



## ANALYSIS AND CONSTITUTIONALITY OF ALL INDIA BAR EXAMINATIONS

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### OBJECTIVE

The objective of the research is to throw light and analyze conduct and the constitutional validity of the All India Bar Examinations.

### SCOPE OF THE PAPER

The project wafts rays on the provisions of the Constitution of India, it also eyes on the Advocates Act, Legal Education Rules and Bar Council of India rules and regulations along with important case(s).

### HYPOTHESIS

AIBE is a violation of the constitutional provisions yet can be fit under reasonable restriction, but it is not fulfilling the motive for which it was started.

### RESEARCH QUESTION(s)

1. Evolution of AIBE
2. Meaning and Determination of Constitutional Validity
3. Violation of Fundamental rights by AIBE
4. Improper Conduct of AIBE
5. Amendments in Advocates Act and other law(s) regarding AIBE.

### CHAPTERIZATION

**CHAPTER I** Deals with Constitution and Fundamental Rights & Constitutional Validity, its meaning and determination

**CHAPTER II** Deals With AIBE and its Conduct & Motive of AIBE

**CHAPTER III** Deals with Evaluation of AIBE using different lenses & Changes needed in AIBE

**CHAPTER IV** Deals with Conclusion

## ANALYSIS AND CONSTITUTIONALITY OF AIBE

### ABSTRACT

Legal Profession is a noble, learned and attractive profession. It plays a vital role in the administration of justice. An Advocate while presenting the most appropriate legal material relating to case, helps the court in arriving at a correct judgment. Therefore, the members of the legal profession play an important role and occupy high social status. For maintaining the quality of the profession eight years ago Bar Council of India came up with a resolution of AIBE that every law graduate has to clear to be enrolled as an advocate and practice in courts. This paper analyses AIBE in different ways possible through different parameters.

### 1.1 CONSTITUTION AND FUNDAMENTAL RIGHTS

*“Think and plan independently of traditional methods, know that there is always an answer and a solution to every problem.”<sup>1</sup>*

The Indian Constitution came into existence in 1950 which laid down the goals which India had to achieve. Society cannot remain constant throughout the times rather it keeps on changing with economic, technological and scientific developments. Hence, law has to keep on evolving and adapt itself according to the changing requirements.

<sup>1</sup> Dr. Joseph Murphy, “The Power of Your Subconscious Mind”, pg.104



The Constitution of India in itself witnesses to be a great social document. It rudiments the plinth of the supremacy of law, social, economic and political justice, secularism and democracy.

The Constitution of India is a borrowed constitution as many of its provisions are borrowed from the constitutions throughout the globe, i.e. From Brazil, South Africa, Australia, Ireland, etc. The provisions of Fundamental Rights enshrined in Part III of the Constitution of India is derived from the Bill of Rights of the American Constitution. These rights are guaranteed to the Indian citizens to constitute a basis for a free and democratic society. The Fundamental Rights though are not absolute but are legally enforceable in the courts of law when violated, but only against the 'State'. The term 'State' is defined under Art 12 of the Constitution, which reads as follows:

"In this part, unless the context otherwise requires, the State includes the Government, and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

Under Art. 12, the meaning of "other authorities" in order to cover more and more institutions and organizations within the term "State" has been widened considerably for preventing them from acting in violation of fundamental rights.<sup>2</sup> The United States Constitution has defined their legislative and executive powers in two Articles, which makes it easier to define their correlation.

<sup>2</sup> Dr. Avtar Singh and Dr, Harpreet Kaur, "Introduction to Jurisprudence", pg,422 (4<sup>th</sup> Edn. 2016)

However, Indian Constitution being an elaborate one, it is difficult to correlate the legislative and executive powers because those powers are to be found in widely separated parts of our Constitution.<sup>3</sup>

In the case of *R.D.Shetty v/s International Airport Authority*<sup>4</sup>, the Court laid down five tests to be considered "other authority":

- 1) Entire share capital is owned or managed by State.
- 2) Enjoys monopoly status.
- 3) Department of Government is transferred to Corporation.
- 4) Functional character governmental in essence.
- 5) Deep and pervasive State control.
- 6) Object of Authority

Every type of public authority, exercising statutory powers, whether such powers are governmental or quasi-governmental or non-governmental, and whether such authority is under the control of government or not.<sup>5</sup>

## 1.2 CONSTITUTIONAL VALIDITY

In the most basic sense as defined by the Cambridge Dictionary, Constitutionally invalid means 'not allowed by the constitution.' Every law must be parallel to the provisions of the Constitution as the Constitution is the supreme law of the land. The power to test the constitutionality of any Law has been conferred upon the superior Judiciary i.e. The Supreme Court and High Courts in India.

<sup>3</sup>H.M. Seervai, "Constitutional Law of India: A critical commentary", 349(4th ed.).

<sup>4</sup>1979 SCR (3)1014.

<sup>5</sup>*Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1, 8



Article 13 of the Indian Constitution States that:

Laws inconsistent with or in derogation of the fundamental rights

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

(3) In this article, unless the context otherwise requires law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368 Right of Equality.<sup>6</sup>

By the virtue of Art. 13 , the Fundamental rights becomes legally enforceable .The effect of inserting this article is that no infringement on the fundamental rights of the people can be done by the government either through administrative action or by enacting a law.<sup>7</sup>

<sup>6</sup> Article 13 , Constitution of India , 1950

<sup>7</sup>Mohd. Anwar Allai v. State of J. & K., AIR 1967 J. & K. 32.

## 2.1 ALL INDIA BAR EXAMINATIONS (AIBE)

The objective of The All India Bar Examination (AIBE) is to examine an advocate's capability to practice the profession of law in India. The AIBE will assess skills at a basic level, and is intended to set a minimum benchmark for admission to the practice of law; it addresses a candidate's analytical abilities and understanding basic knowledge of law. After passing the examination candidate will be awarded "Certificate of Practice" by the Bar Council of India. AIBE will be conducted in 40 cities all across India. Candidates will have 11 languages to choose for attempting the examination. Examination pattern will be multiple choice question and it will be open book exam. The notification bringing the All India Bar Examination into force was passed by the Legal Education Committee and the members of the Bar Council of India at duly constituted meetings on April 10, 2010 and April 30, 2010.<sup>8</sup>

This was to be brought in practice after the 2010 notification that proposed of the AIBE , but before 2010 , the procedure was that a Law graduated filled a form of the BCI and get it attested by two advocates who are in practice for a minimum of 10 years and after that he was granted the Certificate of Practice to the concerned person.

The Bar Council of India resolution at its meeting held on 30 April to amend Part VI, Chapter III of the Bar Council of India Rules

<sup>8</sup>[http://www.allindiabarexamination.com/about\\_us.aspx](http://www.allindiabarexamination.com/about_us.aspx) , 28/12/2018 , 21:52



(Conditions for Right to Practice) was published in the Gazette of India on June 12, 2010. The following resolution was adopted by the Bar Council of India on 10 April 2010 to conduct an All India Bar Examination, the passing of which will entitle an advocate to practice law in India. Consequent to the resolution, the following rules were inserted into Part VI, Chapter III of the Bar Council of India Rules. RESOLVED that as the Bar Council of India is vested with the power of laying down conditions subject to which an advocate shall have the right to practice, these Rules, therefore, lay down such condition of an All India Bar Examination, the passing of which would entitle the advocate to a Certificate of Practice which would permit him/her to practice under Chapter IV of the Advocates Act, 1961. No advocate enrolled under section 24 of the Advocates Act, 1961 shall be entitled to practice under Chapter IV of the Advocates Act, 1961, unless such advocate successfully passes the All India Bar Examination conducted by the Bar Council of India. It is clarified that the Bar Examination shall be mandatory for all law students graduating from academic year 2009-2010 onwards and enrolled as advocates under Section 24 of the Advocates Act, 1961.

#### THE ALL INDIA BAR EXAMINATION

10. (1) The All India Bar Examination shall be conducted by the Bar Council of India. (a) The Bar Examination shall be held at least twice each year in such month and such places that the Bar Council of India may determine from time to time.

(b) The Bar Examination shall test advocates in such substantive and procedural law areas

as the Bar Council of India may determine from time to time

(c) Such substantive/procedural law areas and syllabi shall be published by the Bar Council of India at least three months prior to the scheduled date of examination.

(d) The percentage of marks required to pass the Bar Examination shall be determined by the Bar Council of India.

(e) An unsuccessful advocate may appear again for the Bar Examination, without any limit on the number of appearances.

(f) The Bar Council of India, through a committee of experts, shall determine the syllabi, recommended readings, appointment of paper setters, moderators, evaluators, model answers, examination hall rules and other related matters.

(g) The Bar Council of India shall determine the manner and format of application for the examination.

(h) Upon successfully passing the Bar Examination, the advocate shall be entitled to a Certificate of Practice.

#### APPLICATION OF CERTIFICATE OF PRACTICE

11. (1) The Certificate of Practice shall be issued by the Bar Council of India to the address of the successful advocate within 30 days of the date of declaration of results.

(2) The Certificate of Practice shall be issued by the Bar Council of India under the signature of the Chairman, Bar Council of India.<sup>9</sup>

#### MOTIVE OF AIBE:

<sup>9</sup> The Gazette of India, No. 24 New Delhi, June 12-18, 2010, Part III, Sec. 4 All India Bar Examination Rules 2010 Notification



1. To evaluate an law graduate's skills to practice the profession.
2. To evaluate and analyze the legal capabilities at a initial level.
3. To set a minimum standard for admission to the practice of legal profession..
4. To assess an law graduate's analytical abilities and basic knowledge of law of the land.

### 3.1 EVALUATION OF AIBE USING DIFFRENT LENSES

The All India Bar Exam is more sarcastically referred to as “All India Bogus Examination” by the candidates taking the exam. The bogus parts are spread out evenly throughout the AIBE timeline.

The Bar Council of India first decided to implement it strictly as a necessary step towards an authentic legal practice when the 1st All India Bar Examination was conducted on 6th March, 2011. The 4th All India Bar Examination was conducted on the 9th December, 2012 in absolute mayhem and chaos. The exam was canceled in Jaipur and Bhopal centers due to shortage of question papers. The organizers should have anticipated such shortcomings after making registration provisional for the exam takers. This happened in the first place because of the incorrect registration process which rendered hundreds of paid applicants as unregistered.

This comment was made by Srishti Sharma who took the December 2012 exam – *“It was an absolute farce. The exam was about how quickly you can open the bare act and pick out the answer. The questions also named the act so you don't even have to make that effort. They tried to make it an*

*open book – but forgot it should be application based. Only 2-3 questions required actual application of mind. Anyway, the bar exam doesn't fit into our procedural functions. We already had our lawyer ID cards issues to us which is unconditional of you passing the AIBE.”*

The arguments forwarded for AIBE is that it will scrutinize among the law graduates to maintain the nobility and quality of the profession . AIBE was brought into practice through a resolution and further no amendment were made in the necessary statutes that would made the AIBE valid . As Sec. 24 of the Advocates Act mentions the conditions that must be fulfilled to be recognized as an advocate and practice law in the courts , but till date there is no such amendment made in the act .

#### Section 24 of Advocates Act , 1961 reads as follows :

24. Persons who may be admitted as advocates on a State roll.<sup>10</sup>—

(1) 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 this 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;

(b) he has completed the age of twenty-one years;

(c) he has obtained a degree in law—

<sup>10</sup> Section 24 , Advocates Act , 1961



(i) before the 1[12th day of March, 1967], from any University in the territory of India; or  
 (ii) before the 15th August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or 2[(iii) after the 12th day of March, 1967, save as provided in sub-clause (iia), after undergoing a three year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or  
 (iia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or 3[(iv) in any other case, from any University outside the territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India] or; 4[he is barrister and is called to the Bar on or before the 31st day of December, 1976 5[or has passed the article clerks examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court;] or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act;] 6[\*\*\*]  
 (e) he fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter; 7[(f) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 (2 of 1899), and an enrolment fee payable to the State Bar

Council of 8[six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council]: Provided that where such person is a member of the Schedule Castes or the Schedule Tribes and produces a certificate to that effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be 9[one hundred rupees and to the Bar Council of India, twenty-five rupees]. 10[Explanation.—For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India on that date on which the results of the examination for that degree are published by the University on its notice board or otherwise declaring him to have passed that examination.]  
 (2) Notwithstanding anything contained in sub-section (1), 11[a vakil or a pleader who is a law graduate] may be admitted as an advocate on a State roll, if he—  
 (a) makes an application for such enrolment in accordance with the provisions of this Act, not later than two years from the appointed day, and  
 (b) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1). 12[(3) Notwithstanding anything contained in sub-section (1) a person who—  
 (a) 13[\*\*\*] has, for at least three years, been a vakil or pleader or a mukhtar, or, was entitled at any time to be enrolled under any law 14[\*\*\*] as an advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union territory; or 15[(aa) before the 1st day of December, 1961, was entitled otherwise than as an advocate practise the profession



of law (whether by of pleading or acting or both) by virtue of the provision of any law, or who would have been so entitled had he not been in public service on the said date; or] 16[\*\*\*]

(c) before the 1st day of April, 1937, has been an advocate of any High Court in any area which was comprised within Burma as defined in the Government of India Act, 1935; or

(d) is entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf, may be admitted as an advocate on a State roll if he—

(i) makes an application for such enrolment in accordance with the provisions of this Act; and

(ii) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1).] 17[\*\*\*]

*SC in V Sudeer v. Bar Council of India*, is that no conditions, other than those enumerated in Section 24 of the Advocates Act, can be put on a person wishing to practice law. As Section 24 does not allow for a separate examination, it seems the AIBE would not be permissible. However, the Court did recognise that some “conditions on practice” could be put in place. As to whether an examination would qualify as a condition on practice is certainly debatable.<sup>11</sup>

A two-judge bench decided the matter in the Sudeer case

Also in a recent PIL filed in the Supreme Court against AIBE contending it to be violating of fundamental rights guarantee under Article 19(1)(g) of the constitution . And the matter is pending before the court since then .

Article 19(1)(g) and 19(6) reads as follows<sup>12</sup> :

19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(g) to practice any profession, or to carry on any occupation, trade or business

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

**Article 19(6)(i)- Fulfilments of some inherent professional and technical requirements guided by the code of the**

<sup>11</sup> Utkarsh Shrivastava , “In Defence of the All India Bar Examination” , <https://thewire.in/law/in-defence-of-the-all-india-bar-exam> , 30/12.2018 , 14:39

<sup>12</sup> Article 19 , Constitution of India , 1950



**respective profession or contemplated by the state.**

This allows state to form a law required to be formed in regards to professional or technical qualifications necessary for practising a profession or carrying on any occupation, trade or business. For example,, lawyer needs to get educational degree as well as pass Bar Council Exam in order to practice in court. This does not impose any unreasonable restrictions or violate Article 19(1)(g). This restriction has not restricted its power to any particular space but tried to include every ambit ,such various forms can be license &licensing fees, trade entry fees and others. But nowhere judicial interpretation of words professional or technical qualifications is there. But undoubtedly this restrictions also needs to pass test of reasonableness and objective test. State has now and then used this indirect restriction to curtail citizen’s right to practice.

In *A.K. Gopalan v. State of Madras*<sup>13</sup>, the Supreme Court has that the word, “general public” refers to the rest of the citizens with reference to free citizen who claims the right in question. It does not refer to any group or class of people as distinguished from the people generally. Therefore there exists a need to maintain quality in profession as for the securement of justice for the innocent.

Linking this with the AIBE there surely exists a need to maintain quality in the profession but the Bar Council of India is answerable for not making/proposing necessary amendments in the statutes any conducting the exams from past eight on the note of a resolution. Also the Legal

Education Rules, 2008 need an amendment as according to them there exists no need of the AIBE.

**3.2 AIBE NEEDS MANY CHANGES**

Every rule has an exception of course, and it would be extremely unfair to paint all three-year courses with the same brush. Many lawyers from these courses go on to become excellent litigators and are a credit to the profession. Similarly, the legal knowledge of many students from five-year law courses is barely worth the value of the paper on which their degree is printed. The quality of legal education fluctuates tremendously between institutions and the absorption of that knowledge varies among students of the same institution as well. Thus a common external exam would ensure that those who take up the cause of justice and fight for the rights of others are actually equipped to do so. But the method in which AIBE is conducted needs major changes and its syllabus should be according to the motive behind conducting the exams .

The syllabus of AIBE is : <sup>14</sup>

As per the AIBE syllabus shared the law entrance exam will comprise of questions asked from 19 topics/subjects. Aspirants can view AIBE XIII syllabus below:

Subject	No. of Questions (New Syllabus)
Constitutional Law	10
Indian Penal Code	8

<sup>13</sup>AIR 1956 S.C. 27

<sup>14</sup>[http://aibe13.allindiabarexamination.com/Syllabus\\_AIBE-XIII.pdf](http://aibe13.allindiabarexamination.com/Syllabus_AIBE-XIII.pdf) , 30/12/2018 , 15:09



Criminal Procedure Code	10
Code of Civil Procedure	10
Evidence Act	8
Alternate Dispute Redressal Including Arbitration Act	4
Family Law	8
Public Interest Litigation	4
Administrative Law	3
Professional Ethics and Cases of Professional Misconduct under BCI Rules	4
Company Law	2
Environmental Law	2
Cyber Law	2
Labour and Industrial Laws	4
Law of Tort including Motor Vehicles Act and Consumer Protection Law	5
Law of Contract, Specific Relief, Property Laws, Negotiable Instrument Act	8
Law Related Taxation	4
Land Acquisition Act	2
Intellectual Property Law	2
<b>Total</b>	<b>100</b>

The main motive behind AIBE’s conduct is to maintain the quality among the profession , but the syllabus provided does not match with the motive as these following subjects are already studied by a law graduate and in an open book exam as AIBE is conducted he can easily clear it , also there is no maximum number of attempts set up for an individual these creates major drawbacks that curtain in fulfillment of the motive behind conduct of AIBE.

**4.CONCLUSION**

AIBE is non-violative of any fundamental rights and therefore is constitutionally valid the only answer BCI needs to give is to amend the advocates act in regard to AIBE and make strict changes in the procedure of AIBE . The suggestion here is to borrow the system from US , i.e.

- a. A multistate Bar exam wherein questions that test *principles of common law* spread
- b. A multistate essay exam which tests candidates’ *analytical and communicational* skills;
- c. A multistate performance test where candidate has to perform a *standard lawyering task* (mostly preparing a brief) using the case file and material provided to them.

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