-more-law-schools-several-plans-on-ice>

<sup>64</sup> <http://www.legallyindia.com/Law-firms/legal-market-liberalisation-investigation-into-lobbying-and-policy>

<sup>65</sup> <http://www.thehindubusinessline.com/economy/services-sector-should-not-fear-foreign-competition-modi/article7134631.ece>

<sup>66</sup> <http://www.livemint.com/Politics/PwlaQ7gOvELjM6TFprSuDO/Govt-may-soon-liberalize-legal-services.html>

Both of these gentlemen have a far greater interest and ability to apply pressure than LI or Kian do in this matter.

77. Furthermore, your argument of Kian being a foreign agent on the matter of foreign law firms, has been undermined considerably by your unsolicited email to Kian dated 31 May 2015, sent just over a week after the date of your Letter<sup>67</sup>. You stated:

Dear Mr Kian,

In last few years BCI has done many good,drastic steps . There has been sea change in our policy with regard to entry of foreign lawyers & law firms.A delegation of BCI is likely to visit USA ,UK & Australia very soon . Hon'ble Union Law Min. may also b a part of this delegation.If u r interested we may supply u details for publication.Hope u will publish the important constructive steps of the body of lawyers instead of unnecessary offensive criticisms.

Please explain what has triggered this “sea change” in policy that seem to directly contradict the defamatory statements made in your own Letter.

78. You also write: *“What is the source of income of Legally India and M/s Rainmakers unknown to all.”*

You don't seem to know and although it frankly is another example of trying to distract from the actual issues with diversionary attacks on LI, it's not that complicated to figure out.

Rainmaker sell online training courses for lawyers, though you'll have to ask them for details.

As for Legally India, it might help to just visit <http://www.legallyindia.com/> and it'll be fairly obvious what LI's business model is: LI sells ads and recruitment listings for lawyers.

79. In any case, the points you make here as elsewhere in your Letter are a completely irrelevant attempt at obfuscating and distracting from the facts, namely that you have failed to show any inaccuracies in any of our reports to date and that you have failed to satisfactorily obvious unfairness in the ITES tender process.

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<sup>67</sup> <http://www.legallyindia.com/Bar-Bench-Litigation/bci-mishra-emails-li-to-be-positive>

### (III) The Law

#### (A) You have failed to provide evidence for even a single instance of defamation other those instances committed by you

80. You write that by LI publishing the 19 May 2015 Article, “*you have committed the offence of defamation for which you are liable to be prosecuted and punished by the appropriate forum*” (emphasis yours).

81. In your entire Letter, you have consistently failed to highlight a single inaccuracy in any report that LI has published, particularly in the one dated 19 May 2015 which is entirely based upon the BCI's own minutes that were released under RTI, for which there is a strong public interest in publication since the BCI is a statutory body.

You should also be aware that truth is an absolute defence to civil defamation.

In criminal defamation, you may like to remind yourself that there are several strong defences available under section 499 of the IPC that would clearly apply in this case, such as:

- a. an exception in the “conduct of any person touching any public question” (“It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further”),
- b. “Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.”
- c. Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

82. Additionally, for the offence of criminal defamation, an active mens rea, i.e., an intention to defame an individual/entity must be established beyond reasonable doubt. It is an established legal principle that a statutory public body such as the BCI is open to fair criticism and scrutiny by members of the general public.

Your attention is drawn to various judgments of the Supreme Court regarding the governance of public bodies and their criticism. Additionally, the SC has even extended the right of the general public at large to fairly criticise entities performing public functions such as the BCCI.

83. Your attention is also drawn to the plethora of judgments by the Supreme Court on the freedom of the press and the fundamental rights relating to freedom of expression.

A reading of the recent judgment of the SC in *Shreya Singhal v. UOI* establishes the expansive freedom provided to the public media and general public in reporting fairly and expressing an unhindered opinion. The present scenario clearly demonstrates a factually supported story carried by a reputed media publication such as LI.

Merely because the BCI does not wish to be criticised regarding its opaque manner of functioning, the laws governing defamation cannot be utilised to arm twist the media to refrain from expressing a justified opinion.

84. On top of the above, you have absolutely failed to show any malice or motivation in LI's reporting, other than LI, Kian and Prachi's intention to report the facts in a balanced manner and bring transparency to the functioning of your tenure as chairman, as set out above.

85. In light of the above, you have therefore completely failed to show any of the elements required for defamation, either criminal or civil.

However, in the process you have managed to defame Kian, Prachi, LI and possibly other parties by circulating your factually inaccurate and malicious Letter to hundreds of journalists, public officials and judges.

## **(IV) Conclusion**

86. There is the possibility that your Letter can be ascribed to a genuine and honest mistake on your part with respect to the facts, as evidenced by your apparent inability to distinguish between LI and other independent companies operating in the space, as well as the many other factually false and/or unproven statements made by you in your Letter.

87. Alternatively, it is possible that you have perhaps been the victim of misinformation spread to you mischievously by people who want to commit mischief against LI, Kian and Prachi.

88. If that is the case, LI, Kian and Prachi would accept the following from you as an initial offer that would go some way towards reducing the reputational damage you intended to cause LI, Kian and Prachi with your Letter, as well as repair the damage that your baseless allegations and vexatious legal threats have caused to the great and respected institution of the Bar Council of India:

a. A full, unconditional and personal apology from you and a clarification of all falsehoods contained in your Letter as set out above. Your apology and clarification, a draft of which is to be approved by LI in writing by email, must be circulated to all 146 email recipients of your original letter, sent to any others with whom you, the BCI or other parties may have shared hard copies of your Letter at your behest, and published prominently on the BCI website.

b. Publication of all historical and future meeting minutes of the BCI during your tenures

as its chairman on the BCI's website in a prompt and easily accessible manner.

89. If you are unwilling to agree to the above, despite having been made incontrovertibly aware of the numerous falsehoods and highly damaging assertions made in your Letter, as set out above, LI, Kian and Prachi reserve the right to seek all available legal remedies under civil or criminal law to protect their respective reputations.
90. For the avoidance of doubt, this response will be published on the Legally India website and LI reserves the right to circulate this response to the same email and other recipients that you circulated your Letter to.

Yours sincerely,

Legally India