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## Legislative and Argumentative Analysis with varying Perspectives: Postgraduate Study Reforming Powers of the BCI

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*This article (“Article”) develops upon the existing legislation and rules pertaining to BCI and UGC to try and make sense of the new rules introduced by the BCI in 2020 (“Notification”), supposedly to regulate the LL. M. program and the confidence behind BCI to do so. This article lays down important sections and important clauses of previous legislation. Subsequent arising questions are: — does the BCI have the regulatory powers to overhaul an academic degree? Does an academic degree like LL. M. come under the umbrella/ ambit of ‘legal education?’ Later entails the objections against the new rules and why the BCI might be overstepping its bounds. Exploring the standards set by developed nations regarding the LL. M. duration and how it has become an international standard; reasons for why the 1-year LL. M. programme (domestic and international) duration shall and must be recognized by the BCI. Concluding with recommendations and maintaining the status quo.*

**Keywords:** BCI, UGC, LL. M., new rules, regulatory powers.

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### INTRODUCTION

Dated on the 2<sup>nd</sup> day of January 2021, the Bar Council of India (BCI) published (extraordinary) “Bar Council of India Legal Education (Post-Graduate, Doctoral, Executive, Vocational, Clinical, and other Continuing Education), Rules, 2020” notification on THE GAZETTE OF INDIA:

EXTRAORDINARY.<sup>1</sup> Reading through it makes it seem prima facie BCI has the reforming powers to manipulate the LL. M. program/course and its curriculum. This article (“Article”) delves into the actual factual reasons to see if the facts back BCI’s claims and where UGC stands in all of this.

### ***Background***

Back in 2013, the 1-year LL. M. program was introduced by the Department of Higher Education i.e., Ministry of Human Resource Development (MHRD) as a result of a round table discussion on legal education and the means to revamp it. The guidelines<sup>2</sup> were submitted to MHRD by a special committee constituting of UGC members for this purpose and proposed a 1-year duration LL. M. programme.<sup>3</sup> *So does BCI have the legislative powers to overhaul the L.L. M. program?*

## **LEGISLATIONS**

### ***(i) The Advocates Act 1961 (Substantive Law)***

The Bar Council of India is a statutory body that oversees legal practice and education in India. It was founded under section 4<sup>4</sup> of the Advocates Act 1961. Its members are chosen from among India's lawyers and thereby represent the Indian bar. Its duties among others are to ensure professional standards and maintain the standard of legal education pertaining to the enrolment of advocates.

1. *“(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;*
2. *to recognize Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities 3[or cause the State Bar*

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<sup>1</sup> Gazette Notification, ‘LL.M. Rules and Regulations’ (*Bar Council of India*, 4 January 2021) <<http://www.barcouncilofindia.org/wp-content/uploads/2010/05/Gazette-Notification-dated-04.01.2021-LL.M.-Rules-and-Regulations.pdf>> accessed 07 August 2022

<sup>2</sup> Ronisha Bhattacharyya, ‘UGC Issued Guidelines for Introduction of One Year LL.M. Degree Programme from 2013 Session’ (*Jagran Josh*, 29 June 2013) <<https://www.jagranjosh.com/articles/ugc-issued-guidelines-for-introduction-of-one-year-llm-degree-programme-from-2013-session-1359452937-1>> accessed 07 August 2022

<sup>3</sup> *Ibid*

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

*Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf];...*

3. *(m) to do all other things necessary for discharging the aforesaid functions;”*

***Previously:***

**BAR COUNCIL OF INDIA, PART -IV, RULES OF LEGAL EDUCATION, 2008, CHAPTER III (PROCEDURAL)**

Section 16(iii)<sup>5</sup> An Act to make provision for the co-ordination and determination of standards in Universities, and for that purpose, to establish a University Grants Commission.

***Takings and explanation:***

Specifically, Section 7 (7) (h)<sup>6</sup> of the Advocates Act, 1961, permits the Bar Council of India (BCI) to promote legal education and to establish “standards” for it in consultation with universities that offer it.<sup>7</sup> The BCI had the power to regulate undergraduate and baccalaureate degree courses (*B.A. LL.B., B.Sc. LL.B., BBA. LL.B., B.Com. LL.B., B.A.L. LL.B, B.Tech LL.B., & LL.B*). LL.M is an academic postgraduate degree (“Degree”) that graduates as well as practicing advocates can pursue, making postgraduate studies not mandatory for the practice of law (“Law”) by Advocates. As such the jurisdiction to regulate it lies with the UGC.

***What happened? A new Notification-***

**Bar Council of India Legal Education (Post-Graduate, Doctoral, Executive, Vocational, Clinical, and other Continuing Education), Rules, 2020**

Chapter-II *Post-Graduate Degree Courses in Law:*

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<sup>5</sup> Advocates Act 1961, s 16(iii)

<sup>6</sup> Advocates Act 1961, s 7(7)(h)

<sup>7</sup> *Ibid*

Section 5(b)<sup>8</sup> The post-graduate course in law leading to a master's degree, in short, LL. M. has to be of two years' duration spreading over four semesters.

Section 6<sup>9</sup> A Master Degree Program in Law of one-year duration introduced in India in 2013(as per notification) by the University Grants Commission shall remain operative and valid until the Academic Session in which these Regulations are notified and implemented but not thereafter at any University throughout the country

Section 7<sup>10</sup> LL.M. course is restricted to only graduates of law

Section 10(viii)<sup>11</sup> Teaching-learning methods and weekly schedule: The teaching-learning methodology shall comprise lectures, case studies, group discussions, presentations by the participants, seminars, workshops, field studies, and research covering a minimum of thirty hours per week (equivalent to 5 hours over 6 days a week or six hours over five days a week).<sup>12</sup>

## **(ii) University Grants Commission Act, 1956 (Substantive Law)**

### **CHAPTER II -ESTABLISHMENT OF THE COMMISSION**

An Act to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission. An Act to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission. 1. Short title and commencement.

### **Rules and Regulations (Procedural Law)**

### **CHAPTER IV -MISCELLANEOUS**

University Grants Commission (Online Courses or Programmes) Regulations, 2018. UGC Regulations on Minimum Qualification for appointment of Teachers and Other Academic Staff

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<sup>8</sup> Advocates Act 1961, s 5(b)

<sup>9</sup> Advocates Act 1961, s 6

<sup>10</sup> Advocates Act 1961, s 7

<sup>11</sup> Advocates Act 1961, s 10(iii)

<sup>12</sup> *Ibid*

in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education 2018.

1. 25. (1) *The Central Government may, by notification in the Official Gazette, make rules to carry out the purpose of this Act.*
2. 26. (1) *The Commission [may, by notification in the Official Gazette, make regulations] consistent with this Act and the Rules made thereunder–*

*(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction; (f) defining the minimum standards of instruction for the grant of any degree by any University;*

### ***Understandings***

In section 26(1)(e)<sup>13</sup> it is articulated that UGC defines the minimum qualifications for maintaining teaching standards for teachers and professors. To become an Assistant Law Professor, a baccalaureate degree in Law, Master of Laws (LL. M), and is required to appear and clear the UGC NET exam. Becoming a Senior/Associate Law Professor, all the qualifications that are required to be an Assistant Law Professor along with having experience in the legal field, having a Ph.D. degree, a direct application may happen in lieu of the NET exam requirement.<sup>14</sup> As such the UGC has complete jurisdiction over the LL. M. programme.

### **OBJECTIONS**

#### *A. LACK OF EMPIRICAL DATA*

In 2013, India became one of the first few countries to provide a one-year and a 2-year LL.M. program. The National Knowledge Commission advocated a number of steps to "revamp the system" in order to "achieve academic and professional excellence." The Ministry of Human Resources Development convened a round table on Legal Education, which asked the

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<sup>13</sup> Advocates Act 1961, s 26(1)(e)

<sup>14</sup> *Ibid*

University Grants Commission (UGC) to modify the LL.M. degree programme, making it a one-year study like in all industrialized countries. Finally, a report was provided by a UGC-appointed expert committee, and India was granted a one-year LL.M. programme. However, it appears that the Bar Council of India, which was not previously the regulator for the award of LL.M. degrees, has jumped into action, and believes that the one-year LL.M. experiment has failed. The BCI has not given any empirical data to persuade stakeholders that adding a year to the programme would increase the quality of graduates produced or provide better employment possibilities. In the lack of such information, the choice appears to have been made hastily and without much research.

### *B. FAILURE OF EFFECTIVE CONSULTATION WITH THE STAKEHOLDERS*

Failed to consult the board and universities as evident in the case filed by the Consortium of National Law Universities against the BCI regulation in 2021. The fact that stakeholders, such as students and universities, were not given enough of an opportunity to voice their concerns. The new Rules (Postgraduate) state that since the New Education Policy, 2020 removed legal education from the purview of the Higher Education Commission of India (HECI), the Bar Council of India is now responsible for regulating the "entire field of legal education." However, the Advocates Act of 1961 gives the BCI authority over legal education, and Section 7(1)<sup>15</sup> makes it plain that the BCI can only "set down criteria of such education in cooperation with the Universities in India delivering such instruction." The late Prof Shamnad Basheer, emphasized the necessity of meaningful collaboration while contending that the BCI is neither constitutionally permitted nor institutionally able to supervise the entire spectrum of legal education, including that provided by universities.<sup>16</sup>

### *C. BRAIN DRAIN INCENTIVIZATION*

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<sup>15</sup> Advocates Act 1961, s 7(1)

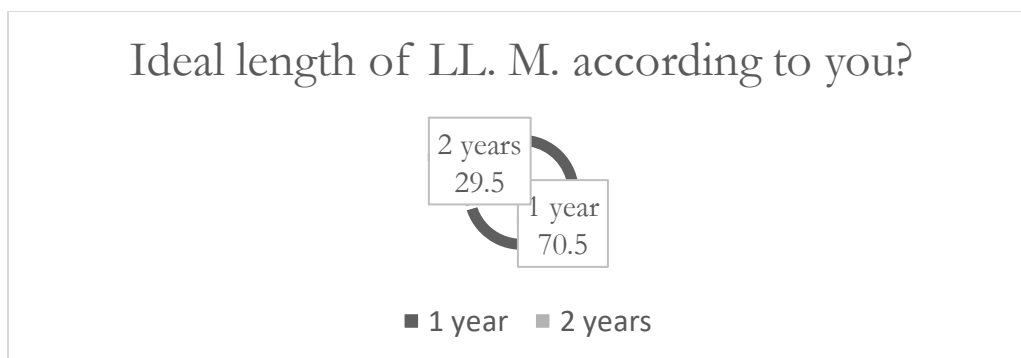
<sup>16</sup> Shamnad Basheer, 'Specialised Legal Education: Bar Council Compliance?' (*Law and Do other Things*, 25 May 2009) <<https://lawandotherthings.com/2009/05/specialised-legal-education-bar-council/>> accessed 07 August 2022

BCI has boosted the value of an international LL.M. for young law graduates interested in pursuing a career in academia. This is because graduates returning from overseas can apply for visiting faculty positions at institutions and look for work. Because an Indian LL.M. requires an extra year of study, Indian colleges would struggle to attract quality applicants who have been accepted by international universities as a result of this shift.

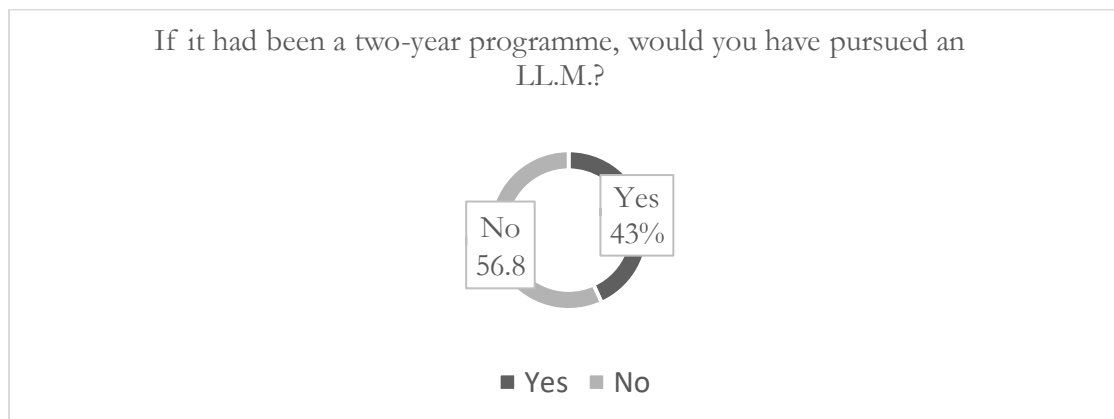
BCI should have made steps to incentivize the planned two-year LL.M. if it was so enthusiastic about it. Currently, students would have to pay fees for two years if they did not have any significant opportunities to make money during the course. It would have been beneficial if the BCI had opted to cover the course's financial expenditures in the second year and ensured that each student received a paid teaching assistantship under the supervision of a professor from the second year onwards.

*D. EVENTUAL DROP IN LL. M. PURSUERS*

The rules and guidelines would have a differential impact on disadvantaged populations. A longer LL.M. entails more investment before a person can look for work. An LL. M. degree would now onwards be considered a luxurious course if not for providing a means to be employed as a Professor. The rules and guidelines would have a differential impact on disadvantaged populations. A longer LL.M. entails more investment before a person can look for work. An LL. M. degree would now onwards be considered a luxurious course if not for providing a means to be employed as a Professor.<sup>17</sup>



<sup>17</sup> *Ibid*



The above pie chart shows the survey results of alumni from Azim Premji University's (APU) one-year LL.M. programme on the subject that was conducted. Respondents ranged from the 2016 batch (when the course began) to the most recent 2020 class. In the last four years, APU has given the LL.M. degree to approximately 85 students, of whom 44 have answered. While 70.5 percent of respondents thought a year was the perfect length for the course, a stunning 56.8% claimed they would not have pursued it if it had been a two-year degree.<sup>18</sup> Law schools rely significantly on theoretical teaching methods, therefore seven years is a significant investment. By sheer logical reasoning, it won't be a stretch to come to reason for the eventual decline in LL.M. pursuers in the near future, if ever it may happen.<sup>19</sup>

#### E. TECHNOLOGY AND THE 1-YEAR LL. M. PROGRAMME

No secret that law as a field is ever-changing. Three decades ago legal research was strenuous, requiring a lot of time and involvement behind a single piece of research. Visitations to the Library, collecting Newspapers, location-specific, physical hard copy books, and adding another element of finding relevant case laws without skimming past them. Currently, research in any field has become significantly cheaper, more accessible, and has no time/location constraints; Legal research partake among new and veteran researchers has increased drastically due to easier entry and no related barriers. Tools for legal research are alleviating the load on lawyers.

<sup>18</sup> Anubhav Raj Shekhar, 'Objections to the Abolition of the One Year LL.M. Programme' (*Bar & Bench*, 01 February 2021) <<https://www.barandbench.com/columns/objections-to-the-abolition-of-the-one-year-llm-programme>> accessed 08 August 2022

<sup>19</sup> *Ibid*



Inferable that the LL. M. programme which is a lot more research-centric/oriented having a passing bar/requirement of submission of a dissertation at the end of the academic year is completely feasible in a 1-year period.

#### F. UNHEARD PURSUIT OF LEGAL EXCELLENCE

According to *QS World University Rankings by Subject 2021: Law and Legal Studies 2021*, An India University specifically *O.P. Jindal Global University (JGU)*, ranked 73<sup>rd</sup> and was the only Indian University in the Top 100 of the List.

#### *Inference*

JGU, a private university had signed agreements and partnered up with seven (7) leading legal institutes in Australia to better facilitate education, in the year 2019; this may be why JGU even managed to rank 73<sup>rd</sup> while other Indian law universities are trying to play catch with leading legal institutes from the USA, UK, Canada, Australia, and Japan. It makes a clear case that India in the global arena is lacking in terms of quality legal education. Students after graduating with a bachelor's in law ("Law") having a desire to become legal academicians often belabored the option to continue further education abroad.

#### G. UK'S REPARATIONS AND WORLD STANDARDS FOR LL. M.

Considering the Law Universities in the UK; after India made it mandatory for the LL.M program to strictly be a 2-year degree, UK's standing 1-year LL.M program will likely be in effect as the UK rightfully so, does not owe any listening rights to India and its legal reforms, except for the reparations it owes for its historic atrocities against India. BCI only recognizes a few foreign law colleges; to any bystander, these new rules are an attempt at cutting ties with them altogether.

*Does the 2-year part-time variant of LL.M provided by foreign universities constitute a 2-year LL.M degree mandate in India, will it be recognized by BCI?*

Highly improbably this notification will upset foreign legal universities & institutions to the extent that they will implement and provide a full-time 2-year LL. M, course as an alternative to their already existing 9-month &/or 1-year LL.M. program or reform the same to be of a 2-year time period. Foreign universities do in fact provide a 2-year variant of LL. M. but it's a part-time ("part-time") variant, meaning, it covers the same syllabi, most providing and having 2 semesters or 3 trimesters/terms for division of the academic year; even after complying with the requirements of the BCI to have a minimum of 4 semesters is met by these universities, the actual teaching(pedagogy), and materials fall short; further, the required teaching/study/contact hours per week (6 hours a day for 5 days a week, amounting to 30 hours a week) as stated by BCI is not adequate in the case of foreign Law universities pedagogy, and curriculum. Hence, will be deemed invalid (u. Section 10; BCI Postgraduate Rules).

#### H. UNCALLED, ARCHAIC, AND A SETBACK

*"If it ain't broke, don't fix it"*

*- Thomas Bertram Lance*

Legal institutes/organisations in developed nations have been thoroughly tested, and previously established structures have been reformed countless times; survival, Darwinism, and organizational evolution<sup>20</sup> is a naturally occurring process that refines the efficiency and effectiveness of a structure. Every curriculum reform that has been implemented in the educational system with more or less required training (human resources, materials, and time) has given rise to a number of distinct realities, some with potential for success and others with challenges.<sup>21</sup> Taking as a starting point the requirement that any restructuring process is based on a sound understanding of the current situation of the relevant intervention field, and studying the completion surrounding the institute.<sup>22</sup> Intervention in already 'set standards'

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<sup>20</sup> G Abatecola & Ors, 'Darwinism, Organizational Evolution and Survival: Key Challenges for Future Research' (2015) 20(1) J Manag Gov 1-17

<sup>21</sup> *Ibid*

<sup>22</sup> CV Rădulescu & Ors, 'The Pressure of Globalization on Educational Evolution in Emerging Economies' (*SHS Conferences*, 10 January 2020)

[https://www.shsconferences.org/articles/shsconf/abs/2020/02/shsconf\\_glob2020\\_06026/shsconf\\_glob2020\\_06026.html](https://www.shsconferences.org/articles/shsconf/abs/2020/02/shsconf_glob2020_06026/shsconf_glob2020_06026.html)> accessed 08 August 2022

without acknowledging that these standards are what developed nations rely on as have best seen fit through concrete evolution, as a result of the constant testing, only institutes/structures that are perfect survive, and so naturally might be the best alternative.<sup>23</sup>

*Setting Industry standards with already established industry leaders?*

India has borrowed the constitution’s framework from multiple countries.<sup>24</sup> Below are the features of the Indian constitution India borrowed from other nations.

Name of Countries	Borrowed Features of the Constitution
Britain	<ol style="list-style-type: none"> <li>1. Parliamentary government</li> <li>2. Rule of Law</li> <li>3. Legislative procedure</li> <li>4. Single citizenship</li> <li>5. Cabinet system</li> <li>6. Prerogative writs</li> <li>7. Parliamentary privileges</li> <li>8. Bicameralism</li> </ol>

<sup>23</sup> *Ibid*

<sup>24</sup> Hemant Singh, 'Constitution of India: Features Borrowed from Other Countries' (*Jagran Josh*, 23 November 2021) <<https://www.jagranjosh.com/general-knowledge/constitution-of-india-features-taken-from-other-countries-1409660545-1>> accessed 08 August 2022

Ireland	<ol style="list-style-type: none"><li>1. Directive Principles of State Policy</li><li>2. Method of Election of the president</li><li>3. Members nomination to the Rajya Sabha by the President</li></ol>
United States of America	<ol style="list-style-type: none"><li>1. Impeachment of the president</li><li>2. Functions of president and vice-president</li><li>3. Removal of Supreme Court and High court judges</li><li>4. Fundamental Rights</li><li>5. Judicial review</li><li>6. Independence of the judiciary</li><li>7. The preamble of the constitution</li></ol>

Canada	<ol style="list-style-type: none"> <li>1. Centrifugal form of federalism where the centre is stronger than the states.</li> <li>2. Residuary powers vest with the centre</li> <li>3. Centre appoints the Governors at the states</li> <li>4. Advisory jurisdiction of the Supreme Court</li> </ol>
Australia	<ol style="list-style-type: none"> <li>1. Concept of Concurrent list</li> <li>2. Article 108 i.e. Joint sitting of the two houses</li> <li>3. Freedom of trade and commerce</li> </ol>
USSR (Now Russia)	<ol style="list-style-type: none"> <li>1. Fundamental duties</li> <li>2. The ideals of justice (social, economic, and political), are expressed in the Preamble.</li> </ol>
France	<ol style="list-style-type: none"> <li>1. Concept of “Republic”</li> <li>2. Ideals of Liberty, Equality, and Fraternity (contained in the Preamble)</li> </ol>
Germany	<ol style="list-style-type: none"> <li>1. Fundamental Rights are suspended during Emergency</li> </ol>
South Africa	<ol style="list-style-type: none"> <li>1. Election of members of the Rajya Sabha</li> <li>2. Amendment of the Constitution</li> </ol>

Japan	1. Concept of “procedure established by Law”
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The National Education Policy (NEP) proposed in 2020 and soon given a green light by the government, is India’s way to “Americanise”<sup>25</sup> or westernize the education sector in India.<sup>26</sup> The NEP proposes a plan<sup>27</sup> to replace the 10+2 system with a 5+3+3+4 structure. Deceptively similar to the American education system’s structure of 5+3+4+3/4. “Inspired” might be the right word for the similarity.

As stated above, India has had an evident history of using and adopting industry standards set by other developed nations in both the legal (constitution) & the education (NEP) field. Then a case is to be made as to why the BCI decided to discard the supposed set-in-stone standards for the LL. M. Programme. The BCI is leveraging its arguments of not recognizing a 1-year duration LL. M. (Indian/foreign) degree in its favour by using section 7<sup>28</sup> of The Advocate Act, 1961.

*Section 7 Functions of Bar Council of India, sub-section 1 (ic) to recognize on a reciprocal basis foreign qualification in law obtained outside India for the purpose of admission as an advocate under this Act;*

### ***Inference***

As discussed, earlier LL. M. is not a qualification for practising law in India, under this proviso, BCI is not entitled to recognize LL. M at all, instead of undergraduate (India/Foreign) courses.

BCI in the notification tries to clarify by saying- “National Education Policy, 2020<sup>29</sup> of Government of India categorically carved out legal education from the newly proposed

<sup>25</sup> AK Das, ‘Cluster University Model is an American Concept’ (News Careers 360, 24 April 2021) <<https://news.careers360.com/nep-2020-cluster-university-model-american-concept>> accessed 08 August 2022

<sup>26</sup> Sujit Nath, ‘NEP is Copy of Western System with No Realisation of Ground Reality, Says Bengal’s Education Minister’ (News18, 06 August 2020) <<https://www.news18.com/news/india/nep-is-copy-of-western-system-with-no-realisation-of-ground-reality-says-bengals-education-minister-2763347.html>> accessed 08 August 2022

<sup>27</sup> *Ibid*

<sup>28</sup> Advocates Act 1961, s 7

<sup>29</sup> National Education Policy 2020

umbrella apex body institution, Higher Education Commission of India (HECI) with its regulatory arm of National Higher Education Regulatory Council [NHERC] excluding the legal education as one of the only two professional education outside the swipec of the HECI and its regulatory arm, NHERC, making the entire realm of legal education for the Bar Council of India to regulate.”

A petition was filed in the Supreme Court, and eventually, the BCI clarified and assured the abolishment of the 1-year duration of the LL. M. will be in effect after the academic year 2022. This is so as to not jeopardize the immediate LL. M. candidates that have taken the entrance exams for the domestic 1-year programme, and the Indian candidates who have made reservations to foreign universities.

## **CONCLUSION & RECOMMENDATIONS**

As is evident that BCI does not in fact have any jurisdiction over the LL. M. programme and has based its final claims that the UGC under whom LL. M. lies, itself thinks that BCI should take under its reign “all matters concerning legal education”, then there is nothing even the Supreme Court can do regarding this no matter the number of students/academicians filing writ petitions. BCI should first and foremost cite/give evidence in its favour in claiming that UGC is giving up LL. M. under its jurisdiction, even a reason like UGC is stretching thin and can’t handle the LL. M. programme and best thinks it fit to be under the BCI’s jurisdiction will be enough to put this to rest. Without which this Notification seems like BCI is stepping out of bounds.

The points made in the aforementioned arguments against the scrapping of the 1-year LL. M. programme should be taken into account to some degree irrespective of the jurisdiction, and consider the global standards it claims that it aspires to achieve. The BCI should perhaps consider maintaining the earlier ‘status quo,’ even though there were two variants to the LL. M. course in India, candidates applying to pursue the 1-year variant had to take a special test – the All-India Admission Test (AIAT). This may have previously served to encourage candidates to

pursue an LL. M. irrespective of not qualifying for the 1-year variant as it was completely on them (candidates) to do well to grasp and secure the 1-year variant instead of the 2-year one.