

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. 22337 OF 2008**

IN THE MATTER OF

BAR COUNCIL OF INDIA

...PETITIONER

VERSUS

BONNIE FOI LAW COLLEGE

...RESPONDENT

**ADDITIONAL NOTE OF MR. K.V. VISWANATHAN, SR. ADV.,
AMICUS CURIAE**

Submitted By
K.V. Viswanathan, Senior Advocate

Assisted By:
Amartya A. Sharan, Advocate
Rahul Sangwan, Advocate
M.G. Aravind Raj, Advocate
Sivagnanam Karthikeyan, Advocate

Filed on 03.10.2022

Additional Note submitted by Mr. K.V. Viswanathan, Amicus Curiae

1. In the submissions filed before this Hon'ble Court on **27.09.2022**, the questions framed by this Hon'ble Court have been answered in the following manner:
 - (1) The Bar Council of India is empowered to prescribe a pre-enrolment training under the Advocates Act, 1961 and to that extent the decision of this Court in *V. Sudeer* (1999) 3 SCC 176 is *per incuriam* and deserves to be set aside.
 - (2) The Bar Council of India is empowered to prescribe a pre-enrolment examination in the exercise of its powers under the Advocates At, 1961
 - (3) In case the question no. 1 and 2 are answered in the negative, due to the words occurring in **Section 30** of the Advocates Act, 1961, any post-enrolment examination would require a statutory amendment to bring it to into place and to be *intra vires* the Act.
2. The present Note is being circulated in relation to certain concerns that were expressed by this Hon'ble Court and to further modify the Note dated **27.09.2022** on the basis of the discussion at the time of oral submissions. The following points are sought to be addressed through this Additional Note:
 - a. Possibility of a Post-Enrolment Examination
 - b. Eligibility for taking a pre-enrolment examination
 - c. Pre-enrolment exams and the period between date of passing the exam and the date of enrolment
 - d. Determination of Seniority in case of Pre-Enrolment Examination
 - e. Number of attempts available to a person taking a Post-Enrolment Examination
 - f. Consequence of cessation of practice for a sustained and prolonged period
 - g. Period of validity of results for a person who writes the Bar Examination
 - h. Registers which are to be maintained by the Bar Council in case of a Pre-Enrolment Examination
 - i. Impact of this Court's decision on persons who are provisionally enrolled
 - j. Need for uniformity in practice of State Bar Councils

A. Possibility of a Post-Enrolment Examination

3. In the Note filed before this Hon'ble Court on **27.09.2022**, it has been submitted with regard to feasibility of a post-enrolment examination that the same would required a statutory amendment to the Advocates Act. However, in view of the discussion before this Hon'ble Court, it is submitted that the said exam can be justified based on a holistic reading of the provisions of the Act.
4. **Section 30** of the Act provides that an advocate shall have a right to practice in all Courts/tribunals. **Section 49(1)(ah)** empowers the Bar Council of India to frame rules which provide for the conditions subject to which an advocate shall have the right to practice. As has been submitted in the Note dated **27.09.2022** under *Heading IV-C(iv)* [**Page 34 of the Note dated 27.09.2022**], the rule making powers listed under the various clauses of **Section 49(1)** per se indicate statutory functions of the Bar Council of India. Therefore, **Section 49(1)(ah)** of the Act which empowers the body to prescribe conditions subject to which the advocate shall have the right to practice ought to be considered as a statutory function in itself.
5. Therefore, on parity of reasoning with the decision of this Court in *Jamshed Ansari v. High Court of Allahabad* (2016) 10 SCC 554 where it was held that the right to practice under **Section 30** of the Act would be subject to the power to frame rules under **Section 34** of the Act [**Para 24-25**], the power to frame rules under **Section 49(1)(ah)** of the Act is also to be considered as part of the Act which can then restrict the right under **Section 30** of the Act.
6. Resultantly, any post-enrolment examination to be prescribed by the Bar Council of India could be justified if this Hon'ble Court were to read the power under **Section 49(1)(ah)** as a statutory function of the body and therefore forming part of the Act itself.

B. Eligibility for taking a pre-enrolment exam

7. Under the current post-enrolment AIBE, the candidates' documents are verified during provisional enrolment, and this also establishes eligibility to take the AIBE. If the examination is held pre-enrolment, and eligibility is restricted to those who have graduated and can produce the degree certificate, then a problem may arise: eligibility to take the exam would be affected by the different graduation dates and varying promptness with which degree certificates are prepared and furnished to the candidates. It is

submitted that candidates should be permitted to take the pre-enrolment exam on production of a transcript showing that they have received a passing mark in all their law school examinations. The factum of graduation may be ascertained through production of degree certificate at the time of enrolment. As an alternative, if the eligibility could be extended to those persons who are in the final semester of the final year of their law course, they could then be allowed to take the examination and any result in such examination would then be subject to the said person passing all the components required under the University/College's course of study. This alternative would however be subject to the Bar Examination results being valid for a limited period of time, as will be discussed in *Heading G*.

8. The alternative arrangement as proposed above would be line with the requirement that the examination is held at the earliest possible time for a law graduate. Such an exam would be consistent with the practice followed by the National Medical Commission under the National Medical Commission Act, 2019. Under **Section 15** of the **National Medical Commission Act, 2019** a common final year undergraduate medical examination known as the 'national exit test' is held by the National Medical Commission to grant license to practice medicine.
9. Therefore, this Hon'ble Court and the Bar Council of India may consider either of the two alternative schemes proposed, both of which will ensure that the bar examination be held as soon as is possible.

C. Pre-enrolment exams and the period between date of passing the exam and the date of enrolment

10. At the time of oral hearing, this Hon'ble Court had expressed its apprehensions regarding the intervening period between the date of passing the bar examination and the date of enrolment, where the graduates would not be engaged in any activity which is beneficial for their development. In this regard, *firstly*, based on the submissions made in *Heading B*, if the examination is periodically held at the earliest possible time for any law student followed by swift publication of results, the concerns of this Hon'ble Court would be suitably addressed.
11. *Secondly*, it is submitted that any graduate with a degree who is yet to appear for a Bar Examination or get enrolled under the Advocates Act would still be able to do all the tasks allied to the legal profession other than the function of acting or pleading before the Courts. Therefore, any graduate with a degree who wishes to keep his link with the legal

profession continuing and perform tasks allied to the legal profession such as assisting an advocate, or working as a law researcher, he/she will therefore continue to equip themselves with the skills required to be an advocate. For example, the **Revised Scheme for Engaging Law Clerk-Cum-Research Assistant in the Supreme Court of India** only requires that a candidate be a law graduate which a degree which is recognized by the Bar Council of India for enrolment and not that the graduate actually get enrolled in order to take up the assignment. Therefore, any concern about a graduate with a degree not being engaged in any activity beneficial for their development would not arise even if the Bar Examination is held at a pre-enrolment stage.

D. Determination of Seniority in case of Pre-Enrolment Examination

12. **Section 21** of the Advocates Act stipulates that where the date of seniority of two or more persons is the same, the one senior in age shall be reckoned as senior to the other. Additionally, all State Bar Councils as on date have different methods based on which they determine the seniority of persons who share the same date of enrolment. It is submitted that the criteria that is based on the date of birth of an advocate currently has statutory recognition and a similar criterion would suit even a pre-enrolment examination. Any determination which will be based on the marks obtained by the candidate in the examination would result in complications and would not be the way forward since it then throws up issues of representation and the need to consider that the examination is being taken by people from all strata of society.
13. On the basis of the above, it is submitted that the practice and procedure as it exists on date for post-enrolment examination would be apt for application to a pre-enrolment examination, in addition to any criterion which has been framed by the respective State Bar Councils.

E. Number of attempts available to a person taking a Post-Enrolment Examination

14. It is submitted that as it exists today the All India Bar Examination is a post-enrolment examination where persons are initially said to be provisionally enrolled on an undertaking that they will pass the exam within 2 years of said enrolment. The concept of provisional enrolment and the undertaking was brought in through the **BCI Resolution** dated **12.04.2013** [Annexed herewith as Annexure – AN/1]. However, as a result of **BCI Resolution** dated **31.01.2017**, it has been clarified that while

the right to practice would only be for two years under a provisional enrolment, the said person can continue to take the Bar Examination as many times as is possible [**Annexed herewith as Annexure – AN/2**]. The result therefore is that any person who is provisionally enrolled is allowed to practice for two years, but is allowed to take the exam not just for two years but for any number of times till he passes the exam while the date of reckoning seniority is from the date of the provisional enrolment.

15. In this context, it is humbly submitted that the said practice of having an unlimited number of attempts would not be in line with the scheme proposed by this Hon'ble Court and must be limited to any number that this Hon'ble Court deems fit to do so.

F. Consequence of cessation of practice for a sustained and prolonged period

16. In *Bar Council of India v. Twinkle Rahul Mangaonkar* (CA No. 816-817/2022), this Hon'ble Court is exploring how to solve the issue noted in its order dated 21.04.2022: "[...] [t]here is another category of persons who after qualifying the law degree, take the Bar exam, clear it, get a certificate of practice and then get their licence suspended to take up the job. They may come back even after twenty years of a job.". This Hon'ble Court had directed the Bar Council of India to consider this issue, keeping in mind the distinction between scenarios where the employment taken up by that person is related to law; and scenarios where it is not. In the latter case, this Hon'ble Court nudged the Bar Council of India to consider whether such persons could be required to take the bar examination again in case they continue in service for a certain period of time. In the order dated 02.08.2022, this Hon'ble Court noted the Minutes of the General Council Meeting of the Bar Council of India dated 08.07.2022 and stipulated that such persons would be required to take the bar exam once again if 5 years or more had passed from the date of suspension of their licence. This rule may be referred to as the "re-examination rule" for the purposes of this Heading.
17. In the present matter, if this Hon'ble Court were to hold that the Bar Council of India could only hold a pre-enrolment exam and not a post-enrolment exam, in order to still incorporate the re-examination rule, the following proposals could be considered by this Hon'ble Court.
18. In this context, it is humble submitted that reference in this regard could be made to Rule 49 in Chapter II, Section VII of the Bar Council of India Rules. The Rule prescribes that any advocate who takes up any other

employment shall intimate such fact to the Bar Council and upon occurrence of such event, the said advocate shall cease to practice as an advocate as long as he continues in such employment. Therefore, the consequence of taking up another employment is that the advocate loses his right to practice that is found under the Act. This being the position, it could be considered by this Hon'ble Court and the Bar Council of India that any person who takes up an employment which has no connection with legal or judicial matters [thereby excluding persons joining as Public Prosecutor or A.P.P or some judicial service or some other service like that of Law Officers in some corporate or Government office from the purview of this Rule – As set out by the Bar Council of India in its Affidavit dated **29.07.2022** at **Page 218 of BCI Compilation in BCI v. Bonnie Foi Law College, SLP (C) No. 22337/2008**] for a substantial length of time, then the nexus to the right to practice arising under Section 30 of the Advocates Act gets severed. Consequently, the Rule making power under Section 49(1)(ah) could then be invoked for the purpose of this Rule requiring an examination for such advocates who come back into the practice after a substantial break from practice.

19. In the alternative, it is submitted that if this Hon'ble Court holds that the BCI can make rules under Sec. 24(1) read with 49(1)(ag) which govern the circumstances in which any person may be deemed “qualified to be admitted” as an advocate, a useful inference would follow: such rules could lay down that an enrolled advocate, having taken an employment in a non-legal context for a substantial length of time (e.g., 5 years) would be deemed to be new enrollee. In order to regain that qualification, that person could be subjected to the re-examination rule and be required to take the bar examination once more.

G. Period of validity of results for a person who writes the Bar Examination

20. On a parity of reasoning with *Heading F* above, the validity of the result obtained by any candidate in any pre-enrolment or a post-enrolment bar examination must also be limited by time. This relevant time-period would be a policy matter for the Bar Council of India to consider, and this Hon'ble Court may request the BCI to indicate their opinion on the same.

H. Registers which are to be maintained by the Bar Council in case of a Pre-Enrolment Examination

21. The main issue considered by this Hon'ble Court was the case of persons facing difficulties while shifting into legal practice from other professions

on account of rules which prevent them from even getting an enrolment number that would enable them to take the AIBE while being in full-time/part-time service or employment.

22. With the judgment in *V. Sudeer* holding the field, this Hon'ble Court directed a solution to the above issue in its order dated 21.04.2022 [**Page 163 of BCI Compilation in *BCI v. Bonnie Foi Law College, SLP (C) No. 22337/2008***]. This Hon'ble Court held that the BCI may provide a provisional enrolment to such candidates which can be entered into a 'B' Register with the appropriate undertaking that such enrolment would not be interpreted as a right to practice in the intervening period and will be only limited to the aspect of taking of the AIBE exam and asked the BCI to place on record a report on actions taken in respect to all the aspects which have been discussed in the respective order in addition to the above-mentioned question. [**Page 172 of BCI Compilation in *BCI v. Bonnie Foi Law College, SLP (C) No. 22337/2008***]. BCI after thorough deliberations and consideration of the issue accepted the suggestions made by the Hon'ble Court and resolved that every State Bar Council shall have three registers (A, B and C) for All India Bar Examination.
 - a. **Register A** shall contain the names of the candidates who pass the AIBE and are issued the certificate of practice and continue to be in the legal profession itself.
 - b. **Register B** will contain the names of the candidates who are in service or job somewhere and have been allowed by the BCI to appear at the AIBE with an undertaking to give-up his/her job/profession within a period of six months from the date of the result of his/her AIBE result is published. The seniority of such candidates shall be counted from the date of giving up of his/her employment and he/she shall be issued a Certificate of Practice (COP) of AIBE only after he/she furnishes the undertaking that he/she has left the employment. The state Bar Councils shall enroll such persons on the basis of COP of AIBE only.
 - c. **Register C** will include the names of persons who get themselves enrolled with some State Bar Council, clear the AIBE and their License suspended in order to take up some job/employment.
23. In the hearing on 27.09.2022, this Hon'ble Court asked that if it were to hold that the Bar Council of India was empowered to provide for a pre-enrolment examination u/s 49(1) (ag), what consequence would that have

on the directions and the resolution passed by the BCI in forming the above-mentioned Registers. It is submitted that in that case the purpose of having Register A and B separately would become futile as all the candidates having taken their respective degree in law would have to appear for AIBE first, and only those who clear it could get enrolled. Hence, all the candidates post clearing AIBE can enroll themselves in a single register. There need not be any change in Register C, which can be maintained as separate register for persons who get themselves enrolled with a State Bar Council, clear the AIBE and get their license suspended in order to take up a job/employment.

I. Impact of this Court's decision on persons who are provisionally enrolled

24. In the event that this Hon'ble Court holds that the current system of provisional enrolment is invalid and that one would be entitled to enrol and practise as an Advocate only upon clearing the AIBE, it would follow that all those who complete their law course after pronouncement of the judgment (at the end of the current academic year – May 2023) – and also those law graduates who are not provisionally enrolled – would have to necessarily clear the AIBE before they can practice.
25. It would cast a duty upon the Bar Council of India to conduct the AIBE at a suitable time to ensure that those who graduate from the current academic year onwards have the opportunity to appear for the exam and get enrolled upon clearing the same – this would safeguard the rights of those who are currently undergoing their law course and also those who are not provisionally enrolled on the date of the judgment.
26. The second category of persons who would be affected by the judgment would be those who are currently provisionally enrolled and yet to appear in the AIBE – which they have to clear within 2 years from the date of their provisional enrolment. Since, the effect of this judgment would be unsettling the existing practice of enrolment, the principle of prospective effect of invalidation of the rule ought to be applied and those whose rights have crystallized under the current rules ought to be safeguarded, as has been done by this Hon'ble Court in several established cases. [*See V.N. Sunanda Reddy v. State of A.P.*, 1995 Supp (2) SCC 235; *Sreedhara S. v. State of Karnataka*, (2002) 9 SCC 441; *Vithal v. State of Karnataka*, (2004) 10 SCC 162; *A.P. Public Service Commission v. K. Sudharshan Reddy*, (2006) 5 SCC 505.]

27. The rights of this category of persons can be safeguarded by directing that the period of their current provisional enrolment (2 years from the date of said provisional enrolment) remains intact. These persons would have the opportunity to appear for the next AIBE as and when it is conducted – those who are unable to clear it should still have the right to provisionally practice if their period of provisional enrolment subsists. But once the period of provisional enrolment expires, they cannot practice until they clear the AIBE.
28. Since the last AIBE was conducted in October 2021, all those who were got provisionally enrolled before October 2021 had an opportunity to give the AIBE. Those who got provisionally enrolled after October 2021 would have a minimum of two years from the date of their provisional enrolment to clear the AIBE while being able to practice. Ensuring that the BCI conducts the examination at the earliest and periodically would ensure that these persons are not affected in any adverse way.

J. Need for uniformity in practice of State Bar Councils

29. This Hon'ble Court rightly apprehended that issues could arise on account of different practices followed by different State Bar Councils with respect to fees charged for enrolment etc. and documents required for obtaining enrolment by each Bar Council. Onerous fees and cumbersome formalities may act as a deterrent for persons wishing to begin practice of law. The effect of such onerous requirements falls more heavily on persons coming from rural areas and underprivileged backgrounds. Thus, it is desirable that the Bar Council of India exercises its power to issue directions under **Section 48B** to ensure uniformity and fairness of the procedure followed by each of the State Bar Councils.

* * *

Drawn by:

Amartya A. Sharan, Advocate
Rahul Sangwan, Advocate
M.G. Aravind Raj, Advocate
Sivagnanam Karthikeyan, Advocate

Settled by:

K.V. Viswanathan, Senior Advocate

Dated: 03.10.2022



भारतीय विधिज्ञ परिषद् BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

21, Rouse Avenue Institutional Area, New Delhi - 110 002

BCI:D: 15/6 /STBC CIR. NO. 4/ 2013(COUNCIL)

12.4.2013

TO
All The Secretaries
Of All The State Bar Councils

Sirs,

The All India Bar Examination Committee of Bar Council of India at its meeting held on 26th, August, 2012 passed the following Resolution:

" The candidates who are enrolled by the concerned State Bar Councils but are yet to appear and pass the All India Bar Exam (AIBE) , it would be better if the concerned State Bar Councils enroll them provisionally and they are issued Provisional Certificates of enrollments Meaning thereby, the certificate issued to such candidates should bear the word "Provisional" (valid upto) in bold letters. The ID Cards issued to them by the State Bar Councils should also bear the work "Provisional" (Valid Upto.....) in same fashion. The candidates who do not pass AIBE shall not get benefits of the various Welfare Schemes of the State Bar Councils or the Bar Associations. The concerned State Bar Council should intimate this fact to all the Bar Associations. Those candidates should not get the right of voting and if any, Association decides to admit them as its member, their membership should be totally provisional with no voting-right. It is also resolved that just below the word provisional in the certificates or in the ID Cards, it should be made clear that the certificate is valid upto (the period is to be calculated for two years from the date of enrolment and the date after completion of two years should be mentioned after the word upto or till they pass the AIBE (whichever is earlier) . It is also made clear that those who do not pass the AIBE within the said period, will not be given further such provisional certificates till they pass the AIBE and will be ceased to be the advocate till they pass AIBE. After getting success in AIBE, the State Bar Councils shall issue certificates of enrollment and the candidates shall return their provisional certificates to State Bar Councils, the State Bar Councils shall issue certificate/licence only after verifying the Certificate of Practice (COP) issued by Bar Council of India duly signed by Chairman, Bar Council of India and Chairman of concerned State Bar Councils."

Grams : ALINDIABAR, New Delhi
 E-mail : info@barcouncilofindia.org
 Website : www.barcouncilofindia.org



Tel. : (91) 011-4922
 Fax : (91) 011-4922 5

भारतीय विधिज्ञ परिषद् BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

21, Rouse Avenue Institutional Area, New Delhi - 110 002

-2-

The General House of the Bar Council of India considered the Resolution of the All India Bar Examination Committee and accept the decision of the said committee on 26.8.2012

I am enclosing herewith a performa of Undertaking that is to be submitted by the Advocate stating that he will practice as an advocate provisionally till he qualify All India Bar Examination and he shall pass this examination within a period of two years from the date of enrolment whichever is earlier. This undertaking should be taken in the form an affidavit on stamp paper of having value of Rs.10/-.

This is for your information and necessary action.

Thanking you,

Yours sincerely,


 [J.R. SHARMA]
 SECRETARY

Encl: As Above

UNDERTAKING

I, _____ S/o / D/o _____

R/o _____

bearing Enrolment No. _____ have been enrolled in the
State Bar Council _____ in the year _____. I have
obtained law degree during the academic year _____. I have to apply
to the next All India Bar Examination. I undertake that I will practice as an
advocate provisionally till I qualify the All India Bar Examination and I shall pass
this examination within two year from the date of enrolment whichever is earlier.
I further undertake that in case, I do not qualify the All India Bar Examination
within two years from the date of my enrolment, I will not practice as an advocate
before any court in India and I shall be abide by the decisions of Bar Council of
India.

Date : _____ Signature _____

Place : _____ Name _____

Enrolment No. _____

Address _____

Grams : ALINDIABAR, New Delhi
 E-mail : info@barcouncilofindia.org
 Website : www.barcouncilofindia.org



Tel. : (91) 011-4922 5000
 Fax : (91) 011-4922 5011

भारतीय विधिज्ञ परिषद् BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

21, Rouse Avenue Institutional Area, New Delhi - 110 002

BCI:D: 564 /2017 [AIBE/Council]

31.1.2017

To
 The Secretaries
 of all the State Bar Councils

Dear Secretaries,

The office of the Bar Council of India is receiving various queries from different State Bar Councils, seeking clarification as to whether an advocate who has been enrolled for more than two years on State Bar Council Roll, can be allowed to appear in All India Bar Examination X or not.

It is hereby reiterated and clarified any Advocate who has graduated after 1st July, 2010 can appear in All India Bar Examination for as many times as it requires him or her to pass such exam irrespective of the fact that he or she has been enrolled for more than two years as an Advocate on a State Bar Council Roll. The concerned Advocate is only barred from practicing as an advocate, if even after two years of being enrolled as an Advocate on a State Bar Council Roll, he or she is unable to clear/pass the All India Bar Examination.

Thus an Advocate enrolled on a State Roll is not debarred from appearing in the All India Bar Examination and as per Resolution No. 73/2010 dated 30th April, 2010, passed by the General Council of the Bar Council an unsuccessful candidate may appear in the All India Bar Examination, without any limit on the number of attempts, till he or she clears/passes such exam.

The Bar Council of India is also receiving queries regarding the fee being charged in All India Bar Examination-X. It is reiterated and clarified that for All India Bar Examination-X, a fee of Rs. 2500/- is being charged from SC/ST candidates and Rs. 3500/- is being charged from other category candidates.

Thanking you,


 SECRETARY