

## **Intricacies in Regulating Higher Legal Education and Research in India: A Critical Appraisal of the Legal Education Rules 2020**

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### **ABSTRACT**

Legal profession is considered to be one of the noble professions of the society. The nobility of any profession sprang from its foundation of education. The standards of legal profession in India are controlled by the Bar Council of India which is an elected body of Lawyers. The Advocates Act, 1961 (hereinafter referred as Act,1961) is the foundation on the basis of which the BCI claimed its authority to control and supervise the legal profession. This Act empowers BCI with various responsibilities coupled with the power to look into election of Bar Councils, matters of disciplinary actions and issues of determining the validity of degree for enrollment. It is through section 7 (1) (h), of the Act, 1961, BCI is controls the standard of the legal profession and legal education up to graduate level through BCI Rules, 2008. Recently Bar council of India has notified new rules titled as “Bar Council of India Legal Education (Post Graduate, Doctoral, Executive, Vocational, Clinical, and other Continuing Education) Rules, 2020”, hereinafter referred as Legal Education Rules, 2020.

Through Legal Education Rules 2020, the BCI is stepping in Post-Graduation Education and Research in Law. This has raised eyebrows of legal academicians in India and is criticized as an autocracy of the BCI without *locus*. This notification has been challenged before the Supreme Court of India by students and a consortium of National Law Universities in India.

The present article is a sincere attempt to evaluate impartially the instant notification and examine the competence, expertise, and *locus* of BCI stepping into Post-Graduate and Research in Law. Through instant notification, the BCI is virtually attempting to become the sole authority to regulate Post-Graduate and Research in Law in the country. Surprisingly, the BCI has scrapped the One Year LL.M program and introduced the Two Year LL..M Program without consultation and thereby usurped the powers of other competent authorities in the field. The authors have substantiated the arguments by highlighting the Legal, Constitutional and Procedural irregularities in the Legal Education Rules, 2020. In addition to the appraisal

of this notification authors also have tried to correlate how this attempt of BCI to re-introduce Two Year LL.M Programme in India is contrary to the global standards of legal education.

## Keywords

Legal Profession, Bar Council of India, Legal Education Rules, 2020, *Ultra-Vires*, *Locus*

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### Introduction:

Legal education is a professional education controlled and supervised by three bodies, the Bar Council of India (hereinafter referred to as BCI), University Grants Commission (UGC), and University to which the colleges or institutions are affiliated or constituent of it. The lack of coordination and conflicting norms and regulation of these regulating bodies also lead to confusion in the administration and management of law colleges in India. The prescribed norms and standards set by the BCI most of the time goes contrary to the rules and regulations of the UGC and norms laid down by the respective universities established under statutes. This leads to confusion about which rules and regulations to be complied with. The National knowledge commission in its Report dated 15-7-2008 also mentions about it<sup>1</sup>

The BCI strongly relied on the Act, 1961 to control and supervise education in law. Under clause 1[h] of section 7 of the Act, 1961 the BCI has the power to lay down the minimum academic standard as a

precondition for commencement of studies in law. Under clause 1 of sub-section 7 the BCI is also empowered to recognize degree in law of Universities to be taken into consideration as a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities. The Act thus confers BCI “the power to prescribe the standard of legal education and recognition of law degree for enrolment of a person as an advocate.”<sup>2</sup>

Further, entry 66 of the Union List of the Constitution of India empowers the Union to coordinate and determine the standard in the institution for higher education and research. UGC Act has been enacted in term of entry 66 of the Union list and empowered the UGC to coordinate and determine the standard in the institution for higher education and research.<sup>3</sup> On other hand the Supreme Court in *Bar Council of India v. Board of Management Dayanand College*<sup>4</sup> held that the Advocates Act falls under entries 77 and 78 of Union List. The right to practice comes under entries 77 and 78. Therefore, even the literal interpretation of the above-mentioned

entries reveal that the BCI is established to maintain the standard of the legal profession.<sup>5</sup> However, higher education and research are not directly connected with the law practices, therefore, it shall not be interpreted under section 7 (1) (h) of the Act, 1961.

The Advocates Act, 1961 is the basic statute more specifically section 7 (1) (h) through which BCI stepped in as a regulating Body by framing Legal Education Rules, 2008. The Rules were framed essentially to maintain the standards of legal education and recognition of degrees in law for the purpose of enrolment of Advocates and inspection of Universities for recognizing its law degree, which is contained in Part IV of the Bar Council of India Rules, 2008. The basic objectives of the Act are provided which read as, *“An Act to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All - India Bar”*. The main purpose of the Act can be broadly defined “to regulate the standards of professional conduct of Advocates, to supervise the functioning of different State Bar Councils, Disciplinary Actions, Elections to State Bar Councils, Promotion of Legal Education and Laying Down Standards of such education in consultation with the Universities and

various incidental objects relating to it, etc.”

However, the Act doesn't deal with Higher Education and precisely, that is a reason why the ambit of the Act is limited to law graduates, the legal practitioners and their enrollment which is evident on a bare reading of the definition clause of the Act. The validity of Legal Education Rules, 2008 was also questioned by various centers of legal education on account of the locus of BCI as a controlling authority.

In the year 2013, the Ministry of Human Resource Department proposed a One Year LL.M Programme ( Masters in Law).<sup>6</sup>

In December 2020 National Education Policy, 2020 was approved by the Union Cabinet which aims to bring sweeping changes in school education and higher education however medical and legal professions are exempted from the same. On 02.01.2021 the BCI, the Statutory Body issued a new notification titled as “Bar Council of India Legal Education (Post-Graduate, Doctoral, Executive, Vocational, Clinical and other Continuing Education), Rules, 2020” (hereinafter referred to as Legal Education Rules, 2020). The rules are notified by the Bar Council of India in view of Sections

7(1)(h), (i); (ia); (ib); (ic); (2)(b); (c); 15(1); 49(1) (af); (d); (e) of the Act, 1961. Through this new notification, BCI has virtually become regulating authority to control legal education at the postgraduate and research level.

The paper intends to critically evaluate Legal Education Rules, 2020.

### **1) The Nobility of the Legal Profession and Its Nexus with Legal Education:**

Legal education has great relevance in the empowerment and development of the society. The overall progress of the nation is not possible without quality education in all the fields of education system. In a constitutional democracy like India, legal education assumes great significance in establishing rule of law and good governance. There is a great legacy of the legal profession towards establishing a just society. The legal fraternity has contributed extensively towards social reformation and freedom of the nation. Amongst all the education branches, the branch of law is one of the prominent branches of education as it deals with establishing the rule of law in the society. The Right to Education up to 14 years has been ensured under Article 21-A of the Constitution of India.<sup>7</sup> In *Mohini Jain v. State of Karnataka*<sup>8</sup> Hon'ble Supreme court observed that "the right to education

flows directly from the right to life under article 21". In this case, the court had interpreted higher education as a part of Art. 21 of the Constitution. However, the *Mohini Jain* case has been partially overruled by the Supreme Court of India in *Unni Krishnan v AP*.<sup>9</sup> After *Unni Krishnan's* case right to education is restricted to education up to 14 years of age.

Nobility and values of the legal profession depends on how these values are imbibed in the education system particularly the legal education system. However legal education is just not meant to produce only professional lawyers. "The vision of legal education is to provide justice-oriented education essential to the realization of values enshrined in the Constitution of India. In keeping with this vision, legal education must aim at preparing legal professionals who will play decisive leadership roles, not only as advocate practicing in the court but also as academicians, legislators, judges, policymakers, public officials, civil society activist as well as counsels in the private sectors, maintaining the highest standers of the professional ethics and a spirit of public service. Legal education should also prepare professionals equipped to meet new challenges and dimensions of internationalism, where the nature and

organization of law and practice are undergoing a paradigm shift. Further, there is a need for original and path-breaking legal research to create new legal knowledge and ideas that will help to meet these challenges in a manner responsive to the needs of the country and ideals and goals of our constitution (Pitroda, 2007, p. 38; Agrawal, B. D. (2012)).<sup>10</sup>

The government of India is trying hard to provide quality education to all sections of the society. The legal profession is characterized as one of the noble professions and highly respectable professions because of its dignity and contribution towards the society. The quality and standard of legal education in India is a matter of great concern because it has proximity with the noble profession of advocacy and esteemed judicial services meant for establishing a just society and rule of law in the country.

Indian legal system is traditional, large, and complex in nature. There are hundreds of law colleges imparting legal education and thereby producing thousands of law graduates and postgraduates from their institutions. Amongst these institutions, very few institutions are of international repute which are producing lawyers, jurists, and academicians of the best quality.

Noted lawyer Fali Nariman observed that “the quality of legal education is more important than the number of lawyers ... We have to give much better status and recognition to our law teacher, who initially moves the hearts and mold the minds of law students. It is the law students who became a practicing lawyer, and it is bright ones amongst them that become judges. On most serious aspect facing the legal profession is that the legal education system appears to have lost its ethical content (Nariman, 2010, p. 83)”.<sup>11</sup> We must educate our lawyers better. We produce ethical illiterates in our law colleges, who have no notion of what public good is (Palkhiwala, 2003, p. 217).<sup>12</sup>

As mentioned earlier, the quality of legal education has close nexus with quality of profession hence quality in legal education will definitely improve the standard of this profession providing opportunities and avenues to the law graduates to work in various emerging inter-disciplinary fields. In improving the quality of legal education there are various stakeholders who serves in the overall process of legal education. However, it is the equal responsibility of all the centers of legal education, private and public universities, UGC, and the BCI to improve legal education. The BCI through its legal education rules became a

supervising and inspecting authority of all the centers of legal education in the country. The above nobility and nature of the legal profession demands the independent council to supervise and control the legal education in India.

### **2) Views Provided by MHRD, UGC, and AIU as a Base of the Notification: Surmises and Conjectures:**

The basic premise of notifying these rules is an expression of opinion by the Ministry of Human Resource Development, Government of India, University Grants Commission, and Association of Indian Universities. Since these authorities referred to various issues of Post graduate legal education especially for considering the matter of equivalence and other matters of one Year LL.M. courses run in foreign universities. It is important to note that these views were indeed expressed in respect of equivalence and other matters of LL.M courses run in foreign universities. Since these are a mere expression of opinion and not direction, hence it has no legal mandate to assume by BCI as a regulating body. The above views do not provide any legal sanction to step in by BCI into higher education and research.

### **3) BCI's Stepping into Post-Graduation Education and Research in Law: Conflicts and Controversies:**

BCI has notified Legal Rules, 2020 assuming its role as a regulating authority for Post-Graduation Education and Research in Law. However, there are two other existing authorities (i.e. UGC and MHRD) regulating higher education in general and higher education in Law. In addition to UGC and MHRD, the Universities have their own parameters and standards for Post-Graduation Education and Research in Law.

The prime objective of the establishment of BCI was to maintain the standard of the legal profession. There is a direct nexus between legal education at the graduation level and the standard of the profession including enrolment of the professionals. Therefore, BCI though the broader interpretation of section 7(1) (h) of the Advocates Act, 1961 started regulating legal education up to graduation level by notifying the Legal Education Rules, 2008. In pursuance of the Legal Education Rules, 2008 the BCI started functioning as an inspecting body in order to maintain the standard of legal education. It is significant to note that such wide interpretation of power provided under section 7(1) (h) of

Advocates Act, 1961 is questioned on a number of occasions by the academia.

The basic premises of section 7 (1) h of the Advocates Act, 1961 which BCI considered as a foundation of deriving power to notify the 2020 rules for the regulation of Post-Graduate and Researcher Education is controversial. Section 7 (1) (b) of the Advocates Act, 1961 clearly states the BCI, “to lay down standards of professional conduct and etiquette for *advocates*.” An advocate under the Advocates Act, 1961 is essentially a person who is enrolled under the BCI after completing his/ her formal educational degree in Law that is LLB. It is pertinent to note that LL.M is not an eligibility criterion to be enrolled as an advocate. Therefore, power exercised under section 7 (1) (b) to lay down rules for the regulation of higher education and research is beyond the power of the BCI.

As stated above there are two other existing bodies (i.e. UGC and MHRD) regulating the Post-Graduation and Research in Education. More particularly when UGC has introduced the One Year LL.M Programme, 2013, without legitimate claim the BCI virtually trying to be a regulating authority stepping into the role of the UGC. Hence, this has been objected on many grounds.

Enactment of the Legal Education Rules, 2020 is a usurpation of powers provided to UGC, MHRD, and Universities. The UGC, MHRD, and Universities are competent authorities to promote and regulate higher education and research, however, the BCI is usurping the power without any legitimate foundation, authority, and competence which is contrary to the basic intention of parent legislation (the Advocates Act, 1961).

The BCI cannot be considered as an expert body in academic matters to examine the quality of higher education and research. The notification doesn't have the Constitutional mandate of Schedule VII of the Constitution of India. Entry 66 of Schedule VII, List 1 grants the power to Parliament to lay down standards specifically in relation to higher education. It reads as "Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions." Though education is a matter in the concurrent list, the framing of standards of higher education is solely present in entry 66. The University Grants Commission Act, 1956 was enacted under Entries-65 and 66 of the Union List and Entry-25 of the Concurrent List. Therefore, power to

supervise and control the post-graduation and research shall be the domain of UGC.

Further, Section 2(f) of the University Grants Commission Act, 1956 empowers the UGC to exercise control over the universities and affiliated colleges for prescribing standards of education. The Act, 1961 was enacted under *Entries-77 and 78* of the Union List. Section 7 (1) (h) and 7(i) of the said Act empowers the BCI to promote and regulate legal education in the country. This indicates that the BCI is not the sole authority to regulate the standards of higher education as the Parliament while exercising power under the Constitution has conferred that authority to the UGC.

In the New Education Policy, 2020, the UGC will be replaced by the Higher Education Commission of India (HECI), which will presume the role of education regulator in the country. This will be done once the Parliament repeals the University Grants Commission Act, 1951, which is still pending. Therefore, the UGC still has the authority to regulate the higher education sector. Secondly, the NHRCE, a wing under the HECI has carved out legal and medical education on the grounds that there exist regulatory authorities in these domains. Point 18.3 of the policy reads as, “National Higher Education Regulatory

Council (NHERC). It will function as the common, single point regulator for the higher education sector including teacher education and excluding medical and legal education, thus eliminating the duplication and disjunction of regulatory efforts by the multiple regulatory agencies that exist at the current time”.

The Medical Education in India is now regulated by the National Medical Commission under the explicit authority granted to it by the Parent Act titled National Medical Commission Act of 2019. The nature of the powers given under the Act differs drastically from the powers given to the BCI. Firstly, the National Medical Commission is explicitly allowed to conduct examinations for undergraduate as well as postgraduate students wishing to enroll in medical education as per Section 14(1) of the Act. However, the BCI does not have any such authority in relation to students wishing to enroll in the study of Law.

The above explanation shows that Bar councils entry into higher and research education conflicts with UGC.

#### 4) **Notification is *Ultra-Vires*:**

The notification is based on the premise of power provided to the Bar Council under section 7 (1) (h) of the Act, 1961. According to section 7(1) (h) of the Act,

1961 one of the functions of the BCI is, “to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils”.<sup>13</sup>

The BCI is estimating that it has the power to regulate higher education and research including Ph.D. However, the above section does not provide or intend to provide the power to promote or regulate higher education including post-graduation and research education.

The BCI is established under the Act, 1961 “to regulate the legal practitioners, in a way a basic role of BCI is to regulate the profession and not academic or research. It is pertinent to note that the entry or enrolment for legal practice is based on LL.B (Graduation) and not on post-graduation or research education (Ph.D.). It is to be noted that while interpreting section 7 (1) (h) of the Advocates Act, the Act shall read as a whole and purposive rule of interpretation shall be applied. Since BCI is established to regulate the profession and the profession has direct nexus with LL.B (Graduation) as an eligibility, it will be illogical to extend the interpretation of section 7(1) (h) to regulate higher education and research. Therefore, the wider interpretation of

section 7 is fictional, evasive, and *ultra-vires* in nature.

Some of the controversial provisions of this notification also include Clause 20 (3) of the notification which de-recognises any LL.M degree which may be obtained by from a Foreign University in the future. These degrees won't be recognised in India as equivalent to India's LL.M degree except for a person who works as a visiting faculty for a year at Indian University. The stipulation to teach for another one year in an Indian University for the recognition of LL.M Degree is illogical and does not fulfill the criteria of *intelligible differentia*.<sup>14</sup> As illustrated above, the BCI doesn't have direct or indirect power to regulate Higher Education in the field of Law. It is a regulatory body concern with the objects of the Act, 1961 which also doesn't postulate any such power with the Bar Council of India. The reliance on sections 7(1)(h), (i); (ia); (ib); (ic); (2)(b); (c); 15(1); 49(1)(af); (d); (e) of the Advocates Act, 1961 to assume such power is arbitrary in nature and notification is ultra vires to the power provided under section 7 of the Act, 1961.

##### **5) The Consultation Process was Bypassed by BCI:**

Section 7(h) clearly states that "to promote legal education and to lay down

standards of such education in *consultation with the Universities in India* imparting such education and the State Bar Councils". The section clearly mandates that the BCI has to lay down legal standards in consultation with Universities in India. Since this notification affects the legal education, hence it mandates to consult the stakeholders including universities. However, there was no pre-enactment or post-enactment consultation with stakeholders. This is a clear example of procedural *ultra-vires*.

#### **6) Notification Conflicts with the Global Standard of One Year LL.M:**

The Notification itself states that the notification is issued in line with the objectives of National Education Policy, 2020. However, the National Education Policy seeks to make the higher education of India globally acceptable and in competition with the global standards. Whereas, the BCI is abolishing the One Year LL.M Programme which is existing global standard, and then further mandating that any foreign LL.M degree won't be recognised which again defeats the object of attainment of global standard. The One Year LL.M Programme was introduced in India with an intent to bring India amongst global standards and at par with LL.M offered by foreign universities. The New Education Policy, 2020 also talks

about how standardization and globalization should be the aim of our education. However, a decision of going back to the two-year LL.M programme seems contrary to the spirit of globalization and standardization of education. The newly published notification is contrary to the spirit of higher education policy from a global perspective since all highly ranked universities across the world are running one-year LL.M except India Pakistan and Bangladesh. Hence by not recognising one year programme BCI is violating the basic intent of standardisation and globalisation of legal education to match with global universities.

The best practice in renowned universities recognized globally from U.S. and U.K. are having One Year LL.M Programme to which the BCI has failed to acknowledge. The notification is imprecise in nature and doesn't have nexus with the object to be attended. On one hand, BCI is introducing Executive LL.M Programme and Associate Programmes which are of three years and can be done at ease which doesn't meet the standards as sought to be achieved. Associate Programme will be considered equivalent to Master Degree in LL.M which again is in conflict with its own objectives. Another programme introduced by BCI is the Fellowship

Programme, which is equivalent to Ph.D. and will be regulated by BCI Trust. Further, it is not clear in the notification, who will appoint a faculty for conducting fellowship programme.

#### **7) Enactment of the Legal Education Rules, 2020 is a Usurpation of Powers Provided to UGC and Universities:**

The UGC and Universities are competent authorities to promote and regulate higher education and research, however, the BCI is usurping the power without any legal basis, authority, and competence which is contrary to the basic intention of parent legislation (i.e. the Advocates Act, 1961).

The Act, 1961 gives no explicit or implicit power to the BCI as an authority to partake such a responsibility in regards to aspirants of Law. The Act is limited in its scope by restricting the application of its authority to the Advocates. Section 7 of the Act lays down the functions of the BCI and nowhere the legislative intent seems to give the Bar Council as the sole authority to make decisions in relation to higher education and research in Law. Therefore, there is no legal body constituted yet to overtake the functions performed by the UGC. The BCI has been empowered to regulate the law profession and shall play a consultative role in graduate education and has no power to regulate higher education

and research either under express or implied provisions of the Advocates Act, 1961.

The above explanation demonstrates that the BCI has usurped the power of UGC and Universities.

#### **8) Apart from the Legality, the BCI is not a Competent Body to Handle Higher Education and Research:**

The BCI is a statutory body and not a college or university to manage and provide higher education and research. Neither BCI nor the BCI Trust is "Universities" as per the University Grants Commission Act. The term "University" has been defined under the University Grants Commission Act, 1956. According to UGC Act, "*University*" means a "*University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act*". The BCI is not a university established or incorporated under Central Act, Provisional Act or a State, etc. Since BCI is not a university, it cannot practically engage in the service of providing higher education and research. Apart from the above argument, there is a pertinent question of administration since

BCI lacks the proper resources to impart higher education and to conduct entrance examination. Further, conducting all India entrance examination for two-year LL.M Programme introduced by BCI is restricting choices of universities those who wanted to make a new experiment in legal education.

Further, the fellowship programme intended under clause 16 of this new notification is an utter misuse of power and conflicting with norms and rules laid down for maintaining standards of higher education and research. More particular norms of the in-house research supervisors, quality research, etc. Clause 16(2) (c) of impugned notification reads as "Fellowship is obtained by conducting research under the supervision of an allotted faculty by BCI Trust for a period not less than three years".

As per UGC regulation 2018 various norms for improving quality of research are laid down by UGC in furtherance to maintain the quality of research. The UGC Rules for Ph.D. mandates to have an in-house faculty or faculty from an affiliated institute of the university to be a research guide or supervisor. These norms specifically state that professors from a University or from its Constituent or Affiliated University can only be a

research guide and not external professors. The clause inserted by BCI is not only against the above and other established standards and practice but also ambiguous. Similarly, executive LL.M Programme is also contrary to the established standards of examination and teaching pedagogies as it gives liberty for organizing exam through email and virtual mode of classes according to the convenience of target students probably detrimental to the quality of legal education. The LL.M Executive Programme introduced in notification seems to be more comfortable as it allows week end classes, classes on the holidays which seems to be truly "executive programme" compromising the standards of higher education. Since this executive LL.M Programme allows teaching and assessment through online mode, correspondence through mail which may hamper the quality of legal education. On the contrary due to the deterioration of the quality of legal education few night law colleges were shut down by BCI earlier on the account lack of quality and standard.

#### **9) Violation of Right of Education:**

The BCI's mandate of compulsory training of one year is a violation of the right of choice and education. As seeking admission to the LL.M course does not mean everyone is interested in academics

only as there are other avenues and opportunities available. A person may pursue a master degree merely to acquire knowledge. Therefore, making it incumbent to have compulsory visiting faculty for equivalence has no rationale. Moreover, asking for compulsory academic internship in two years LL.M course also tilted towards academic orientation. Hence students who are interested in the corporate sector may not be interested in an academic internship rather internship with a corporate firm may strengthen his/her future employability. Even standards laid down for equivalence for all foreign university are neither logical nor have any legal base. A masters degree from a world-class university will not be treated at par with an LL.M degree in India and the credibility of the same will be questioned and a person has to pass a litmus test of visiting faculty. This restricts the choice to opt for other career options, therefore, if a student who obtained a degree from a foreign university is neither interested in practice nor academics and wanted to make a career in law and policy governance, corporate sector, legal and financial adviser where LL.M from a reputed university may strengthen his claim of employability. In this situation, asking a candidate to go for visiting faculty does not make any sense.

The above-mentioned condition also intervenes into the autonomy and freedom of the educational institutions and universities to administer higher education and research. The notification also violates Article 14 of the Constitution of India as the imposition of a mandatory condition to work as a visiting faculty for a period of one year in an Indian University is discriminatory, arbitrary, and lacks *intelligible differentia* and cogent reasoning. It violates the liberty and choice of Indian Students who want to pursue higher education from reputed foreign universities like Harvard or Oxford.

The right to practice, occupation and profession covered under Article 19(1) (g) of the Constitution of India is also getting impacted inconsequentially. In case a student wants to take up a job in the profession other than academics requiring LL.M degree as an essential or preferential qualification. Since foreign LL.M degree is not being treated valid unless supplemented with one-year teaching at law institute in India which jeopardies the professional interest and job prospective of the candidates. Hence, such unreasonable equivalence provided under clause 20 (3) of the notification amounts to be an interference with right guaranteed under Article 19 (1) (g) of the Constitution of India.

## Conclusion:

The notification 2020 lacks cogent reasoning, deliberation, and consultation with the stakeholders of the legal education. The BCI does not have a locus, legal basis, or authority to issue the present notification. It is based merely on views expressed by MHRD, UGC, and AIU.

The notification conflicts with the powers of UGC and Universities to regulate higher and legal education. The present notification is also *ultra-vires* to the parent Act and violative of Article 14 and 19 of the Constitution of India along with the right of education flows from Article 21 and restricts the right of choice of the students.

Apart from the above, the BCI does not have the infrastructure, manpower, and competence to handle and regulate higher education and researcher.

The retrospection of the role played by BCI in standardising the quality of legal education reveals that BCI has not played noteworthy role in improving quality of legal education in country since 2008. The BCI has played merely a role of an inspecting body of law colleges to provide permission cum license for running law colleges. Since members of the BCI lacks

the academic orientation and expertise in academics and research, it is not a suitable body to supervise and regulate the higher education and research in law. In this backdrop of circumstances, considering nobility and complexity of legal education a balanced mechanism comprising of academicians, judges, imminent professionals is required to control and regulate legal education and research in India. The claim of BCI as the elected representative of lawyer community is overestimation of power to regulate the higher education and research in law. It has been further estimated that the BCI has power to step into higher education and research in absence of existing authority to supervise and control as the Higher Education Commission is not established yet. An absence of the existing regulating body does not pave the way to get an entry in an unoccupied domain to regulate higher legal education and research in India. Nonexistence of mechanism does not provide legal sanction for stepping into unoccupied domain.

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## References

[1] Ref. Rule 20 of Bar Council of India Rules for Legal Education 2008. The National Knowledge Commission in its Report dated 15.07.2008 has taken cognizance of the importance of legal education while recommending the establishment of a regulatory body under the name and style of Regulatory Authority for Higher Education, and teaching.

[2] See section 7 [1] h of the Advocates Act 1961

[3] Ref. *Bar Council of India v. Savita Institute of Medical* (2007) 2 SCC 202

[4] [2007(2) SCC 202]

[5] Also ref. *India Cement v. State of Tamil Nadu* [1990 (1) SCC 12]

[6] So as to modify the existing education in India MHRD organized a Round Table on Legal Education, one of the prominent objectives to hold the round table conference was to introduce the One-year LL.M programme in tune with International Standards. The detailed guidelines were laid down by the Expert Committee constituted by the UGC and accordingly One Year LL.M degree programme was introduced in 2012. A number of steps were introduced by the National Knowledge Commission to revamp the system towards achieving academic and professional excellence in legal education. In pursuance of it a National Education Policy, 2020 [NEP] was approved by the Union Cabinet with intend to introduce modification in school and higher education in India. The prime objective of higher education policy was to internationalise it to fulfill challenges of

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the global education. The prominent outcome of NEP is the establishment of the Higher Education Commission of India (HECI) to work as a paramount umbrella body for higher education in India. HECI shall discharge its function with respect to set academic standards, look into accreditation and funding, and other allied matters. HECI has replaced other existing authorities working in higher education including UGC, AICTE, and NAAC, however, legal and medical education were exempted from its control and supervision.

[7] Added by way of 86th Amendment Act of Constitution 2002, free and compulsory education has been facilitated to the children of 6 to 14 years.

[8] (1992) 3 SCC P. 666. In this case, the Hon'ble Supreme Court while reading Directive Principles contained in Art. 38, 39A and 45 with Art. 21 of the constitution has observed that "it becomes clear that, the framers of the constitution made it obligatory for the state to provide education for its citizens".

[9] 1993 AIR 2178, 1993 SCR (1) 594

[10] Pitroda S. (2007). *The Report of National Knowledge Commission* <https://epsiindia.org/wp-content/uploads/2019/02/Knowledge-Commission-Report-20071.pdf> also see Agrawal, B. D. (2012) Legal Education in Justice Delivery System. *Supreme Court Cases*, 6

[11] Nariman, F. S. (2010). *Before Memory Fades, (An autobiography)*, Hay House publisher India Pvt. Ltd. p. 83.

[12] Palkhiwala N. A. (2003). *We The Nation The lost decades*, UBS Publishers.

[13] Objectives of the Advocates Act, 1961

[14] To make the distinction between Indian and foreign degree of post-graduation in Law, the distinction should be based upon some reasonable criterion. One cannot abruptly treat it unequal without justifiable and reasonable grounds are made out. Thus, the above classification has no legitimate nexus with objectives sought to be achieved.