

WORKING PAPER
ON
ALL INDIA BAR ASSOCIATION

by
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THE need for a united India Bar has been voiced for many years in the past. The question was raised before the Chamier Committee and again before the All-India Bar Committee, popularly known as the Das Committee. The demand is also being made in many States in the various Lawyers' Conferences which are held in the States, and also by several Bar Associations.

The implementation of this demand for a united India Bar has become an urgent necessity after independence, since when it is realised that a strong bar in this country apart from raising the professional standard can be one of the most powerful factors for upholding the Constitution and protecting the freedom of the citizen.

The achievement of this ideal is unfortunately not in the hands of the members of the profession. We are given to understand that the matter of the establishment of an All-India Bar Council with a view to achieve a united Bar is under consideration of the Government. It is difficult to know when the Government machinery will move and that even if it does move, what shape the All-India Bar Council may take and to what extent the legislation might safeguard the autonomy and the independence of the Bar.

It is, however, open to the legal profession to make a move in this direction independently of what the legislature might do. The legal profession cannot, of course, achieve a united Bar, but by its own efforts, it can establish an Indian Bar Association as a step in this direction. The necessity for such a Bar Association, I believe, has been widely expressed. Before, however, the task could be undertaken, care will to be taken to see that such a body, if organized, must be made as representative as possible, and should not merely be a body organized by a few members of the Bar, however eminent, employing the name of the All-India Bar.

As stated above, the Indian Bar Association, if it is to serve a useful purpose, has got to be very representative of the profession. One of the points for consideration, therefore, would be the question of its composition. Should it be composed of constituent bar associations—State, District and even those at lower levels—or should it be a body of individual lawyers from all over the country. It is also possible to organize an Association of this kind where the corporate and the individual membership could be combined. The Bar Council of England is an example of a body of lawyers which consists of individual members.

while the American Bar Association is composed of associations as well as individual members. Both, it may be useful to remember, are non-governmental, independent organisations which have no legislative sanction behind them. The only sanction is the combined and powerful voice of the legal profession which they bring to bear in the most effective manner whenever the occasion demands.

The next question would be whether the Association should open membership to the academic lawyers and academic legal institutions. It must be confessed that, whatever the reasons, India has failed to produce great academic lawyers or legal institutions so far. That, however, should be no justification for excluding them from the membership of such an Association where they can make a great contribution.

One of the important questions for consideration would be the wherewithal to run an institution of this kind. The average man in the profession is far from rich, and excepting few associations the rest can only manage to make both ends meet with the meagre subscriptions they receive from their members. The Indian Bar Association, if it is to perform a useful function, must have sufficient funds. It must stand on its own legs and neither accept nor attempt to get any financial support from the Government, for such a step would rob it of its independence. What is the exact amount of subscription for individuals or associations is a matter for consideration. But it will have to be substantial, resisting all pressure from the profession or the associations to fix it at a low figure. If the Association is unable to have a substantial subscription which will help it to function, it may as well not come into existence.

If we decide on an organization where we have individual members, whether with or without membership thrown open to the associations, I would certainly welcome as members official leaders of the bar. But they should have no ex-officio position as such, and their membership of the Association should not give them any special privileges.

As stated earlier, I would favour an Association based on the American model. Assuming that we get large membership, the question for our consideration would be the shape that the representation of the members might take. While the Governing Council must be necessarily and sufficiently representative, in view of the vast distances in our country, its membership must not be so scattered as to make it extremely difficult for the governing body to meet and effectively transact its business. In the earlier stages of the Association, such meetings will have to be fairly frequent, and so also later when the Association gets into stride. What should be the composition of the Executive Committee and how should it be formed? Should it be a body entirely elected by the Governing Council or should it be partly elected and partly nominated by the President? Perhaps it would be preferable to have a partly nominated Committee in order to enable it to function effectively in view of the vast distances in our country.

What would be the functions of such an Association? I do not visualize it merely as a trade union of the profession. While it certainly will be one of its duties to safeguard the interests of the profession, if it

is to serve a useful purpose, it will have to take a much wider view of its duties. One of the main duties of such an Association would be to uphold the Constitution and other democratic institutions, and it must be prepared to see that with the necessary but proliferating bureaucracy and administrative machineries inherent in a welfare State, the citizens' rights are not trampled upon.

The Association will also have a great duty of setting standards of professional conduct and enforcing them without fear or favour. This is the only way to stop the deterioration in the professional standards of the bar and the consequent loss of prestige.

The profession should set before itself the air of serving the public in a honest and fearless manner, as the American Bar Association does. The task of seeing that no one goes unrepresented before the Courts for lack of means would be one of the tasks facing such an Association.

The Association also will have its task regarding qualifications and the standards of legal training, which, it is admitted for years past, is very far from satisfactory. This is not the occasion for me to get into the question as to how this is to be done. One thing, however, is certain: that drastic changes in our teaching and examination standards are urgently needed. A system in which cramming or the test of memory is rampant can hardly be expected to produce good or great lawyers. The Association may also have to safeguard less fortunate members in their declining days.

These are some of the important tasks which we can visualize for the Indian Bar Association. I have ventured to put forward these suggestions for consideration, and if I do not put forward any draft Constitution of such an organisation, it is for the reason that unless the main objectives and the shape of the organisation is clear, it would be a waste of effort to draw up a Constitution for such a body. The drafting of its Constitution will not be a difficult task, once the shape becomes clear and the objectives are well-defined.

I suggest that if we can agree regarding the objectives and the shape, a draft Constitution may be prepared and circulated for opinion to as many Bar Associations, individuals and academic bodies as possible. I know this will delay the formation of the Association for a few months, but time will not be wasted as the interest in such a body will be created and this democratic process will help us in creating a really effective organisation, and not a mere paper body.

POINTS FROM THE WORKING PAPER

The Draft calls for a clear mandate on the following points to prepare appropriate Draft Constitution of the All-India Bar Association :

1. The name of the Association to be 'The All-India Bar Association.'
2. The composition of the Association :
 - (a) should it be composed of constituent bar associations—State, District and those at lower levels ?

or

should it be on the analogy of the Bar Council of England ?
 - (b) Is the membership to be open to academic lawyers and academic Legal Institutions ?
3. Funds for the Association:

What should be the subscription, annual or life, from individuals and associations ?

What other ways to augment the Funds ?
4. Ex-Officio membership to official leaders of the Bar.
5. **The Governing Council of the Association.**

What is the mode of representation of the individual lawyers and the Association on the Governing Council. Will not membership of the Governing Council, if scattered, affect transaction of business ?

Can the American model be considered ?
6. What are the objectives of the Association ?

It should

 - (a) include safeguarding interests of the profession
 - (b) be a watch-dog of the Constitution
 - (c) defend the citizens' right
 - (d) lay down professional standards and enforce discipline among its members
 - (e) help in legal aid to those who lack the means
 - (f) guide teaching and examination standards
 - (g) provide help to aged and indigent lawyers.
7. A committee to draft the Constitution of the All-India Bar Association.