

Law Commission of India

184th Report

on

**The Legal Education & Professional Training and
Proposals for Amendments to the Advocates Act,
1961 and the University Grants Commission Act,
1956**

December, 2002

**JUSTICE
M. JAGANNADHA RAO
Chairman**

**LAW COMMISSION OF INDIA
SHASTRI BHAVAN
NEW DELHI-110 001
TEL: 3384475
FAX:3073864, 3388870**

Residence:
1, JANPATH,
NEW DELHI – 110 011
TEL: 3019465

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Dear Shri K. Jana Krishnamurthi ji,

I am forwarding herewith the 184th Report on the “Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956”.

The Commission took up the subject of ‘Legal Education’, suo motu, as the said subject is fundamental to the very foundation of the Judicial system. The Commission in the year 1999, issued a working paper proposing certain amendments to the advocates Act, 1961. The scope of the working paper was wide and it contained five chapters. Chapter I thereof was Introductory, Chapter II related to ‘Legal Education and Professional Training, Chapter III to ‘Professional Competence and Social Responsibility’, Chapter IV to ‘entry of Foreign Legal Consultants and Liberalization of Legal Practice, and Chapter V to ‘Management and Development of the Profession’. However, in the present report, the Commission has confined its recommendations to the ‘Legal Education and Professional Training’ only.

The Bar Council of India (BCI), under Section 7 (1) (h) of the Advocates Act, 1961, is empowered to promote legal education and lay down ‘standards’ of such education in consultation with the Universities imparting such education. The University Grants Commission, under Section 2 (f) of the University Grants Commission Act, 1956 (UGC Act) is also having power to exercise control over the Universities and affiliated

colleges for prescribing standards of education. The BCI may prescribe standards of legal education in consultation with the universities. L But in practice, it is not possible for the BCI to consult each and every University and there is no manner prescribed in the Advocates Act, 1961 for rendering effective consultation in this regard. Therefore, in this Report, the Commission has proposed that the University Grants Commission should constitute its 'Legal Education Committee' consisting of various specified faculty members. The Commission has recommended that the UGC Act, 1956 be amended by providing a separate provision for constituting the 'Legal Education Committee' of the UGC. It has also recommended that the UGC shall nominate three members out of its Legal Education Committee, for the purpose of the 'Legal Education Committee of the BCI. It has proposed that, the Legal Education Committee of the BCI should also have one retired Judge of the Supreme Court and one retired Chief Justice or retired Judge of a High Court to be nominated by the Chief Justice of India. Accordingly, it has recommended to amend section 10 (2) of the Advocates Act, 1961. The Legal Education Committee of the BCI should consult the Legal Education Committee of the UGC. It will have to fulfil the requirements of specified consultation process. The procedure for consultation is provided in the proposed section 10AA of the Advocates Act, 1961. Further, it is also recommended to elaborate the expression 'standards of legal education', in the Act by amendment of section 7 (1) (h) of the Advocates Act.

The Law Commission has viewed that accreditation and quality assessment of law schools in the country must be introduced by the BCI and UGC, so that healthy competition environment may be generated. The Commission is also of the view that training of 'Alternative Dispute Resolution' system should be given to law students, lawyers and judges, in view of the recent amendments to the Code of Civil Procedure, 1908 (Sec.89) and observations of the Hon'ble Supreme Court in **Salem Advocates Bar Association v Union of India** 2002 (8) SCALE 146 for following the mandatory procedure.

The Commission is of the view that there is an overwhelming need to reintroduce appointment of adjunct teachers from lawyers and retired Judges on part-time basis.

In view of the Commission, it is necessary to impart professional training to the law teachers apart from the existing refresh course

conducted by the UGC. Accordingly, the Commission has suggested to establish at least four colleges by the UGC or by the Central Government in consultation with BCI, in the four corners of the country.

The provisions relating to recognition, de-recognition and inspection of Universities and law colleges are suggested for suitable amendments, in order to do away the conflicts in exercise of powers of various bodies. It is thus recommended that in the event of difference in the inspection report of the Bar Council and other bodies, a further inspection has to be done by a Task Force, as done under the All India Council of Technical Education Regulations.

The Commission has recommended that a law graduate shall get training from an Advocates having 10 years experience in the Bar, and should also qualify Bar examination, before allowing him to be enrolled as an Advocate, as suggested by the Hon'ble Supreme Court in V. Sudeer vs Bar Council of India, 1999 (3) SCC 176.

In order to give shape to its recommendations, a draft Bill is also annexed with the Report to suggest the amendments in the Legislative form.

With warm regards,

Yours sincerely,

(Justice M. Jagannadha Rao)

Shri K. Janakrishna Murthy,
Hon'ble Minister for Law and Justice,
Shastri Bhavan, New Delhi.

CONTENTS		PAGES
Ch. I	Introductory	1-8
Ch. II	Respective Roles of The Bar Council of India And UGC – A Constitutional and Statutory Perspective	9-22
Ch. III	Membership of The Legal Education Committee of the Bar Council of India	23-30
Ch. IV	The UGC Committee on Legal Education and the Consultation Process	31-44
Ch. V	Standards of Legal Education, Legal Skills and Values (Mac Crate Report) and New Globalization Challenges and Accreditation	45-56
Ch. VI	Alternative Dispute Resolution training for students as well as lawyers	57-63
Ch. VII	Adjunct Teachers from the Bar & Bench	64-70
Ch. VIII	Permissions and Inspections	71-84
Ch. IX	Examination System, Problem Method and Training Centres for Law Teachers	85-93
Ch. X	Education on Legal Education Literature	94-99
Ch. XI	Disaffiliation of College or University	100-101
Ch. XII	Training and Apprenticeship	102-116
Ch. XIII	Disqualification of Employees	

	Dismissed or Removed From Service and Section 24A	117-119
Ch. XIV	Summary of Recommendations	120-130
Annexure	Draft of Bill “The Advocates (Amendment) Bill, 2003”	1-10

Chapter I

Introductory

1.0 The Law Commission of India took up the subject of legal education suo motu, as the said subject was seen as fundamental to the very foundation of the judicial system. The Commission prepared a Working Paper in 1999 proposing amendments to the Advocates Act, 1961 (Act 25 of 1961). The paper contained five chapters, Chapter I was Introductory, Chapter II related to ‘Legal Education and Professional Training’, Chapter III to ‘Professional Competence and Social Responsibility’, Chapter IV to ‘Entry of Foreign Legal Consultants and Liberalisation of Legal Practice’ and Chapter V to ‘Management and Development of the Profession’. We are, however, confining the present report to ‘legal education’ only.

1.1 Several responses and representations were received by the Law Commission from the Bar Council of India, Bar Councils of various States, Bar Associations and members of the Bar, some of them accepting the

suggestions, while some others opposed the suggestions. We shall initially refer to some of the important suggestions/representations.

Response of the Bar Council of India:

1.2 The Bar Council of India in its letter dated 3.8.2000, made elaborate suggestions. It accepted some of the proposals, rejected some others and suggested further amendments to some sections. These relate to amendments/new provisions proposed in working paper to sections 2(1)(hh), 3(2)(b), 4(1), 7(1)(ic), 9(1), 10(2), 9A, 7(1)(h), 24(1)(iiia), 24(1)(f), sec. 24(1), sec. 24A(1)(c), sec. 33A, sec. 49(1)(ai), (aj), (ak), (al), (am), (ag)(agg)(ff), (ee)(ggg), (ff), sec. 49A, 45, 24(1)(b), 36B, 3(2)(a). We are not referring in this Report to all these suggestions in as much as the scope of the present report is limited and concerns only legal education and a few other related matters. In other words, we are not proposing, in the present report, to traverse the entire ground covered by the Working Paper.

Response of the UGC:

1.3 The University Grant Commission, in its letter dated 16.9.1999, while welcoming the initiative taken by the Law Commission with regard to the improvement of Legal Education and quality of Legal Profession, referred to the 'Report of the Curriculum Development Centre, 1988-1990', headed by Prof. Upendra Baxi. Part-I of that Report runs into about 100 pages and Part II runs into about 740 pages. That Report was prepared by a team of expert academicians for the UGC during 1988-1990. The

UGC, in its letter remarked that unfortunately in the Working Paper prepared by the Law Commission, no reference was made to the Report of the above Expert Committee.

It further stated that the UGC Panel on legal education “was looking forward for better inter-action among UGC and BCI, among others.” The UGC then gave its views with regard to Chapters I and II of the Law Commission’s Working Paper. It referred to the proposed amendments to sec. 7(1)(h) and sec. 10(2)(b). Seeking greater representation for the law teachers in the Legal Education Committee of the Bar Council of India it suggested that in the said Committee, it would not be necessary to have as members, the Secretary UGC or the Secretary, Ministry of Law as was the case at present and that the Director of National Law School, Bangalore need not also be a member as proposed. It was stated that the UGC was constitutionally empowered to deal with ‘Standards of Legal Education’. It may here be stated that the above Expert Committee referred to by UGC, in its Report also regretted that the B.C.I. had not consulted either the Universities or the UGC, at any stage. Various other suggestions were made in the above letter on other matters.

1.4 We may here add that a fresh ‘UGC Model Curriculum’ was prepared in the year 2001 by the Curriculum Development Committee (CDC) constituted by the UGC in the year 2000. (This runs into 500 pages) In fact, the UGC panel on law had initiated the work of revision and updating of the LL.M. and LL.B. (Hons) syllabi prepared by the Curriculum Development Committee in 1988-1990. It was stated that the Bar Council of India has already presented texts of the course for LL.B. but

in as much as it did not formulate detailed subjects, the CDC was taking up the matter. This Committee for LL.M. and LL.B. (Hons) consisted of Prof. C.M. Jariwala, Prof. N.S. Chandrashekharan, Prof. V.K. Bhansal, Prof. K.L. Bhatia, Prof. Mool Chand Sharma, Prof. Hargopal Reddy, Prof. T. Bhattacharya and Prof. P. Leelakrishnan as Convenor. The Committee to formulate LL.B. syllabus had eight members which included Prof. Ranbir Singh & Prof. M. Pinheiro also. The New Report of the CDC of the UGC is dated 9.3.2001.

Report of the Parliamentary Committee on Subordinate Legislation (1993-94):

1.5 The attention of the Law Commission has also been drawn to another Report, namely the Fifteenth Report of the Parliamentary Committee on Subordinate Legislation (1993-94) which is in seven Chapters, which deals with various aspects concerning the legal profession. Chapter VI of the said Report deals with 'Continuing Legal Education and Restructuring the Law Course' and Chapter VII deals with 'Renewal of Registration'. It appears that this Report has not also been referred to in the Working Paper prepared by the Law Commission.

Views of the Faculty:

1.6 On the side of the Faculty, the Commission received the views arrived at in the national conference of law teachers, viz., the All India Teachers Congress (22-25 Jan, 1999), held at the Faculty of Law, University of Delhi. The said Conference was attended by law teachers

representing over 460 law colleges in the country. The Congress was inaugurated by Justice S.B. Majmudar of the Supreme Court of India. The Congress published a separate volume on the subject containing a large number of papers regarding various aspects of legal education. It also passed various resolutions. It referred to the 'Revised Curriculum' prepared by the Bar Council of India (for 3 year and 5 year law courses). The main grievance of the entire Faculty drawn from all over the country was that the Bar Council of India was not complying with the requirement of 'consultation' with the Universities under sec. 7(1)(h) of the Advocates Act, 1961. It was pointed out that under sec. 7(1)(h) , one of the functions of the Bar Council was

“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.”

and the view was unanimously expressed that the Bar Council of India could not have revised and fixed the “curriculum” for law students without consulting the Universities. It was even observed that the action of the Bar Council of India was ultra-vires of the provisions of the Act. The Congress in its letter to the Commission dated 24.7.1999 went to the extent of suggesting that the Bar Council should not have any role to play in the matter of legal education or of fixing up the curriculum and it should be vested in a separate body consisting of legal academics.

1.7 Again, National Law School of India University (NLSUI) organized, in conjunction with its 10th Convocation, the 'First National Consultative

Conference of Heads of Legal Education Institutions' at Bangalore on 12.8.2002. The conference was inaugurated by the Chief Justice of India, Shir B.N. Kirpal and several Judges, Professors and leading lawyers spoke on the occasion. A draft of the final 'issues and recommendations' emerging therefrom has been forwarded to the Law Commission of India on 5.11.2002. The Report deals with challenges faced by legal education. It refers to academic goals of legal education; institutional structure; curriculum/syllabi; evaluation/examination; the difficulty in finding good teachers; technology and connectivity; class rooms; teaching tools and infrastructure; students; career opportunities and placements; Bar Examination/Apprenticeship, governance; accreditation and quality arrangement; and finally financing. The above Report dated 5.11.2002 sent by the National Law School has also been taken into account while preparing this Report.

Response of Association of Universities & Others:

1.8 The Association of Universities has also sent up its views. Various other individuals, Bar Councils or Bar Associations have also sent up a large number of representations.

The Commission's views:

1.9 After the Working Paper, the Commission has now had the benefit of a variety of views expressed by the various bodies. It has perused the report of the Curriculum Development Centre, 1988-1990 and 2001 of the UGC, the Report of the Parliamentary Committee on Subordinate

Legislation (1993-94), considered the views of the All India Teachers' Association of Universities 1999, and of the 'First National Consultative Conference of Heads of Legal Educational Institutions' organized by the National Law School of India University, Bangalore.

1.10 The Commission feels that, in the light of the above views, particularly of the Bar Council of India on the one hand and the Faculty and the UGC on the other hand, a deeper study of the constitutional and statutory roles of the BCI and UGC is necessary. These roles have already been demarcated by the constitutional provisions and by judgments of the Supreme Court and the High Courts. As we shall presently show, the provisions relating to the jurisdiction or functioning of the Bar Council of India and the UGC/Faculty, have to be ultimately harmonized.

1.11 The respective roles of the Bar Council of India and of the Faculty have also been succinctly summarized by the Law Commission of India in its 14th Report (1958), which was chaired by Shri M.C. Setalvad, the then leader of the Indian Bar. We shall also refer to that Report. The constitutional and legal position was considered again in the Report of three-Judge Committee headed by Justice A.M. Ahmadi in 1994.

1.12 The Commission does not propose to deal in this Report with issues relating to 'Entry of Foreign Legal Consultants and Liberalisation of Legal Practice' nor with the question of constitution and elections to Bar Councils or membership of disciplinary committees. The Commission proposes to take up various issues which are equally important and which would go a long way in improving the quality of legal education. The

subjects are: the respective roles of the Bar Council of India and the UGC in regard to maintaining standards of legal education as disclosed by the constitutional provisions in Sch. VII of the Constitution of India; the membership of the Legal Education Committee; devising an effective procedure for consultation by the Bar Council of India with the universities; need for the Bar Council of India and UGC to study various aspects of legal education; streamlining permissions and inspections; teaching of 'problem methods'; training in ADR procedures; better system of examination and establishing special centers for updating and improving the quality of teaching; apprenticeship or training and Bar examination, etc.

CHAPTER II

Respective Roles of The Bar Council of India And UGC – A Constitutional and Statutory Perspective:

2.0 At the outset, the Commission proposes to examine the existing Constitutional and Statutory scheme concerning legal education.

The UGC Act & Entry 66 of List I:

2.1 The University Grants Commission Act, 1956 was an Act passed by Parliament with respect to the subject matter of Entry 66 of List I of the Constitution of India, viz.,

“Entry 66, List I: Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

The Statement of Objects and Reasons appended to the original Bill which preceded the UGC Act, states that the word “standards” in Entry 66 of List I means standards of ‘teaching and examinations in Universities’. It says that the

“Commission will also have the power to recommend to any University, the measures necessary for the reform and improvement of University education and to advise the University concerned upon the action to be taken for the purpose of implementing such

recommendations. The Commission will act as an expert body to advise the Central Government on problems connected with the co-ordination of facilities and maintenance of standards in Universities. The Commission, in consultation with the University concerned, will also have the power to cause an inspection or inquiry to be made of any University....and to advise on any matter which has been the subject of an inquiry or inspection.”

The Preamble to the UGC Act states that the Act is intended

“to make provision for the co-ordination and determination of standards in Universities.”

In view of section 2(f) of the UGC Act, the UGC has control over the Universities as well as affiliated colleges. In Premchand Jain vs. R.K. Chhabra (AIR 1984 S.C. 981), the Supreme Court referred to Entry 66, List I as being the basis of the UGC Act of 1956. Later, in Osmania University Teachers Association vs. State of AP (AIR 1987 S.C. 2034), the Supreme Court observed:

“The University Grants Commission has, therefore, greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the Universities.”

2.2 It was pointed out that the UGC could take all steps necessary to maintain standards, including fixing qualifications, written tests etc. and the UGC could withhold grants to the Universities if its directives were not

implemented. In University of Delhi vs. Raj Singh: (1994 Suppl (3) SCC 516), the Supreme Court held that qualifications for the teaching staff could also be prescribed by Regulations of the UGC and the said Regulations would override any other legislation, even if made by Parliament, such as the Delhi University Act, 1922. The Court observed, while dealing with the UGC Act, as follows:

“These are very wide ranging powers. Such powers, in our view, would comprehend the power to require those who possess the educational qualifications required for holding the post of lecturer in Universities and colleges to appear for a written test...”

“These (powers) include the power to recommend to a University the measures necessary for the improvement of University education and to advise in respect of the action to be taken for the purpose of implementing such recommendations (clause (d)). The UGC is also invested with the power to perform such other functions as may be prescribed or as may be deemed necessary by it for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of such functions (clause (j)). These two clauses are also wide enough to empower the UGC to frame the said Regulations.”

Thus, regulations made by the UGC could override any other statute made by Parliament. The recent decision of the Supreme Court in Preeti Srivastava vs. State of MP 1999(7) SCC 120, in relation to medical education, is of great relevance in as much as the Court was there

considering the provisions of another statute like the UGC Act, passed by Parliament under the same Entry 66, List I of the VII Schedule, namely, the Indian Medical Council Act, 1956, which specifically deals with “standards” of medical education. The Preamble to that Act also states (like the Preamble to the UGC Act, 1956) that the Act is intended, among other things, to provide for the prescription of standards of post graduate medical education. Section 20 of the Medical Council Act, 1956 deals with the constitution of the P.G. Medical Education Committee to assist the Medical Council in matters concerning P.G. Medical education and it states that in case there is difference between the Medical Council and the P.G. Medical Education Committee, the Medical Council “shall forward them together with its observations, to the Central Government for decision.” Once Regulations are made by the Medical Council on the basis of the recommendations of the P.G. Medical Education Committee, they would be binding on the State Governments. The Regulations are not to be treated as merely recommendatory. Standards of education under Entry 66, List I include calibre of teaching staff, proper syllabus, student-teacher ratio, calibre of students admitted to the institution, equipment and lab facilities, adequate accommodation for the college, the standards of examination, including the manner in which the papers are set and examined.

2.3 From the above decisions of the Supreme Court, the scope and effect of a law made under Entry 66 of List I dealing with ‘standards of education’ is quite clear. The law, be it the UGC Act, 1956 or the Medical Council Act, 1956 (in so far as the latter authorized the laying down of standards of PG Medical Education), and laws made under the said entry

for the purpose of laying down the ‘standards’, which include standards of teaching, syllabus, examination, at the admission level or later and they would override any other law made by Parliament.

2.4 University Acts, passed by the State Legislatures under Entry 25 of List III or under old Entry 1 of List II would also be subject to the provisions of the UGC Act, 1956.

The Advocates Act, 1961 & Entries 77 and 78 of List I:

2.5 The Advocates Act, 1961 has been passed by Parliament by virtue of its powers under Entries 77 and 78 of List I of Schedule VII of the Constitution of India. The legislative subject here is “practice in the Supreme Court or in the High Court.” (see O.N. Mohindroo vs. Bar Council, AIR 1968 SC 888), (Bar Council of UP vs. State of UP, AIR 1973 SC 231). In fact in the latter case, namely, the Bar Council of UP case, AIR 1973 SC 231, the Supreme Court specifically held (see p. 238) that in pith and substance, the Advocates Act, 1961 deals only with the following subject-matter referred to in Entries 77, 78 of List I:

“Entry 77: Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such court) and the fees taken therein; persons entitled to practice before the Supreme Court”.

Entry 78: Constitution, organization (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practice before the High Courts.”

The Advocates Act, 1961 thus deals with the conditions which a person has to satisfy before he can be permitted to practice in the Supreme Court or the High Court, but the Statement of Objects and Reasons or the Preamble of the Advocates Act, 1961 does not expressly refer to ‘standards of legal education’ as do the Preamble and Statement of Objects and Reasons of the UGC Act, 1956 or the Medical Council Act, 1956. It is only section 7(1)(h) of the Advocates Act which refers to this aspect.

2.6 In the view of the Commission, so far as law courses in Universities which offer certain law degrees or diplomas (and where such students are notified that those degrees or diplomas will not entitle them to practice are concerned) which do not enable a person to practice, the Bar Council of India cannot impose mandatory conditions. The UGC has the prerogative in such cases. However, in the laying down of standards by the Universities even in regard to such courses, though the prerogative is with the UGC and the Universities, they would benefit much by consulting the Bar Council of India. In other words, in regard to courses in law which do not lead to a professional career, the UGC and the Universities could, at their option, consult the Bar Council of India, though it is not mandatory.

Width of Entries in one List of Schedule VII of the Constitution not to be limited by Entries in other List or even same List:

2.7 Whenever there are provisions in the Constitution referring to separation of legislative powers between a federal and state legislatures, it is necessary to examine the width of the subject upon which the Federal or

State legislature, as the case may be, is primarily entitled to legislate. This exercise is performed by examining the pith and substance of the legislation which is made with reference to those legislative entries. Certain well-settled principles of interpretation apply.

2.8 Firstly, each entry in each list has to be given its widest scope, without any limitation. Incidental encroachment into the field of legislation of another legislature is permissible to a limited extent, i.e. if it is not in direct conflict with the latter's express provisions. For example, where a federal legislature legislates on one of the subjects within its field, it may incidentally encroach into the field of a State legislation and vice-versa, so long as it does not directly conflict with express provisions of the other statute. As long as the pith and substance of the legislation is attributable to a subject within the field of that legislature, as allocated by the Constitution, such a limited incidental encroachment into the field of another legislature, is permissible and is not liable to be struck down as ultra-vires.

2.9 However, conflict, in the present context, does not arise between legislations made under Entries pertaining to the Federal legislature and the State legislature. Here the issue arises between two legislations made by the same legislature, i.e. UGC Act and Advocates Act, both made by Parliament. In the case of the UGC Act, 1956 and Advocates Act, 1961, we are concerned with two legislations in List I itself though they are made under different entries.

2.10 If the UGC Act, 1956 is expressly meant to deal with standards of education, can the Advocates Act, 1961, which is meant to deal with the ‘right to practice’ be deemed as a law which is in pith and substance, one also relating to ‘standards of education’? The point here is that, as stated above, both laws are made under different entries in List I. In that event, what is the principle of interpretation that is applicable?

2.11 It was stated in India Cement vs. State of TN, 1990(1) SCC 12, that the constitutional principle mentioned in the preceding paragraph as between laws made by a Federal legislature and a State legislature is equally applicable in the case of legislation made under different entries in the same List by the same legislature. In the above case, Sabyasachi Mukherji, J (as he then was) observed (see p 23, para 18):

“In interpreting an entry, it would not be reasonable to import any limitation by comparing or contrasting that entry with any other one in the same list.”

2.12 The same principle as in India Cement was reiterated by Sabyasachi Mukherji, J (as he then was) in Synthetics & Chemicals Ltd. vs. State of UP 1990(1) SCC 109 at 151 (para 67).

2.13 In other words, provisions of the UGC Act under Entry 66 of List I dealing with standards of education and the provisions of the Advocates Act must be given as wide a scope as possible. The UGC Act was passed under Entry 66, List I and deals with standards of education while the Advocates Act owes its existence to Entries 77, 78 of List I. That Entry no

doubt, does not refer to 'standards of legal education' but deals with a subsequent stage, 'the right to practice'.

Harmonisation between powers of BCI and UGC:

2.14 It must be noted that the Bar Council of India depends on the Universities for imparting legal education which is necessary for the profession. The Universities prepare students for professional practice except where the law course is one for those who cannot practice. This raises a question for application of the principle of harmonious construction. Section 7(1)(h) of the Advocates Act, 1961 does enable the Bar Council of India to lay down 'standards of legal education'. Section 7(1)(h) cannot be treated as in conflict with the UGC Act, 1956. The reason is that under section 7(1)(h) the BCI has to consult the Universities. The UGC can lay down 'standards of education' and the Bar Council of India can lay down the conditions for eligibility of a law graduate to enter the legal profession. If a student who joins a law university desires to enter the legal profession but is taught law in a manner not acceptable to the Bar Council of India, the law schools will not be serving the career class of students and, in fact, will find few takers. Therefore, as a practical proposition, the law schools will have to conform to the conditions set by the Bar Council of India, if they have to supply prospective lawyers to the Bar. At the same time, the Universities and UGC are concerned equally with standards of legal education, whether for practitioners or otherwise. The Universities are answerable to the UGC in the matter of standards of legal education and so are the affiliated colleges. In other words, the

subject of legal education comes within the purview of two entities, the UGC and the Bar Council of India. Precisely to ensure harmony, the Advocates Act in sec. 7(1)(h) has required consultation by the Bar Council of India with the Universities. The two are partners with a common goal.

2.15 Yet another aspect is that the Universities and affiliated colleges employ thousands of law teachers at various levels. A large number of these teachers are highly qualified. A good number among them have Doctorates or Masters degrees from India and several of them have Doctorates or degrees from reputed universities in the world like, Cambridge, Oxford, Yale, Harvard and Stanford and so on. Several of these teachers have been teaching law for ten to twenty years or even more. It is incumbent, therefore, that these law teachers, who have ultimately to perform the function of teaching are consulted or allowed to express their difficulties or problems particularly when a new curriculum is introduced. The obligations of consultation are reciprocal and not one way. There is ample need for the Universities to consult the Bar Council of India and likewise for the Bar Council of India to consult the Universities. A fine balance has to be established with the mechanism of sec. 7(1)(h) of the Advocates Act which requires consultation with the Universities. Consultation means 'effective' consultation.

2.16 In this connection, we may refer to the article "Revamping professional legal education: Some observations on the LL.B curriculum revised by the Bar Council of India" by Prof. Gurdeep Singh published in the volume "Legal Education in India in 21st Century: Problems and perspectives" (Jan 1999), published after the All India seminar at Delhi

attended by Faculty from all over India. The volume is published by the Delhi University Law Faculty. The article refers to a large number of problems arising out of the recent curriculum introduced by the Bar Council of India which problems could have found easy solution if there was effective prior consultation with the Faculty

Here, one other aspect may be pointed out. The Bar Council of India, by letter LE (Cir.No.4/1997) dated 21.10.1997 had, after referring to the titles of the LL.B. courses and the title of the papers to be offered, left the details to be evolved by the Universities. The Bar Council of India stated in that letter:

“The identification of the content and number of each paper in the prescribed courses is left to the discretion of the University Academic bodies. The CDC Report (1988) Commissioned by the UGC may be followed by Universities while preparing the syllabi for the various courses.”

(quoted from pp. 1, 2 of the CDC Report of 2001 of UGC)

2.17 The CDC Report 2001 of UGC, in fact, admits of considerable harmony in the process of consultation between the Bar Council of India and the Faculty but in our view, the same has to be strengthened. After referring to sec. 7 (1) (h) of the Advocates Act, 1961 and sec. 12 of the UGC Act, 1956, the said Report of 2001 states (page 2):

“In the field of legal education, there was, thus, a dilemma of dual responsibility of the BCI and UGC. The CDC in the eighties were aware of this difficulty and suggested certain ways and means to solve the problems arising from the dual responsibility and called for more interaction, in the form of information sharing and consultation, between UGC and BCI. It is significant that BCI had an open mind when they set out in 1995 for a reform. They consulted the universities and the UGC law panel while formulating the reforms for LL.B. courses.”

The Report, however, says (page 2):

“Although this cannot be described as closer interaction, the gaps in common endeavors between BCI and UGC for reforms in legal education were being filled. It is significant that besides asking to follow CDC Report in the preparation of Syllabi, BCI resolved to accept some of the courses recommended by CDC. Environmental law, human rights law and consumer protection laws were made compulsory subjects. Law and poverty, comparative law, insurance law, law and medicine, women and the law and intellectual property were made optional papers. Administrative law and labour law were promoted to the status of compulsory courses.”

The CDC Report of 2001 of UGC thus accepts that there has been some consultation but it says that ‘closer interaction’ is necessary between the BCI and UGC.

2.18 It is in the light of the above that the Law Commission proposes to recommend, a procedure which will ensure 'closer interaction' between the BCI and UGC.

2.19 While the obligations on both bodies are reciprocal in nature, however, one cannot ignore practical difficulties in the present form of sec. 7(1)(h) which requires the Bar Council of India to consult all the Universities. The Universities in which law is taught either directly or through affiliated colleges are large in number and make it practically impossible for the Bar Council of India to consult every one of the Universities whenever it takes important decisions relating to legal education. If it has to consult each University, it will be a time consuming process. The Bar Council of India appears to have bona fide felt that requirement of sec. 7(1)(h) is satisfied if some of the professors working in the Universities are invited to speak at certain seminars dealing with revision of curriculum. In our view, such a procedure has to be modified in as much as a professor or two invited to a conference, may not be representative of the views of all the Universities.

2.20 In as much as the Bar Council of India cannot be required to consult all Universities, the provisions of sec. 7(1)(h) have to be amended by prescribing that the Bar Council of India must consult a body which effectively represents all the Universities.

2.21 In order to solve the practical problem and make consultation easy and meaningful, the Commission has felt it necessary to formulate a simple and effective procedure for consultation. The consultation procedure

between the Bar Council of India and the Universities must be simple and effective. In this process, the Bar Council of India and the Universities have to cooperate and, as already stated, work as equal partners having a common goal. We shall deal with this aspect in Chapter IV after first going into the question of membership of the Legal Education Committee in Chapter III. Certain aspects to be discussed in Chapter IV depend on what we recommend in Chapter III.

2.22 We accordingly recommend as follows:-

“Inasmuch as the Bar Council of India cannot be required to consult all universities, as stated in section 7(1)(h), the provisions of section 7(1) (h) have to be amended by prescribing that the Bar Council of India must consult a body which effectively represents all universities and that such a body should be constituted by the University Grants Commission. This requires amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956.”

Chapter III

Membership of the Legal Education Committee of the Bar Council of India

3.0 We shall initially deal with the issue of the membership of the Legal Education Committee of the Bar Council of India. The Law Commission's 14th Report (1958) presided over by Shri M.C. Setalvad (see para 53, page 546) referred to the recommendation of the All India Bar Committee, 1953 that the 'Legal Education Committee' should consist of 12 members of whom 2 should be Judges, 5 should be elected by the All India Bar Council and five other persons should be selected and co-opted from the Universities by the above seven members.

3.1 But, the Advocates Act, 1961, in clause (b) of subsection (2) of sec. 10 prescribed a membership of 10 members in the said Committee of whom 5 were to be elected members of the Bar Council of India and five were to be co-opted by the Bar Council of India from among non-members. It did not specify who were to be the other five non-members to be co-opted.

3.2 The Justice Ahmadi Committee Report 1994, for the first time suggested that the 10 member Committee should consist of five Bar Councillors, plus two from the higher judiciary, one from among academicians, and the remaining two, should be the Secretary, UGC and the Secretary, Ministry of Law, Government of India. The suggestion of the Justice Ahmadi Committee has been implemented by the Bar Council of India soon after 1995 and a retired Supreme Court Judge and a retired High

Court Judge are now in the Committee as per the above recommendations. There is only one from the academic community. In other words, out of ten, five are Bar Councillors, two are Judges, one is an academician, and the Secretary UGC and Secretary, Law are the other members.

3.3 However, in the Working Paper prepared by the Law Commission (1999) the membership of a 15-member Committee was suggested as follows: five from the Bar Council, five from the faculty, and out of the remaining five, two to be from the Judiciary, and the Secretary, UGC and Secretary, Law are to be the third and fourth members and the fifth should be the Director of the National Law School, Bangalore.

3.4 The Bar Council of India has strongly opposed the above proposal made in the Working Paper in as much as the existing ratio of Bar Councillors which is 5/10 becomes 5/15.

3.5 On the other hand, the Faculty at its deliberations at the All India Law Teachers Congress (Jan. 22-25, 1999) was of the view that in a Committee of ten, there should be more representation to the academic community and that the Ahmadi Committee was wrong in permitting only one from the Faculty to be on the Committee. Of course, a further suggestion was made that the Faculty alone must be concerned with legal education and that the lawyers and Judges have no place there.

3.6 Similarly, the 12.8.2002 Conference at Bangalore called the 'First National Consultation Conference of Heads of Legal Educational Institutions', in its draft recommendations observed (at p. 10)

“The regulatory structure for legal education in India is currently seriously flawed and needs careful reconsideration. A typical law college has four masters at a minimum: the University to which it is affiliated; the State Government, the University Grants Commission and the Bar Council of India. These four agencies have varying mandates, interests and constituencies and do not provide coherent guidance for the improvement of legal education in the country.”

It also says:

There is wide concern among legal academics that they are not adequately consulted currently by any of these authorities.”

“Of course, the further suggestion is to form an All India Legal Education Council on the model of AICTE for technical education and that the BCI would then be responsible only for regulating entry into the legal profession and maintenance of professional standards rather than for legal education”.

But, we feel that if ‘legal education’ is kept totally out of the purview of the BCI and its role is limited only to admission to profession and discipline of lawyers, it may not be able to prescribe a definite course of legal education which can meet the needs of the Bar. As at present, the Law Commission feels that there are practical difficulties in the way of the suggestion to exclude the BCI totally from legal education. Such a

decision cannot be taken without consulting the Bar and the Judiciary. We do not propose to go into this further suggestion for the reason given below.

3.7 The criticism that the Ahmadi Committee recommended only one member of the Faculty to be on the Legal Education Committee is, in our view, justified. But, the other view, that the Bar Council and Judges should have nothing to do with legal education cannot be accepted in as much as, under Entries 77 and 78 of List I, the subject matter of legislation is ‘practice in courts’ and the Advocates Act, 1961 is a law made for that purpose. As pointed out in Chapter II, though generally, in the matter of ‘standards of legal education’ the UGC or the Universities may have primacy, in the matter of standards of legal education for those students who will practice in Courts, the primacy is of the Bar and the Judiciary. This was the view of the Setalved Committee also in the 14th Report. But at the same time, that does not mean that the law teachers have no place in the fixing of the standards. In our view, there must be discussion by the Bar Council of India with the Universities or with, as proposed, a body of legal faculty, representative of the law teaching community in the entire country, to be nominated by the UGC. We are of the view that the proposal made in this Chapter and the next Chapter (viz., Chapter IV), will balance the roles of the Bar, Judiciary and the law teachers and once the number of teachers in the Legal Education Committee is increased, there will be no room for any grievance.

3.8 Here, we may mention that in the next chapter, i.e. Chapter IV, we are recommending the constitution of a Legal Education Committee of the

UGC, a body which will be representative of all Universities with whom the Bar Council of India will have to consult for the purposes of sec. 7(1)(h).

3.9 Further, we have re-examined the issue of membership of the Legal Education Committee in the light of the responses of the UGC, Bar Council of India and the Faculty, to the Working Paper. We find that the grievance of the Bar Council of India that it has been given only a one-third share (5 out of 15) is genuine and has to be accepted. The original ratio of 5 out of 10 is to be maintained. It is, therefore, proposed to drop the idea of the 15-member Committee as proposed in the Working Paper and to adhere to the 10-member Committee as at present making it clear that one half, i.e. five members, will be Bar Councillors. As of now, the remaining five are non-Bar Councillors. We propose to make some changes in the composition of the remaining five and here the Bar Council of India can have no grievance. Out of the remaining five members, one will continue to be a retired Judge of the Supreme Court, one other will be a retired Chief Justice/retired Judge of a High Court, to be nominated by the Chief Justice of India. (It appears that such a procedure is already being followed by the Bar Council of India). Of the remaining three to be nominated, the Law Commission agrees with the UGC that the Law Secretary, Govt. of India and the Secretary, UGC can be dropped. In those two places now occupied by non-Bar Councillors, it is proposed to bring in two more from the faculty making it three from the faculty instead of one as at present and these three are to be nominated by the UGC and the three faculty members must, as stated in the next Chapter, be faculty members of the proposed UGC Legal Education Committee and also be teachers actually in office.

In case, during the tenure of the Bar Council of India's Legal Education Committee, any vacancy occurs in these three faculty positions either by retirement or otherwise, the UGC will have to nominate fresh faculty members who are in office, in replacement. They must be of the rank of Law Professors/Principals of Law College/Vice-Chancellors/Directors of Law Universities, as stated in Ch. IV.

3.10 The retired Judge of the Supreme Court on the Committee should, in our view, be the Chairman of the Legal Education Committee in the same manner as at present, and shall have a casting vote.

3.11 We would also like to recommend a separate provision enabling the Attorney General for India to participate in the meetings of the Legal Education Committee whether on his own or on invitation by the Chairman of the Committee, and he may, if necessary, vote on any resolution.

3.12 We, therefore, recommend that the Legal Education Committee of the Bar Council of India will thus be a committee representing the Bar, the Bench and the Faculty, as visualized by the Report of the All India Bar Committee, 1953, referred to in the 14th Report of the Law Commission of India, headed by Shri M.C. Setalvad and will have five from the Bar Council of India, three from the faculty, a retired Judge of the Supreme Court and a retired Chief Justice/Judge of the High Court. The Attorney-General for India can participate on his own or on invitation and he may, if necessary, vote on any resolution.

The above proposals will be made in the proposed section 10AA.

3.13 We, therefore, propose as follows:

- (1) Section 7(1)(h) has to be amended by providing for “consultation” as proposed in section 10AA to be inserted in the Advocates Act, 1961, with the Legal Education Committee of the UGC constituted by the University Grants Commission.
- (2) Clause (b) of subsection (2) of sec. 10 has to be amended to provide for membership of Legal Education Committee of the Bar Council of India representing different classes of persons. The Committee shall comprise of 5 members from the Bar Council of India, one retired Judge of the Supreme Court of India, one retired Chief Justice/Judge of a High Court both to be nominated by the Chief Justice of India and three academicians in law to be nominated by the University Grants Commission and these three should be members of the proposed UGC Committee on Legal Education and all three of them must be in office and one of them must be Director/Vice-Chancellor of a statutory Law University. The Chairman of the Committee, namely, the retired judge of the Supreme Court, shall have a casting vote.
- (3) The Attorney General for India can, at his option, participate in the meetings of the Legal Education Committee of the Bar Council of India and the Chairman of that Committee shall be entitled to request the Attorney General to participate in the proceedings of the Committee and when he so participates, he is entitled to vote.

- (4) All questions which come up before any meeting of the Bar Council Legal Education Committee shall be decided by a majority of the votes of the members present and voting and in the event of an equality of votes, the Chairman shall have and exercise a second or casting vote. It requires insertion of sub-section (2A) in section 10 of the Advocates Act, 1961.
- (5) The Bar Council Legal Education Committee should meet at least once in every three months.
- (6) In section 10A of the principal Act, in sub-section (4), for the words, “every committee thereof except the Disciplinary Committees”, the words “every committee thereof except the Bar Council Legal Education Committee and the Disciplinary Committees”, shall be substituted.

Chapter IV

The UGC Committee on Legal Education and the Consultation Process

Section 7(1)(h) to be amended so that consultation by BCI will be, not with all Universities (which is impracticable) but with a new body to be nominated by UGC, representing the Universities:

The UGC Committee on Legal Education to be constituted: proposed sec. 10AA

4.0 As stated earlier, section 7(1)(h) of the Advocates Act, 1961 requires the Bar Council of India to consult the “Universities” for the purpose of laying down standards of legal education. We have already pointed out that there are practical difficulties if the BCI has to consult each and every university which confers degrees in law. It is one of the statutory functions of the UGC to deal with co-ordination and the laying down standards of education in the universities and therefore, for the purpose of sec. 7(1)(h), the UGC can constitute a Legal Education Committee which is representative of all Universities and affiliated law schools. Consultation under sec. 7(1)(h) must then be with an academic body of law teachers to be nominated by the UGC. In our view, that Committee should consist of ten eminent law teachers of whom six shall be law teachers in office, two law teachers who have retired and two vice-chancellors or Directors of statutory law universities. The said body can be called the UGC Committee on Legal Education. It must also be ensured that the UGC nominates three law teachers who are members of the UGC Legal

Education Committee and who are in office as teachers, to be members of the Legal Education Committee of the Bar Council of India, so that they can co-ordinate the decisions taken by the UGC Committee on Legal Education with those taken by the Legal Education Committee of the Bar Council of India. One of these three must be a Director/Vice Chancellor of statutory Law Universities.

Consultation Process:

(i) First stage of consultation should be with the State Bar Councils under sec. 7(1)(h), as at present:

4.1 It will be seen that sec. 7(1)(h) presently requires consultation between the Bar Council of India and Universities and the State Bar Councils. It is not proposed to make any change in regard to consultation with the State Bar Councils. But, the consultation with Universities, i.e. with the proposed UGC Committee of academicians under sec. 7(1)(h) must be effective consultation. Obviously, it will be convenient if the Legal Education Committee of the Bar Council of India first consults the State Bar Councils and the decisions arrived at as a result of the said decisions are sent to the UGC Committee on Legal Education for its views. The proposed amendment would be that the Bar Council of India will, through its Legal Education Committee, consult the State Bar Councils and after receiving their responses, will finalise the proposals which have to be sent to the Legal Education Committee of the UGC, as stated in this chapter:

(ii) Second stage of consultation thereafter should be with the body nominated by UGC, as now proposed:

4.2 The consultation by the Bar Council of India with the UGC Committee on Legal Education will be after the consultation with the State Bar Councils and will have to be as follows.

4.3 As stated above, the Legal Education Committee of the Bar Council of India will consult the State Bar Councils and will have to provisionally finalise its proposals. This will be for the purpose of the further consultation with the UGC Committee on Legal Education. The said proposals will then have to be sent by the Legal Education Committee of the Bar Council of India to the UGC Committee on Legal Education. That Committee will have the benefit of the views of the three academicians who are also in the Bar Council of India's Legal Education Committee and once the views of the UGC Committee are finalized, the decision of the UGC Committee will have to come back to the Bar Council of India's Legal Education Committee for discussion. Once again the three academician members can explain the views of the UGC Legal Education Committee to the Bar Council of India's Legal Education Committee. The two members from the Judiciary will also consider these views. Once the Bar Council Legal Education Committee considers these views, a collective decision has to be taken in the said Committee by all the ten members, including the Chairman (the retired Judge of the Supreme Court). In the new scenario, it is expected that the BCI Legal Education Committee and the UGC Legal Education Committee will give due and proper consideration to each other's views and arrive at a consensus. Of course, in

the absence of a consensus, the majority view of the Legal Education Committee of the Bar Council will have to prevail. It is expected that at such a meeting, all the members and, in particular, the retired/sitting Judge of the High Court, will invariably be present to help in the emergence of a satisfactory solution to any problem arising out of differences between the BCI Committee and the UGC Committee.

4.4 In certain situations, the Faculty may like to initiate and place some suggestions before the Bar Council of India. There must, therefore, be a separate procedure whereby the UGC Committee on Legal Education may initiate and send its suggestions to the Legal Education Committee of the Bar Council of India. In that event, the latter Committee shall first consult the State Bar Councils and then after arriving at a provisional view, refer the same to the Legal Education Committee of the UGC. The said Committee will give its final views and forward the same to the Legal Education Committee of the Bar Council of India.

4.5 The second aspect which the Bar Council has to take care of is that whenever a new curriculum is introduced – sufficient advance notice must be given to the law schools so that they can take steps to conform to the prescriptions. Let us assume that new subjects in intellectual property or cyber law or environmental law are proposed to be introduced. It may be noted that all the 460 law schools may not immediately be able to get 460 law teachers in each of these subjects who are duly qualified and who can take up these classes. There may be other difficulties like non-availability of standard books which can meet the requirements of students. There have been serious complaints from managements and faculty that some of

the Bar Council's directives tend to be arbitrary. These reactions of the law schools cannot be treated as resistance or disobedience. The practical difficulties in the way of law schools must also be taken into account.

4.6 For example, in the recent curriculum which has been circulated by the Bar Council of India, there are quite a good number of matters which perhaps require a second look. The manner in which some important subjects have been put in the list of optional subjects and the manner in which two subjects which have not much of connection, have been joined together in one paper, appears to require correction. In a number of conferences and articles published by the Faculty, these anomalies have been pointed out. It appears to the Commission that there is considerable force in the view of the Faculty that effective consultation and greater interaction with the Faculty would have eliminated such anomalies. This view was also expressed at the Conference on 12.8.2002, of Law Professors organized by the National Law School of India University. Several articles have been published by experienced Professors in the volume published after the All India Conference of Faculty at the Delhi University in Jan. 1999 entitled "Legal Education in India in 21st Century, Problems and Perspectives" edited by Prof. A.K. Kaul and Prof. V.K. Ahuja. The suggestions of the Faculty require serious consideration. We have already referred to Prof. Gurdeep Singh's article "Revamping Professional Legal Education: Some observations on the LL.B Curriculum Revised by the Bar Council of India" and we feel that it will be extremely useful to read the said article.

4.7 It must be noted that standards of legal education relate to various aspects of legal education. They are known to the Bar as well as to the Faculty. Hence, they must be arrived after a thorough study and after an effective interaction between the Bar Council and the Faculty. Bar Councillors and Judges and faculty members of the Legal Education Committee must make an in-depth study of the subject of 'Legal Education' which is a specialized branch by itself. It is not sufficient either for the Bar or Faculty to have a general or vague idea about Legal Education. There is voluminous literature both Indian and foreign on the subject. If one reads the Report of the Curriculum Development Centre of the UGC 1988-1990, one will notice that it is very elaborate and consists of various aspects of Legal Education and runs into 800 pages and the subsequent Report of 2001 consists of 500 pages. There are several earlier reports. (See also the articles in the Journal on Legal Education available in the Indian Law Institute). The recent curriculum prepared in 2001 by the National Law School University, Bangalore is said to be on the basis of the Mac Crate Report and Harvard models. Of course, whatever is adopted must suit Indian conditions. New courses are necessary in the light of liberalization, privatization and globalisation. The standards of legal education concern the entry to the college, the curriculum, as also the method of examination at the time of entering the college and leaving it or entering the profession and the qualification of teachers etc. There must be full coordination between the Bar Council and the Faculty on these matters.

4.8 There is one other aspect here which concerns the implementation of the recommendations of the Legal Education Committee of the Bar Council of India by the Bar Council of India. The earlier Working Paper of the Law

Commission suggested that the Bar Council of India should accept and act in accordance with the decisions of the Legal Education Committee of the Bar Council of India. It is very gratifying to note that in the letter of the Bar Council of India dated 3.8.2000, the Bar Council of India has agreed to implement the recommendation of its Legal Education Committee without raising any objections. In the said letter dated 3.8.2000, the Bar Council of India has further explained the various matters in regard to which the Legal Education Committee could give its views. This is a very happy augury and obviates the introduction of any provision like sec. 20 of the Medical Council Act, 1956 which requires that in the event of any difference between the Committee of the Medical Council and the Medical Council of India, the matter will be referred to the Central Government. The proposal of the Bar Council of India in its letter dated 3.8.2000 is that sec. 7(1)(h) should read as follows:

“to lay down standards of professional legal education in accordance with the recommendations of the Legal Education Committee of the Bar Council of India, which, inter alia, includes curriculum, teaching methods, examination, admission of students, number of teachers, location and infrastructure requirements, and management in consultation with...”

4.9 There can be no objection to this proposal. Therefore, the views of the Legal Education Committee of the Bar Council are to be implemented by the Bar Council of India, – without demur.

4.10 As to the co-ordination between the Bar Council of India and the faculty, it is advantageous to refer to the 14th Report of the Law Commission in regard to ‘Consultation process and the minimum standards’ to be prescribed by the Bar Council of India. As to the meaning of ‘standards’, we shall deal with this aspect in Chapter V.

4.11 The 14th Report of the Law Commission (1958) presided over by Shri M.C. Setalvad dealt with the above aspects in extenso. It is worthwhile to refer to that Report. It stated (p. 546, para 54) as follows:

“We have already seen how in England, professional legal education and the admission to the profession are controlled by a body consisting exclusively of professional men. There is no reason why a similar control and regulation should not be vested in the profession in India. Co-ordination between the bodies regulating professional training and the Universities with a view to ensuring minimal standards can be achieved in the manner indicated above. In our view the Legal Education Committee of the All India Bar Council may be empowered to keep itself in touch with the standards of legal education imparted at the various Universities by visits and inspection as in the case of the medical and dental professions or as is done by the American Bar Association in the case of the American Law Schools. If the Council or its Committee is of the view that the standards prescribed by a particular University in legal education are not adequate or that institutions established by it or affiliated to it for imparting legal education are not well-equipped or properly run, it may decide to

refuse admission of the graduates of that University, to the professional examination till the University has taken steps to reach the minimum standards.”

That is how the principle of the Bar Council of India laying down minimum standards necessary for the profession came into existence. Obviously, the UGC or the University cannot reduce these standards. Of course, they can certainly require higher standards (say) for LL.M and Ph.D. degrees even for LL.B they can lay down higher standards.

4.12 In this connection, it is necessary to refer to the recommendation 25 at page 550 of the 14th Report of the Law Commission which is as follows:

“25: The All India Bar Council should be empowered to ascertain whether law colleges maintain the requisite minimum standards and should be empowered to refuse recognition, for the purpose of entry into the profession, of degrees conferred by institutions which do not conform to the minimum standards.”

Similar is the view expressed by the Justice Ahmadi Committee in 1994. After referring to the judgments of the Andhra Pradesh and Karnataka High Courts, the Committee stated:

“It is also the view expressed by Courts that the Bar Council lays down only the minimal standards required at the entry point into law college and the enrolment point into the profession. (AIR 1972 AP 206 and AIR 1985 Karn. 223)”

In the Karnataka High Court Judgment quoted by the Committee, viz. Sobhana Kumar vs. Mangalore University (AIR 1985 Karn 223), Rama Jois, J (as he then was) observed:

“A combined reading of these provisions (Sec. 49(1)(af) and sec. 7 of the Advocates Act) show that the Bar Council is invested with the responsibility of ensuring standards of legal education and it is also empowered to prescribe the minimum conditions of eligibility for admission to the law course...

... Therefore, the universities cannot prescribe any conditions of eligibility for admission to the law degree course which is lower than the conditions of eligibility prescribed by the Bar Council.”

This appears to be the legal position.

4.13 It is hoped that, if the Bar Council of India and the faculty implement the proposals made in Chapters III and IV, the difficulties faced by the Bar Council of India in regard to consultation with all Universities and the grievance of the faculty in regard to insufficient consultation, will get resolved.

4.14 The proposals are, therefore, for the constitution of the Legal Education Committee of the University Grants Commission of ten members, of whom six would be academicians in office of the level of Professors, Deans or Principals or of equal rank and two law teachers of

similar ranks who have retired and two should be Directors/Vice Chancellors of statutory Law Universities.

4.15 The further proposal is in regard to consultation between the Legal Education Committee of the Bar Council of India and the Legal Education Committee of the UGC and its acceptance and implementation by the Bar Council of India.

4.16 Provision is also to be made for the Legal Education Committee of the UGC to initiate and make suggestions to the Legal Education Committee of the Bar Council of India, and the latter shall then follow the procedure of consulting the States Bar Councils and the UGC Legal Education Committee.

4.17 It is also proposed that the Legal Education Committee of the Bar Council of India shall, while passing resolution concerning standards of legal education, have regard to the following factors:

- (a) the time required for the law schools to provide the necessary infrastructure;
- (b) availability of books or faculty members who are qualified to teach any new subject that may be introduced in the curriculum;
- (c) availability of funds with the law schools to implement the resolution or the time required to gather the necessary funds.

4.18 The proposals for the constitution of the UGC Legal Education Committee are contained in the proposed amendment to the UGC Act and

the proposals for the consultation process are contained in the proposed sec. 10AA to be inserted in the Advocates Act, 1961.

4.19 The consultation process will be as stated in para 4.3, 4.4, 4.5 above and in the other paras of the Chapter.

4.20 We, therefore, recommend that new section in the form of section 10AA be inserted in the Advocates Act, 1961 for providing consultation procedure as follows:-

Consultation procedure by the Legal Education Committee of the Bar Council of India:

“ **10AA.** The procedure for consultation under clause (h) of sub-section (1) of section 7, shall be as follows, namely:-

(a) in respect of proposals relating to standards of professional legal education, the Bar Council Legal Education Committee, shall first consult the State Bar Councils and arrive at provisional proposals and the same shall be communicated to the University Grants Commission Legal Education Committee for its views on such proposals.

(b) after receiving the views of the University Grants Commission Legal Education Committee, the Bar Council Legal Education Committee, shall consider the same and arrive at its final decision.

(c) the final decision of the Bar Council Legal Education Committee, arrived at under clause (b) shall be enforced by the Bar Council of India and shall be binding on all universities and all law colleges affiliated to universities, in so far as they relate to standards of legal education necessary for students to get enrolled at the Bar for practicing the profession of law;

(d) the University Grants Commission Legal Education Committee may send any proposal in regard to the matters referred to in clause (a) for consideration of the Bar Council Legal Education Committee;

- (e) if any proposal is received under clause (d) from the University Grants Commission Legal Education Committee, the procedure specified in clauses (a) to (c) shall be followed by the Bar Council Legal Education Committee.
- (f) the standards of legal education as may be finalized under this section shall be the minimum standards necessary for students to get enrolled at the Bar for practicing the profession of law in Courts.”

4.21 We, further recommend that the University Grants Commission Act, 1956 be amended and a separate provision in the form of section 5A for constitution of the ‘Legal Education Committee’ of the University Grants Commission, as follows:-

Legal Education Committee of the University Grants Commission

“5A (1). The Commission shall constitute a Legal Education Committee of the University Grants Commission consisting of ten members of whom-

- (a) six shall be law teachers of the rank of Professor, Dean or Principal holding office as such or others of equal rank;
- (b) two shall be retired law teachers of the rank of Professor, Dean or Principal or others of equal rank;
- (c) two shall be Vice-Chancellors or Directors of law universities established by statute.

(2) The University Grants Commission Legal Education Committee shall represent all the universities and law colleges for purpose of clause (h) of sub-section (1) of section 7 of the Advocates Act, 1961.

(3) The University Grants Commission shall nominate-

- (a) two law teachers in office from among the six members referred to in clause (a) of sub-section(1);
- (b) one member from among the category referred to in clause (c) of sub-section (1),

to be members of the Bar Council Legal Education Committee for the purpose of sub-clause (iv) of clause (b) of sub-section (2) of section 10 of the Advocates Act, 1961 (Act 25 of 1961).”

Chapter V

Standards of Legal Education, Legal Skills and Values (Mac Crate Report)

and

New Globalization Challenges and Accreditation

5.0 The provisions of sec. 7(1)(h) of the Advocates Act, 1961 enable the Bar Council of India to lay down the standards of legal education required for students who seek enrolment to the Bar. It is therefore necessary to refer to some aspects of the standards, particularly those relating to legal skills. In chapter IV we have dealt with ‘minimum standards’ to be laid down by the Bar Council of India. Now, we shall refer to what is meant by ‘standards of legal education’.

5.1 Several efforts have been made from time to time, to improve standards of legal education. The 14th Report of the Law Commission headed by Sri M.C. Setalvad is one of the best and elaborate reports on Legal education. It is something which every person must read. The UGC Curriculum Reports 1988-90 and 2001 must also be read. They were prepared by eminent professors, including Prof. Upendra Baxi. One must also read the recent Ahmadi Committee Report which contains extracts of letters of the Chairman, Bar Council of India and Chairman, University Grants Commission, and views of Chief Justices of various High Courts in the matter of Legal education. Various suggestions were given regarding the courses of study, attendance, entrance examination, final examination, the lecture method, case method, problem method, constitution of Committees and membership, and need for apprenticeship and Bar examination. In this Chapter, we are referring briefly to some of these

aspects and we propose to lay emphasis on Legal Skills and Values as adumbrated in the Mac Crate Report of USA.

Standards of Legal Education & Legal Skills:

5.2 In the Bar Council of India rules, Part IV (as amended upto 30.11.1998) dealing with the subject of ‘Standards of Legal Education and Recognition of Degrees in Law for admission as advocates’, Section A refers to 5-year law course after 10+2 or 11+1, Section B relates to 3-year law course after graduation, and Section C refers to Rules regarding inspection of law colleges by State Bar Councils. Again Schedule 1 contains a list of the Directives issued under Rule 21 in Section A or under Rule 14 in Section B. Sch. II is the questionnaire to be answered by any college which is seeking affiliation. Schedule III deals with Proforma for Inspection of law colleges and Schedule IV with the Form of Annual Return to be submitted by the law colleges. We also have the Training Rules, 1995 made under sec. 24(3)(d) of the Advocates Act, 1961 which have been struck down by the Supreme court as being ultra vires of the Act or rather beyond the rule-making power.

5.3 Recently, new proforma formats have been prescribed for application seeking permission to open law colleges and in respect of inspections, compliance, responses in respect to standards of legal education, recognition of degrees etc.

5.4 The Ahmadi Committee Report dealt elaborately with the methods of teaching. It referred to the “case method” introduced by Prof. Langdell

of Harvard University and to the “problem method” pioneered by Prof. Carl Llewellyn and Judge Jerome Frank and the Notre Dame Law School. The Report referred to Rule 21 of the Rules and to Sch. I dealing with the 5-year course which contains the following directive:

“10. Every university shall endeavour to supplement the lecture method with the case method, tutorials and other modern techniques of imparting legal education.”

The Report recommended as follows:

“This Rule must be amended in a mandatory form and we should include problem method, moot courts, mock trials and other aspects in this Rule and make them compulsory.”

In tune with the above recommendations, we find in the 5-year course syllabus that Rule 2(c) says as follows:

“2(c): That the course of study in law has been by regular attendance for the requisite number of lectures, tutorials, moot courts and practical training given by a college....”

5.5 Rule 3(2) refers to contact and correspondence programme, tutorials, home assignments, library, clinical work etc. – in all 30 hours per week but class room lectures should not be less than 20 hours.

5.6 Rule 9(1) lists 6 subjects for part I (compulsory), Rule 9(2) lists 21 subjects for part II (compulsory), Rule 9(3) lists 15 subjects (optional) out of which three have to be selected. Rule 9(4) refers to 6 months practical training which will include the following compulsory papers:

Paper I: Moot-court, pre-trial preparations and participation in trial proceedings – 10 marks for each, total 30 marks.

Observance of trial in two cases, one civil and one criminal case (30 marks).

Interviewing techniques and pre-trial preparations (30 marks).

Viva-voice (10 marks).

Paper II: Drafting, pleading (15 exercises) and conveyancing (15 exercises).

Civil, criminal, writ petition and drafting sale deed, mortgage etc.

Paper III: Professional ethics, accountancy for lawyers and Bar-Bench relations – 80 marks. Viva-voice 20 marks.

Paper IV: Deals with public interest lawyers, legal aid and para legal services (100 marks).

5.7 We may, however, proceed to refer to certain skills aspect of standards of Legal Education.

Professional skills & professional values – the Mac Crate Report:

5.8 On legal skills, we will be referring to the Mac Crate Report of USA (1992) which is the Report of the “Task Force on Law Schools and the Profession: Narrowing the Gap”, prepared by the American Bar Association. This was followed by subsequent resolution of the ABA House of Delegates in Feb, 1994 and the Report on Learning Professionalism 1996 (Chicago). It is also necessary to refer to the study made by the Law Society of England and Wales on ‘Preparatory Skills: Review of the Institute of Professional Studies (Auckland) 1990; the earlier Reports, namely, Crampton Report on Lawyer Competency (US) (1979) and the Carrington Report on Training for Public Professions of the Law (1971), Washington. The National Law School, Bangalore is said to have prepared a new curriculum in 2001 based on the Mac Crate and Harvard curriculum, with modifications suited for Indian conditions.

5.9 There are 10 chapters in the Mac Crate Report in Parts I to III. Chapter 5 of the Report refers to the ‘Statement of Fundamental Lawyers Skills and Professional Values’, Chapter 7 refers to ‘Professional Development during Law School’, Chapter 8 to ‘Transition from Law Student to Practitioner, Chapter 9 to ‘Professional Development after Law School’, Chapter 10 refers to the Need for a National Institute to Enhance the process of Professional Development (see <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>).

5.10 Under chapter V(A) thereof, the legal skills referred are (1) legal research, (2) factual investigation, (3) communication, (4) counselling, (5) negotiation, (6) skills required to employ or to advise a client about the options of litigation and alternative dispute resolution mechanisms, (7) the

skill to identify the administrative skills necessary to organize and manage legal work effectively and (8) finally, the skill of analyzing the skills involved in recognizing and resolving ethical dilemmas.

5.11 Professional values, according to the Mac Crate Report, include ‘training in professional responsibilities’ and involve more than ‘just the specifics of the Code of Professional Responsibility and the Model Rules of Professional Conduct’; they should encompass ‘the values of the profession’, including the ‘obligations and accountability of a professional dealing with the lives and affairs of clients’. These values are many, such as, (1) the value of competent representation, analyzing the ideals to which a lawyer should be committed as a member of a profession dedicated to the service of clients, (2) the value of striving to promote justice, fairness and morality; the ideals to which a lawyer should be committed as a member of a profession that bears special responsibilities for the quality of justice, (3) the value of striving to improve the profession; explore the ideals to which a lawyer should be committed as a member of a ‘self-governing’ profession, (4) the value of professional self-development, analyzing the ideals to which the lawyer should be committed as a member of a ‘learned profession’. The Report also refers to the relationship between the ‘skills’ and the ‘values’.

5.12 Chapter V(b) of the Report refers to ‘Fundamental lawyers skills as follows:

- (1) diagnosing a problem, generating alternative solutions and strategies, developing a plan of action, implementing the plan and keeping the planning process open to new information and new ideas.
- (2) identifying and formulating legal issues, formulating relevant legal theory, elaborating legal theory, evaluating legal theory and criticising and synthesizing legal argumentation.
- (3) knowledge of the nature of Legal Rules and Institutions, knowledge of and ability to use the most fundamental tools of legal research, understanding of the process of devising and implementing a coherent and effective research design.
- (4) determining the need for factual investigation, planning a factual investigation, implementing the investigative strategy, memorializing and organizing information in an accessible form, deciding whether to conclude the process of fact gathering, evaluating the information that has been gathered, assessing the perspective of the recipient of the communication; using effective methods of communication.
- (5) establishing a counselling relationship that respects the nature and bounds of a lawyer's role; gathering information relevant to the decision to be made; analyzing the decision to be made; counseling the client about the decision to be made, ascertaining and implementing the client's decision.

- (6) preparing for negotiation, conducting a negotiating session, counseling the client about the terms obtained from the other side in the negotiation and implementing the client's decision.

- (7) advise the clients about the options of litigation and alternative dispute resolution, and have a fundamental knowledge of
 - (a) litigation at the trial-court level
 - (b) litigation at the appellate level
 - (c) advocacy in disputes between and Executive Forms
 - (d) proceedings in other Dispute Resolution Forums

- (8) skills of efficient management such as formulating goals and principles, developing systems and procedures to ensure that time, effort and resources are allocated efficiently; develop system to ensure work is completed at the appropriate time; develop system or procedures to work effectively with other people, develop system and procedures for efficiently administering the law office.

- (9) keep familiar with nature and sources of ethical standards, the means by which ethical standards are enforced, the processes for recognizing and resolving ethical dilemmas.

5.13 The Mac Crate Report says that law schools and the practicing bar should look upon the development of lawyers as a common enterprise, recognizing that legal education and practising lawyers have different capacities and opportunities to impart to future lawyers the skills and values required for the competent and responsible practice of law. Each

law school, the Report says, should determine how its school can best help its students to begin the process of acquiring the skills and values that are important in the practice of law. Law schools should be encouraged to develop or expand instruction in such areas as ‘problem solving’, ‘fact investigation’, ‘communication’, ‘counselling’, ‘negotiation’, and ‘litigation’.

5.14 One has to read the elaborate article by Prof. John J. Costonis, Dean of Vanderbilt University: “The Mac Crate Report: Of Loaves, Fishes and the Future of American Education) in vol. 43 (1993) Journal of Legal Education, p. 157, which refers to several important developments in the field of Legal education.

5.15 We would think that the Members of Legal Education Committee of the Bar Council of India and UGC should study the above Report and various subsequent modifications of the same. Criticism of the Report is found in other articles in the Journal on Legal Education. The Bar Council and UGC committees must also look into similar Reports in UK, Canada and Australia so that our standards match with standards elsewhere and we are able to produce, in all our 460 and odd law schools and the 102 universities which offer legal education, students of the same calibre and knowledge. Apart from that, in the context of liberalization, privatization and globalisation, we have to keep pace with international standards.

5.16 The emergence of new economy – globalisation, privatization and deregulation have thrown up new challenges. There are today revolutionary changes in information, communication and transportation

technologies which require corresponding changes in the legal system. Many highly specialized areas of law like intellectual property, corporate law, cyber law, human rights, alternative dispute resolution, international business transactions, have to be introduced in all our law schools. The opening of trade and capital markets as a result of globalisation and the retreat of the State from traditional roles, have raised new legal issues concerning ways in which poor and marginalized sections can protect themselves from further impoverishment. Special emphasis has to be made on criminal justice. The very nature of law, legal institutions and law practice are in the midst of paradigm shifts.

5.17 Legal education must seek to serve distinct interdisciplinary knowledge domains – law and society, law, science and technology; law, economics, commerce and management. To that extent, certain new law subjects should be introduced in the five year course of LLB in the first and second years.

5.18 Teaching must focus on building up the student, skills of analysis, language, drafting and argument. Teachers must bear in mind that while most of the students may choose a professional career as a lawyer, some others may choose a judicial career or career as a legal consultant or law officer in government or an academic career.

5.19 Alternative Dispute Resolution systems – mediation, conciliation, arbitration etc. must be and remain as a compulsory subject.

5.20 The curriculum should not make the mandatory element too large but subjects which are in need in the bulk of the courts in the mofussil, in the civil and criminal law, must be mandatory. While subjects mostly in use in the courts at the grass-root level must be mandatory and some new subjects can also be made mandatory, care must be taken to give more choice to the students in the optional subjects.

5.21 Syllabus could be structured not merely on the basis of mandatory subjects but also on basis of “credits” as done in the National Law School.

5.22 Accreditation and quality assessment of law schools must be introduced by the UGC & BCI fastly to build up a sense of competition between the different law schools. Legal education institutions are not today adequately subject to a rigorous system of quality assessment and accreditation processes. The various well-known parameters for evaluating the performance of a law school must be laid down by the UGC and the BCI and annual rating must be given to each law school and published in the internet to enable prospective students to compete for admission to the best law schools.

5.23 If necessary, this task may be performed by the UGC and BCI by taking the help of professional agencies who are well versed in accreditation processes of law schools. There must also be transparency about the quality of the assessment.

5.24 We, therefore, recommend substitution of the existing clause (h) of subsection (1) of section 7 which merely refers to “promotion of legal

education and laying standards in consultation with the Universities and State Bar Councils” as follows:

- (a) for clause (h), the following clauses shall be substituted, namely:-

“(h) to promote *legal education* and lay down standards of such education in accordance with the recommendations of the Bar Council Legal Education Committee arrived at in the manner specified in section 10AA including, in the matter of-

- (i) the prescription of standards relating to curriculum, admission of students, appointment and qualification of teachers;
- (ii) the appointment of adjunct teachers from the Bar and from among the retired judges;
- (iii) the prescription of conditions of service of the law teachers;
- (iv) the prescription of student-teacher ratio;
- (v) the laying down of guidelines for adopting different teaching methods;
- (vi) specifying the conditions as to the location of law colleges, infrastructure, library and management;
- (vii) promoting excellence in legal education for the purposes of the accreditation scheme if any, introduced by the University Grants Commission;
- (viii) promoting alternative dispute resolution as a subject of academic study in the law schools for students;
- (ix) promoting continuing education on alternative dispute resolution for legal practitioners;

Chapter VI

Alternative Dispute Resolution training for students

as well as lawyers

6.0 The Commission has felt it expedient to add a separate chapter on 'Alternative Dispute Resolution' both for students at the law schools and for lawyers who are already at the Bar.

6.1 Recently, Parliament enacted new sec. 89 in the Code of Civil Procedure, 1908 by requiring every civil suit to mandatorily go through the ADR process, however, giving the parties the option to choose one or other of the processes – like arbitration, mediation, conciliation and settlement through Lok Adalats. These provisions have come into force from 1.7.2002.

6.2 Parliament enacted these provisions into our civil procedure with a view to lessen the burden of the civil courts and to save money and time for the litigants. But, unfortunately, the subject of ADR is not familiar to most of the lawyers at the Bar. Not only are they not familiar but there is some kind of antagonism or disbelief in the efficacy of these systems. Lawyers and judges are known for their conservatism. This conservative experience regarding ADR is not peculiar to our country. Even in advanced countries in America, Europe and in the Commonwealth when, over just about 20 years ago, these ADR systems were proposed there was resistance from the lawyers and Judges. There is vast literature on this aspect. But over a period, the lawyers and the litigants in this connection have realized and recognized the utility of these systems. In those countries, in just about 20

years, the number of civil matters settled at the stage before trial, has risen to nearly 90% and only 10% of cases are going for trial.

6.3 Recently, the Supreme Court had occasion to deal with the utility of ADR systems and we shall refer to the said judgment in Salem Advocate Bar Assn. v. Union of India, 2002 (8) SCALE 146. Speaking for the Bench, after referring to sec. 89 of the Code of Civil Procedure, Kirpal CJ observed as follows: (see para 9 to 12)

“It is quite obvious that the reason why sec. 89 has been inserted is to try and see that all the cases which are filed in court need not necessarily be decided by the court itself. Keeping in mind, the laws delays and the limited number of Judges which are available, it has now become imperative that resort should be had to Alternative Dispute Resolution Mechanism with a view to bring an end litigation between the parties at an early date. The Alternative Dispute Resolution (ADR) Mechanism as contemplated by sec. 89 is arbitration or conciliation or judicial settlement including settlement through Lok Adalat or mediation. Subsection (2) of sec. 89 refers to different Acts in relation to arbitration, conciliation or settlement through Lok Adalat, but with regard to mediation, sec. 89(2)(d) provides that the parties shall follow the procedure as may be prescribed. Sec. 89(2)(d), therefore, contemplates appropriate rules being framed with regard to mediation.

In certain countries of the world where ADR has been successful, to the extent of over 90 per cent of the cases are settled out of court,

there is a requirement that the parties to the suit must indicate the form of ADR which they would like to resort to during the pendency of the trial of the suit. If the parties agree to arbitration, then the provisions of the Arbitration and Conciliation Act, 1996 will apply and that case will go outside the stream of the court but resorting to conciliation or judicial settlement or mediation with a view to settle the dispute would not ipso facto take the case outside the judicial system. All that this means is that effort has to be made to bring about an amicable settlement between the parties but if conciliation or mediation or judicial settlement is not possible, despite efforts being made, the case will ultimately go to trial.

Sec. 89 is a new provision and even though arbitration or conciliation has been in place as a mode for settling the dispute, this has not really reduced the burden on the courts. It does appear to us that modalities have to be formulated for the manner in which sec. 89 and, for that matter, the other provisions which have been introduced by way of amendments, may have to be in operation. All counsel are agreed that for this purpose, it will be appropriate if a Committee is constituted so as to ensure that the amendments made become effective and result in quicker dispensation of justice.

..... This Committee may consider devising a model case management formula as well as rules and regulations which should be followed while taking recourse to the ADR referred to in sec. 89. The model rules, with or without modification, which are

formulated may be adopted by the High Courts concerned for giving effect to sec. 89(2)(d).”

In the light of the above judgment, it is clear that every case must compulsorily pass through a process where an attempt is made for settlement by ADR procedures.

6.4 The Commission is, therefore, of the view that ADR procedures must form and continue as a compulsory subject in all law schools and that there is urgent need for training lawyers, who are already practising in the courts, in these ADR procedures.

Courts must be recognized as centers for adjudication or settlement:

6.5 According to age old and popular conception, courts were recognized only as places where disputes are adjudicated by a competent judge in a court established by the State. But, these age old concepts have now undergone a complete transformation. According to Prof. Frank EA Sander, today, the status of the court is different. Today, the court is also a place which encourages settlement. Prof. Sander’s vision was that the:

“court was not simply a courthouse but a dispute resolution centre where the grievant, with the aid of a screening clerk, would be directed to the process (or sequence of processes) most appropriate to a particular type of case” (Sander, Frank, EA ‘Varieties of Dispute processing’ 707 RD 111 quoted in ‘Dispute Resolution’ by Goldberg, Sander and Rogers, 3rd Ed, 1999)

The law students, the Bar and the Bench must, therefore, consider that practice in courts is no longer confined to developing skills in advocacy but also skills in ADR procedures.

6.6 In an adversarial system, lawyers have grown to view courts as places for a combat or a legal fight. Law students and lawyers must be trained not merely to speak for their clients but to listen to the views of the opponent and see if an adjustment can be made which will save time and money for the litigants and incidentally save time for the courts. If some cases are settled, courts can deal faster more complex or important cases or cases relating to criminal offences etc. which must necessarily be adjudicated by the courts.

If the training in respect of ADR procedures starts right from the law school, a lawyer who has gone through that training or prospect will not be averse to a system of settlement by ADR methods. A culture different from the one now prevailing has to be developed and this has to be started in right earnest from the law school level. Now that sec. 89 imposes a mandate that every case must go through ADR processes. ADR processes must be made a compulsory subject in the law school for students.

But, the more important thing today is that lawyers at the Bar, have not had sufficient knowledge of the techniques relating to the ADR systems or the ground rules or the ethical aspects of the system, - such as those relating to confidentiality – but are compelled to participate in the ADR processes by virtue of the mandate of sec. 89 of the Code of Civil

Procedure, even though they have not had any training while at college or at the bar so far in regard to those ADR processes.

6.7 A look at the vast literature on ADR systems shows that the subject does require considerable training to be given to lawyers. The norms and the nuances and the rules of the game have first to be learnt. There are several standard books on the subject. There is voluminous literature that can be immediately accessed through the Internet even in remote parts of the country.

6.8 In order to familiarize the lawyers at the Bar to ADR procedures, there is urgent need to go about training in ADR systems more or less on a 'war footing'. The Bar Council of India and Bar Associations and Indian Law Institute and its Branches and other recognized organizations like the ICADR must step in to start training in ADR systems urgently (The High Courts and Districts courts must start training in ADR system for Judicial officer).

6.9 We have introduced a system into our civil law by virtue of sec. 89 of the Code of Civil Procedure w.e.f. 1.7.2002 before the Bar is able to accept it, or recognize its worth, much less implement it. In text books on the subject, hundreds of pages are written on each of the techniques of mediation, conciliation, negotiation, settlement and arbitration, about which our lawyers are not quite familiar.

6.10 One has to first learn which of these procedures is suitable to a given case and if so, how to go about it.

It is in the light of the above urgency of situation that the Law Commission has introduced a separate chapter on ADR in this Report to emphasise that (1) law students and (2) lawyers who are at the Bar –must be trained in the ADR systems.

6.11 It appears that Bar Council of India has already treated ADR as a compulsory subject (see page 92 of the UGC Model Curriculum 2001). It also appears that the UGC Curriculum Report 2001 has accepted the said recommendation as is clear from the same paragraph of the Report.

We, therefore, recommend that clause (h) of sub-section (1) of section 7 be amended for enabling the Bar Council of India to promote ADR as a subject of academic study in the law school for students and also to promote continuing education on ADR for legal practitioner.

We, also recommend that the High Courts, BCI, State Bar Councils, the Indian Law Institute, the ICADR and similar organisations should start ADR training programmes for lawyers and judicial officers. The training could be a short term one for one week, or it may be a one-month certificate course or a six-month/one-year diploma course.

Chapter VII

Adjunct Teachers from the Bar & Bench

7.0 One of the important recommendations of the Mac Crate Report relates to the need not only for permanent full time faculty but also to

“make appropriate use of skilled and experienced practicing lawyers and Judges in professional skills”,
and receive guidance, from part-time adjunct teachers drawn from practicing lawyers and retired Judges.

The Report also refers to ‘apprentice programmes’.

7.1 From the time-old method of ‘lectures’, the Langdel’s ‘case method’, and Prof Llewellyn and Judge Jerome Frank’s ‘problem method’, we have now reached the new method of training the students in various ‘skills and values’ with the help of faculty and the ‘adjunct faculty’ of practicing lawyers and judges, as advocated in the Mac Crate Report.

7.2 Andre Thomas Starkis and others refer in ‘Meeting the Mac Crate objectives (affordably): Massachusetts Law School: (Vol. 48) Journal of Legal Education (1998) at p. 231 to a combination of faculty, lawyers and judges, as follows: (p. 231)

“The Mac Crate Report challenged the traditionalist’s view of legal education because it proceeded from the premises that preparing law students to practice law is the business of law schools....

Massachusetts Law School (MSL) has accomplished this.... The keys have been a heavy reliance on practitioners and judges to teach, a small full time faculty that not only teaches but mentors a permanent group of adjuncts, a shared commitment to teaching....”

and at p. 232:

“With the exception of faculty members who founded MSL some ten years ago, all but one of the full time faculty were recruited from the ranks of the schools’ adjuncts. At present nearly half of all course hours each year are taught by adjuncts drawn from the ranks of working lawyers and judges.”

7.3 The reason why lawyers and judges are actively involved in so far as the teaching of law schools is stated as follows:

“The school’s view is that, although teaching involves a different (but not entirely distinct) set of skills from lawyering or adjudication, those with relevant experience are far better teachers on the whole than those whose knowledge is largely academic.”

7.4 The Massachusetts view is that ‘reliance on adjuncts provides depth and benefit to the curriculum at a relatively low cost. To hire full time faculty with as much knowledge and experience (as lawyers and judges) would be very expensive. They say that

“And there is no need to fit square-peg faculty into round-hole courses.”

7.5 In several laws schools in US, between 20% to 40% of the credit hours are allocated to the adjuncts, that is the practising lawyers and judges.

Prof. Jonathan Rose of Arizona University in his article ‘The Mac Crate Reports’ Restatement of Legal Education (Vol. 44) (1994) Journal of Legal Education 548 says (at p. 559):

“The report does recognize that law schools cannot produce mastery (of skills) without some help from the bar”

He again says at p. 564:

“Many academics lack the interest, even if they have the competence, to devote a large portion of their professional life to skills training. Part of the explanation lies in traditional academic hiring standards and promotion and tenure culture.”

7.6 Donald J. Weidmen in his article “The Crisis of Legal Education, a wake-up call for faculty” (Vol. 47) (1997) Journal of Legal Education p. 92 says:

“There are equally important questions about the appropriate admixture of faculty scholarship and whether too much of it is directed only towards often academics.”

and refers to Graham C. Lilly “Law Schools without Lawyers? Winds of change in Legal Education” 81 Va L Rev p 1921 (1995) and to Harry T. Edward’s article “The Growing Disjunction between Legal Education and the Legal Profession” 91 Mich. L Rev 34 (1992) and says at p. 103:

“Because of the tremendous gap between academic lawyers and practicing lawyers, an affirmative action program to integrate law faculties into the profession will be required. Most schools bring in a significant number of Judges and practicing attorneys as adjunct teachers, guest lecturers, and advisers to students. The problem at many law schools is that the faculty don’t get out enough. Schools should work with bench, the bar and government agencies to have professors in residence, faculty as speakers, faculty team teaching with the bench and the bar, and so forth.”

and laments that there is far little communication between legal academics and members of the practising bar. He thinks it is imperative that more faculty take interest with the bench and bar.

7.7 Prof. Eleanor W. Myers in her “Teaching Good and Teaching Well: Integrating Values with Theory and Practice” (Vol. 47) (1997) Journal of Legal Education p. 401 (at p. 407) says:

“The adjunct teachers teach the skills aspects of the simulations and provide feedback on the weekly written work. We choose the adjunct faculty from a variety of practice settings – urban, suburban, outside and inside counsel,

Our adjunct faculty are indispensable. They provide a ‘realness’ to the program by bringing fresh and concrete examples from their practice. They lend credibility to the problems when they tell the students that these things actually happen and lawyers actually deal with them. Their presence, in an explicit and articulated partnership with us faculty, bridges the so called “gap” or “disjunction” between the law school and practice more effectively than any other model we have encountered.

The adjunct teachers follow the prescribed curriculum, which includes assigned readings as skills development and weekly written assignments. They spend most of their classroom time commenting on students’ performance and giving practical advice. We arrange for the adjuncts to be trained in the National Institute of Trial Advocacy method of giving feedback – a four-part formula – that focuses on one aspect of the performance and gives examples of ways to improve it....

The full-time teachers regularly observe the skill sections, to monitor both the students’ and the adjuncts’ performance. Every semester, all the students evaluate the adjunct faculty, using a form specifically designed for adjuncts teaching skills courses.”

7.8 Prof. Deborah Jones Merrit in her article “New Course Offering in the Upper Level Curriculum: Report of an AALS Survey (Vol. 47) (1997) Journal of Legal Education p. 524 (at p. 546) says:

“Adjuncts taught a significantly higher percentage of litigation – related courses (42.2 %) , the new courses (31.1 %). . . . Tenure-track faculty seemed to teach a somewhat smaller percentage of litigation classes (48.6 %) than other new courses (55.9 %).”

and at p. 550

“Adjuncts taught a particularly high percentage (53.2%) of lawyers courses. Tenure-track faculty, on the other hand, were significantly less likely to teach lawyers courses (43%) than other new offerings (56%).”

7.9 From the above views expressed by leading academicians, it is clear that if various types of ‘legal skills’ programs are proposed to be introduced into the curriculum, it becomes necessary to introduce an ‘adjunct faculty’ consisting of “lawyers and Judges” on the teaching side into the faculty on a part time basis.

7.10 As at present, there does not appear to be such a system. In the last several decades, there was the system of leading lawyers taking up classes part-time in the evening or morning Law colleges or even day time regular classes. In fact, very distinguished lawyers who later became Judges of the

High Court or Supreme Court or became senior counsel in the High Courts or Supreme Court, have rendered yeoman service as part-time lecturers. That system has practically been discontinued with the abolition of morning or evening colleges or part-time courses.

7.11 Taking into account the experience in USA and also the reality that will obtain in law schools once the 'legal skills' subjects are proposed to be introduced in the curriculum, it becomes necessary for the Bar Council of India to seriously consider this option and have a rethinking in the matter of permitting lawyers and retired judges to become part of an 'adjunct faculty' so far as the teaching of legal skills is concerned. The Commission is of the view that there is an overwhelming need to reintroduce lawyers and retired Judges to take up classes in the 'practical skills' as part of the curriculum.

7.12 We, therefore, recommend amendment of clause (h) in sec. 7(1) enabling the Bar Council of India to lay down procedure and conditions for appointment of Adjunct teachers who are to be appointed from among members of the Bar and the retired Judges. This has to be done in consultation with the State Bar Councils and the Legal Education Committee of the Bar Council of India and the Legal Education Committee of the UGC.

Chapter VIII

Permissions and Inspections

Permissions:

8.0 The question of maintaining standards of legal education extends to over 460 laws schools and 102 universities. Some of these law schools are university schools, while others are law colleges or law schools affiliated to one or other university. Unfortunately, the Bar Council of India has permitted law schools to be opened not only in State and district headquarters but also in non-district headquarters in several States. Some cities have more than 20 law colleges and some States around 40 or more law colleges. This was done over a decade ago. This has seriously affected the quality of legal education.

8.1 A large number of law colleges were permitted to be started in several places, by the Bar Council of India without properly considering whether the colleges will be able to provide the necessary infrastructure and competent staff and teachers. After their establishment, when later various prescriptions or standards were set by the same Bar Council of India, several colleges were not able to meet the standards. It is therefore obvious that great care has to be taken at the time of grant of permission. Today, a medical college is not sanctioned unless various items of infrastructure are provided – including the facility for a 300 bed hospital. We do not mean to say that conditions for establishment of medical colleges and law schools are comparable but nonetheless in the matter of grant of permission to law schools – which are intended to produce good

students who will go to the Bar or the Bench later. Utmost care must be taken by the Bar Council of India at the threshold itself.

8.2 If care is not taken while granting permission, there are bound to be too many and unending inspections which result in uncertainty for the students and staff, apart from avoidable expenditure for the law schools, let alone the expense of frequent inspections both at the stage of initial establishment and also later.

In India, we do require a good number of law schools but they must produce students who have received legal education of sufficient quality. No doubt, several permissions granted to a large number of schools had been withdrawn in the last ten years. Why did it happen? Such closures caused lot of suffering and inconvenience to the students who joined those Colleges. Several of these students had to be absorbed in other colleges. Obviously, the initial inspections were not satisfactory.

8.3.1 The power of the Bar Council of India to grant permission for affiliation and withdrawal of permission for affiliation is contained in the Rules made by the Bar Council of India. The Rules, in our view, are certainly intra-vires of the Act. But the Commission felt that there should be a substantive provision in the Act on this aspect of the power of the Bar Council of India in regard to grant of prior permission to start law course which lead to an enrolment as an advocate and withdrawal of such permission. The Bar Council of India should exercise this power of granting permission and withdrawal of such permission in consultation with the Bar Council Legal Education Committee. It is proposed to put this

aspect in section 7(1) which deals with the powers of the Bar Council of India. The Commission felt that previous exercise of such powers would be justified on the basis of various principles including the 'de-facto' doctrine. But, again, by way of abandon caution, the Commission felt that a separate provision validating all previous action of the Bar Council of India in regard to permission for affiliation or withdrawal of permission be inserted. It is also proposed that no law college or law department of a university or any other institution should offer or impart instruction in a course of study in law which leads to enrolment as an advocate and no student should be admitted in any such course without obtaining prior permission in this regard from the Bar Council of India. It is further proposed that no law college or law department of a university or any other institution should continue to impart instruction, if the permission granted by the Bar Council of India has been withdrawn. It is also proposed that any fees or amount by whatever name called collected from any person towards admission in violation of this requirement shall be refunded. Accordingly, it is proposed to put this aspect in proposed section 7A. (The existing section 7A should be renumbered as section 7D).

8.3.2 In order to emphasize the mandatory nature of requirement of prior permission from the Bar Council of India and to deter violation of this requirement, the Commission felt that it is necessary to incorporate a provision that if any person including any institution or body, society, trust or company starts any law course which leads to enrolment as an advocate, without prior permission, or continues to impart instruction, if permission granted by the Bar Council of India has been withdrawn, it would be an offence. For this purpose, section 45A is proposed to be inserted making the violation a punishable offence.

Inspections:

8.4 As per section 7(1)(i) of the Act, the Bar Council of India may visit and inspect those universities whose degree in law may be recognized for the purpose of enrolment of law graduates as lawyers. Bar Council of India may also direct the State Bar Councils to visit and inspect universities. As per section 6(1)(gg), the State Bar Councils may also visit and inspect universities in accordance with the directions of the Bar Council of India. Further, rule 8 of Section A of Part IV of the Bar Council of India Rules refers to 'Inspection'. Recently, new formats have been prepared for inspection, responses, Reports and for further responses to the Report. Procedure for recommending disaffiliation for the University on the basis of the Reports, is also indicated.

8.5 No doubt, inspections are necessary. Quite a good number of inspections have yielded good results and in fact, some of the colleges which were bad have been weeded out after inspection. But still, the inspection process has to be revamped. On the other hand, some colleges complain that though they have complied with all the requirements needed for affiliation still, they are not granted permanent affiliation but are given affiliation only for one year and that there are inspections every year and in some cases, more than once in an year, and each time the managements are asked to deposit a minimum of Rs.50,000/- as inspection fee to enable the Committee Members to inspect. There are also complaints that the expenditure for the inspection team is becoming very expensive,

particularly if the inspection team stays in costly hotels. It is for the Legal Education Committee to take note of these complaints and rectify them.

8.6 There are again complaints that some inspections are cursory and colleges which are badly run are given clean chit while colleges which are running well and whose students have consistently obtained first ranks in the University or whose students have consistently been selected by reputed universities in UK and USA for post graduate studies, are disaffiliated.

8.7 There are indeed several court cases filed by managements against the Bar Council of India and while no doubt some have been dismissed, some have been allowed with critical observations against the manner in which inspections were conducted or disaffiliation proposed. The law reports of the High Courts are evidence to these facts.

8.8 We agree that in the matter of inspection of a large number of colleges, there are bound to be some complaints or even litigation. What we, however, mean to say is that the Bar Council of India must take extreme care while granting permission and while conducting inspections.

8.9 When, under the Rules, lawful directives of the Bar Council have to be obeyed by the Universities and the Law Schools, which if not obeyed, may lead to penal action, the procedure in the matter of inspections must be streamlined. While there is need to be tough with colleges which do not conform to the required standards, care must be taken to see that good colleges do not suffer on account of bad inspections. The Bar Council of

India, when it wields powers, is also accountable like any other public body.

8.10 The procedure for inspection, therefore, requires a thorough overhaul. Periodically, we can introspect, take stock and review and evolve procedures which will either eliminate mistakes of the past or which can lead to better inspections so as to avoid public criticism. After all, our goal is the same, to see that good law schools are established and proper quality of legal education is imparted to the students.

8.11 Again, there are inspections by more than one body. Now, there are inspections by the UGC or by the University authorities under various statutes of the Universities and there are also inspections by the Bar Council of India. There was similar duplication in regard to inspections under the AICTE Act where, in respect of Engineering Colleges, there were inspections by the Universities or UGC as well as by those deputed by the AICTE. Similar was the situation with respect to inspections of medical colleges. There also, there are more than one inspections, some by the universities and some by the Medical Council of India. Multiple inspections normally give rise to conflicting reports.

8.12 When conflicts between these reports arise, managements are dissatisfied with one or the other inspection. The Supreme Court has had occasion to deal with the question of inspections in several cases in Engineering and Medical colleges. In particular, we would refer to the judgment in Jaya Gokul Educational Trust vs. Commissioner & Secy. to Government: 2000(5) SCC 231. In that case, there were conflicting reports

and the Court had occasion to refer to the Regulations framed by the AICTE Act which gave some solutions. The AICTE has powers similar to the Bar Council of India. Regulation 8(4) provides that at the stage of initial grant of approval, the Bureau of the Council seeks comments/recommendations of

- (i) the State Government concerned,
- (ii) the affiliating University

apart from the regional bodies of the AICTE. Regulation 8(5) requires the Regional Office to arrange visits by an expert committee constituted by the AICTE which will put forward its recommendations before the AICTE. Reg. 8(8) states that if there is disagreement between the recommendations made by the State Government, University or the Regional Office of the AICTE, then the Central Task Force shall invite representatives of the respective agencies for further consultations before making recommendations. On the recommendations of the Central Task Force, the AICTE will take a final decision. Regulation 8(10) states that the decision of the AICTE shall be communicated to the State Government concerned or the UGC, as the case may be, and to the University concerned before the 30th of April of the next year where the applications for starting an institution are made before the 31st December of the previous year. The Task Force would also consist of a member of the Subordinate Judiciary, at the level of a District & Sessions Judge.

We recommend that the Inspection Rules framed by the Bar Council of India be also amended providing that among the members of the Inspection Committee, at least one academician from a different State other than the

one where the college is proposed to be established or is already established, must be included.

We also recommend that separate provisions be incorporated in the Advocates Act, 1961 for providing that in case of any conflict in the inspection reports of the Bar Council of India and of the UGC/Universities or where there is a big gap between the claims of the management and the Inspection Committee, a Task Force should make inspection on the same lines as in the Regulations of the AICTE in which a Judicial Officer would be a member.

These recommendations should not be considered by the Bar Council of India as diluting the authority of its inspection committees, but as one intended to prevent complaints in regard to the inspection process and in fact, such a procedure is now followed in respect of Engineering Colleges by the AICTE. The inspections by the Committees of the Bar Council of India must be open and transparent and principles of fairness and natural justice must be strictly followed. A complaint against an inspection should not be viewed as a dispute between adversaries but as a fact-finding mission consistent with principles of natural justice. In fact, if the findings of the Task Force confirm the findings of the Bar Council of India's inspection committees, it would only enhance the strength of the findings of the Inspection Committee of the Bar Council of India.

8.13 We, therefore, recommend that

- (i) for the purpose of obtaining prior permission from the Bar Council of India by the law colleges and law department of a university or any other institution, a separate provision be incorporated in the form of section 7A, namely:

Prior permission of Bar Council of India.

“7A. (1) No law college or a law department of a university or any other institution, after the commencement of the Advocates (Amendment) Act, 2003, shall offer or impart instruction in a course of study in law which will lead to enrolment as an advocate, and no student shall be admitted to any such course unless prior permission for starting such course has been granted by the Bar Council of India.

Provided that any permission or approval for its affiliation given by the Bar Council of India under the Bar Council of India Rules, prior to the commencement of the Advocates(Amendment) Act, 2003, shall be deemed to be a permission granted under this sub-section.

- (2) No law college or a law department of a University or any other institution shall continue to impart instruction in a course of study in law leading to enrolment as an Advocate, and no student shall be admitted thereto if the permission granted under sub-section (1) has been withdrawn by the Bar Council of India.
- (3) Any fees or amount by whatever named called collected from any person towards admission in violation of the provisions of sub-section (1) and (2) shall be refunded.
- (4) Any violation of provision of sub-sections (1) and (2) shall be an offence punishable under section 45A.

(The existing section 7A should be renumbered as section 7D)

- (ii) For the purpose of providing punishment for the violation of proposed section 7A, a provision in the form of section 45A be incorporated, namely:

Penalty for imparting instruction without prior permission from the Bar Council of India.

“45A (1) After the commencement of the Advocates (Amendment) Act, 2003, if any person, including any institution, company, society, trust or body contravenes the provisions of sub-sections (1) and (2) of section 7A, he shall be punished with simple imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees or with both.

(2) The offence mentioned under sub-section (1) shall be tried by the Metropolitan Magistrate or Judicial Magistrate of first class, as the case may be.

(3) Where an offence mentioned under sub-section (1) is committed by any institution, company, society, trust or body, every person who at the time the offence was committed, was in charge of and was responsible for the conduct of the affairs of such institution, company, society, trust or body as well as the institution, company, society, trust or body shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that

he had exercised all due diligence to prevent the commission of such offence.”

- (iii) The existing section 7 (1) (i) should deal only with recognition of universities. For the purpose of inspection of universities and colleges, separate sections 7B and 7C be added, namely:

Inspection of Law Colleges and Universities

7B. (1) The Bar Council of India may, for the purpose of granting recognition, permission or for ascertaining whether standards of legal education are maintained, visit or inspect any-

- (i) University which confers a degree in law;
- (ii) Department of law in a University;
- (iii) Law college affiliated to a University.

(2) Without prejudice to the provisions of sub-section (1), the Bar Council of India may also direct the State Bar Councils to visit or inspect any such University, Department or Law College referred to in that sub-section for the purposes specified in that sub-section and submit a report.

Task Force

7C. (1) Where there is a difference of a substantial nature in the reports submitted by the Bar Council under section 7B and the report submitted by the University Grants Commission and the reports relate to a University or Department of a University, a further inspection shall be done by a Task Force comprising of –

- (i) two members nominated by the Bar Council of India;
- (ii) two members nominated by the University Grants Commission;
- (iii) one Judicial Officer in the service of the State to be nominated by the Chief Justice of the State concerned.

(2) Where there is a difference of substantial nature in the reports submitted by the Bar Council under section 7B and the report submitted by the University and the reports relate to a law college which is affiliated to it , a further inspection shall be done by a Task Force comprising of –

- (i) two members nominated by the State Bar Council;
- (ii) two members nominated by the University concerned;
- (iii) one Judicial officer in the service of the State, to be nominated by the Chief Justice of the State concerned.

(3) The Bar Council of India shall consider the other reports in the light of the Report of the Task Force and take a decision in accordance with the provisions of this Act.”

(iv) Section 6 (1)(gg) should be substituted as follows:

“(gg) to visit and inspect any University which confers a degree in law or a Department of law of a University or a law college affiliated to a university, in accordance with the directions given under sub-section(2) of section 7B;”

(v) Section 7 (1) (i) should be substituted as follows:

“(i) to recognize universities whose degree in law shall be a qualification for enrolment as an advocate or to de-recognise such University or to issue direction to any University to disaffiliate a law college in consultation with the Bar Council Legal Education Committee ”

(vi) A separate clause in sub-section (1) of section 7 be added to enable the Bar Council of India to grant permission to a law department of a university or a law college for imparting instruction as follows:

“(id) to grant permission to a law department of a University or a law college for imparting instruction in course of study in law for enrolment as an advocate, or to withdraw such permission in consultation with the Bar Council Legal Education Committee.

(vii) The following clause be added in sub-section (1) of section 49:

“(ak) the procedure regarding granting permission to impart instruction to law colleges, law department of university or any other institution as referred to in clause (id) of sub-section (1) of section 7 and the procedure regarding withdrawal of such permission.”

(viii) Section 49 (1) (d) should be substituted as follows:

“(d) the standards of legal education as referred to in clause (h) of sub-section (1) of section 7 to be observed by the universities and the Law Colleges affiliated to the universities and the manner of inspection of such universities and Law Colleges, as referred to in section 7B and section 7C.”

Chapter IX
Examination System, Problem Method and
Training Centres for Law Teachers

9.1 We shall now refer briefly to the examination systems. The Ahmadi Committee Report, 1994, has referred to this aspect and considered it as something quite important to improve the quality of the students who may ultimately come to the Bar.

9.2 There has been a belief for several years in the past that if one takes up the study of law, one need not attend classes regularly and that if one reads some small books published by some publishers who have an eye only on profit making, - one can easily pass the law examination. Such easy methods have remained very attractive and continue to stay even today for students who just want a bare pass. There are some students who have never read the text of a bare Act, much less any leading commentary. They only depend on some of these small books containing a few theoretical questions which the students think are sufficient. When they go to the Bar, they for the first time open the books containing the Acts or the commentaries and are unable to cope up with the problem of the litigant and the needs of the profession. Of course, what we have said does not apply to the more serious students who have been regular and who are interested deeply in the subjects and in making a mark in the profession but such students are today a small percentage. Nor are we referring here to the students from the new law Universities or to some colleges which are still rated as the best.

9.3 Whatever be the percentage of students who adopt short cuts to pass the law examination, there is, in the view of the Commission, great need to revamp the examination system with the dual object of eliminating malpractices like copying (which do take place in some centres) and the perennial problem of absenteeism in law schools. Mere bookish knowledge must give way to practical aspects of law. This has to start in the college itself.

The Lecture method and Case method:

9.4 Methods of teaching have been changing from time to time. The time old method of lectures was supplemented by the 'case method' introduced by Prof. Langdell in Harvard in 1911 and these have been supplemented by the 'problem method' later.

Problem method:

9.5 The 'problem method' of teaching is today considered more important than the other two methods.

9.6 The problem method was introduced by Prof. Jerome Frank in his article "Why not a Clinical Lawyer School" 81. U. Pa L. Rev. 907 (1933) which he expanded in his thesis in "Both Ends Against the Middle" (1951) 100 U. Pa L. Rev. 20, where he grumbled that Legal education should not remain 'hypnotized by Langdell's ghost'. He also said that the law curriculum should include 'social sciences and humanities'. Law is linked with economics, politics, cultural anthropology, and ethical ideals.

Humanities must also be added to social sciences. ‘Students’, Prof. Frank said must be exposed to

“the great literary artists” whose “poetic insights.... concern.... the particular, the unique”

and these goals too will have to be accomplished in the legal clinic.

9.7 Mr. Stephen Nathanson in his ‘Developing Legal Problem Solving Skills’ (1994) Vol. 44 Journal of Legal Education (p. 215) says that teachers should synthesize “general problem-solving skills and context-specific knowledge”.

9.8 In 1979, Russel Stewart, in Australia, said that teaching legal problem-solving skills should be the primary goal of professional legal education. In 1984, in America, Anthony G. Amsterdam predicted that by the 21st century, legal education would have shifted its focus from case reading, doctrinal analysis and legal reasoning to a broader spectrum of practical skills, including problem solving skills. In 1991, in England, a research study by Kim Economides and Jeff Small listed the main tasks and skills and stated that professional legal training should address problem-solving figures prominently among them. In 1992, the American Bar Association’s Mac Crate Report identified problem-solving as the most fundamental of all legal skills.

9.9 A curriculum design has to be made, theory and practice must be put together, a problem-data bank must be generated and circulated to all law schools.

9.10 Prof. Myron Moskowitz of the Golden Gate University has extensively dealt with the ‘problem method’ in his article “Beyond the Case Method: It’s Time to Teach with Problems” [See (1992) Vol. 42 Journal of Legal Education, p. 241).

9.11 The American Association of Law Schools (AALS) in their 1942 Report stated as follows:

“The merit of the problem method is that it more effectively forces the law student to reflect on the application of pertinent materials to new situations and accustoms him to thinking of case and statute law as something to be used, rather than as something to be assimilated for its own sake.”

A later AALS Report lists five virtues of the problem method: (1) it approximates the lawyer’s approach to the law, (2) it affords training in planning and advising, (3) it broadens the range of matters open to the students consideration, (4) it increases the effectiveness of instruction where case-law is inadequate (primarily where legislation is involved), and (5) it provides the stimulus to student interest. Prof. Myron Moskowitz in the above article (at Page 249) has referred to a large volume a literature on ‘problem method’. The author refers to a problem in criminal law where the Miranda Rule is involved and to the string of four cases of the US Supreme Court, each of the rulings referring to minor variations in the law on the subject of Miranda warnings students must learn these aspects. He says (at p. 258) that ultimately the ‘problem method swallows up the case

method'. The author also disagrees with the view that the problem method is suitable only for small classes of students. The author also refers to the manner in which 'problems have to be set'. He then says (p. 267) "we now have books that contain problems" and there are several types of problem books. Reference is made to five types of such books.

9.12 Prof. Borch refers to what a medical professor said, that there is "widespread conservatism" among academics to innovation in teaching. Teachers must also be trained in the matter of problem-solving. Professional academics and the 'Adjunct teachers' can deal with this part of the curriculum effectively.

There is a vast literature on the subject of 'problem methods'.

New Examination System will eliminate absenteeism and malpractices:

9.13 The Ahmadi Committee Report suggested a system where the theory part of the examination – where it is not difficult to get pass marks – is restricted to 25% or 20% marks while 75% or 80% marks should be allocated for legal problems. There must be a separate minimum for the theoretical part and the problems part. The importance of the legal problems part is that the candidate will have to apply his mind independently in the examination hall. He cannot resort to copying nor will he be able to seek any help from the supervisor for unless one is thorough, one cannot follow even if some obliging supervisor in the examination hall is prepared to help him. We may make it clear that we are not here referring to the good and reputed colleges where there are no

malpractices. We are only referring to those colleges where malpractices do persist or are encouraged by some managements. Apart from prevention of malpractices, the problem-method will make the student to think and come forward with a practical solution. This is not possible unless the student is thorough with the subject. The problem method will be able to eliminate malpractices.

9.14 In our view, so far as this part of the paper containing the problems is concerned, the students can even be allowed to have the bare Acts to enable them to read the sections clearly and think of an answer. Of course, this may not apply to some subjects like the Law of Torts where several legal principles are based on case law and not statutes.

9.15 The second advantage of the problem method is that students will have to necessarily attend all classes and cannot hope to remain absent, if they have to face such a system of examination.

The third advantage is that students have to apply their mind independently.

Thus the problem method has several advantages – (i) it precludes malpractices; (ii) it makes the students think and study the statutes closely and (iii) absenteeism in classes will get automatically controlled.

The introduction of ‘problem method’ requires generation of a huge data Bank of problems in various subjects.

In the matter of prescribing topics for the law course, the Commission considers that clinical legal education may be made mandatory subject. This course features as part of the law curriculum in all

universities in South Africa and is an excellent supplement to the legal aid system. Even here in India, the Delhi university has for many years now been running a successful legal clinical education programme where students are able to provide minimal legal assistance in the form of drawing of the petitions/applications and offering legal advice, to undertrial prisoners and inmates of custodial institutions. This could be made mandatory in all law colleges.

Training centres for Law teachers

9.16 Yet another important aspect is about the need to revamp the teaching system by establishing a number of special institutions to enable law teachers to update their knowledge. While we agree that there are several good teachers in law schools who are highly qualified and very competent, there is always need to keep abreast of latest needs of the practitioners, and of the latest Judgments of our Courts and our statutes as well as Judgments of the House of Lords, American and Canadian Supreme Courts, Judgments of the Australian High Court and New Zealand Courts and of the European Human Rights Court at Strausborg. It is also necessary to keep in touch with new principles of law emanating abroad and to several developments in important subjects like trademark, copyright, patents, the Trips Agreement, Cyber law, Environmental law, Human Rights and other new subjects.

9.17 Further, when it is necessary to teach several subjects dealing with procedural laws at the college level, there is need that law teachers must

get acquainted with several practical aspects of the procedural laws. Training for the teachers is, therefore, necessary.

Apart from the existing refresher courses conducted by the University Grants Commission, it is necessary to impart professional training to the law teachers.

9.18 To start with, at least four colleges must be started by the Central Government in consultation with the Bar Council of India and UGC, in the four corners of India. The law teachers must have exposure to centres by experts in various branches of law and for this purpose guest lecturers from other States or even from other countries have to be invited.

9.19 It will be for the UGC and the Government of India to make the necessary funds available for the above purpose.

9.20 We recommend addition of clauses (ie) and (if) after proposed clause (id) in section 7 (1) as follows:

“(ie) to take such measures to facilitate the establishment of institutions by the Central Government for continuing legal education for law teachers;

(if) to take measures for raising the standards of teaching in law in consultation with the Central Government, the State Governments and the University Grants Commission.”

9.21 We also recommend that the ‘problem method’ be introduced in the examination system to an extent of above 75% in each paper, apart from

25% for theory. The students should obtain a separate minimum number of marks for the theory and a separate minimum in the problem part of the examination. This will enable the student to apply their mind seriously to every subject. This will also eliminate malpractices. Attendance to classes is also bound to improve.

Chapter X

Education on Legal Education Literature

10.0 Today, 'Legal Education' is in itself a specialized branch for study and there is abundant literature available, both Indian as well as foreign which refer to various concepts of legal education relevant both to teachers and students. The Commission is of the view that it is necessary for the Bar Councillors, the Faculty, the UGC and the Managements to keep abreast of the developments in legal education in India and abroad. The 14th Report of the Law Commission (1958) presided over by Sri M.C. Setalvad referred to legal education literature in India, USA , UK and Canada available at that time.

10.1 It is suggested that the Legal Education Committee of the Bar Council of India as well as the UGC should have Libraries on the subject of legal education, consisting of literature on legal education so that the two committees could have the benefit of all the reports, past and present in India and contemporary literature on legal education from other countries. In the context of liberalization, privatization and globalization, the methods of legal education may have to be modified and innovations elsewhere have to be kept in mind by our Committees. Several new subjects may also have to be introduced.

10.2 In a recent book on Legal Education and Profession in India by Shri P.L. Mehta & Ms. Sushma Gupta, the history of legal education is traced and the following reports are referred to in Chapter 4. The Reports are:

1. Legal Education during 1861-1961.
2. First India University Commission Report 1902.
3. Report of the Chagla Committee, 1955.
4. Report of the Bombay Legal Education Committee consisting of Dr. P.V. Kane, Justice N.H. Bhagwati.
5. Report of the Inter-University Board, 1950.
6. Report of the All India Bar Committee, 1953.
7. Report of the Rajasthan Legal Education Committee, 1955.
8. 14th Report of the Law Commission, 1958 presided over by Shri M.C. Setalvad.
9. Recommendations of the Gejendragadkar Committee, 1964 appointed by Dr. C.D. Deshmukh, VC of Delhi University.
10. Formulations of All India Seminar on Legal Education, 1972.
11. UGC Curriculum Development Report, 1988-90 presided over by Prof. Upender Baxi (in two volumes running into 800 pages).
12. Justice Ahmadi Committee Report, 1994.

We shall add to this list, the UGC Curriculum Development Report, 2001. There are reports on legal education produced by leading Universities and academic bodies in UK, USA and other countries. There are also journals on legal education. Steps must be taken to see that the copies of all these reports are available both with UGC and the Bar Council of India and they will be of immense help to the two Committees on Legal Education.

10.3 Several of the above Committees in India have also emphasized on the practical aspects of law. In this context, it is necessary to note that today the emphasis abroad is also on the practical aspects of law and the recent Report in USA on the subject is the celebrated Mac Crate Report (also called the Report of the Task Force of the American Bar Association on ‘Law Schools and profession: Narrowing the Gap’)(1992) which has been subject of subsequent resolutions of the ABA House of Delegates in Feb. 1994 and there is a subsequent report called the Report on Learning Professionalism (1996)(Chicago). Then there is the study of the Law Society of England and Wales on ‘Preparatory Skills; Review of the Institute of Professional Legal Studies (Auckland) 1990; the US Crampton Report on Lawyer Competency 1979 (ABA); the Carrington Report on Training for Public Professions of the Law (1971)(Washington). The National Law School, Bangalore, is said to have brought about a new curriculum modelled on the Harvard & McCrate models.

10.4 There are again several important journals on legal education. For example, the Journal of Legal Education, published by the Association of American Law Schools (AALS) and the Journal of Professional Legal Education(USA) are leading journals and there are hundreds of articles in these journals on the subject in the past more than one decade. The journals also review books on legal education. There is, in addition to the above, a vast literature of articles by Judges, lawyers, academicians in India and abroad on legal education.

10.5 It appears that in the USA 20 new courses were added during 1989-92 to the curriculum by the American Association of Law Schools. (see

‘New Course Offerings in the upper-level curriculum by Deborah Jones Merrit & Jennifur Citon) (Vol 47). *Journals of Legal Education*, 1997, p. 524). The Committee on Curriculum and Research in USA meets every three or four years to review the position (ibid. 569). (In footnote No 149, a long list of articles and studies in curriculum studies is referred to).

10.6 The Law Commission has referred to the above literature on legal education only with a view to impress one and all that Legal Education is a subject which requires in-depth study and research by members of both the Legal Education Committees so that our law schools and Universities can benefit by the said information and steps can be taken to improve the quality of teaching and produce students who can catch up with international standards.

10.7 It is true that in recent times a few specialized institutions have been started in various States – in Hyderabad, Jodhpur, Bhopal, Calcutta etc. These statutory law universities or deemed universities have been started on the model of the National Law School, Bangalore. In fact, the need to establish such institutions was one of the recommendations of the Justice Ahmadi Committee in 1994. These institutions, in each State, today project an image of excellence in legal education. (Unfortunately, most of these students are taking up jobs in big companies and only a few among them are coming to the Bar. May be, corporates also need some well trained personnel or else, otherwise the companies may go outside India for expert legal advice. But, most of these law graduates must be persuaded to come to the bar). We cannot, however, rest content with a few star colleges. We must be concerned with all the rest of the hundreds of law

colleges located in cities and districts headquarters all over the country. It is these students who come to the Bar in great numbers at the grass-root level. It is the desire of the Law Commission that the Bar Council of India and academic community must co-ordinate and take steps which can result in upgrading the standards of legal education in these colleges which are spread over length and breadth of the country. A few bright-star colleges with limited number of student-intake based on all-India selection is not the end and may not result in an overall change in the level of legal education.

10.8 Upon the law student who emerges from the college depends the legal profession. Upon the legal profession depends the quality of the Judiciary. Once a lawyer practices for 3 years, he becomes eligible in most States to become a judicial officer at the level of a munsif. (Now, the Supreme Court has said that a law graduate can straight-away go as a Judicial officer). With seven years experience, he becomes eligible – in most States – to be recruited as a District & Sessions Judge directly, who can deal with civil cases of unlimited pecuniary jurisdiction and who can recommend a sentence of death. Such are the high stakes involved. Therefore, there is need to make the curriculum stronger, and lay a firm foundation. Legal Education has to be taken seriously and kept on a high pedestal.

10.9 We, therefore, recommend that in sec. 7, clause (ig) to be added as follows:

“(ig) to create awareness of the latest trends in legal education by establishing legal education libraries at the offices of the Bar Council

of India and all State Bar Councils and Universities and in law colleges.”

Chapter XI

Derecognition of University and Disaffiliation of College

Provision in sec. 7(1)(i) to derecognise University to be modified as one for derecognising either the University or a particular institution/College imparting legal education.

11.0 Sec. 7(1)(i) of the Advocates Act, 1961 enables the Bar Council of India to recognise universities whose law degrees shall be sufficient qualification for enrolment as an advocate. Now, the colleges which are imparting legal education are in large number, within every university. Today, there are also Law Universities established under statutes.

11.1 Question arises as to what should be done when a particular law college does not conform to the prescribed standards or violates other directives of the Bar Council of India and the latter wants to de-recognise a college. As at present clause (i) of sec. 7(1) speaks of recognizing universities. This impliedly includes derecognition also. Certain doubts have been expressed whether for the fault of a single college within a university, the university itself of which it is a part, has to be de-recognised. In such a situation, it is pointed out that it would be sufficient if the BCI should require the University concerned to withdraw its affiliation to the said college. Of course, in the case of a University, if it violates any directive of the Bar Council of India, question may arise if the University itself has to be derecognised.

11.2 In the light of this discussion, clause (i) of sec. 7(1) needs to be amended for conferring powers to the Bar Council of India to recognize a university or to issue direction to any university to disaffiliate a law college in consultation with the Legal Education Committee of the Bar Council of India.

11.3 We recommend that section 7(1)(i) should be substituted as follows:
“(i) to recognize universities whose degree in law shall be a qualification for enrolment as an advocate or to de-recognise such University or to issue direction to any University to disaffiliate a law college in consultation with the Bar Council Legal Education Committee ”

We further recommend that in section 49 (1), following clause should be inserted:

“(aj) the procedure regarding recognition and de-recognition of such universities as referred to in clause (i) of sub-section(1) of section 7 and the procedure regarding the issuing of direction to a university to disaffiliate a Law college.”

Chapter XII

Training and Apprenticeship

12.0 Before the Advocates Act, 1961 was enacted, there was a system by which a law graduate had to undergo training by way of apprenticeship in the chambers of a lawyer for one year and pass a separate Bar examination conducted by the Bar Council on the subjects of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898. It was only after a law graduate successfully completed his apprenticeship and the Bar examination that he became eligible to be enrolled as an Advocate. (Prior to 1961, the enrolment had to be moved in the court of the Chief Justice of the High Court concerned and the motion for enrolment was to be by a senior advocate practicing in the High Court. There was convention of a brief interview in the chambers of the Chief Justice of the High Court before the enrolment was later moved in open court on the same day).

12.1 After the Advocates Act, 1961 came into force, the procedure for apprenticeship was continued by virtue of clause (d) of subsection (1) of sec. 24. (The enrolment was, however, to be before the enrolment committee of the State Bar Council.) That clause required the graduate in law to undergo a course of “training in law and pass an examination after such training”, before he could be enrolled. Certain categories of persons were exempted under a proviso to the said sub-clause.

12.2 In the year 1964 there were certain amendments to sec. 24 but it is not necessary to refer to them in as much as in 1973, by Act 60/73, clause (d) of subsection (1) of sec. 24 was omitted and the amendments made in

1964 to the proviso were also omitted. The result was that after 1973, there was no requirement of the training or the Bar examination.

12.3 Yet another amendment related to the rule making power of the State Bar Councils. In sec. 28 (2)(b), the clause permitting the State Bar Council to make rules regarding the training and Bar examination was also deleted by the same Act 60 of 1973.

12.4 In 1994, the Chief Justice of India, Justice M.N. Venkatachaliah constituted the Ahmadi Committee on Legal Education. The Committee consisted of Justice A.M. Ahmadi, Justice B.N. Kirpal and one of us (Justice M. Jagannadha Rao). The Committee wrote to all Chief Justices of High Courts seeking their views. Almost all the Chief Justices felt that having regard to deterioration in the standards of students and in skills of advocacy, it was incumbent for the Bar Council of India to reintroduce the Training Programme for graduates. Responses were also received by the Committee from State Bar Councils and the Bar Council of India.

12.5 After the Ahmadi Committee Report in 1994, the Bar Council of India reconsidered the earlier decision of 1973 and decided to reintroduce the Training for one year after graduation. It accordingly made Rules soon after 1994 and the Rules were replaced by fresh Rules made on 19.7.98. It is these rules that were challenged in the Supreme Court. The Supreme Court considered the question in V. Sudheer vs. Bar Council of India 1999 (3) SCC 176 whether, having regard to the legislative history which revealed that the Training was part of the mandate in the Act, the same could not be reintroduced by way of a Rule by the Bar Council of India.

The court held that once the relevant statutory provisions in sec. 24(1)(d) or in the proviso thereto were deleted and also when the subject of Training which was one of the items enumerated in clause (b) of subsection (2) of sec. 28, (sec. 28 being the section relating to rule making), was deleted in 1973, the Bar Council of India could not have made any rule regarding Training and such a condition had to be introduced only by an Act by the Legislature. It was also held that it was for the State Bar Councils to introduce Training and that the Bar Council of India could not by itself introduce the Training.

12.6 It must be noted that the Supreme Court in V. Sudheer's case merely considered whether the new Rules were ultra vires of the provisions of the Act. It did not say anywhere that Training was not necessary. On the other hand, it expressly endorsed the need for reintroducing training and accepted the recommendations of the Ahmadi Committee. It said: (pp. 210-211)

“Before parting with these matters, it is necessary to note that in the light of the experience of various courts in which advocates are practising since the time the Advocates Act has come into force, the Law Commission of India and other expert bodies that were entrusted with the task of suggesting improvements in the standards of legal education and legal practitioners felt it necessary to provide for compulsory training to young advocates entering the portals of the courtrooms. Training under Senior Advocates with a view to equip them with court craft and to make them future efficient officers of the court became a felt need and there cannot be any

dispute on this aspect. In fact, the question of making some suggestions regarding admission to law colleges, syllabus, training, period of practice at different levels of courts, etc., was taken up as Item 16 in the last Conference of the Chief Justices held in December 1993. The Conference resolved that Hon'ble the Chief Justice of India be requested to constitute a Committee consisting of Hon'ble Mr. Justice A.M. Ahmadi as its Chairman, and two other members to be nominated by Hon'ble the Chief Justice of India to suggest appropriate steps to be taken in the matter so that the Law graduates may acquire sufficient experience before they become entitled to practise in the courts. The said High-Powered Committee, after inviting the views of the Chief Justices and State Bar Councils as well as the Bar Council of India made valuable suggestions. The relevant suggestions in connection with legal education are Suggestions 1, 12, 13, 15, 16 which are required to be noted. They read as under:

1. In laying down the standards of legal education, the Bar Council's 'Legal Education Committee' constituted under Rule 4 of Chapter III of the Bar Council of India Rules, 1965 must reflect the participation of representatives of (1) the judiciary, (2) the Bar Council and (3) the UGC. It is proposed that the Rules be amended and the Legal Education Committee be restructured to involve the bodies above-mentioned.

12. Rule 21 of the Bar Council Rules directing that every university shall endeavour to supplement the lecture method with case method, tutorials and other modern techniques of imparting legal education must be amended in a mandatory form and it should

include problem method, moot courts, mock trials and other aspects and make them compulsory.

13.(i) Participation in moot courts, mock trials, and debates must be made compulsory and marks awarded, (ii) practical training in drafting pleadings, contracts can be developed in the last year of the study, and (iii) students' visits at various levels to the courts must be made compulsory so as to provide a greater exposure.

15. Entrance into the Bar after 12 months or 18 months of apprenticeship with entry examination. For obtaining the licence/sanad from State Bar Councils it must be prescribed that one should secure at least 50 per cent or 60 per cent marks at the Bar Council examination.

16. So far as the training under a Senior Lawyer during the period of one year or 18 months of apprenticeship, the Act or the Rules must stipulate that the senior must have at least 10 or 15 years' standing at the District Court/High Court and the student's diary must reflect his attendance for three months in the grassroot level in a civil court and for three months in a Magistrate's Court and at least six months in a District Court. The advocate in whose office he works must also certify that the student is fit to enter the Bar. Unless these formalities are completed, the student should not be permitted to sit for the Bar Council examination."

12.7 After saying so, the Supreme Court further observed (p. 211) as follows:

“It is true that these suggestions of the High-Powered Committee clearly highlighted the crying need for improving the standards of legal education and the requirements for new entrants to the legal profession of being equipped with adequate professional skill and expertise. There also cannot be any dispute on this aspect. However, as the saying goes “a right thing must be done in the right manner”. We appreciate the laudable object with which the Bar Council of India has framed the impugned Rules for providing training to the young entrants to the profession by laying down details as to how they should get appropriate training during their formative years at the Bar. Unfortunately for the Bar Council of India, that right thing has not been done in the right manner. We equally share the anxiety of the Bar Council of India for evolving suitable methods for improving the standards of legal education and legal profession. The aforesaid recommendations made by the High-Powered Committee could have been put into practice by following appropriate methods and adopting appropriate modalities by the Bar Council of India.”

12.8 The Supreme Court further observed that the need to introduce training is a matter which cannot be left to the decision of the State Bar Councils. In as much as an enrolled lawyer can practice anywhere in India, this power of prescribing training and examination must be entrusted to the Bar Council of India so that the training could be uniform. The Supreme court observed: (p. 212-213)

“It is easy to visualize that appropriate amendments in sections 7 and 24(1) would have clothed the Bar Council of India with appropriate

power of prescribing such pre-enrolment training for prospective entrants at the Bar. That would have provided an appropriate statutory peg on which the appropriate rule could have been framed and hanged. It is also necessary to note in this connection that merely leaving the question of providing pre-enrolment training and examination to only the State Bar Councils may create difficulties in the working of the all-India statute. It goes without saying that as an enrolled advocate is entitled to practise in any court in India, common standard of professional expertise and efficient uniform legal training would be a must for all advocates enrolled under the Act. In these circumstances, appropriate statutory power has to be entrusted to the Bar Council of India so that it can monitor the enrolment exercise undertaken by the State Bar Council concerned in a uniform manner. It is possible to visualize that if power to prescribe pre-enrolment training and examination is conferred only on the State Bar Councils, then it may happen that one State Bar Council may impose such pre-enrolment training while another Bar Council may not and then it would be easy for the prospective professional who has got the requisite Law Degree to get enrolment as an advocate from the State Bar Council which has not imposed such pre-enrolment training and having got the enrolment, he may start practice in any other court in India being legally entitled to practise as per the Act. To avoid such an incongruous situation which may result in legal evasion of the laudable concept of pre-enrolment training, it is absolutely necessary to entrust the Bar Council of India with appropriate statutory power to enable it to prescribe and provide for all-India basis pre-enrolment training of

advocates as well as the requisite apprenticeship to make them efficient and well-informed officers of the court so as to achieve better administration of justice. We, therefore, strongly recommend appropriate amendments to be made in the Act in this connection.”

12.9 The Supreme Court suggested that before the Act is amended on the above lines for introducing Training, in the meantime, in-house training may be given to the new recruits after enrolment, as a temporary measure for a period of one year.

12.10 The Supreme Court also referred in (para 34) to the suggestions of the court as extracted in a letter dated 24.9.1977 of the Counsel representing the Bar Council of India. Those suggestions also included the Training programme for one year and a practical test. Certain further suggestions were given in para 5 in relation to those who have worked in solicitors’ offices or as corporate lawyers.

We may refer to the following observation at p. 213 of the Judgment:

“We, therefore, strongly recommend appropriate amendments to be made in the Act in this connection.”

12.11 In view of the specific recommendation or rather directive of the Supreme Court of India, it becomes necessary to reintroduce the provisions relating to Training programme and examination.

12.12 As per the information furnished in the “Directory of Commonwealth Law Schools, 2003/2004” published on behalf of the ‘Commonwealth Legal Education Society, UK’, in most of the countries like Australia, Bangladesh, Canada, Hong Kong, Malaysia New Zealand, Pakistan, Singapore, South Africa and UK, some period of training or apprenticeship or pupillage and the passing of Bar examination, completion of course are mandatory before a student enters into the legal profession. Similar is the situation in other countries like Botswana, Cameron, Caribbean, Malawi, Malta, Mauritius, Namibia, Nigeria, Papua New Guiana and Zambia.

In the recent conference in the National Law School, Bangalore on 12.8.2002 of faculty from all over India, lawyers and judges expressed their views in regard to apprenticeship. Sri K.K. Venugopal, Senior Advocate, stated that having regard to the fact that 90% of students are likely to go to the Bar in courts located in mofussil areas or district headquarters and as these students have come from several colleges located in those areas, apprenticeship after law degree and before practice and Bar examination must be reintroduced for such students.

12.13 No doubt, in recent times, some law schools are deputing their students for ‘placement’ to the chambers of several senior lawyers or law firms in cities like Delhi, Bombay, Calcutta, Chennai, etc., for a few weeks each year. This method of ‘placement’ is good and must be encouraged. But, it must be noted that students from only a few of the top law schools – may be about 10 or 20 law schools in the counting – are now getting this benefit but the bulk of the students from the remaining over 400 law schools are not getting the benefit. In fact, it is practically difficult for

senior counsel in these big cities to increase the number of ‘placement students’. The senior counsel cannot be overburdened by sending a large group of students nor will senior counsel agree to take a large number. The Bar Council has, therefore, to take care of the students who cannot get entrance to the chambers of seniors in big cities and indeed, who cannot afford financially to stay in the big cities for the purpose of placement. A student in a remote college in Madhya Pradesh, North East or Gujarat or Bihar or from the South cannot go to these big cities or get placement. The Law Commission is, therefore, of the opinion that ‘placement’ is not a substitute for ‘apprenticeship’. Further, placement in chambers of seniors in Supreme Court or High Court does not always give an insight of what is happening at the grass-root level in the trial courts. Students must get sufficient knowledge and experience of courts at various levels. That is why, placement procedure, which cannot cater to the needs of students from all the 400 law schools and odd, - cannot be an effective substitute for one year apprenticeship.

12.14 In this connection, we may point out that in several countries across the world, a graduate from the Bar is not permitted to get enrolled and practice straightaway. There is a period of training between one year or more. In some countries it even extends to 5 years. Today, an advocate in India, once enrolled, can directly address even the Hon’ble Judges in the Supreme Court of India. We do not think that in India we should allow the law graduates to address any Court straightaway without further training and a Bar examination.

12.15 There are other good reasons why a graduate should undergo the Training and pass the Bar Examination. It is true that several parts of the legal skills have been introduced into the curriculum. But still, there is a great difference between learning about the skills in the college curriculum and witnessing the actual presentation of skills in court. Once a person joins the office of a senior and studies an individual case, either at the trial stage or at the appellate stage, watches the preparation and research of the senior in his chamber, or assists him in the preparation or research or the actual process of witness examination, discovery, inspection procedures in a civil case or the actual arguments in interlocutory matters, (e.g. injunction or receiver applications) or the arguments at the final stage of the trial or appeal or watches the preparation in a criminal case from the stage of anticipatory bail to the ultimate stage of arguments after the trial – then only can he realize the difference between reading about skills and the actual performance of skills . There are so many legal skills in the profession which can be learnt only in the chambers of a lawyer or in a court and these are learnt day by day. All these cannot be learnt in the college even though, the studying in college may give the student some idea of the skills. In fact, there is a further difference between a lawyer assisting his senior in the court and the lawyer himself arguing the case.

12.16 In the light of the observations of the Supreme Court, the opinion of the Ahmadi Committee and the opinion of the Chief Justices of the High Courts, and the need to revamp the Legal education system, we recommend amendment of the Act, reintroducing the Training Program and the Bar examination.

12.17 There is a strong view that when some students are passing out of good Law schools, there is no need for further training. Here we have to keep in mind not the students coming out from the few star colleges or universities but from the bulk of the colleges in various other places in the cities, district headquarters and other mofussil areas. These are the students who go to the courts at the grassroot level upon enrolment. Rules regarding pre-enrolment training and examination cannot be restricted to a few students. They have to apply to everybody. The Supreme Court in Sudheer's case suggested exemption only in two types of cases – those trained in solicitor's office or in corporate work but we have considered this aspect and do not recommend any exemption, having regard to the current scenario of deteriorating standards.

12.18 Some more objections to training are raised – some say that a student can easily 'cook up' the diaries meant to be maintained while attending the chamber of a senior lawyer or after attending court. Some say that very few seniors have time to interact with these young graduates. We do not agree that these objections have any relevance. If there are some students who do not take the training seriously or if there are some seniors who take these apprentices into their chambers and do not have time, we cannot blame the system. Then why are these same critics supporting 'placement' with seniors. One should see how a similar system is working satisfactorily in the case of Chartered Accountants. Again, a medical graduate has to go through 'housemanship' for one year. We do not see any good reason as to why law graduate should not.

12.19 Yet another objection is that the student has already spent 5 years at the college level and his right to make a living should not be postponed by one more year. We do not agree. The student, once he starts practicing in the court, is dealing with important rights of those who approach the court, such as civil rights or constitutional rights or rights relating to the liberty of a person accused in a criminal case. A single mistake in drafting a legal notice may ruin a case or an error in a plaint or written statement may ultimately be the cause for a person losing a case. A single wrong question in cross-examination may again be the sole cause for a party losing a civil case or in his getting convicted in a criminal case. We are of the view that the 'legal profession' is a profession which is at least as serious as that of a chartered accountant or a medical doctor. Unfortunately, in the last five decades, everybody has come to think that it is easy to pass a law examination, and that whatever be one's training or knowledge and whatever the means, it is not difficult to attain success in the profession. It is this attitude that has diluted the quality of the profession.

12.20 We may next refer to another aspect of the matter. In a recent judgment in All India Judges Assn. vs. Union of India, 2002 (3) Scale 291, the Supreme Court issued a direction that law graduates from college must be enabled to directly enter the Judicial service at the lowest level instead of being required to have a minimum experience of 3 years at the Bar but that after entering service, they should be given one year's training.

12.21 We have referred to the above judgment of the Supreme Court in the context of the question relating to 'training'. If in some States law

graduates are proposed to be recruited straightaway as observed by the Supreme Court, at least a one-year apprenticeship and Bar examination before enrolment, would be certainly advantageous and, in fact, will be necessary.

12.22 We may also point out that in some countries, apart from training and Bar examination, there is also a requirement of periodical renewal of the permission to practice granted by the Bar Council. There are mandatory requirements for attending courses in continuing legal education. We do not have such a system. In that light, to insist upon one year training and Bar examination at the threshold before enrolment, cannot, in our view, be objected to seriously.

12.23 We, accordingly, recommend reintroduction of training and Bar examination by the Bar Council of India as follows:

(A) Insertion of clause (ha) in sub-section (1) of section 7 as follows:

“(ha) to ensure that sufficient practical training is imparted to candidates seeking to enroll at the Bar, by way of attachment to legal practitioners and also to prescribe for matters relating to the conduct of Bar examination for such candidates in accordance with the provisions of clause (d) of subsection (1) of section 24.”

(B) Insertion of clause (d) in sub-section (1) of section 24 as follows:

“(d) after obtaining a degree in law recognized under clause (i) of sub-section (1) of section 7, he has undergone a course of training by way of attachment to a legal practitioner of more than ten years’ standing, for such duration not less than one year and has qualified at the Bar Examination in such manner as may be prescribed by the Bar Council of India”.

(C) Insertion of clauses (ai) in section 49 as follows:

“(ai) the period of training and conduct of Bar examination and matters relating thereto under clause (ha) of sub-section (1) of section 7 and clause (d) of sub-section (1) of section 24;

Chapter XIII
Disqualification of Employees Dismissed or Removed
from Service and Section 24A

13.0 It appears that for quite some time, the Bar Council of India is not satisfied with the present system of permitting the entry to the profession of certain law graduates who have either been convicted by a Court or who, having been in service, have been removed or dismissed from service on the grounds of moral turpitude.

13.1 Section 24A deals with disqualification for enrolment. As per clause (a) and (b) of sub-section (1), a person cannot be enrolled as an advocate if he is convicted of an offence involving moral turpitude or under the provisions of Untouchability (Offence) Act, 1955. Similarly, as per clause (c), if a person is dismissed or removed from employment or office under the State or any charge involving moral turpitude, he cannot be enrolled as an advocate. But, at present, sec. 24A(1) contains a proviso which enables law graduates, who have been convicted or who have been dismissed or removed from service to be enrolled after the expiry of two years from the date of his release from the prison or after the expiry of two years from the date of dismissal or removal, as the case may be. The said proviso to section 24A (1) reads as follows:

“Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his release or dismissal or, as the case may be, removal.”

Above this proviso, there is an 'Explanation' dealing with service under the State which states that the expression 'State' shall have the meaning assigned to it under Art. 12 of the Constitution.

13.2 A few issues arise in connection with section 24A.

It has been brought to the notice of the Commission that the proviso below sec. 24A(1) is permitting a large number of persons who have been convicted or dismissed or removed from service on charges involving moral turpitude to enter the profession after the expiry of 2 years from the dates specified in the proviso. There is a request from the Bar Council of India that such persons ought not to be allowed to enter the profession. It is said that the profession requires high standards of ethics and morality to be maintained and that those who have previous bad record should not be allowed at all to enter the profession. As a consequence, it is stated that the proviso should be deleted.

13.3 The Commission is of the view that in the matter of legal ethics and morality no relaxation is permissible. There is no guarantee that those who have been convicted or whose services have been terminated on charges involving moral turpitude, would cease to show similar tendencies just after the expiry of two years of the date of release from prison or date of dismissal or removal. The disqualification must therefore extend to the rest of their life, and an absolute bar alone will be in the interests of preserving the purity of the legal profession.

13.4 Therefore, we are of the emphatic view that the proviso below sec. 24A(1) must be deleted.

13.5 Yet another aspect is whether dismissal or removal on the ground of moral turpitude should be a disqualification only in respect of employees under the 'State' as defined in Art. 12 of the Constitution of India and whether persons in private employment who have been dismissed or removed from service should not suffer such a disqualification. We do not find any good reason to allow those in service under entities not falling within Art. 12, who are dismissed or removed from private service, on charges involving moral turpitude, to be allowed to be enrolled. As at present, sec. 24A(1) does not disqualify such persons even for two years.

It is, therefore, necessary to delete the words 'under the State' in sec. 24A(1)(c) and to also delete the Explanation.

13.6 We, therefore, recommend deletion of the Explanation and the proviso below sec. 24A(1), and also the deletion of the words "under the State" in clause (c) of sec. 24A (1).

Chapter XIV
Summary of Recommendations

This summary of recommendation is gathered from the various Chapters I to XIII and arranged subject-wise for the purpose of convenience.

1) In as much as the Bar Council of India cannot be required to consult all Universities, as now stated in section 7 (1) (h), the provisions of section 7(1)(h) have to be amended by prescribing that the Bar Council of India must consult a body which effectively represents all the Universities and that such a body should be constituted by the University Grants Commission. This requires amendment of the Advocates Act, 1961 and the University Grants Commission Act, 1956.

(para 2.22)

2) The consultation procedure between the Bar Council of India and the Universities must be simple and effective.

(para 2.21)

3) Section 7(1) (h) has to be amended by providing for ‘consultation’ as proposed in sections 10AA to be inserted in the Advocates Act, 1961 with the Legal Education Committee of the University Grants Commission.

(para 3.13(1)).

4) Clause (b) of subsection (2) of sec. 10 has to be amended to provide for membership of Legal Education Committee of the Bar Council of India, representing different classes of person. The Committee shall comprise of 5 members from the Bar Council of India, one retired Judge of the Supreme Court of India, one retired Chief Justice/Judge of a High Court both to be nominated by the Chief Justice of India and three academicians in law to be nominated by the University Grants Commission and these three should be members of the proposed UGC Committee on Legal Education and all three of them must be in office and one of them must be Director/Vice-Chancellor of a statutory Law University. The retired Judge of the Supreme Court shall be the Chairman of the Committee.

(para 3.12(2))

5) The Attorney General for India can, at his option, participate in the meetings of the Legal Education Committee of the Bar Council of India and the Chairman of that Committee shall be entitled to request the Attorney General to participate in the proceedings of the Committee and when he so participates, he is entitled to vote.

(para 3.13 (3))

6) The Bar Council Legal Education Committee shall decide all matters in its meeting by majority of votes of the members present and voting, and in the event of equality of votes, the Chairman shall have an exercise a casting vote.

(para 3.13 (4))

7) The Bar Council Legal Education Committee shall meet at least once in three months.

(para 3.13 (5))

8) In sub-section (4) of section 10A, for the words ‘every committee thereof except the disciplinary committees’, the words ‘every committee thereof except the Bar Council Legal Education Committee and the disciplinary committees’, should be substituted.

(para 3.13 (6))

9) The U.G.C. Committee on Legal Education to be constituted by the U.G.C. The Committee to consist of ten members, of whom (a) six shall be academicians of the level of Professors, Deans or Principals or of equal rank, (b) two shall be law teachers of similar ranks who have retired and (c) two shall be Directors/Vice-Chancellors of statutory Law Universities. Section 5A to be inserted in the UGC Act, 1956 for constitution of UGC Legal Education Committee.

(paragraphs 4.14 and 4.21)

10) The procedure for consultation referred to in sec. 7(1)(h) shall be as follows: After the Legal Education Committee of the Bar Council of India consults the State Bar Councils, it shall consult the Legal Education Committee of the UGC which shall forward its views back to the Legal Education Committee of the Bar Council of India and the latter Committee shall then take a final decision. Section 10 AA to be inserted in the

Advocates Act, 1961 for providing consultation procedure to be followed by the Bar Council Legal Education Committee.

(paragraphs 4.3 and 4.20)

11) The UGC can also initiate proposals by sending the same for consideration of the Legal Education Committee of the Bar Council of India, in which case the same procedure will be followed by the Legal Education Committee of the Bar Council of India, which it follows in the matter of proposals initiated by it.

(para 4.4)

12) The Bar Council of India should implement the decisions of the Legal Education Committee of the Bar Council of India.

(para 4.15)

13) The Bar Council Legal Education Committee should take into consideration various factors mentioned in para 4.17 before passing any resolution in respect of standards of legal education.

(para 4.17)

14) Section 7(1)(h) be amended to provide that standards of legal education shall be laid down by the Bar Council of India in accordance with the recommendations made by the Legal Education Committee of the Bar Council of India after consultation with the State Bar Councils and the Legal Education Committee of the UGC, as mentioned in the proposed section 10AA and the word, 'standards' shall mean various matters referring to curricula etc. as detailed in para 5.24.

(para 5.24)

15) ADR training must be introduced for law student and lawyers as follows:

(1) for students, ADR system to be made compulsory subject in LL.B. course; and

(2) for lawyers, short-term training, certificate, diploma courses on ADR to be introduced on a massive scale all over the country, for purpose of section 89 of Civil Procedure Code.

(para 6.5, 6.6)

16) The High Court and the Bar Council of India, the State Bar Councils, the Indian Law Institute and the ICADR and similar organizations should start ADR training programmes for lawyers and judicial officers. The training should be a short one for one week, or it may be one-month certificate course or a six-month or a one-year diploma course.

(para 6.11)

17) Section 7 (1) (h) to be amended to enable the Bar Council of India to promote ADR as a subject of academic study in the law school to students and also to promote continuing education on ADR to legal practitioner.

(para 6.11)

18) Bar Council of India can lay down minimum standards necessary for courses for students who will come into legal profession but not in respect of other law courses which do not lead to a professional career. UGC can

prescribe higher standards.

(para 4.10 to 4.12)

19) UGC and BCI to introduce a system of Accreditation of law colleges. Section 7 (1) (h) should be amended to enable Bar Council of India to promote excellence in legal education for the purpose of accreditation system.

(para 5.22)

20) It is proposed to recommend amendment of clause (h) in sec. 7(1) enabling the Bar Council of India to lay down procedure and conditions for appointment of Adjunct teachers who are to be appointed from among members of the Bar and the retired Judges. This has to be done in consultation with the State Bar Councils and the Legal Education Committee of the Bar Council of India and the Legal Education Committee of the UGC.

(para 7.12)

21) It is proposed that a separate provision be inserted in the Advocates Act for providing that no law college or a law department of a university shall impart instructions in course of study in law which lead to enrolment as an advocate unless a permission has been granted by the Bar Council of India in this regard. It is also proposed that no law college or law department of university or any other institution shall continue to impart instruction in such course, if the permission granted by the Bar Council of India has been withdrawn. Further that any fees collected towards admission in violation of this provision shall be refunded. It is also

proposed that violation of this provision shall amount to an offence punishable under proposed new section 45A.

It is proposed that existing section 7A be renumbered as 7D and after section 7, above mentioned provision be inserted.

(paras 8.3.1 & 8.3.2)

22) A separate clause in sub-section (1) of section 7 be added to enable the Bar Council of India to grant permission for imparting instruction to a law department of a university or a law college and to withdraw such permission.

(para 8.13)

23) It is recommended that separate provisions be incorporated in the Advocates Act, 1961 for providing that in case of any conflict in the inspection reports of the Bar Council of India and of the UGC/Universities or where there is a big gap between the claims of the management and the Inspection Committee, a Task Force should make inspection on the same lines as in the Regulations of the AICTE in which a Judicial Officer would be a member. For this purpose, it is proposed that new sections 7B and 7C be added in the Advocates Act. Consequently, inspection Rules framed by the Bar Council of India should be amended.

(para 8.12)

24) The existing section 7 (1) (i) should deal only with recognition of universities. For the purpose of inspection of law colleges and universities, separate provisions should be inserted in the form of section 7B and 7C.

Consequently, sections 6 (1) (gg), 7 (1) (i), 49 (1) are also required to be amended.

(para 8.13)

25) It is recommended that the ‘problem method’ be introduced in the examination system to an extent of about 75% in each paper, apart from 25% for theory. The students should obtain a separate minimum number of marks for the theory and a separate minimum in the problem part of the examination. This will enable the students to apply their mind seriously to every subject. This will also eliminate malpractices like copying or seeking help of invigilators. Attendance to classes is also bound to improve.

(para 9.21)

26) It is also recommended that the clinical legal education may be made a compulsory in legal education.

(para 9.15)

27) The Central Government should start at least four colleges in the country for providing professional training to law teachers in consultation with the Bar Council of India and the University Grants Commission.

(para 9.18)

28 Section 7 (1) may be amended by adding clauses (ie) and (if) as follows:

“(ie) to take such measures to establish institutions for continuing legal education for law teachers;

(if) to take measures for raising the standards of teaching in law in consultation with the Central Government, the State Governments and the University Grants Commission.”

(para 9.20)

29) It is recommend that in sec. 7 (1), clause (ig) be added as follows:

“(ig) to create awareness of the latest trends in legal education by establishing legal education libraries at the offices of the Bar Council of India and all State Bar Councils and universities and in law colleges.”

(para 10.9)

30) Section 7(1) (i) to be amended for providing disaffiliation or derecognition of a College or a University in case a College or University does not implement the lawful directions of the Bar Council of India or State Bar Councils.

(para 11.1)

31) In Section 49 (1) following clause should be added, namely:

“(aj) the procedure regarding recognition and de-recognition of such universities as referred to in clause (i) of sub-section(1) of section 7 and the procedure regarding the issuing of direction to a university to disaffiliate a Law college;”

(para 11.3)

32) Training for one-year (Apprenticeship) in the Chambers of a lawyer with at least ten years standing and Bar Examination to be introduced for a law graduate before he enters the legal profession, by amendment of the Act. Power to do so to be vested only in Bar Council of India. Sections 7, 24 and 49 to be amended.

(para 12.23)

33) Officers in private or public service, dismissed or removed from service or convicted on the ground of charges involving moral turpitude, to be debarred totally from entering into the profession. Section 24A (1) should be amended.

(paras 13.2 & 13.6)

We recommend accordingly.

(Justice M. Jagannadha Rao)
Chairman

(Dr. N.M. Ghatate)
Member

(T.K. Viswanathan)
Member-Secretary

Dated: 20.12.2002