

## **Beacon of Hope Amidst the Dark Clouds of Turf Protection: Evaluating Recent Efforts and Missed Opportunities Towards Competitive Legal Services in India**

Common law countries have adopted varied paths to regulation of the legal profession, despite their common origins and similar legal tradition of lawyers and courts. Semple, Pearce and Knake have proposed a taxonomy of theories of legal professional regulation based on a comparative analysis of regulations across some common law countries.<sup>1</sup> They have identified two major frameworks: the North American (comprising of United States of America and Canada) professionalist-independent framework; and the consumerist-competitive framework found in the Common Law jurisdictions of Northern Europe (comprising England and Wales) and Australia.<sup>2</sup> While the former framework mandates self-regulation based on ideals including professionalism and professional independence, the latter framework treats clients as consumers of legal services (similar to consumers of other goods and services) and adopts a market oriented approach promoting protection and interests of consumers.<sup>3</sup> As a consequence of differing regulatory frameworks, regulatory reforms responding to changing social and technological conditions in the legal profession in these countries were markedly diverse. Hence, while Australia, England and Wales embarked on goals of enhanced market competition and innovation, the United States, on the contrary, rejected market competition and innovation.<sup>4</sup>

The Indian legal profession has adopted the North American professionalist-independent framework to lawyer regulation. It has many barriers to entry and practice. Entry is guarded through prohibition on ownership/investment in legal businesses by non-lawyers, mandatory legal curriculum required to be taught in law schools and accreditation of law schools itself. Practice of law can be conducted after a candidate displays satisfactory education, examination qualification and sound moral character requirements. Post-admission, delivery of legal services is regulated with laws governing structure of permissible legal partnerships and businesses, and advertising restrictions.

India's regulatory body for lawyers, the Bar Council of India (**BCI**) has been criticised over the years on various grounds including capture, poor capacity, and transparency. The Government has intervened at times to introduce competitive and consumer welfare enhancing proposals. However,

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<sup>1</sup> Noel Semple, Russell Pearce and Renee Knake, 'A Taxonomy of Lawyer Regulation: How Contrasting Theories of Regulation Explain the Divergent Regulatory Regimes in Australia, England/Wales, and North America' (2014) 16(2) *Legal Ethics* 258.

<sup>2</sup> For a comparative understanding of the legal professions in the United States and Australia, see generally Sharyn Roach Anleu, 'The Legal Profession in the United States and Australia: Deprofessionalization or Reorganization?' (1992) 19 *Work and Occupations* 184, 196.

<sup>3</sup> Semple et al, above n 1, 1.

<sup>4</sup> In 2000, the ABA adopted a resolution that emphasised the core values of the legal profession including a lawyer's duty to help maintain a single profession of law. The resolution was adopted in response to a debate on whether ABA's *Model Rules of Professional Conduct* be amended to permit lawyer participation in multidisciplinary practices. The adoption of this rule rejected MDPs in the United States that as per many commentators could have made the legal market more competitive. See Nathan M Crystal, 'Core Values: False and True' (2001) 70 *Fordham Law Review* 747, 749.

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these proposals are yet to see daylight. Consequently, the profession and the BCI have attracted notoriety for their status quo preserving, self-serving policies. Recently, the Ministry of Human Resource Development of the Government of India, passed the National Education Policy, 2020.<sup>5</sup> While the policy makes several suggestions regarding improvement of higher education including legal education in India, yet it has shrugged from bringing forth legal education within the ambit of a common, single point, central regulator for higher education sector, the proposed National Higher Education Regulatory Council, leaving it to be primarily governed by the BCI. While this may be regarded as a missed opportunity to take away a core regulatory function, the regulation of legal education, from the ambit of a dysfunctional regulator, the Education Policy has been influential in providing guidance to law schools and the BCI on expected standards of legal education.

Meanwhile, the Institute of Chartered Accountants of India (ICAI), the professional accounting body in India, has permitted multidisciplinary practices between accountants, auditors and other professionals through their regulations.<sup>6</sup> ICAI has however clarified that partnerships with advocates cannot be formed until the professional regulator of lawyers, permits such relationships through an amendment of their existing rules that currently bars them.<sup>7</sup> All eyes are thus on BCI to evolve from its status quoist stand to permit multidisciplinary partnerships with lawyers and move towards a consumerist-competitive framework.

This paper evaluates recent efforts namely, the Education Policy, 2020 and the official nod to multidisciplinary accountancy firms, that are aiming to take the Indian legal professional regulation towards a consumerist-competitive framework. It charts the history of barriers to competition in the legal services sector through an analysis of key laws, decisions, and regulation to understand whether the recent circuitous route to a path of competitive services will succeed or fail. The discourse seeks to highlight for scholars of competition law, the unique set of challenges prevalent in India that prevent competition in the legal services sector and the beacon of hope amidst the dark clouds of turf protection.

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<sup>5</sup> Ministry of Human Resource Development, Government of India, National Education Policy, 2020, Ministry of Human Resource Development of the Government of India, passed the National Education Policy, 2020 [https://www.education.gov.in/sites/upload\\_files/mhrd/files/NEP\\_Final\\_English\\_0.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf)

<sup>6</sup> The Institute of Chartered Accountants of India, Notification No. 1-CA(7)/197/2021, July 8, 2021, <https://resource.cdn.icai.org/65464council52804.pdf>; and the Institute of Chartered Accountants of India, <https://www.icai.org/post/chartered-accountants-amendment-regulations-2021-dated-july8-2021>

<sup>7</sup> The Institute of Chartered Accountants of India, Frequently Asked Questions (FAQs) on Multi-disciplinary Partnership Firm of Chartered Accountants in Practice (MDP CAs in Practice) <https://resource.cdn.icai.org/66051aasb53312-annex3.pdf>