

Dear Colleagues,

It can be clearly seen that the HER Bill is violative of the autonomous character of BCI and the State Bar Councils. The power to lay down norms, standards for the legal education system will be effectively taken away by the Bill. The same can be seen through Section 2 of the Bill. The same violates Section 7(1) (h) and (i), Advocates Act, 1961 as well as Section 3, Rules of Legal Education, 2008. Further, the establishment of the National Commission for Higher Education and Research as envisaged by the Bill would effectively take the control away from the lawyers and the same would go into the hands of the academicians. Further, the Legal Education Committee as established by the BCI would be made redundant.

Further, Section 17 r/w Section 35 of the Bill provide for accreditation in accordance with section 4 of the National Accreditation Regulatory Authority for Higher Educational Institutions Act, 2010. The same would make the Accreditation Committee under Rule 29, Rules of Legal Education, 2008 redundant. Further, Section 7(ic), Advocates Act and Chapter V, Rules of Legal Education are the relevant provisions when it comes to regulation of degree in law in foreign university. Attempts under Section 17 of the Bill to invest the same with the Commission is infringement of the independence of the BCI. Apart from this, sections 60 and 83(2) of the Bill attempt to repeal Sections 6 (gg), 7(1) (h) and (i), Advocates Act. Under Section 31, National Accreditation Regulatory Authority for Higher Educational Institutions Act, 2010 there is a provision to apply against the order of 'Accreditation Agency' before the authority of a few nominees of the Government. What is to be kept in mind is that the LEC of the BCI is headed by a former Judge of the Supreme Court and sitting Chief Justice of HC and other judges and academicians like VCs of NLUs. Apart from this, the LEC is a statutory body.

Therefore, it is felt it would be ridiculous to make any other Authority as a forum superior in any manner and on any decision of the LEC.

Inspection as envisaged under **Section 2(xii) and Chapter III, Legal Education Rules, 2008** is being made redundant by **Chapter VI of the Bill**. The BCI would have no role to play at all and any institution would have to directly apply to the Commission either to

grant or to refuse approval of educational institution. The BCI and the State Bar Councils would have no role to play at all and thus, their role is being undermined.

Thus, the above mentioned contravening provisions make it clear that the HER Bill would greatly interfere with the autonomy of the BCI and State Bar Councils when it comes to legal education. Thus, it is felt that the norms, processes for any institution imparting legal education, the commencement of enrolment of students under the program of legal education, the norm of academic quality for a university to affiliate law colleges shall be with the BCI and the Commission shall have no power or function to discharge under the HER Bill with regard to legal educations.

Further, in view of the great success of the National Law Schools and the vision that the BCI showed in bringing about the five year integrated program reinforces the belief that it is in the best interest of legal education if control was retained by BCI.

However, attempts can be made to incorporate certain positive provisions of the HER Bill by amending the Advocates Act. The same would ensure positive developments and dynamic growth in the field of education and the independence of the legal profession would not be infringed as the control would remain with the BCI. Some positive provisions could be Sections 16, 18, 19 and Chapter VII of the Bill (which envisages setting up of a Board for research promotion and innovation) therefore following provisions of HER bill may be merged the existing statute, the Advocates Act, 1961.

Some of the positive provisions as envisaged under the HER bill are enumerated below:

Section 16, HER Bill – Commission to promote higher education and research

16. (1) The Commission shall, in consultation with the General Council and other bodies concerned, take all such steps as it may think fit for the promotion and coordination of higher education and research.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (1), may, *inter alia*, provide for all or any of the following matters, namely:—

- (a) to promote autonomy within higher educational institutions and universities;
- (b) to promote accountability framework in regulatory systems of higher education sector;
- (c) to promote development of a curriculum framework with specific reference to new or emerging or inter-disciplinary fields of knowledge;
- (d) to promote, through the development of a flexible academic framework, the exercise of choice by students for self-development, entrepreneurship, acquisition of skills and pursuit of learning;
- (e) to promote joint and cross-disciplinary program between and amongst the universities and other higher educational institutions;
- (f) to promote synergy of research in universities and higher educational institutions, with research in other agencies or laboratories;
- (g) to promote coordination between universities and higher educational institutions and industry towards innovation for mutual benefit and for the wellbeing of society;
- (h) to encourage universities to formulate a Code of Good Practices in leadership, governance and management and to develop a Framework Code to guide universities in formulating such Code of Good Practices;
- (i) take such other measures for the promotion of higher education and research in higher educational institutions and universities for the achievement of the goals in sub-section (1);
- (j) develop measures to relate higher education and research to the world of work and needs of society;
- (k) encourage universities for enabling colleges to innovate in higher education and research to evolve into universities or institutions with an authorisation to award degrees by itself;
- (l) take measures to enhance **access** and **inclusion** in higher education to remove imbalances in higher education;
- (m) perform such other functions as may be prescribed.

(3) Nothing contained in this section shall be construed to imply that the measures taken by the Commission shall be obligatory for higher educational institutions and universities to adopt, but such measures shall serve to act as reference for higher educational institutions and universities to advance quality, access and inclusion in higher education and research therein, and for the achievement of the goals in sub-section (1).

However, the Commission here shall mean the Legal Education Committee (LEC) of the BCI. The prerogative of taking any of the steps under Section 16 shall lie with the LEC.

Similarly Section 18 and 19 of the HER Bill seems to provide for positive measures in the arena of education. The BCI can make efforts to keep the same in mind while formulating norms and rules.

Regarding entry of foreign educational institutions:

When it comes to the provisions regarding entry and operation of foreign educational institutions, the BCI's concerns of reciprocity seem justified. But wherever such reciprocity is accorded, then undue restrictions must not exist upon entry of foreign educational institutions from such countries. The same would in turn a spirit of healthy competition and would provide for an impetus to the national educational institutions to better their infrastructure. The prerequisite of reciprocity must however be fulfilled.

Board for Research Promotion and Innovation:

The same is provided for under Chapter VII of the HER Bill and if incorporated into the Advocates Act, 1961 it would result in positive developments in the field of education.

In light of the above, it is therefore suggested that the existing Advocates Act, 1961 may be amended incorporating above positive provisions of the HER bill.