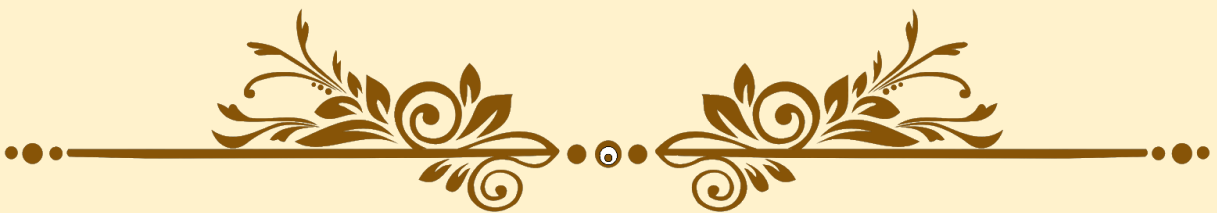


BAR COUNCILS: ENSURING HIGH STANDARDS OF PROFESSIONAL CONDUCT

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Introduction

Dissatisfied with administrative orders passed by the High Court of Punjab & Haryana, severely restricting the nature¹ and number of cases being listed daily through virtual mode, the Punjab and Haryana High Court Bar Association (**‘Bar Association’**), on May 7, 2021, passed a resolution², whereby *inter alia*, a boycott of the court of the Chief Justice was called for, seemingly on account of the latter not cooperating with the Bar Association and not taking into account the problems faced by the general public in the states of Punjab, Haryana and the Union Territory of Chandigarh.

On the same day, i.e., May 7, 2021, the Bar Council of Punjab & Haryana (**‘Bar Council’**), keeping in view the prevailing circumstances, and further citing that the demand made in the resolution to be *‘wholly unjustified and uncalled for’*, injuncted the operation of the resolution³.

¹ Especially those pertaining to those pertaining to life and liberty, and other fundamental rights or involving stay/injunction.

² First reported on May 7, 2021 and copy of resolution available at: <https://www.livelaw.in/news-updates/punjab-and-haryana-high-court-bar-association-resolution-against-chief-justice-ravi-shanker-jha-173782>.

³ *‘Now is the time to Join Hands, 170 Advocates have died’* Upadhyay, Sparsh, reported on May 7, 2021, available at:

What ensued thereafter was a filing of a petition by the Bar Association before the Bar Council of India and the formation of a seven-member council to examine the grievances of the Bar Association in consultation with the Chief Justice. Finally, on May 15, 2021, the Bar Association withdrew the resolution of May 7, 2021.

This episode had raised multiple questions with respect to the nature, manner and roles performed by the Bar Association and the Bar Council respectively. Seminal to this, was the thought that the Bar Association and Bar Council, seemingly operate as independent silos, especially on account of how they were formed/structured and the roles they respectively perform.

Given the difference in the structures of the Bar Association and the Bar Council, can it be suggested that the act of the latter injunctioning the operation of the resolution passed by the former, was an overreach and an affront to the independence of the Bar Association?

This article examines the legality of the actions of the Bar Council in view of the attendant facts, and the applicable provisions of the Advocates Act, 1961 ('1961 Act'), and puts forth the view that Bar Council has acted within the bounds of jurisdiction vested in it by virtue of the 1961 Act.

A. ADVOCATES ACT, 1961: AN OVERVIEW

Entries 77⁴ and 78⁵ of List I in the Seventh Schedule of the Constitution, enumerate the legislative fields of entry where the central government is competent to legislate with respect to *inter alia* the persons entitled to practice before the Supreme Court and the High Courts, respectively.

Similarly, the legislative field of Entry 26⁶ of List III in the Seven Schedule, enables the Central or the State Government to enact laws with respect to *inter alia* the legal profession.

<https://www.livewlaw.in/news-updates/ph-bar-council-stays-hc-bar-associations-resolution-seeking-transfer-of-chief-justice-173804>.

⁴ Entry 77 of List I: 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.

⁵ Entry 78 of List I: Constitution and organization including vacations of the High Courts except the provisions as to officers and servants of High Courts; persons entitled to practice before the High Courts.

⁶ Entry 26 of List III: Legal, medical and other professions.

Keeping in view the aforesaid constitutional provisions, the central government enacted the 1961 Act on May 19, 1961 with a view to ‘*amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar*’⁷.

While the Act extends to the whole of India, however, the chapters and provisions thereof, were brought into force, at different points of time through various notifications⁸.

In view of the above, one need not belabour the point that as far as the legal profession is concerned, the 1961 Act is a complete code which provides for and caters to *inter alia*, promotion of legal education and laying down standards thereof⁹, the accreditation of

⁷ Preamble to the Advocates Act, 1961.

⁸ **Notification**

Date

Provisions

S.O. 1870, dated 7th August, 1961

16-8-1961

Chapters I, II and VII.

S.O. 2790, dated 24th November,

1961 1-12-1961

Chapter III and sub-section (2) of Section 50.

S.O. 2919, dated 13th December, 1961

15-12-1961

Sub-section (1) of section 50.

S.O. 297, dated 24th January, 1962

24-1-1962

Sections 51 and 52.

S.O. 958, dated 29th March, 1962

29-3-1962

Section 46.

S.O. 50, dated 4th January, 1963

4-1-1963

Section 32 and chapter VI [except Section 46, sub-section (1) and (2) of section 50, sections 51 and 52].

S.O. 2509, dated 31st August, 1963

1-9-1963

Chapter V

S.O. 1500, dated 5th April 1969

1-6-1969

Sections 29, 31, 33 and 34 of Chapter IV

In Pondicherry, Pondicherry Gazette,

10-6-1968

Chapters I, II and III, Section 32,

Extra., p. 1, dated 7th June, 1968

Chapters IV, V, VI and VIII.

SO1349(E) dated 09.06.2011

15.06.2011

Section 30

⁹ Section 7 (1) The functions of the Bar Council of India shall be –

(h) to promote legal education and to lay down standards of such education in consultation with the universities in India imparting such education and state bar councils.

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universities/law schools imparting education in law¹⁰, admitting such graduates to the rolls¹¹, laying down standards of professional conduct and etiquette for advocates¹², to deal with cases of misconduct against advocates¹³, recognition of Senior and other advocates¹⁴, disqualification for enrolment¹⁵, power to remove names from roll¹⁶, power to make rules¹⁷, power of High Court to make rules¹⁸, punishment of advocates for misconduct¹⁹, disciplinary powers of Bar Council of India²⁰, appeals to Bar Council of India against orders passed by the disciplinary committee of a state bar council²¹, appeal to the Supreme Court²², and the like.

Thus, from the above, it is palpable that from the moment a person is desirous of enriching herself with legal education, the standards of curriculum being taught, the consequential grant of the degree, and if so desired by such person, the admission into the rolls as an advocate with jurisdictional state bar council, the grant of license, the right of audience in courts of India²³, are all facets that are regulated by or under the 1961 Act or the rules and regulations made therein.

Consequent to the above, one should have considerable reservations in readily accepting any notion that issues pertaining to, arising from or out of the legal fraternity, to the extent they have an effect on the administration or working of the fraternity itself, the state bar councils

¹⁰ Section 7 (1) The functions of the Bar Council of India shall be –

(i) to recognize universities whose degree in law shall be qualification for enrolment as advocate and for that purpose to visit and inspect Universities or cause the state bar councils to visit and inspect universities in accordance with such directions as it may give in this behalf.

¹¹ Section 6 (1) the functions of a state bar council shall be – (a) to admit persons as advocates on its rolls.

¹² Section 7 (1) the functions of the Bar Council of India shall be: (b) to lay down standards of professional conduct and etiquette for advocates.

¹³ Section 6 (1) the functions of a state bar council shall be – (c) to entertain and determine cases of misconduct against advocates on its rolls.

¹⁴ Section 16 of the 1961 Act.

¹⁵ Section 24A of the 1961 Act.

¹⁶ Section 26A of the 1961 Act.

¹⁷ Section 15 of the 1961 Act.

¹⁸ Section 34 of the 1961 Act

¹⁹ Section 35 of the 1961 Act.

²⁰ Section 36 of the 1961 Act.

²¹ Section 37 of the 1961 Act.

²² Section 38 of the 1961 Act.

²³ Section 30: Right of Advocate to practice: Subject to the provisions of this Act, every advocate whose name is entered in the state roll shall be entitled as of right to practice throughout the territories to which this act extends

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- (i) in all the courts including the Supreme Court;
 - (ii) before any tribunal or person legally authorized to take evidence; and
 - (iii) before any other authority or person whom such advocate is by or under any law for the time being in force entitled to practice.

are bereft of any power to deal with it, should a situation so arise, especially given the overarching regulatory role given to state bar councils under the 1961 Act.

This is more so when certain other provisions of the 1961 Act are taken note of, i.e., the 1961 Act envisages formulation of statutory body having perpetual seal and succession²⁴, which for the purposes of state of Punjab and Haryana, and the Union Territory of Chandigarh is to be known as the Bar Council of Punjab and Haryana²⁵.

The members, forming part of the Bar Council are those, amongst others, as provided in Section 3 (2) of the 1961 Act, while Section 3 (3) provides for creation of posts of Chairman and Vice-Chairman. Section 3(4) enjoins an advocate from voting in an election till the disqualification so imposed upon her/him, subsists.

A similar structure is provided for the Bar Council of India under Section 4 (1) of the 1961 Act, save and except the fact that the ex-officio members thereof are the Attorney General of India, the Solicitor General of India and one member elected by each State Bar Council from amongst its members. Furthermore, the creation of posts of Chairman, Vice Chairman, the term of an office member and the like are provided under sub-sections (2) – (3) thereof.

Next in the seriatim of sections of the 1961 Act, are those pertaining to the functions of the state bar councils and the Bar Council of India, under Sections 6 and 7 respectively, reference, albeit in brief, to some provisions thereof, has been made in the preceding paragraphs, however, as these provisions are foundational to the view put forth in this article, they are being reproduced below for exactitude and coherence –

“Section 6: Functions of State Bar Councils

- 1) *The functions of a State Bar Council shall be –*
 - a. *to admit persons as advocates on its roll;*
 - b. *to prepare and maintain such roll;*
 - c. *to entertain and determine cases of misconduct against advocates on its roll;*

²⁴ § 5 Bar Council to be body corporate: Every bar council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract and may by the name by which it is known, sue and be sued.

²⁵ § 3(1) There shall be a Bar Council (d) for the state of Punjab and Haryana, and the Union Territory of Chandigarh to be known as the Bar Council of Punjab and Haryana.

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- d. to safeguard the rights, privileges and interests of advocates on its roll;
 - (dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section and clause (a) of sub-section (2) of section 7;
 - e. to promote and support law reform;
 - (ee) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest;
 - (eee) to organize legal aid to the poor in the prescribed manner;
 - f. to manage and invest the funds of the Bar Council;
 - g. to provide for the election of its members;
 - (gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section (1) of section 7;
 - h. to perform all other functions conferred on it by or under this Act;
 - i. to do all other things necessary for discharging the aforesaid functions.
- 2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of –
- a. giving financial assistance to organize welfare schemes for the indigent, disabled or other advocates;
 - b. giving legal aid or advice in accordance with the rules made in this behalf;
 - c. establishing law libraries.
- 3) A State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.

Section 7: Functions of Bar Council of India

1. The functions of the Bar Council of India shall be-
- a) [** *]
 - b) to lay down standards of professional conduct and etiquette for advocates;
 - c) to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council;
 - d) to safeguard the rights, privileges and interests of advocates;
 - e) to promote and support law reform;
 - f) to deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council;
 - g) to exercise general supervision and control over State Bar Councils;
 - h) 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;
 - i) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect

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- Universities 3[or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf;*
- (ia) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest;*
- (ib) to organize legal aid to the poor in the prescribed manner;*
- (ic) to recognize on a reciprocal basis foreign qualification in law obtained outside India for the purpose of admission as advocate under this Act;]*
- j) to manage and invest the funds of the Bar Council;*
- k) to provide for the election of its members;*
- l) to perform all other functions conferred on it by or under this Act;*
- m) to do all other things necessary for discharging the aforesaid functions.*
2. *The Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of—*
- a) giving financial assistance to organize welfare schemes for indigent, disabled or other advocates;*
- b) giving legal aid or advice in accordance with the rules made in this behalf;*
- c) establishing law libraries.*
3. *The Bar Council of India may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that Sub-section.”*

[Emphasis Supplied]

Apart from the generality of the functions as specified hereinabove, it is seen that a state bar council, as also, the Bar Council of India, both are tasked with ‘*safe-guarding the rights, privileges and interest of advocates*’²⁶, further, while a state bar council is to entertain and determine cases of misconduct against an advocate registered on its rolls²⁷, it is the Bar Council of India, which is to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each state bar council²⁸.

Significantly, per Section 6 (1) (dd) of the 1961 Act, as effective from December 26, 1993, a state bar council is also tasked with promoting the ‘*growth of Bar Associations for the purposes of effective implementation of welfare schemes referred to in clause (a) of sub-section (2)*’ of that section, or Section 7 (2) (a) of the 1961 Act.

²⁶ Section 6 (1) (d) and Section 7 (1)(d) of the 1961 Act, respectively.

²⁷ Section 6 (1) (c) of the 1961 Act.

²⁸ Section 7 (1) (c) of the 1961 Act.

Thus, Bar Council itself is to foment, propagate, and otherwise provide for an environment conducive for bar associations to be formed, for the welfare of the advocates themselves. It would also be worthwhile to note here that this statutory function/ duty on the state bar councils is nothing but another manifestation of right to form associations or unions as provided under Article 19 (1) (c) of the Constitution²⁹.

Consequently, any view to the effect that beyond the space voluntarily been ceded by the bar associations, state bar councils or the Bar Council of India cannot interfere in the functioning of the Bar Associations³⁰, seems to immediately lose its luster, as it is rather the Bar Council, which is statutorily bound to encourage advocates to form associations.

Rather, the aforesaid provisions would suggest that the issue then turns to as to under what circumstances, if at all any, can the Bar Council or the Bar Council of India, as the case may be, interject upon the functioning of the Bar Association, as is examined in the ensuing part.

B. LEGALITY OF BAR ASSOCIATION RESOLUTIONS REQUIRING ADVOCATES TO ABSTAIN FROM WORK: FLOGGING A DEAD HORSE

To recapitulate, the resolution of May 7, 2021, called for *inter alia* ‘transfer of Hon’ble Chief Justice of Punjab & Haryana High Court to some other High Court’ and pending which, ‘his court would be boycotted by all Hon’ble Members of the Punjab & Haryana High Court Bar Association, Chandigarh’.

As far as the second aspect of the resolution, pertaining to abstinence from work is concerned, its lack of legality needs no further elaboration, save and except that a five judges bench in ‘*Ex.-Capt. Harsh Uppal v Union of India and Anr.*’³¹, have held that such calls/resolutions by whatever name called, are –

“20. ...*ex facie bad in view of the decision in Mahabir Prasad Singh case, (1999) 1 SCC 37. The advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.*”

²⁹ Article 19 (1) All citizens shall have the right to form associations or unions or co-operative societies.

³⁰ ‘*Bar Councils: A Story of misplaced priorities amid a raging pandemic*’, Jaiswal, Amit, 12.06.2021, available at:

<https://www.barandbench.com/columns/bar-councils-a-story-of-misplaced-priorities-amid-a-ranging-pandemic>.

³¹ (2003) 2 SCC 45.

Furthermore, while holding so, the Supreme Court has, while noticing the provisions of the 1961 Act, placed the onus on state bar councils, as also, the Bar Council of India, by observing –

“21. It must also be remembered that an advocate is an officer of the court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the court. They owe a duty to their clients. Strikes interfere with administration of justice. They cannot thus disrupt court proceedings and put the interest of their clients in jeopardy. In the words of Mr. H.M Seervai, a distinguished jurist...

...

*23... The submissions made based on the Advocates Act are also without merit. Section 7 of the Advocates Act provides for functions of Bar Council of India. None of the functions mentioned therein authorise paralyzing of the working of courts in any manner. On the contrary, the Bar Council of India is enjoined with the duty with of laying down standards of professional conduct and etiquette for advocates. this would mean that the Bar Council ensures that advocates do not behave in an unprofessional and unbecoming manner. Section 48-A gives a right to the Bar Council of India to give directions to the State Bar Councils. **The Bar Association may be separate bodies but all advocates who are members of such associations are under disciplinary jurisdiction of the Bar Councils and thus the Bar Councils can always control their conduct. Further, even in respect of disciplinary jurisdiction the final appellate authority is, by virtue of Section 38, the Supreme Court.***

...

25. In the case of Supreme Court Bar Assn. v Union of India [(1998) 4 SCC 409], it has been held that professional misconduct may also amount to contempt of court (para 21). It has further been held as follows (SCC pp. 444-46, paras 79-80)

...

*Thus, a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of courts and majesty of law and to prevent interference in administration of justice. In our view, it is the duty of Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct. **This being their duty no Bar Council can even consider giving a call for strike or a ball for boycott. It follows that Bar Councils and even Bar Associations can never consider or take seriously any requisition calling for a meeting to consider a call for strike or a call for boycott. Such requisitions should be consigned to the place where they belong, viz., waste-paper basked. In case any Association calls for a strike or a call for boycott the State Bar Council concerned and, on their failure, the Bar Council of India must immediately take disciplinary action against the advocates who give a call for strike and if the Committee members permit calling of a meeting for such purpose, against the Committee Members...***

[Emphasis Supplied]

The aforesaid passage shows that the Supreme Court has negated the contention that bar associations are independent are separate from bar councils, and rather holds all bar associations to be under the disciplinary control of the jurisdictional state bar councils. A similar ruling has been rendered by a three-judge bench of the Supreme Court in *Common Cause, A Registered Society & Others v. Union of India*³².

Thus, it is apparent that such calls/requisitions requiring abstinence from work, have, at the very least, been ruled to be a conduct unbecoming of an advocate, for which as noticed in this part, the Bar Council, has power to take disciplinary action.

C. MISCONDUCT AND POWER TO TAKE ACTION BY STATE BAR COUNCILS :

The term ‘*conduct unbecoming of an advocate*’, is to be understood in light of Section 7 (1) (b) and Section 6 (1) (c) of the 1961 Act, pertaining to the standards of professional conduct, etiquette and entertaining cases of misconduct against advocates, respectively.

Though the 1961 Act, does not define the term misconduct, but per the ruling of Supreme Court in *Noratanmal Chouraria v M.R. Murli and Another*³³, it has been held to be –

“7. *Misconduct has not been defined in the Advocates Act, 1961. Misconduct, inter alia envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which however, is wide enough to include wrongful omission or commission, whether done or omitted to be done intentionally or unintentionally. It means ‘improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard behaviour.’*”

8. *Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law.*

...

11. *Section 35 of the Advocates Act, however, refers to imposition of punishment for professional or other misconduct. A member of the legal profession which is a noble one is expected to maintain standard in a dignified manner. the standard required to be maintained by the member of the legal profession must be commensurate with nobility thereof....*”

[Emphasis Supplied]

³² (2006) 9 SCC 295.

³³ (2004) 5 SCC 689.

Similarly in *R.D. Saxena v Balram Prasad Sharma*³⁴, it has been held that the term ‘misconduct’ is to be understood in reference to the subject matter and context where such term occurs. ‘*It literally means wrong conduct or improper conduct*’.

Again, in *D.P. Chadha v Triyughi Narain Mishra & Ors.*³⁵, another three-judge bench of the Supreme Court, while dealing with professional misconduct under the 1961 Act have held that *inter alia* –

“20. A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time, misconduct is not necessarily something involving moral turpitude. It is relative term to be construed with by reference to the subject-matter and the context wherein the term is called upon to be employed....

However, a point of law well settled or admitting no controversy must not be dragged into doubt solely with a view to confuse or mislead a judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupported by law, but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent...”

[Emphasis Supplied]

Upon a cumulative reading of the ratio laid down in *Harsh Uppal* (Supra), *Noratanmal* (Supra), *R.D. Saxena* (Supra), and *D.P. Chadha* (Supra) would show that where such calls/requisitions as that issued on May 7, 2021, were issued, then not only would it be in the fitness of things, but also, the statutory requirement of the Bar Council to act in a manner deemed fit by it.

This is more so, when the first part of the resolution called for a transfer of a sitting High Court judge to another high Court, an exercise which is to be carried out as per Article 222³⁶

³⁴ (2000) 7 SCC 264.

³⁵ (2001) 2 SCC 221.

³⁶ Article 222 of the Constitution: Transfer of a Judge from one High Court to another –(1) The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court. (2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the constitution (Fifteenth Amendment Act, 1963, as a Judge of the other High Court, be entitled to receive in

of the Constitution and all the implications thereof as decided in the multitude of the Judges transfer cases, *First, Second* and/or *Third*.

D. ORGANIZATIONAL OR INCORPORATION STATUS OF ASSOCIATIONS AND OVERSIGHT BY REGULATORY BODIES

While in Part B of this article, it has been noticed that the Supreme Court had in *Harsh Uppal* (Supra), rejected the contention that a bar association being a separate entity, is not under the disciplinary jurisdiction of the jurisdictional state bar council, however, it may be worthwhile to examine whether the status of formation of an association i.e., either as company with charitable objects etc.³⁷, or under the Societies Registration, 1860 ('**Societies Act**'), or any other mode whereby individuals can accumulate for a common purpose, have any effect vis-à-vis the regulatory oversight under which such professionals perform their roles.

In other words, can a group of professionals, having formed an association, claim themselves to be devoid of the legislative oversight mandated under any law, specifically those under whom they have been granted accreditation and the right to practice their profession?

Take for instance medical professionals, say dentists, form an association under the Societies Act, can such members claim autonomy from the institution /medical body under which they have been registered and granted license to practice their profession, that too, merely on the basis of registration under the Societies Act, to which seemingly different sets of laws apply?

To this, it is suggested that the requisite regulatory body, be it for medical professionals or for advocates, is *agnostic* to the institutional or organizational structure under which such professionals register their association, as their calling is the profession for which they are

addition to his salary such compensatory allowance as may be determined by Parliament by law, and until so determined, such compensatory allowance as the President by order fix.

³⁷ Companies Act, 2013, § 8.

licensed to practice and the members are thus amenable to the regulatory oversight of such profession.

Moreover, and even otherwise, the contention that registration of an association under the Societies Act, would somehow provide safe harbour from regulatory oversight, as had also been contended by the Board of Control of Cricket in India, being a body registered under the Tamil Nadu Societies Registration Act, 1975, has already been rejected by the Supreme Court in *Board of Control of Cricket in India v Cricket Association of Bihar and Ors.*³⁸, wherein, while dealing with the recommendations made by the Justice Lodha Committee Report, which *inter alia* dealt with changes to be made in the functioning of the BCCI, it has been held that *inter alia* –

“61. In D.A.V. College v. State of Punjab [(1971) 2 SCC 269], this Court was examining the validity of a legislation that provided for compulsory affiliation of religious or linguistic minority institutions to the University. It was contended that the requirement of compulsory affiliation was in violation of their right of freedom of association guaranteed under Article 19 (1) (c). This Court, however, rejected that contention and held that the notification providing for compulsory affiliation with the University did not interfere in any manner or attempt to interfere with the petitioners’ right to form an association under Article 19 (1) (c). This Court said: (SCC pp. 280-81, paras 29-30) –

“29. It is contended that the compulsory affiliation of the petitioners to the University affects their fundamental right of freedom of association as guaranteed under Article 19 (1) (c), therefore, the notification under Section 5 (3) affiliating them to the University is bad. It is also urged that since the words ‘associated with and admitted to any privileges’ are used in Section 5 of the Act, it would mean that petitioners are compulsorily formed into an association with the University. This contention is countered by the respondents who point out that the freedom of association under Article 19 (1) (c) implies association between citizens while in the case of the petitioners what is sought to be affected is an affiliation within the University which is a corporate body.

*30. The right to form an association implies that several individuals get together and form voluntarily an association with a common aim, legitimate purpose and having a community of interests. It was sought to be suggested that the compulsory affiliation with the University affects the aims and objects of the association, as such its freedom is infringed. **There is in our view a fallacy in this argument which on earlier occasions had also been repelled. In All-India Bank Employees’ Assn. v National Industrial Tribunal [AIR 1692 SC 171] it was observed that the right guaranteed under Article 19 (1) (c) does not carry with it a concomitant right that the associations shall achieve their object such that any interference in such achievement by any other law would be unconstitutional unless it could be justified under Article 19 (4) as being in the interest***

³⁸ (2016) 8 SCC 535.

of public order or morality. The right under Article 19 (1) (c) extends, inter alia to the formation of an association or union.

...

100. We may, in conclusion, deal with two other recommendations which have also come under criticism by BCCI and the intervening Associations.... **The contentions that the recommendations have no rationale or that the same are contrary to the provisions of the Tamil Nadu Societies Registration Act, deserve notice, only to be rejected.**”

[Emphasis Supplied]

Accordingly, it is seen that none of the decisions, namely, *Harsh Uppal (Supra)*, *D.A.V. College (Supra)* or *BCCI (Supra)*, lend themselves to admit or even remotely permit, a complete free hand to associations registered under any law for the time being in force, being complete unbridled or controlled by any other law, which in the present case would be the 1961 Act. Consequently, it would appear that refuge behind the Societies Act, is limited at best.

E. ORDER OF THE BAR COUNCIL AND REFERENCE TO THE BAR COUNCIL OF INDIA

As yet, the article has taken into account the action of the Bar Association, the injunction imposed by the Bar Council against such action. It would now be appropriate to take note of the legislative provisions under which the order of the Bar Council of India of May 10, 2021³⁹, came about.

As per reports⁴⁰, the Bar Association, preferred a ‘*revision petition*’ before the Bar Council of India, against the order passed by the Bar Council, along with an application seeking a stay of operation of the order of the Bar Council.

³⁹ ‘*Such type of politics cannot be allowed*’ Published on 11.06.2021, available at: <https://www.barandbench.com/news/bci-hcba-resolution-punjab-haryana-hc-chief-justice-court>.

⁴⁰ ‘*Bar Council of India Resolves issue between Punjab and Haryana High Court Bar Association and Bar Council*’, published on 17.05.2021, available at: <https://www.indialegallive.com/top-news-of-the-day/news/bar-council-of-india-punjab-and-haryana-high-court-bar-association-bar-council/>.

While a copy of the petition is not readily available in the public domain, however, a reading of the 1961 Act would suggest that such a petition would have likely been filed under Section 37⁴¹ thereof.

The filing of the petition by the Bar Association, would reasonably suggest that, to some extent, there is an admission that the Bar Council exercises regulatory control over the Bar Association. The aforesaid is of course subject to the caveat that as the petition itself is not readily available, the Bar Association may have also not admitted the regulatory oversight of the Bar Council, in which case, the points as urged in parts B – D of this article, would apply.

Be that as it may, it had been reported⁴² that the Bar Council of India had, through its order of May 10, 2021, refused to grant an interim stay/injunction on the application so preferred by the Bar Association. Furthermore, a seven-member council constituted who were tasked to seek resolution of all grievances

Thereafter, a respectable resolution to the whole saga was achieved and the Bar Association had, through its press-note of May 15, 2021 had withdrawn the earlier resolution of May 7, 2021.

F. CONCLUSION –

Keeping in view the regulatory role to be performed the Bar Council under the 1961 Act, as also, other functions and duties as delineated therein, it is put forth that the Bar Association cannot be viewed from the prism of being an unregulated, unbridled collection of individuals which would have no regulatory oversight.

⁴¹ Section 37 of the 1961 Act: Bar Council of India: (1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made under section 35 or the Advocate General of the State may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.

(2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order 2[including an order varying the punishment awarded by the disciplinary committee of the State Bar Council] thereon as it deems fit. Provided that no order of the disciplinary committee of the State Bar Council shall be varied by the disciplinary committee of the Bar Council of India so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.

⁴² *'Such types of politics'* (*Supra*).

Rather the Bar Councils while exercising regulatory functions over all associations within its jurisdiction are statutorily mandated to foster the growth of such associations. Such oversight of the Bar Council cannot be said to impinge upon the independence of the bar association, till such time the oversight seeks to ensure that the high standards of professional conduct expected of an advocate are maintained.

Finally, the orders of the Bar Council and the Bar Council of India would lend themselves to suggest that the action of the Bar Association as contemplated under the resolution of May 7, 2021 is neither palatable, nor legally sustainable however, some other form of collective bargaining would need to be devised, which would, while keeping in line with the standards of professional conduct as mandated under the 1961 Act and expected of an advocate, achieve the intended objective, should a similar situation present itself in future.

G. POSTSCRIPT

While I have endeavored to put forth my views in a steadfast manner, I may hasten to add that the views so expressed are merely examining the legal provisions involved. I must make a special mention of the actions taken by the Bar Association to ameliorate the situation of advocates suffering on account of the pandemic, which includes, but is not limited to, collection of a sum of Rs. 30,21,351.00/- as on June 10, 2021, to be utilized for the benefit of the members, organization of vaccination drives for the members and their family members, being able to arrange for a grant of funds from the Government of Punjab through its letter no. 453, dated May 25, 2021, and the like.

