

**ACCESS TO LEGAL PROFESSION: A CASE ANALYSIS OF BAR
COUNCIL OF INDIA V. BONNIE FOI LAW COLLEGE & ORS.
AND THE ADVOCATES ACT, 1961**

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ABSTRACT

The legal profession is a quintessential part of the system of administration of justice. Without a well-organized legal profession, the courts would not be able to effectively administer justice because the best legal arguments for or against the parties could not be presented to the court, nor could the evidence in their favour or against be marshalled or the facts properly stated. A properly outfitted and effective Bar is predicated on a well-organized system of judicial administration. A more representative and equitable legal system is promoted by allowing talented and qualified applicants, regardless of their background, to enter the legal profession. However, individuals from disadvantaged backgrounds who want to become advocates face significant obstacles due to the exorbitant registration fees mandated by State Bar Councils. Many bright law graduates are discouraged from following their goals of becoming lawyers due to the expense of entering the legal profession. The contentious issue of excessive enrolment fees levied by State Bar Councils from aspiring advocates seeking admission to the legal profession is at the centre of the case Bar Council of India v. Bonnie Foi Law College & Ors. The basis for the enrolment and regulation of advocates is governed by the Advocates Act, 1961, which oversees the legal profession in India. However, the State Bar Councils' imposition of exorbitant registration fees has prompted questions about how well it complies with the requirements of the Act and how it would affect both the legal profession and access to justice. In the light of the same, the case comment examines the potential effects of exorbitant enrolment fees on access to justice, diversity in the legal profession, and the financial burden on aspiring advocates. The comment also highlights how crucial it is to strike a balance between upholding

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the integrity of the legal profession and guaranteeing accessibility and equality for aspirant advocates.

Keywords: - *Legal Profession, Exorbitant Fees, Enrolment, Advocates Act 1961, Advocates*

INTRODUCTION

The legal profession plays a vital role in maintaining the rule of law, defending individual rights, and making sure that everyone has access to justice. Access to Legal Profession is crucial in order to promote a varied and inclusive legal community that represents the nation's diverse social, economic, and cultural backgrounds. A major barrier to becoming an advocate for those from disadvantaged backgrounds is the exorbitant registration fees charged by State Bar Councils, which goes against the idea of access to justice. There are two ways in which access to justice is denied. Firstly, it limits the type of legal counsel that is available to individuals from the disadvantaged background who might require the assistance of such counsel. Similar-background advocates are more likely to comprehend the difficulties and problems experienced by marginalised people and can offer greater representation. Second, it prevents the emergence of a diverse and compassionate legal community when brilliant individuals from disadvantaged backgrounds are discouraged from entering the legal profession as a result of high enrolment fees. In the case of *Bar Council of India v. Bonnie Foi Law College & Ors.*², the question of charging exorbitant fees for the registration of law graduates as advocates in accordance with the mandate of the Advocates Act 1961 is being highlighted by the Court, while dealing with the issue of BCI's authority to conduct a pre-enrolment examination for the enrolment of advocates.

In the meantime, a writ petition was filed by a law graduate named Gaurav Kumar against Government of India, Bar Council of India, & State Bar Councils for charging high fees and sought to declare the amount taken as arbitrary, unreasonable, & illegal.³ It is important to comprehend and examine the critical aspects of the issue of charging excessive fees for the enrolment of advocates even if the Supreme Court has not yet passed a judgment on the issue. It is also significant to

² *Bar Council of India v. Bonnie Foi Law College & Ors.*, [2023] SCC Online SC 130.

³ *Gaurav Kumar v. Union of India*, [2023] SCC Online SC 391.

note that the Bar Council of Kerala has been ordered by the Kerala High Court in the case of *Bar Council of Kerala v. Akshai M Sivan*⁴ to only collect Rs. 750 as enrolment fees from law graduates who wish to enrol, while the Bar Council of India is taking the Supreme Court's directive to consider a uniform fee structure into consideration.

BAR COUNCIL OF INDIA V. BONNIE FOI LAW COLLEGE & ORS: BACKGROUND & THE FACTS OF THE CASE

This matter first came to light in 2009 when Bonnie Foi Law College submitted an affiliation request to run a legal study course in their college. The deficiencies in the institution's architecture and operation brought up a bigger issue regarding the declining standards of legal education offered at numerous law colleges in India when an inspection team visited the college in question on June 29, 2009.⁵ Solicitor General of India at the time Mr. Gopal Subramaniam, President of the Supreme Court Bar Association, Mr. M.N. Krishnamani, and Chairman of the Bar Council of India Mr. S.N.P. Sinha were appointed as members of the committee by the Supreme Court. The aforementioned Committee was tasked with looking into matters pertaining to the affiliation and recognition of law institutions, identifying problems that needed to be fixed, and addressing obstacles to the application of current regulations.⁶ The Report acknowledged two important elements as essential for raising the bar for the legal profession: first, the establishment of a bar examination; and second, the requirement that all applicants for admission to the Bar serve an apprenticeship under a senior lawyer.⁷As a result of the report submitted by the Committee as appointed by the Court, the first All India Bar Examination was held in 2010 by a specifically established independent body made up of recognised specialists from a variety of fields.⁸

In response to this, the Bar Council of India (BCI) established the All-India Bar Exam (AIBE) in April 2010 with the aim of raising the bar for the Indian legal profession. The Bar Council of India issues candidates who pass the test a "Certificate of Practise (CoP)" to denote their qualification as an advocate. The BCI framed 'Certificate of Practise and Renewal Rules, 2014' in October 2014, which provides

⁴ *Bar Council of Kerala v. Akshai M Sivan*, W.P. {C} No. 3068 OF 2023(G).

⁵ *Bonnie Foi Law College & Ors.* (n 1) ¶ 5.

⁶ *ibid*, ¶ 6.

⁷ *ibid*, ¶ 7.

⁸ *ibid*, ¶ 8.

that advocates who joined in State Bar Councils after June 2010 had to appear for AIBE in order to acquire their CoP, whereas those who enrolled before June 2010 had to obtain their CoP within 6 months. Two kinds of advocates - practicing advocates and non-practicing advocates - were established by the BCI's "BCI Certificate and Place of Practise (Verification) Rules, 2015" that were released in January 2015. Both enrolled and newly admitted advocates have challenged these 2014 and 2015 Rules imposed by the Bar Council of India.⁹

ISSUES AT HAND

A three-judge bench of the Court stated on March 18, 2016, that a Constitution Bench should provide authoritative guidance on the issues at hand since they are of great significance and would have a significant impact on the legal profession as a whole. Consequently, the following three questions were framed which were referred to the Constitution Bench:

(1) Whether the Bar Council of India could validly prescribe pre-enrolment training in accordance with the Bar Council of India Training Rules, 1995, drafted under Section 24(3)(d) of the Advocates Act, 1961, and (2) if so, whether the decision of this Court in *V. Sudeer v. Bar Council of India* calls for reconsideration?

(2) Whether the Advocates Act of 1961 permits the Bar Council of India to establish a pre-enrolment test?

(3) If the answers to questions 1 and 2 are in negative, then the subsequent question is whether the Bar Council of India can legitimately prescribe a post-enrolment examination in accordance with Section 49(1) (ah) of the Advocates Act, 1961?¹⁰

While these were the issues raised in the current case for the court to decide, another issue that was brought up by the court during the judgement in this case was the excessive fees charged by the State Bar Councils for enrolling advocates in the respective State Bar Councils and the need for a uniform fee structure, to be established by the Bar Council of India.

⁹ Constitutional Bench Update: Bar Council of India v. Bonnie Voi Law College & Ors., (*Manupatra*) < <https://www.manupatra.com/corporate/Blog/pdf/Bar-Council-of-India-vs-Bonnie-FOI-Law-College.pdf>> accessed 25th July 2023.

¹⁰ *Bonnie Foi Law College & Ors.* (n 1) ¶ 9.

DECISION OF THE COURT: LAYING THE GROUND FOR FURTHER CHALLENGE

The authority of Bar Council of India to hold the All-India Bar test (AIBE), a pre-enrolment test, has been affirmed by the five-judge Constitution Bench, which is composed of JJ. Sanjay Kishan Kaul, Sanjiv Khanna, Abhay S. Oka, Vikram Nath, and JK Maheshwari. The Court stated that the Bar Council of India is directly concerned with the standard of individuals who wish to obtain a licence to practise law as a profession, and that neither the provisions under the Advocates Act, 1961, nor the role of the universities to impart legal education, in any way, prohibit the Council from conducting pre-enrolment examinations.¹¹ After noting that there are consequences, particularly with regard to the interregnum period, which would arise from holding the All-India Bar Examination in either scenario, it would be appropriate to leave it to the Bar Council of India to look to the finer points of both situations, the Court left it to the Bar Council of India to decide as to when the All-India Bar Examination has to be held- pre or post enrolment.¹²

The Court emphasized on the importance and role of the Advocate's Act 1961. which was passed by Parliament with the intention of harmonising the legislation governing legal professionals. The duties listed in Section 7 of the aforementioned Act for the Bar Council of India, the apex body governing legal profession, make clear its significant importance. The Bar Council of India is not given direct control over legal education by the rules, since this authority predominantly rests with institutions. However, as the supreme professional organisation for lawyers in India, the Bar Council of India, is concerned with the standards of the legal profession and the tools used by individuals who wish to enter it. It was determined that because the Bar Council of India is directly concerned with the standard of individuals who want to obtain a licence to practise law as a profession, neither these provisions nor the responsibility of the universities to provide legal education in any way prevent the Council from conducting pre-

¹¹ *ibid*, ¶ 20.

¹² *ibid*, ¶ 35

enrolment examination. The Court disagreed with the argument in the *V. Sudeer*¹³ case that because the ability of the State Bar Councils to conduct training sessions or examinations was removed by the 1973 Amendment, it *ipso facto* amounted to removing those abilities if they so belonged to the Bar Council of India. The Court argued that the Bar Council of India has much greater powers and authority.¹⁴

The Court also cited Section 49(1) (ag) of the Act, which, while addressing the Bar Council of India's general rule-making authority, specifically states that the Bar Council of India has been granted full authority over all matters pertaining to the class or category of individuals eligible to be enrolled as advocates. Therefore, it is difficult to question the Bar Council of India's need of an exam for enrolling of advocates.¹⁵ The Court concluded that the *V. Sudeer* case establishes an improper legal stance. Along with that, the Court emphasised in its ruling that there are no transparency and accountability in the collection of fees by the Bar Council of India. The cost of enrollment varies amongst State Bar Councils. The Bar Council of India, which has the authority to ensure that a standard pattern is followed and the cost does not become prohibitive as soon as young students are about to enter the Bar, should pay attention to this.¹⁶

PAVING THE WAY FOR AN UNIFORM FEE STRUCTURE: ENSURING EQUALITY & INCLUSIVITY

As was already mentioned at the start of this article, the legal profession plays a crucial function in the pursuit of justice and the upholding the rule of law. It is a fundamental component of the Indian judicial system. The legal industry is not spared from the concerns of injustice and prejudice that are present in our society, despite its significance. Members of historically marginalised groups, notably Dalits and Adivasis, women, and those from minority and economically disadvantaged

¹³ *V. Sudeer v. Bar Council of India* (1999) 3 SCC 176

¹⁴ Prachi Bharadwaj, 'AIBE valid; BCI must ensure quality of lawyers entering the profession': Read 8 suggestions by Supreme Court Constitution Bench' (*SCC Online Blog*, 11 February 2023) <<https://www.sconline.com/blog/post/2023/02/11/aibe-all-india-bar-exam-bar-council-india-pre-enrolment-advocates-act-supremecourt-constitution-bench-legal-updates-knowledge-research-news/>> accessed July 30th, 2023.

¹⁵ *ibid.*

¹⁶ *Bonnie Foi Law College & Ors.* (n 1) ¶ 44.

sectors encounter significant obstacles in their attempts to enter, advance, and achieve in this field.

The unnecessarily high enrollment fees set by State Bar Councils are one of these primary barriers. For instance, it is Rs. 17,350 in Assam and Rs. 15,300 in Delhi. This places a heavy financial burden on families and recent law graduates from the aforementioned underprivileged background, who already struggle financially and have fewer job opportunities. The Bar Council has a responsibility to advance diversity by encouraging students from the aforementioned underprivileged groups to pursue a legal education and career. This includes, but is not limited to, significantly lowering the high enrolment fees and providing other forms of assistance to ensure that all students have an equal chance to succeed.

| SL. No. | Name of the State Bar Council | Total Enrolment Fees | Enrolment Fees |
|----------------|--|-----------------------------|-----------------------|
| 1. | Bar Council of Delhi | 15,300 | 600 |
| 2. | Bar Council of Maharashtra & Goa | 15,500 | 600 |
| 3. | Bar Council of Punjab & Haryana | 19,200 | 9200 |
| 4. | Bar Council of Assam, Mizoram, Nagaland, Arunachal Pradesh, & Sikkim | 17,350 | 6000 |
| 5. | Bar Council of Rajasthan | 16200 | 4800 |
| 6. | Bar Council of Madhya Pradesh | 20,300 | 6000 |
| 7. | Bar Council of Karnataka | 15500 | 5500 |
| 8. | Bar Council of Uttar Pradesh | 16,665 | - |

Table 1: Enrolment Fees of different State Bar Councils¹⁷

¹⁷ Table showing enrolment fees of all state bar councils in India with respective fee structure (2021) (*Live Law*) < https://www.livelaw.in/pdf_upload/enrolment-fee-chart-430318.pdf> accessed July 30th, 2023.

The above table reflects the discrepancies in the fee structure of different State Bar Councils for the enrolment of candidates as advocates. It is important to highlight that the Kerala High Court recently ordered the Bar Council of Kerala to only collect Rs. 750 as an enrolment fee from law graduates who desire to enrol in the separate State Bar Councils in the case of *Bar Council of Kerala v. Akshai M Sivam*.¹⁸ The Bar Council of Kerala appealed the single judge's decision limiting the enrolment fee to Rs. 750¹⁹, and the case was heard by a division bench consisting of Chief Justice S.V.N. Bhatti and Justice Basant Balaji. In light of the interim order issued by the single bench of Justice Shaji P Chaly in *Koshy T. v. Bar Council of Kerala, Ernakulam & Anr.*²⁰, which held that the Bar Council lacks the required authority under the Statute, and is not permitted to collect fees beyond Rs. 750/- prescribed by law.

There are similar petitions pending before the Odisha High Court²¹ and Bombay High Court.²² The Supreme Court has admitted an PIL challenging the various enrolling fees being levied by several State Bar Councils as being too high, and as a result, the Supreme Court has given notice in the matter of *Gaurav Kumar v. Union of India*²³. The issue was then raised on May 12, 2023, and the Supreme Court ordered the State Bar Councils that have not yet submitted their replies to do so within four weeks. If they fail to do so, their right to reply will be forfeited, and the petition will move forward assuming they have nothing more to say. The Supreme Court made an important oral observation during the hearing that the BCI must intervene because the State Bar Councils are charging exorbitant fees for enrolment as advocates.²⁴ The Supreme Court also expressed concern about how a Dalit student or a student from a rural background can afford such exorbitant fees for enrolment as advocates.

¹⁸ *Bar Council of Kerala v. Akshai M Sivam* W.P. (C) No. 3068 OF 2023(G).

¹⁹ *Koshy T. v. Bar Council of Kerala, Ernakulam and Another* (2017) KHC 553.

²⁰ *ibid.*

²¹ 'Plea in Orissa High Court over 'exorbitant fees' for aspiring lawyers' (*Times of India*, Aug. 6, 2022) < <https://timesofindia.indiatimes.com/city/cuttack/plea-in-orissa-high-court-over-exorbitant-fees-for-aspiring-lawyers/articleshow/93385223.cms>> accessed August 1st, 2023.

²² Greeva Garg, 'Bombay HC: Plea challenges increased Enrolment Fees of BCMG' (*The Law Insider*, Aug. 13, 2021) < <https://www.lawinsider.in/news/bombay-hc-plea-challenges-increased-enrolment-fees-of-bcmg>> accessed August 1st, 2023.

²³ *Gaurav Kumar v. Union of India*, 2023 SCC Online SC 391.

²⁴ Apoorva, '[Enrolment fees] Supreme Court issues notices to Union Government, Bar Council of India and State Bar Councils' (SCC Online Blog, April 10, 2023) <<https://www.sconline.com/blog/post/2023/04/10/supreme-court-to-examine-validity-of-exorbitant-enrolment-fees-charged-by-sbc-legal-research-legal-news-updates/>> accessed August 1st, 2023.

It is important to note that Sections 16 to 28 of Chapter III of the Advocate's Act of 1961 include the law governing "Admission and Enrolment of Advocates". The mandatory enrollment fee is Rs. 750/- as per Section 24(1)(f). It follows that since the amount of the enrolment fee is specified in the Act itself at section 24(1)(f), it is unnecessary to add that it can only be changed by amending the Act, which is not the case. In the case of *Bar Council of Maharashtra v. Union of India*²⁵, the State Bar Council was allowed to charge the annual fee that the Bar Council of India may from time to time determine after consulting with the other State Bar Councils. The State Bar Council of Maharashtra challenged the constitutional validity of Section 24(1)(f) of the Advocates Act, 1961 through a writ petition. The petitioners argued that Section 24(1)(f) is otiose, out-of-date, and generally tends to impede and restrict the fundamental right to form association and freedom of carrying out profession. The Bar Council claims that Section 24(1)(f), which grants it the right to charge enrollment fee, is the sole source of funding that is accessible to it. There is just one enrollment fee that must be paid, and after that, there is no provision that allows the Bar Council to demand further fees or donations from the Advocates. The Bar Council also attempted to argue that Article 19(1)(g) and Article 14 of the Constitution are violated by the restriction on the Bar Council's ability to collect only a one-time enrolment fee from an advocate at the time of enrollment. Instead, the Bar Council argued that it should be permitted to collect an annual renewal fee or a similar fee from advocates, as the Institute of Chartered Accountants does for chartered accountants.²⁶ The Bombay High Court held that –

"The enrolment fee payable by those seeking admission to the Bar Council was initially set at Rs. 250 under clause (f) of sub-section (1) of section 24, but by way of an amendment made by Act No. 70 of 1993, it has now increased to Rs. 600. Thus, it would appear that Parliament was aware of the issue because the enrolment cost nearly doubled as a result of Act No. 70 of 1993. We are worried that if the Bar Council's argument that Section 24(1)(f) is unlawful is accepted, the end outcome will be that the Bar Council will not be able to collect any registration fees at all. As things are, we do not perceive any constitutional error in the extent to which Parliament has set the enrolment cost. If the Bar Council determines that the amount of Rs. 600/- now set forth in Clause (f) of sub-Section (1) of Section 24 is

²⁵ *Bar Council of Maharashtra v. Union of India* AIR 2002 Bom 220.

²⁶ *ibid*, ¶ 2.

*insufficient, further remedies are available. The Bar Council may raise the issue with the Central Government in order to have the necessary action taken to alter the relevant legislation. It cannot be argued that bringing a Writ Petition is the appropriate route of action for the Bar Council's complaint. This Court while sitting in Writ Jurisdiction under Article 226 of the Constitution cannot make legislation and enact laws. Even with regard to Bar Council's grievance that it should be allowed to periodically recover renewal fee from the Advocates, such legislation cannot be made and the Bar Council cannot be permitted to do so."*²⁷

The question that remains, then, is whether the Bar Council has the right to include the fixing of special fees in the regulations it makes in light of sections 24(1)(e) and 28(2)(d). As we've previously seen, the Legislature itself has determined the enrolment fee that a candidate must pay when seeking for enrolment with a State's Bar Council under section 24(1)(f) of the Advocates Act, 1961. Once the legislature has established an enrolment fee, a State Bar Council or any other body may only validly set another cost- whether it be referred to as a special fee or something else- if there is an express legislative justification for doing so. It is a well-established principle that when the law specifies how an act must be carried out, it must be carried out that way or not at all. Therefore, the State Bar Councils lack the legal authority to impose exorbitant enrolment fees when the statute specifies fees of Rs. 750. Any rules adopted by the State Bar Councils that grant them the right to establish enrollment fees other than those specified in Section 24(1)(f) are beyond the purview of their rule-making jurisdiction.

It goes without saying that the State Bar Councils' requirement of enrolment fees outside of those allowed by section 24(1)(f) blatantly violates the right to equality and equal treatment under the law given to law students and recent graduates as envisaged in Article 14. This creates a significant financial barrier for many aspiring Advocates, which is discriminatory against law students from historically oppressed and other underprivileged backgrounds of society.

CONCLUSION

²⁷ *ibid*, ¶ 3.

The legal profession serves as an essential thread in the intricate web of justice administration, tying the arguments, facts, and evidence together to provide fair results. The discourse surrounding the *Bar Council of India v. Bonnie Foi Law College & Ors.* case made clear that the outrageous fees demanded by State Bar Councils for enrolment of advocates present a significant barrier to the overarching principles of fairness, equity, and accessibility that form the basis of our legal system. The Advocates Act, 1961, a piece of legal architecture, aims to maintain the health of the Indian legal community. However, the burgeoning issue of high enrolment fees has raised concerns about the effectiveness of the Act and its consistency with the values it purports to maintain. The tension between preserving the integrity of the legal profession and promoting diversity calls for a sophisticated understanding - a delicate balance measured on the scales of justice.

The fundamental goal of the legal system is to deliver justice without discrimination, and it recognises that a diverse and diversified legal profession contributes to the lively nature of legal discourse. It is the responsibility of the legal profession as a whole to remove the obstacles that prevent people from disadvantaged backgrounds from participating in society. The legal community can raise the resonance of justice while ensuring that future luminaries are not constrained by financial restrictions by lobbying for affordable enrolment fees. Every citizen has a right to access justice; it is not only a privilege of the wealthy. Aspiring advocates are prevented from exercising this birthright by the high fees, upsetting the equilibrium that our legal system is designed to preserve. When every voice, regardless of origin or condition, vibrates within the holy halls of justice, the objectives of a nation are best accomplished, as we consider the consequences of the Bar Council case, we are reminded of this.

Last but not the least, legal institutions have a serious responsibility to work towards a legal profession that is fair, equitable, and open to all. It encourages us to follow a road of harmony where the integrity of the legal profession peacefully coexists with the ideas of equality and opportunity, ultimately pointing the way to a more just and equitable legal system.