



भारतीय विधिज्ञ परिषद् BAR COUNCIL OF INDIA

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Resolution passed by the Bar Council of India at its emergent meeting held on 7th January, 2012 on the Higher Education and Research Bill – 2011 (Bill No.LX of 2011) and other Bills relating to Regulation of Legal Practitioners:-

- 1. Higher Education and Research Bill – 2011 of the Ministry of Human Resource Development, Government of India.**

The Bar Council of India is highly concerned and disturbed about the provisions of the aforesaid Bill, the Council has discussed its implications in the emergent meeting of the Council held on 07.01.2012 at 04.00 p.m. in its office at New Delhi and unanimously RESOLVED as follows: -

The Bar Council of India is a Statutory Body created under the Advocates Act, 1961 for maintaining the standard of Legal Profession, the independence of the profession, the high standard of Legal Education. The State Bar Councils and Bar Council of India were assigned independent functions under Sections 6 and 7 of the Advocates Act, 1961.

As back as in 1961, the Parliament felt that the maintenance of the freedom of lawyers is a must for a strong democracy, therefore, the Advocates Act, 1961 was passed, assigning very important functions with regard to the Legal Education and standard of Legal Profession to these elected bodies called State Bar Councils and Bar Council of India. And in the recent past, the Governments have been facing strong opposition on several

vital issues from the lawyers and under these backgrounds, the present Government is trying to curb the independence of legal profession and to have a direct control over the lawyers, legal profession and legal education.

The power to take Disciplinary action against lawyers was attempted to be taken away and the proposal was to give this power to some bureaucrats or outsiders so that the Government could be at liberty to misuse this power.

It is under these backgrounds that the Ministry of Human Resource Development has come out with the Higher Education and Research Bill, 2011.

The Council unanimously expresses its view that the proposed Bill directly affects the vital and basic structures of the Advocates Act, 1961 under which total autonomy and independence was given to the Bar Council of India and State Bar Councils to regulate the Legal Profession and Legal Education.

The Higher Education and Research Bill, 2011 proposes to take away the duties and functions entrusted to the Bar Council of India and State Bar Councils and it proposes to vest all these powers with a National Commission constituting a few academicians. The Council strongly condemns the attempt of the Ministry of Human Resource Development by which it has tried to encroach upon the provisions of the Advocates Act, 1961 with a view to use the functions and duties of elected bodies comprising of more than 15 lakh Advocates of the country.

This Bill will deprive the representative of Advocates of India to have their say in the formulation and implementation of policies involving Legal Education at the professional and educational level.

Since 1961, when this function was entrusted, the Bar Council of India has brought in effective changes in the Legal Education system without any financial support from the Government. Bar Council of India first introduced the Three Years LL.B. Course in place of the Two years course and that created a slow revolution in improving the quality of those joining the profession. In 1986, the Bar Council of India introduced the Five year LL.B. Course which helped in catching young persons for the profession and this course has attracted the best brains to take to the profession. And gradually the Council has been taking all steps to maintain high standard of Legal education and it has taken revolutionary steps for the said purpose.

The experiment of the Bar Council of India to start a first class educational institution in the form of the **National Law School of India University at Bangalore**, was a resounding success. Today, under the guidelines and ideas of Bar Council of India, more than 14 National Law Schools have come up in different states providing a totally new vision and dimension to the concept of legal education in the country. These Law schools are doing much better than many of foreign universities of Developed countries. The Legal Education Committee of Council has involved academicians, Judges of the Supreme Court of India and High Courts and other legal luminaries in the process of formulation of the education policy.

Moreover, the Legal Education Committee of the Bar Council of India is headed by a retired Judge of Supreme Court of India. Besides, this committee consists of top legal luminaries in the form of a sitting Honourable Chief Justice of a High court, a distinguished Professor of Law, the Law Secretary, Government of India, UGC Chairman and five elected members of the Bar Council of India, the Attorney General and the Solicitor General of India. Bar Council of India vide its decision dated 03.09.2011

of Legal Education Committee has expanded the Legal Education Committee by nominating permanent invitees from the eminent Senior Advocates like Shri Ram Jethmalani, Senior Advocate, Shri Ashok Desai H, Senior Advocate, Shri K.K. Venugopal, Senior Advocate, Shri P.P. Rao, Senior Advocate, Shri Anil Divan, Senior Advocate, Shri Gopal Subramaniam, Senior Advocate, Shri A.K. Ganguli, Senior Advocate, Shri O.P. Sharma, Advocate and Prof. (Dr.) Ranbir Singh, Vice-Chancellor, National Law University, Delhi and Hon'ble Mr. Justice Mukul Mudgal, former Chief Justice of Punjab and Haryana High Court and other Legal luminaries as its special invitees. All these experiences will come to naught if the proposed Bill takes away the function entrusted to the State Bar Councils and Bar Council of India with respect to Legal Education in India (contained in Section 6 and 7 of the Advocates Act, 1961).

The Bar Council of India, hence, resolves to oppose tooth and nail this draconian and highly condemnable proposals contained in the Bill.

The said Bill proposes to centralize power in higher education. It is feared that with an overburdened responsibility, the proposed commission will never be able to contribute substantially to the development of research and specially in the field of Legal Education. We wish to place on record the good understanding that existed between the UGC and the Bar Council of India. Many joint ventures have been taken up together which have worked very successfully and specially the one dealing with curriculum development and conduct of Common Law Entrance Test (CLAT).

The Proposed Bill goes against the Federal structure of the country. Higher Education, is in the concurrent list, hence, both the Central and State Governments have an equal responsibility with regard to its functioning and programmes. This Bill

proposes regulation of syllabi, course structures, administrative protocols, appointment of Vice-Chancellor etc. thereby, totally denying the States of its say in the development of Higher Education, which the Bar Council of India has been undertaking with the aid of State Bar Councils.

The Bar Council of India resolves, that the proposed Bill will upset the delicate balance that exists between the Centre and the States in matters of education. The Central Government should only lay down policy guidelines and provide funds and the States should carryout the programmes as they think necessary for the development and research in educational field.

The Bar Council of India does not approve of any step that will take away the function entrusted to States or functions already assigned under various statutes for functioning of various professional organizations. This will only lead to negation of history and defeat of long established tradition. In the present form it is feared that the proposed Bill will destroy all that was achieved in the field of education during the last 50 to 60 years.

The Bill in its present form will lead to bureaucratization. The Bar Council of India visualizes that the proposed commission will not be able to cater to the needs of all the professional courses or subjects as with over centralized power, innovation and quick decision making will be at stake.

The Advocates Act 1961 envisages workings of the State Bar Councils and the Bar Council of India with Universities. But the proposed Bill impinges on university autonomy through undesirable and utterly unnecessary centralization of power.

The Bar Council of India is of the firm belief that the proposed new legislation by lowering the status of the legal profession is stealthily trying to invite foreign firms to settle down in India

thereby depriving the legal professional in India of its legitimate claims. The type of confusion this legislation will create will only bring down the name of the legal profession and make way for inviting foreigners onto the Indian soil. The proposals to invite outsiders into India goes against the principles of reciprocity as envisaged under the Advocates Act 1961. Section 47 of the Act clearly lays down that where citizens of India are prevented from practicing in any other country or are treated with discrimination, no subject of that country should be allowed to practice the profession of law in India. The ultimate decision vests with the Bar Council of India which may prescribe conditions subject to which foreign qualifications may be recognized for purpose of admission as an advocate under the Act. This clearly indicates that legal education and profession cannot be separated from one and other. They are both inter dependent and any effort to do this will be counterproductive.

The Bar Council of India wishes to state that it has served the cause of legal education and the profession with honour and dignity over the last 50 years. It has conducted all its programmes without seeking any help, financial or otherwise, from anyone else. It desires to move ahead in the same spirit to meet the new challenges of the times.

The Bar Council of India and the State Bar Councils had to oppose a Bill called “Legal Practitioners (Regulations and Maintenance of Standards in Professions, Protecting the Interest of Clients and Promoting the Rule of Law) Act, 2010” proposed by the Ministry of Law and Justice, Government of India which sought directly replace and control the State Bar councils and the Bar Council of India, neutering the voice of the advocates of India in the matter of Legal Profession. It must be stated and emphasized, that the independence of the Bar matters; it matters not just to the Bar. It matters to the people. It matters to the

organizations and the governments. It enables the clients and organizations to challenge the governments of the day. It is to secure the interpretation and application of the law without conflicting loyalties, and the Bar is proud of its history as a servant of the nation. Fortunately, the Hon'ble Law Minister realised the truth and seeing the strong opposition of the Lawyers all over the country, decided to drop that idea.

An independent Bar and an independent Judiciary are indispensable organs for any Democratic Nation. The Bar Council proposes to undertake an intensive dialogue with Government and the Judiciary to further legal reforms, legal aid, professional accountability and a simple code of ethics.

In view of the above, the Bar Council of India proposes to call on the Hon'ble Law Minister to consult the matter for resolving the issue by incorporating suitable amendments to the Blank Bill so that the provisions of the Advocates Act, 1961 are not impaired in any manner whatsoever.

Resolution No. 2/2012

Council unanimously RESOLVES and calls the lawyers all over India to observe 20th January, 2012 as a protest day against the Higher Education and Research Bill, 2011. The Council also expresses its displeasure and anguish in the manner in which the new Bill was approved by the Cabinet without any consultation with the Members of the Bar. The Council further RESOLVES that it will not allow the said Bill to include the Advocates Act or Legal Education in its ambit or to curb any of the function & duties of the State Bar Councils or Bar Council of India under the Advocates Act, 1961 and in order to agitate the matter, a phase-wise agitation will be undertaken. The Council further RESOLVES to convene a joint meeting of the Bar Council of India and the Chairmen or their nominees of all the State Bar

Councils on 23rd January, 2012 to hold a joint meeting for deciding the future course of action of the agitation.

The Council also forms a Steering Committee consisting of following Members namely Shri Ashok K. Parija, Chairman, Shri Zafar Ahmed Khan, Vice-Chairman, Shri Ashok K. Deb, Managing Trustee, Bar Council of India Trust, Shri Faisal Rizvi, Dr. G. N. Mishra, Shri Biri Singh Sinsinwar, Shri Manan Kumar Mishra (Convenor of Committee), Shri Satish Abarao Deshmukh, Shri T. S. Ajith, Shri S. Prabhakaran, Shri Bhoja Gowda and Shri Bhupinder Singh Rathore, Members, Bar Council of India and the representative of the different State Bar Councils and Associations in order to steer the agitation and the Steering Committee will meet weekly at Delhi on every Saturday in order to steer the agitation. The Council also RESOLVES that the Delegates/Members of Steering Committee will meet Hon'ble the President, Hon'ble Vice-President, Hon'ble Prime Minister, Hon'ble Law Minister, Hon'ble Finance Minister, Hon'ble Minister of Human Resource Development, Hon'ble Leader of Opposition in both the Houses of Parliament, Hon'ble Leaders of all the Political Parties and all the Hon'ble Members of Parliament who are from the legal fraternity, in order to advocate their cause.


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Resolution No. 3/2012

It is further RESOVLED that a reputed Media Agency be engaged to propagate the various activities of the Bar Council of India in public domain. A Media Cell of the Bar Council of India consisting of Shri Manan Kumar Mishra as Convenor, Shri S. Prabhakaran as Co-convenor, Shri Apurba Kumar Sharma, Shri Satish Abarao Deshmukhm, Shri Vijay Bhatt and Shri I. N. Mehta, Members, Bar Council of India in order to finalize and coordinate with media agency in this regard. The Media Cell will meet and hold a Press Conference at Delhi.

It is further RESOLVED to convene a press conference on 9th January, 2012 at 03.00 p.m. at the premises of Bar Council of India at 21, Rouse Avenue, institutional Area, New Delhi - 110002 for enumerating and highlighting views of the Bar Council of India on the Bill which is attempting to take away the duties and functions of the Bar Council of India and State Bar Councils assigned under the Advocates Act, 1961.

Secretary is authorized to invite all the Print and Electronic Media for coverage views of the Bar Council of India on the above said Bill.


(Ashok K. Parija)
Chairman
Bar Council of India