

Bar Council has More Vital Tasks at Hand Than Making Unsolicited Comments on Same-Sex Marriage

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The BCI should focus on issues within its remit and where it can make a difference, such as ensuring that it is a more diverse and representative body, and taking steps to improve legal education and the condition of advocates, particularly young advocates, instead of passing unnecessary comments on the rights of others.

What is the Bar Council of India?

For the uninitiated, the Bar Council of India (BCI) is the apex regulatory body of the Indian legal profession. It consists of 15 members elected from the different state Bar councils, which are the regional units of regulation of the legal profession.

Its most important functions include the regulation of induction of advocates, disciplining them, and giving recognition to institutes in India that can impart legal education. It has been entrusted with conducting the All-India Bar Entrance Exam, without clearing which, a law graduate cannot practise law in India.

Given its important role in ensuring that the legal profession continues to be a self-regulated profession, it is essential that it does not indulge in political gimmickry. While an expectation of the highest ethical standards is made by the BCI from its advocates, the BCI has made some unfortunate and unsolicited comments about the on-going proceedings in the Supreme Court of India relating to the recognition of same-sex marriage.

On 23rd April 2023, the BCI passed a resolution asking the Supreme Court of India to not decide whether same-sex marriage should be allowed or recognised in India, asking it to leave it to the Parliament to make a law on the issue. It also claimed, albeit without any verifiable research, that 99.9 percent of the country was opposed to the recognition of same-sex marriage. Terming same-sex marriage bad, it said that allowing it would harm the social fabric of the nation.

In this article, I give three cogent reasons why the BCI should not have made such an irresponsible statement on an extremely sensitive topic. I am sure there are many others, and that even without these reasons, the BCI should have refrained from making this statement. One, the BCI does not have the representative capital to make such statements. Two, while the BCI resolution is not binding on the Supreme Court, it has implications that affect the day-to-day lives of the people of India, including members of the Bar who do not identify as heterosexual. Three, the BCI should focus on things that are more within its ambit, including but not limited to, making a policy for the increasing number of advocates, a policy to stop the exploitation of junior members of the Bar and a policy to ensure higher standards of legal education.

The BCI is not truly representative of the community it represents

The BCI has been around for more than six decades. It has never been led by a woman. This is probably why the BCI website does not bother to use the gender-neutral term 'chairperson', because it has always had a 'chairman'. The BCI also has never had a Muslim, Sikh or Christian chairman in its 61 years of existence. It has always been led by a Hindu male member of the Bar.

The BCI, as it is constituted today, faces the same issue of lack of representation. There are no female, Muslim, Sikh or Christian members in the BCI. The BCI has no policy for increasing diversity in the body either. As a self-regulatory body, it is not bound by the Constitutional promises for reservations for the Scheduled Castes (SC), Scheduled Tribes (ST) or Other Backward Classes (OBC). But should it not be the case that the apex body of the legal profession should be more committed to substantive equality? How can members of the profession be trusted to fight for the equality of others when its own regulatory body is probably the most homogenous body with no movement to increase diversity?

Given the serious lack of diversity within its ranks, it does not bode well for the BCI to oppose the same-sex marriage petitions in the Supreme Court. On the contrary, it must take steps to ensure that its members are sensitive to gender and sexual-orientation diversities and do not stigmatise those who identify as LGBTQIA+.

The BCI resolution has implications beyond words

The Supreme Court is of course considerate of requests made by representatives of the Bar; however, it is not bound by it. Therefore, some might argue, that let it be the stand of the BCI that the Supreme Court should not hear the same-sex marriage case, how does

that matter on the ground if the resolution is not binding?

But that is a simplistic reading of the events. The BCI resolution has had a chain reaction. All the District Bar Associations in Delhi have also passed resolutions condemning the Supreme Court hearing the same-sex marriage case. What this does is further stigmatise the already maligned queer members of the Bar. By outrightly and publicly condemning the lifestyle of some of their members, the Bar associations have made it harder for queer members to identify as queer, with the threat of social and professional exclusion, in an already over-competitive profession.

The up-to-date status of the BCI is apparent when the most updated Vision Statement on the website of the BCI is for 2011–13. It is truly time that the BCI updates its ‘vision’.

Some things for the BCI to consider

Lastly, there is so much that the BCI can do, but has not done, that should invite its attention and interest more than whether, in the absence of political will or legislation, the Supreme Court should allow the right to a dignified life to people with whom the current members of the BCI cannot relate or identify.

The status of legal education needs better administration. The mushrooming of law schools in India was stopped temporarily by the BCI, but without any significant achievements in terms of the closure of sub-standard legal education institutions. Instead, after removing the moratorium, it shortly announced a BCI law school in Goa.

The BCI must also ensure that the cost of entering the legal profession is affordable for the common Indian and also uniform across states. Enrolling with a state Bar council costs anywhere between ₹14,000 in Delhi to over ₹40,000 in Odisha. The BCI needs to step in and ensure that no law graduate is forced to become a law clerk (*munshi*) or be discouraged from practising law. This would also require the BCI to issue an official mentorship policy mandating a fixed amount to be paid to junior advocates by seniors of the profession, commensurate with the living standards in the state.

In recent history, the BCI has not made any recommendations to the legislature except for an Act to provide special protections to advocates. The BCI has no identifiable research wing, no research output, no internationally reputed or cited journal, no sought-after conferences and no connection to the common person enrolling as an advocate. It needs to remedy all these.

Conclusion

The BCI is largely funded by advocates enrolling in India. Most of these advocates are juniors who are being exploited by their seniors. A larger proportion is of those who do not know the exact role that the BCI plays in their careers. It is, therefore, disheartening that the BCI would resort to lowly tactics to brow-beat the Supreme Court into not giving justice to the people that its membership cannot identify with. Same-sex marriage, if recognised, will only give rights to a section that does not have it, not take any rights away

from a section of the citizenry that has them. The BCI should have been conscious of its composition, its prestigious position and its impactful precedent before passing such a resolution. There is an urgent need for sensitisation of the members of the Bar and the Bar Council of India.

Courtesy: