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## **BARRIERS TO THE BAR: EXAMINING THE LEGALITY OF EXCESSIVE ENROLMENT FEES IN INDIA**

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### **ABSTRACT**

This article explores the topic of enrolment fees set by State Bar Councils in India and their effects on accessibility to the legal profession. It outlines the legal structure under the Advocates Act, 1961, especially Section 24, and emphasizes the marked difference between the established enrolment fees and the much larger sums imposed in reality throughout various states. The research examines the historical changes in enrolment fees and thoughtfully critiques the inconsistency and lack of clarity in how they are established. It contends that these inconsistencies establish financial obstacles for future advocates, compromising constitutional values of equality, dignity, and the right to pursue a profession under Articles 14, 19(1)(g), and 21. This paper highlights the necessity for regulatory reform and standardization through the perspective of the Supreme Court's ruling in *Gaurav Kumar v. Union of India* (2023). It ends by promoting a fairer fee system, backed by financial assistance tools, to guarantee that access to the legal field is determined by merit instead of financial means.

## Introduction

In order to receive a Certificate of Practice and become a licensed advocate in India, prospective advocates must first register with a State Bar Council and then pass the All India Bar Examination (AIBE).<sup>1</sup> The high enrolment cost that different State Bar Councils impose, however, is a major obstacle in this procedure. Many prospective advocates may find it difficult to pay the exorbitant fees these councils demand, raising the question of whether they are justified. This problem emphasizes the necessity of striking a compromise between guaranteeing the calibre of legal practitioners and granting entry to the field to all eligible candidates.

### What is meant by enrolment fee?

An "enrolment fee" levied on lawyers means a fee that has to be paid compulsorily by a fresh lawyer<sup>2</sup> to his/her respective State Bar Council to register himself/herself as a practicing lawyer, after which the individual is entitled to attempt the All India Bar Examination (AIBE), provided that if the individual clears the exam, he/she is entitled to practice law within the jurisdiction legally. The fee is normally prescribed under the Advocates Act, 1961<sup>3</sup> and is a fixed one and an additional amount has to be paid to the Bar Council of India in some cases.

### Advocates Act, 1961<sup>4</sup>

After India's independence and the enforcement of the Constitution in 1950, an annual meeting of the Inter-University Board in Madras passed a resolution highlighting the need for an All India Bar to bring uniformity in legal standards and law examinations across universities. A committee, including the Attorney General of India, retired judges, and the Advocate General of Madras, submitted a detailed report in March 1953. The report proposed establishing bar councils in each state and an All India Bar Council to regulate the profession. In 1961, the Advocates Bill was introduced to Parliament, implementing these recommendations, and was enacted as the Advocates Act, 1961, which still regulates the legal profession today.

The Advocates Act, 1961, provides rules and regulations governing the conduct of advocates

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<sup>1</sup> Bar Council of India, *Bar Council of India*

<sup>2</sup> Shashwat Kaushik, *Admission and Enrolment of Advocates*

<sup>3</sup> Michael Shriner, Monesh Mehndiratta, 'Advocates Act, 1961'

<sup>4</sup> The Advocates Act, No. 25 of 1961

and legal practice. The present Act of 1961 has been enacted to implement the recommendations of the All India Bar Council Committee, along with the 14th report of the Law Commission in 1955. The purpose of the Act is to outline the qualifications of an advocate, his or her registration and enrolment, provisions for the conduct of advocates, constitution of bar councils, etc.

### **Section 24, Advocates Act, 1961**

Section 24<sup>5</sup> of the aforementioned act addresses the parameters for the ‘Persons who may be admitted as advocates on a state roll’. These include:

1. He is a citizen of India.
2. He has completed the age of twenty-one years;
3. He has obtained a degree in law, that is either three years long or part of a five year integrated law program.

If the said individual is able to meet the requirements to become an advocate, they are to register with their respective State Bar Council. Followed by the said individual must have paid the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 (2 of 1899)<sup>6</sup> and an enrolment fee payable to the State Bar Council of India. Following that if a person is a member of the schedule castes or the schedule tribes and they are able to produce a certificate to sustain the same should provide it to the relevant authorities. The enrolment fee that he must pay to the State Bar Council may differ from the general category.

### **History of enrolment fee**

The history of the enrolment fee goes back to the pre-independence era. It started off with the introduction of the Legal Practitioners Act of 1879<sup>7</sup>. This legislation established the basis for legal practice, including the enrolment fees. Prior to this time the legal practice was not formalised and it was less regulated. Under the British regime, the law graduates had to enroll themselves with the respective High Courts to practice, at different levels such as:

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<sup>5</sup> The Advocates Act, No. 25 of 1961, § 24 (India)

<sup>6</sup> The Indian Stamp Act, No. 2 of 1899 (India)

<sup>7</sup> The Legal Practitioners Act, No. 18 of 1879 (India) (repealed)

1. Advocates
2. Vakils and,
3. Pleaders

There was also disparity between the enrolment fee each had to pay, with advocates were made to pay the highest level of fees followed by vakils and pleaders. The amount of fee charged by each presidency (Bombay, Madras and Calcutta) was different and varied over time. One of the interesting observations is that under The Advocates Act of 1961 under S.24(1)(f) prescribes the enrolment fee payable to the State Bar Council as Rs. 600/- and Rs 150/- towards the Bar Council of India for advocates belonging to the general category. For advocates belonging to SC/ST categories, the amounts are Rs.100 and Rs.25 respectively. In some States, the enrolment fee goes to the extent of Rs.40,000.<sup>8</sup>

### **Why is there disparity between states and their fee structure?**

The varied enrolment fee policies throughout Indian state bar councils highlight the necessity of a more harmonic approach to legal education and professional entry criteria. A more fair legal profession that maintains the values of justice and inclusivity would depend much on a recalibration of BCI supervision coupled with customized state-level measures encouraging accessibility. Variations in the enrolment fees submitted by advocates in India between state bar councils create significant legal and policy issues about equity, access, and regulatory control. Although the Bar Council of India (BCI) offers a general regulatory framework, state bar councils have great latitude in deciding their own rates of fees

Ex-Chief Justice of India DY Chandrachud had called for democratization of the legal profession by eliminating feudalistic elements such as financial hurdles and access to a level playing field for first generation lawyers<sup>9</sup>.

The then CJI requested State Bar Councils all over the nation to revisit the fee structure for registration to their respective bar councils.

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<sup>8</sup> Anmol Kaur Bawa, Bar Councils Can't Collect Any Amount Exceeding Fee Specified Under § 24 of Advocates Act for Enrollment: Supreme Court, LiveLaw (July 30, 2024)

<sup>9</sup> Amisha Shrivastava & Sharmeen Hakeem, Revisit High Enrolment Fee to Bar Councils, We Aim to Provide Judgments in All Languages: CJI Bats for Democratisation of Legal Profession, LiveLaw (Jan. 21, 2023)

The enrolment fee for Indian advocates is not standard throughout the nation; instead, it is quite different from one state to the other. What makes the disparity here so remarkable is that the reason behind such variation is usually not distinct and does not clearly appear in the form of open explanation. The difference would be attributed to tangible things like the population size, density of lawyers, financial position of the state bar councils, or even the number of advocates being registered annually. But in fact, no such pattern is found. The variation seems to be random, having no rational or uniform basis that can be perceived at first sight. This absence of a logical basis brings into question whether the setting of the fee is subject to traditional practices, administrative expediency, or imbalanced policy decision-making at the state level. Consequently, the process of enrollment, although controlled by the Advocates Act, 1961 at a federal level, reflects differences at the state level that lead to misunderstanding on the part of future lawyers, with them wondering why two people entering into the same career in different states are supposed to pay different amounts for the same purpose.

According to the provisions under the Advocates Act, 1961, the enrolment fee to be levied by a State Bar Council has been specifically prescribed: Rs. 600 for general category candidates and Rs. 100 for candidates belonging to the Scheduled Castes and Scheduled Tribes. But in practice, this statutory norm has not been complied with uniformly throughout the country. Rather, most states have designed their own fee structures, frequently with no ceiling, leading to wide and frequently inexplicable variations.

For example, in Uttar Pradesh, the enrolment fee has been set at around Rs. 16,665, while in Uttarakhand it goes higher to around Rs. 23,650. Kerala also levies a high figure, charging new entrants nearly Rs. 20,500. These numbers themselves are already a stark deviation from what the central law initially planned. However, the most impressive numbers come when states like Odisha and Meghalaya are compared. Odisha charges a very high amount of Rs. 42,100, the highest for an advocate to apply for enrolment. Conversely, Meghalaya is the extreme at the other end, with the lowest fee in India with only Rs. 750<sup>10</sup>, thus proving the presence of no uniformity or logical basis of these state-level requirements.

Such divergence becomes more complicated due to the absence of transparency behind the logic for such huge differences. The disparities cannot be explained using traditional metrics

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<sup>10</sup> Press Trust of India, State Bar Councils Cannot Charge Exorbitant Fees for Enrolling Law Graduates as Lawyers: SC, *Econ. Times (India)* (July 30, 2024)

like the number of practicing attorneys in the state, state population, or cost of administration. Rather, what one sees is a patchwork system in which each state operates separately, without respecting the spirit of equality as dreamed up by the central law. This has not just created confusion for law graduates applying for enrolment but also raised questions of accessibility and justice. Why should one candidate, for the same professional credential, pay Rs. 42,100 in Odisha and another pay a fraction of it in Meghalaya? Such disparities create an uneven playing field among advocates at the very threshold of their careers, adding unnecessary financial burdens on some while offering leniency in other regions. What is the reason behind such variation between the states of the same nation? The reason being the State Bar Council of Odisha imposes various other charges which are under the category of enrolment charge. The rest of the charges are welfare schemes for example, Welfare fund, advocates welfare fund (state bar council), other schemes (death, accidental, retirement or pension funds). The rest of the fees encompass application/enrolment form fees and miscellaneous fees (in Odisha, it includes the Secretary, BCI fees). All this when summed up provides the grand total of Rs. 42,100.<sup>11</sup>

This autonomy has resulted in a lack of consistency, affecting new recruits into the legal profession and generating concerns about financial barriers to access to justice.

### **Problem now**

Access to the legal profession is an integral part of justice, yet the high enrolment fees imposed by the Bar Council of India (BCI) pose barriers that are financial in nature and, hence, impinge upon the cause of students from poorer families who wish to become lawyers. These costs, which are often exorbitant in various states, severely limit opportunities for those who cannot afford them. This severely opposes the very idea of law education which was to be made accessible to all and not just for a few affluent individuals. Seeing that legal education is terribly expensive, these additional enrolment fees serve as disincentives for students from poor economic backgrounds to join the profession. This results in serious constitutional violations within the definition of Articles 14<sup>12</sup> and 21<sup>13</sup>, which guarantee equality and the right to a livelihood. Diversity within the legal profession is essential-yet high fees dissuade

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<sup>11</sup> Bar Council of India, Table Showing Enrolment Fees of All State Bar Councils in India with Respective Fee Structure (2021)

<sup>12</sup> INDIA CONST. art. 14

<sup>13</sup> INDIA CONST. art. 21

representation from underprivileged areas, further entrenching existing imbalances. It is quintessential for reforming the fee structure of BCI for equitable access.

### **Ethical issue**

Enrolment regulations that have significant financial implications impede aspiring lawyers deeming the barriers in entry to be high. Such rich-poor dichotomization becomes a factor in favour of extinction for an otherwise vibrant organism called diversity and inclusivity within the legal profession.

1. **Economic Discrimination:** It sharply discriminates against candidates from less wealthy backgrounds, auguring poorly for diversity and inclusivity in the legal profession.
2. **Violating Equal Opportunity:** It is in violation of Article 19(1)(g) of the Constitution of India, guaranteeing to every citizen the right to any profession.
3. **Unaccountability:** The ambiguity surrounding the expenditure of collected amounts is indeed one of the causes for these misgivings against the very accountability and management of these funds<sup>14</sup>.
4. **Potential Conflict of Interest:** Excessive fees imposed by regulatory authorities without a valid motive may draw suspicion that they are assessing pecuniary gain over professional welfare.

### **Gaurav Kumar v. Union of India and Ors. (2023)**

To be admitted as an advocate, one must meet specific qualifications outlined in Section 24 of the Act.

Section 24(1)(f) stipulates the enrolment fees payable to SBCs and BCI.

SBCs charge additional fees beyond the statutory enrolment fees, ranging from Rs.15,000 to Rs.42,000 in total.

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<sup>14</sup> Anmol Kumar Bawa, Exorbitant Enrolment Fees Charged by State Bar Councils Violate Right to Profession, Dignity and Equality: Supreme Court, LiveLaw (July 30, 2024)

Legal Provisions discussed in the case<sup>15</sup>

1. Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
2. Article 19(1) (g)<sup>16</sup>: All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business.
3. Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.

### **Court's Observation in the case**

The Court held that exorbitant enrolment fees charged by State Bar Councils (SBCs) violate an aspiring lawyer's right to choose a profession and dignity under Articles 19(1)(g) and 21 of the Constitution. The bench led by CJI DY Chandrachud and Justices JB Pardiwala and Manoj Misra held in the case that the enrolment fee cannot exceed Rs.750 for advocates belonging to the general category and Rs.125 for advocates belonging to SC/ST categories.<sup>17</sup>

The Court ruled that SBCs and BCI cannot demand payment of fees other than the stipulated enrolment fee and stamp duty as a precondition to enrolment.

### **Conclusion**

A well-organized financial aid program, need-based, complemented by waivers for certain disadvantaged candidates, would help maintain the fairness of the entire setup while keeping in mind the integrity of professional standards. The legal profession must first embody justice before it can serve justice; entry into the field must be on merit, not financial privilege, for it to serve that purpose.

The legal policy implications of these discrepancies, however, call for an examination of the uniformity of regulations and the BCI's role in maintaining fairness. The establishment of a baseline pricing model, combined with financial aid mechanisms like as scholarships or

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<sup>15</sup> Gaurav Kumar v. Union of India, Writ Petition (C) No. 352 of 2023 (India).

<sup>16</sup> INDIA CONST. art. 19, cl. 1(g).

<sup>17</sup> Sparsh Upadhyay, Fresh Enrolments with UP State Bar Council: Delayed Process, Anxious Candidates & Dreams on Back-Burner, LiveLaw (Dec. 30, 2024)

instalment-based payment choices, could help to reduce these barriers while maintaining important regional flexibility.