



भारतीय विधिज्ञ परिषद् BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

21, Rouse Avenue Institutional Area, Near Bal Bhawan, New Delhi - 110002

BCI:D:5228/2022

Date: 13.09.2022

To,

The Secretary/ies of
 State Bar Councils.

Sub.: Resolution of Bar Council of India dated 06.08.2022 vide Item No.216/2022 for consideration, approval, views and opinion of State Bar Council/s and through them of the Bar Association/s.

Sir(s)/Ma'am(s),

The Council vide it's Council Meeting dated 06.08.2022 vide Item No.216/2022 considered the issue relating to enrolment of Mr. Daeyoung Jung, a Korean National in the State Bar Council of Delhi. The Council also considered the proceedings in the High Court of Delhi in the matter of Mr. Daeyoung Jung Vs. Bar Council of India & Another. The Court is inclined to grant him enrolment, it seems.

Mr. Daeyoung Jung a Korean National has obtained a law degree from an Indian Law University, and as per his statement, an Indian National who obtains a law degree from a Korean Law University will be entitled to practice law in Korea.

Section 24 of the Advocates Act (1) reads as follows: *Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an Advocate on a State roll, if he fulfills the following conditions, namely: -*

(a) *He is a citizen of India:*

Provided that subject to the other provisions contained in the Act, a national of any other country may be admitted as an Advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country

Mr. Daeyoung Jung submitted that citizens of India who are duly qualified by interpreting duly qualified as duly qualified by way of obtaining a Korean Law degree are permitted to practice law in the Republic of Korea and has invited the attention to Article 4 and 5 of Attorney at Law Act and Article 5 and 6 of National Bar Exam Act.

Mr. Daeyoung has referred to Article 4(3) of Attorney at Law Act which states qualifications of Attorney at Law - That a person who has passed the National Bar Examination is eligible to be an Attorney at law.

He has referred to Article 5 of Attorney at Law Act- qualifications for applicants and Article 5(1) of this act which states a person who intends to apply for the examination shall have earned a juris doctorate degree from a Professional law school under Article 18(1) of the Act on the Establishment and Management of Professional Law Schools.

Article 18(2) states that the required academic years of the juris doctorate degree program under paragraph (1) shall be three years.

It was observed that from this it could be inferred that a law graduate who is duly qualified in India can only practice in Korea after he/she obtains a Juris Doctorate Degree {3 Year Degree} in Korea.

He has also furnished in writing by the President of the Republic of Korean Bar Association stating that there are no nationality restrictions to write a National Bar Exam and a person who is qualified to be a Attorney at law can be enrolled into the Korean Bar

Under the Korean Legal system, an Indian Advocate or any Indian citizen who is duly qualified to be a registered under the Advocates Act, 1961 is not permitted to practice law in South Korea and subject to other conditions and restrictions are only permitted to act as Foreign Legal Consultant for limited purpose. Not only this no foreign degree of law is recognized for practicing law in South Korea, thus an Indian citizen who is duly qualified to be admitted on rolls and practice law in India, apart from fulfilling other conditions/restrictions will again require to undergo a three-year law degree course from a recognized law College in South Korea before he can sit for the National Bar Examination for admission to the Bar in South Korea.

Under Article 86 of the Attorney at Law Act, the Korean Bar Association is under the supervision of the Ministry of Justice who is the apex regulator under the Korean Legal system. So, it is clear that the Korean Bar Association is not the Apex body or the regulator of the law under the Korean Legal system. Article 86 significantly transpires that the Minister of Justice regulates the functioning of the Korean Legal system.

The Ministry of Justice (Korea) stated in reply to the petitioner that there is no nationality barrier or restriction for enrollment as an Attorney at Law in Korea.

However, this cannot be a ground for allowing the concerned admission into Indian Bar.

Upon discussion and deliberation on the issue, having regard to the Hon'ble High Court, and while having utmost respect for the Hon'ble High Court, most of members discussed on the following lines.

The Indian Constitution under Article 19 1 (g) provides the fundamental right to practice any profession, or to carry on any occupation, trade or business to every citizen of India. It was observed that this fundamental right is not guaranteed to a non citizen. The Constitution makers obviously had discussed and deliberated over this Article in great detail before inserting this provision and making it applicable for citizens of India only and excluding non citizens.

Furthermore, under section 7 of the Advocates Act, the Bar Council of India is duty bound to safeguard the rights, interests and privileges of Indian Advocates who are presently only Indian citizens.

Section 24 of the Advocates Act was deliberated upon. Section 24 (1) is reiterated herein and reads as follows:-

Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an Advocate on a State roll, if he fulfills the following conditions, namely:-

(b) *He is a citizen of India:*

Provided that subject to the other provisions contained in the Act, a national of any other country may be admitted as an Advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country.

The Council observed that the word used in the proviso is "may" and not "shall".

The sole intention of the legislature was to make this proviso directory.

Therefore, there is no mandate on BCI to admit national of any other country as an Advocate on a state roll in any State Bar Council in India and the word "may" is used in a directory sense.

It is at the discretion of the Bar Council to admit a foreign national into State roll or not and it can be denied by giving sufficient reasons, merely the reason that citizen of India who is duly qualified are permitted to practise law in the other country shall not bind Bar Council to admit any foreign or non-citizen into the Indian advocates roll.

In "Crawford on the Construction of Statutes" at page 516, it is stated that

The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other...."

The consequences that would follow would have wide repercussions on the Indian Bar. We have to first look into the interests of Indian Citizens. The Constitution of India guarantees only citizens of India the Fundamental right to practice any profession under Article 19(1) g. This is not a fundamental right guaranteed to nationals of other countries.

Furthermore, it is understood that the phrase, duly qualified in proviso Section 24 1 (a) which reads as "Provided that subject to the other provisions contained in the Act, a national of any other country may be admitted as an Advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country", has to be read with the phrase "subject to the other provisions of this act"

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The phrase duly qualified would mean, the qualification which is attained by acquiring a qualified LL.B degree from an Indian University as stipulated under Section 24 or as per Section 24 (iv) which talks of acquiring a Law degree outside the territory of India, if the degree is recognized for the purposes of the Advocates Act, by the Bar Council of India.

We may note clearly herein, that law degree from Korea is not per se recognized by the Bar Council of India, as sufficient to practice law in India.

Furthermore Section 47 of the Advocates Act, 1961 was also discussed

Section 47 of the Advocates Act, 1961 reads as follows:

47. Reciprocity. —

(1) Where any country, specified by the Central Government in this behalf by notification in the Official Gazette, prevents citizens of India from practising the profession of law or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to practise the profession of law in India.

(2) Subject to the provisions of sub-section (1), the Bar Council of India may prescribe the conditions, if any, subject to which foreign qualifications in law obtained by persons other than citizens of India shall be recognised for the purpose of admission as an advocate under this Act.

In this regard it was observed that an Indian Law degree holder is not entitled to practice law in Korea, on the basis of his Indian LL.B degree. The basis of reciprocity with any foreign Country is that an Indian Law degree holder should be entitled to practice law in that Country and then similarly India could think of allowing that foreign national holding a foreign degree to practice law in India.

It was further discussed that if an advocate is found guilty of any professional misconduct he/she can be punished as per the provisions of Section 35 of the Advocates Act, 1961. In this case, the concerned Korean National who is not a citizen of India, if enrolled as an Advocate and engages himself in any professional misconduct under the Advocates Act, 1961 and the Rules framed by the Bar Council of India, no action can be taken against him if he leaves the territory of India and goes beyond Indian Jurisdiction.

It was discussed that being elected representatives of 21.5 lacs Advocates, BCI owes a huge responsibility to the present Advocates fraternity. The apprehension was that apart from the above provisions, enrolling him would pave the way for entry of people of foreign origin into the Indian Bar, which has been unprecedented till date. This will open the floodgates to the Indian Bar, and soon citizens of Nepal, Srilanka, Nigeria, Bangladesh, Bhutan, etc. may be seen entering the Indian Bar, which may not go down well with Advocates who are Indian citizens, whose rights, privileges and interests are to be safeguarded by the Bar Council of India as per Section 7 (1) d of the Advocates Act, 1961.

“May”, firstly makes it directory for Bar Council of India, regardless of the interpretation of duly qualified. As per interpretation of the Council, duly qualified has to be read subject to other provisions of this act and would mean an Indian citizen who has obtained an Indian law degree and is duly qualified in that respect and he on basis of such degree should be permitted to practice law in South Korea, which is not the case here. On the other hand, if the interpretation of duly qualified is read as an Indian citizen who is duly qualified by way of obtaining a law degree from Korea, which we believe is not the ambit of the Advocates Act, even then, the use of word “may” makes is discretionary for BCI to admit a foreign national into an Indian Bar even if he has obtained a law degree from an Indian University.

This issue requires wider deliberations and discussion with all stake holders and all the State Bar Councils who are the elected representative body of the Advocates of States. The Bar Associations shall also be consulted in this regard. Both the State Bar Councils and the Bar Associations of the country shall be asked to furnish their views and opinion on this issue.

Joint meetings of BCI and State Bar Councils and Bar Associations shall be convened in phases to discuss and deliberate upon the issue. The pros and cons from all aspect, legal, technical, discretion, all consequences need to be deliberated and discussed upon.

The resolution may be circulated among all State Bar Council and through them to various Bar Associations for their consideration, approval, views and opinion. Thereafter, the State Bar Councils and the State Bar Associations through the State Bar Councils may kindly urgently send their comments as stated above on letterhead duly signed by the Secretary or authorized office bearer on the basis of a decision taken by the respective body.

The matter is listed before the Hon’ble High Court of Delhi on 21st of September, 2022 and therefore, the comments as mentioned above should reach the office of Bar Council of India by way of email attachment with the subject heading “response to letter dated 13.09.2022 bearing No.BCI:D:5228/2022” by, on or before 16th-17th September, 2022 as Affidavit in this regard has to be filed before the Hon’ble High Court of Delhi in time before the date of hearing.

Thanking you

Yours sincerely,


(Srimanto Sen)
Secretary

Bar Council of India

Copy to,

All the Hon’ble Members,
Bar Council of India.