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CONTINUING LEGAL EDUCATION: BURDEN OR A MUCH NEEDED REFORM?

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"Education is a continual process, it's like a bicycle...if you don't pedal you don't go forward."

— George Weah

INTRODUCTION

THE above quote aptly sums up the need of continuing professional education for professionals. Continuing education not only ensures professional development and accountability but also emphasises on the need for specialization among professionals. The Medical Council of India has already introduced Continuing Medical Education for health professionals in India. MCI, through a resolution in 2011 has made it mandatory for the doctors to earn at least 30 CME credits every 5 years to ensure recertification.¹ Similarly, the need of introducing mandatory Continuing Legal Education (CLE) has been recognised for the legal practitioners in India. The concept of CLE is not alien to India as CLE programmes are conducted at regular levels in forms of courses, workshops, seminars, research paper presentations etc. However, since these activities are voluntary and confined to metropolitan cities, only a section of advocates are benefited by the same. Thus, it has been proposed that CLE must be made mandatory for the lawyers in India to maintain their bar licenses.

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1. Medical Council of India Notification. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

CONTINUING LEGAL EDUCATION IN INDIA

Mandatory Continuing Legal Education is already in vogue in several jurisdictions such as Australia, Canada, France, Germany, UK and US. These jurisdictions require their lawyers to earn minimum CLE credits in order to continue their practice. The demand for introduction of continuing legal education in India has been growing stronger over the years. It is due to the efforts of Late Prof. N.R. Madhava Menon that the concept of continuing legal education has gained momentum in India. M.K. Nambyar Academy and few other NLUs have even started offering course modules in continuing legal education both for lawyers, professors and researchers. The onus of offering continuing legal education to judges lies on the national and state judicial academies. However, CLE still continues to be voluntary for legal professionals in India.

Chapter IV of the *Rules of Legal Education* made by the Bar Council of India in consultation with Universities and State Bar Councils provides for the establishment of Directorate of Legal Education.² Rule 34 of the said rules reads as follows:

34. Directorate of Legal Education

The Bar Council of India shall establish a Directorate of Education for the purpose of organizing, running, conducting, holding, and administering

*Continuing Legal education The Acts establishing the National Law Universities in India also enjoins the universities to impart continuing legal education.³ Section 4(a) of *The National Law University Act, 2007* provides as under:*

4. Objects of the University. *The objects of the University shall be:*

(a) To evolve and impart comprehensive legal education including distant and continuing legal education at all levels to achieve excellence;

The *Vision Statement 2011-13* of the Bar Council of India also underlined the importance of continuing legal education for advocates and proposed to put in place a system of continuing legal education through

2. Rules of Legal Education, 2008.

3. National Law University Delhi Act 2007 (Delhi Act No. 1 of 2008).

seminars and workshops.⁴The recent Law Commission report No. 266 titled "*The Advocates Act, 1961 (Regulation of Legal Profession)*" also highlights the importance of continuing legal education in India.⁵ The report recommends the amendment of The Advocate's Act, 1961 for introduction of CLE provisions. Law Commission has proposed to introduce the following provisions in The Advocates Act, 1961:

1.6 Functions of State Bar Councils

(1) (j) to organize compulsory Continuing Legal Education either directly or through Bar Associations, Bar Council of India Trust, the State Bar Councils, Lawyers' Society and any institute of repute recognized by Bar Council of India for this purpose in accordance with the rules made in this behalf.

27 Functions of Bar Council of India

(1) (q) to provide for, organize and monitor compulsory Continuing Legal Education through Bar Council of India Trust, a society or association recognized by it and as prescribed by guidelines/rules.

3.49 General power of the Bar Council of India to make rules

(1) (ia) to provide for, organize and monitor compulsory Continuing Legal Education for Advocates or class of Advocates either directly or through Bar Council of India Trust.

SHOULD CLE BE MADE MANDATORY?

Mandatory CLE is being proposed as a part of reforms in legal education in India. After the success of 5-year law schools, introduction of mandatory CLE can be viewed as another attempt of improving the standards of the bar. The issues which have been plaguing the legal profession include incessant strikes, unprofessional behaviour, misconduct and contemptuous acts by the lawyers. It has been realised that continuing legal education if made mandatory for the legal practitioners would help in weeding out such lawyers who do not abide by the values of the bar.

4. <http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/vision-statement-2011-13/>

5. Law Commission of India, 266th Report on The Advocates Act, 1961 (Regulation of Legal Profession), 2017

In the era of globalisation and with the influx of foreign law firms in India, it is necessary that the lawyers of India stay abreast of all the legal developments. With the MNCs lining up and number of investment treaties taking place, a lot of opportunities will be up for grabs in international litigation, arbitration and mediation. While motivating the lawyers to continuously learn, mandatory CLE requirements will also help them in achieving professional goals.

Now a days specialized lawyers are the most cherished ones. India is also slowly and surely embracing ADR and there are demands for trained arbitrators, mediators and negotiators. The CLE activities can help advocates in achieving their intended specialization while they continue their active practice. The system of CLE cannot be rejected as purely academic as it also seeks to inculcate ethics and professionalism in lawyers so that the practice of law continues to be a noble profession.

The importance of continuing legal education cannot be denied as an incompetent lawyer is guilty of disservice to the society when he puts the rights and interests of his clients in jeopardy. It is very important that the lawyers are always on their tiptoes, willing to learn and grow. The CLE credits are nothing but a way to ensure that the lawyers are willing to spend a couple of hours every year, improving themselves. The CLE requirements are not at all arduous to fulfil as they can be earned by teaching, public speaking, participating in seminars, publishing research papers and by engaging in pro bono work. The CLE requirements vary in jurisdictions but mostly countries require a minimum of 12 hours to be spent every year by lawyers on CLE activities. The certificates ensuring CLE compliance are required to be submitted by lawyers once every three or five years.

In India, fresh law graduates enrol as advocates after clearing the All India Bar Examination. AIBE is a national level exam conducted by the Bar Council of India to assess the capability of the individuals willing to practise law in India. Although the exam ensures quality in the legal profession at the threshold by scrutinising individuals, there is still no mechanism at place for further upgrading the professional standards of the members of the bar. Thus, introduction of mandatory CLE would be a welcome step which would ensure quality and professional competency at the bar.

IMPLEMENTATION OF CLE: AN UPHILL TASK

The CLE system may certainly seem promising but implementing the same will be an uphill task. In India, there are almost 2 million lawyers registered with different State Bar Councils. In order to ensure the

compliance of CLE requirements, an elaborate system will have to be put into place with provisions for the following:⁶

- (i) *Financing of CLE activities* — The hefty fees in law schools continue to burn hole in the pockets of the parents. By the time students graduate, they are already under substantial debt. If CLE activities are required to be self-financed by the young graduates themselves, it will seem to be an unwelcome burden to them. Thus, for CLE to become a success, it is imperative that these activities are conducted at a nominal cost ensuring maximum participation.
- (ii) *Marks based assessment Vs. Credit based assessment* — There seems to be a divergence of opinion among the advocates over the system of CLE to be adopted in India. Credit based assessment will offer flexibility to the advocates whereas marks-based system will be easier to implement.
- (iii) *Regular courses Vs. Virtual courses* — If regular courses are made part of CLE, it would cause advocates utter discomfort as they would have to leave work for attending CLE courses whereas virtual courses will allow lawyers to study and ensure CLE compliance even from their offices or homes.
- (iv) *Subject based learning Vs. Skill based learning* — The curriculum of CLE also requires consideration. It has been much debated if the CLE should constitute of subject based learning or skill based learning. The inclusion of emerging areas of law, legislative and judicial developments and international and comparative legal system are some of the areas which merit inclusion in CLE curriculum.

CONCLUSION

Dr. W. Edwards Deming has very famously remarked, “*Learning is not compulsory. Neither is survival.*” It is certainly true that advocates cannot afford to be slack when it comes to their profession. Lawyers have obligations not only to their clients but also to the bar, the bench and above all to the justice delivery system. It is not the academic achievements of a lawyer which help him to prosper but his constant zeal to learn, grow and excel.

It was Abraham Lincoln who said, “*Give me six hours to chop down a tree and I will spend the first four sharpening the axe.*” This oft

6. Ministry of Law and Justice, Report on Designing the Continuing Legal Education for Advocates in India, 2017.

mentioned quote by Abraham Lincoln emphasises on the fact that however skilled one may be, he must still spend a considerable time on polishing and strengthening those skills. Introduction of continuing legal education in India will certainly pave way for professionals who are willing to render their quality services. If requirement of CLE is made mandatory in future, it would only require a couple of hours every year which seems to be fairly reasonable. Although the system of recertification may seem onerous to many but a few hours spent by lawyers on improving themselves would have far-reaching effects on the legal profession in India.

After the advent of 5 years law courses/integrated law courses in India, there has been a sea change in legal education. However, a large section of the bar even today comprises of Advocates who gained entry into the profession only after passing their LL.B exams. During the course of my practice, which is over 40 years when there was no scope for joining any courses etc., I still remained in touch with legal education one way or the other. The first step after becoming an Advocate was passing the Advocate-on-Record Examination in the Supreme Court, whereafter whenever I have had an opportunity of attending seminars, conferences, attending moot courts and choosing to speak on legal matters, I never lost that opportunity. I also delved into teaching after being assigned as a Visiting Professor in a foreign University. As mentioned earlier, specialization within the profession has gained a lot of momentum. Therefore, even after being designated as a Senior Advocate by the Supreme Court, I joined the 40 hours Mediation Course recently, conducted by the Supreme Court of India. I have no doubt that in future Arbitrators will have to be fully qualified and accredited by institutions which will add strength to the improvement of the ADR movement in the country. Therefore, I am of the firm view that every lawyer young and old must continuously pay attention towards gaining legal education to stay abreast of continuous legal developments in the country and abroad.

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