

# LEGAL CONUNDRUMS OF THE PATENTS ACT AS TO UNIVERSITY -INDUSTRY RELATIONSHIPS: A CRITICAL STUDY WITH SPECIAL REFERENCE TO THE RIGHT TO PRACTISE LAW

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## I. INTRODUCTION

**Introduction:** Advocates work can be divided into two broad segments i.e. Litigation and non-litigation practice of law. Non- litigation practice of law is included in section 29 of the Advocates Act, 1961. Bar council of India has also approved non-litigious practice as chamber practice & therefore enrolment as an advocate is pre-requisite for practicing in non- litigation matters also. Hon'ble Supreme Court in *Bar Council of India vs. A.K. Balaji and Ors.*, settled the issue & it is no more a *res-integra* that practicing of law includes not only appearance in courts but also giving of opinion, drafting of instruments, participation in conferences involving legal discussion. These are parts of non-litigation practice which is part of practice of law. Scheme in Chapter-IV of the Advocates Act makes it clear that advocates enrolled with the Bar Council alone are entitled to practice law, except as otherwise provided in any other law. All others can appear only with the permission of the court, authority or person before whom the proceedings are pending. Regulatory mechanism for conduct of advocates applies to non-litigation work also. The prohibition applicable to any person in India, other than advocate enrolled under the Advocates Act, certainly applies to any foreigner also<sup>1</sup>.

Work of patent agent is actually a non-litigation practice of law, better known as chamber practice. Therefore, the nature of job stated under Section 127 of the Patents Act is nothing but a part of the work usually done by any Advocate in respect of drafting and filing. As per section 30 of the Advocates Act, an advocate can also practice patent laws in capacity of a patent agent as of right. Under section 126 of the Patents Act, prior to the amendment, the qualification prescribed to be patent agent, as per sub-clause (i) of the Section 126 (1) (c), was an advocate within the meaning of the Advocates Act, 1961 (25 of 1961). Hence, an advocate was entitled to register his name as patent agent, as a matter of right to practice before the Controller of Patents, prepare all documents, transact all business and discharge other functions, as per the provisions of the Act.

In fact, as per Section 126 of the Patents Act, apart from Advocates, other persons, who have passed the qualifying examination prescribed and conducted by the respondents' Department are also eligible to be registered as patent agents. However, after the impugned amendment, it has been made that advocates are not entitled to register their names as patent agents, as a matter of right. The said amendments in the Patents Act were declared unconstitutional by the Madras High Court in *S.P. Chockalingam vs. Controller of Patents and Union of India*. Indian Patent office has filed an appeal against the said amendment in Madras High Court. India Patent office still is insisting unconstitutionally on the appearance of advocates in patent agent examination.

Proper interpretation & implementation of UGC guidelines & rules made under Advocates Act, 1961 will remove the impediments in the utilization of the services of academics outside the university system, reputed scientists & advocates, judges & other skilled professionals as it is imperative that the expertise & experience of such individuals who are outside the main stream academic system, flows into our universities. Full time law teachers are allowed chamber practice & legal consultancy. It is well known that today the country faces a dissonance & disconnect between higher legal education and its relevance to practice of law (litigious & non litigious), legal

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<sup>1</sup> Bar Council of India vs. A.K. Balaji and Ors. (13.03.2018 - SC) : MANU/SC/0239/2018

cells/IPR cells of various industries, judiciary etc. UGC is of considered opinion that this is so because a majority of the existing Higher Educational Institutions remains almost disconnected with the requirements of the work place as they are yet to incorporate the specific requirements of various industries in their curriculum in an innovative & flexible manner while producing well-groomed graduates. A crying need is felt, more than ever for taking integrated initiatives towards knowledge acquisition & upgradation of human competencies in universities & colleges to address the emerging needs of the economy so as to ensure that graduates have adequate knowledge & skills to get suitably employed or become entrepreneurs and thereby meet the economic and industrial needs at the regional and national levels.

**Amendment of Sec 126, Patents Act & the Advocates Right to Practice**

The third amendment of Patents Act 1970, in 2005 was a major breakthrough for Indian IP practice in patents. Pursuant to International Pressure & agreements, Section 126<sup>2</sup>, Indian Patents Act, 1970 was amended which provides for qualifications of Patents Agent, wherein subclause (i) was omitted by Act 15 of 2005, sec. 67(a)(w.r.e.f.1-1-2005). Prior to the said amendment, the Patents Act, 1970 mandated that an advocate within the meaning of the Advocates Act, 1961, who obtained a degree in science, engineering or technology from any university established under law in the territory of India, was qualified to have his name entered in the register of patent agents. Now, Advocates, even with science degrees are made ineligible to get themselves registered directly as patent agents without patent agent examination

**Amendments in Sec. 126 Patents Act are declared unconstitutional in S.P. Chockalingam case:**

A mandatory requirement of passing a qualifying examination, by amending the Patents Act, was introduced & examinations are required to be conducted by the Ministry of Commerce & Industry. The said amendments in the Patents Act were declared unconstitutional by the Madras High Court in *S.P. Chockalingam vs. Controller of Patents and Union of India*<sup>3</sup>, it was held that there was no satisfactory reason on the side of the Respondents as to why the term “Advocate” within the meaning of Advocates Act, 1961 available under Section 126 (1) (c) (i) of the Act was deleted by the 2005 Amendment in an unjustifiable manner. Respondents had no legal right to expand their authority for curtailing the profession of legal practitioners against the Advocates Act, 1961 by way of conducting their own examination in law and drafting. Merely by prescribing qualification as degree holder in science, engineering or technology and passing a departmental examination on the Act and drafting, the Respondents could not monopolise such category of persons and say that advocates were not competent to be patent agents. All the citizens of India have right to practice any profession or carry on any occupation, trade or business, which is a fundamental right, that cannot be prevented by State by making any law, though the State is empowered to impose reasonable restrictions in the interests of general public. By the unreasonable restriction made by the Respondents by way of 2005 Amendment, the advocates practicing in the area of the Act would have

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<sup>2</sup> Available at <http://www.ipindia.nic.in/acts-patents.htm> ( viewed on 20.12.2017) Indian Patents Act, 1970 Qualifications for registration as patent agents

(1) A person shall be qualified to have his name entered in the register of patent agents if he fulfils the following conditions, namely:-

- (a) he is a citizen of India;
- (b) he has completed the age of 21 years;
- (c) he has obtained a degree in science, engineering or technology from any university established under law for the time being in force in the territory of India or possesses such other equivalent qualifications as the Central Government may specify in this behalf, and, in addition,—
  - (i) [Omitted]
  - (ii) has passed the qualifying examination prescribed for the purpose; or
  - (iii) has, for a total period of not less than ten years, functioned either as an examiner or discharged the functions of the Controller under section 73 or both, but ceased to hold any such capacity at the time of making the application for registration;
  - (d) he has paid such fee as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), a person who has been registered as a patent agent before the commencement of the Patents (Amendment) Act, 2005 shall be entitled to continue to be, or when required to be re-registered, as a patent agent, on payment of the fees as may be prescribed.

<sup>3</sup> (2013)4MLJ23

to necessarily depend on other patent agents. As a matter of fact, prior to the impugned amendment, the parties/litigants were at liberty to engage any advocate who had registered as patent agents in respect of drafting, preparing, filing and appearing before the authorities. It was the right or privilege of the litigants or parties to engage any patent agent either an advocate who had registered himself as patent agent or the other category by way of amendment, the Respondents could not create a monopoly against the Advocates Act. Hence, the 2005 Amendment could be construed only an unreasonable class legislation prohibited under Article 14 of the Indian Constitution on the ground that the same was against equality before law and equal protection of law. Hence, the impugned amendment was against Articles 14, 19 (1) (g) and 21 of the Constitution and also against public interest, accordingly, the same was liable to be struck down, as unconstitutional. Therefore, the Court declared the 2005 Amendment as unconstitutional and unenforceable.

### **Understanding the Genus 'Right to practice law'**

#### **Meaning of practice of law in non litigation matters/chamber practice**

There is no dispute that for a person to practise in litigious matters, he has to be enrolled as an advocate under the 1961 Act. A person can be said to be practising in litigious matters when he renders legal assistance by acting, appearing and pleading on behalf of another person before any Court or authority. Bombay High Court in *Lawyers Collective v. Bar Council of India*<sup>4</sup> observed that a person can be said to be practising in non litigious matters, when he represents to be an expert in the field of law and renders legal assistance to another person by drafting documents, advising clients, giving opinions, etc. The question that if a person wants to practise in non litigious matters only, then whether, he should be enrolled as an advocate under the 1961 Act?, was answered in affirmative. Hon'ble Supreme Court in *Bar Council of India vs. A.K. Balaji and Ors*<sup>5</sup> settled the issue in 2012 clarifying that Section 29 of the Advocates Act, 1961 covers the persons practicing litigious matters as well as non-litigious matters & therefore, to practice in non-litigious matters in India the law firms shall be bound to follow the provisions contained in the Advocates Act, 1961.

#### **Understanding the permissible classes of an advocate & cataloguing the work of an advocate**

Although there can be only two classes of advocates permissible under the Advocates Act, 1961 i.e. senior & other advocates<sup>6</sup> yet the functioning of an advocate can be broadly divided into two parts for the sake of understanding only. firstly as preparing plaint, written statement, petitions, applications, counters, preparation of all documents relating to the same, filing the case, compliance of any returns till the same is numbered & this first segment is analogous to practice in *non-litigious*<sup>7</sup> matters ( *better known as chamber practice*), in the sense that physical appearance in the court is not required by the advocate who is doing aforementioned tasks, & second segment of advocate's work depends upon the physical appearance in court for advancing legal arguments in the cases and in case if the order or Judgment is against the client or the particular counsel, preferring appeal/revision. Therefore, one part of the advocacy is drafting or preparing the case legally and filing and the other part is advancing arguments.

Madras High Court in *S.P. Chockalingam vs. Controller of Patents and Union of India*<sup>8</sup> observed that as per Section 127 of the Patents Act, though the word 'patent agents' has been coined or employed, the heading of the section, Right of patent agents, itself makes it clear that the same is nothing but the normal duty of any advocate relating to drafting, presenting and filing papers before the Court or Tribunal or other authority, though the nomenclature is patent agents, under Section 127 of the Patents Act, for which, qualification has been prescribed under Section 126 of the Act, to register as patent agent.

Section 127 of the Patents Act, the heading Rights of patent agents would say that as per the Act and the Rules made thereunder, every patent agent whose name is entered in the register shall be entitled (a) to practice before the

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<sup>4</sup> (2010) 2 Bom CR 753 at page 728

<sup>5</sup> (2012)3CompLJ302(SC).

<sup>6</sup> The Advocates Act, s.16.

<sup>7</sup> Origin of term *non-litigious matters* can be traced to *Lawyers Collective case*.

<sup>8</sup> (2012)3 CompLJ 302(SC).

Controller; and (b) to prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller of Patents under the Act.

**The right to practise and the right to appear in courts are not synonymous.**

Is it mandatory for an Advocate to appear in the courts or even file vakalatnama in the courts to sustain his identity as an advocate. It was settled way back in 1973 that by *Hon'ble Allahabad High Court in Prayag Das vs. Civil Judge, Bulandshahr and Ors*<sup>9</sup>, the right to practise and the right to appear in courts are not synonymous. An Advocate may carry on chamber practice or even practise in court in various other ways, e.g., drafting and filing of pleadings and Vakalatnama for performing those acts. For that purpose his physical appearance in court may not at all be necessary. However, so far as the basic qualifications of an Advocate entitling him to practise without physically appearing in court, or disentitling him from doing so are concerned, the determination of such conditions must remain within the exclusive province of the Bar Council. It is correct that the High Court does not possess the power to take away an Advocate's right to practise in courts. That power can be exercised only by the Bar Council which may also frame rules under Section 49(ab) of the Advocates Act. Refusal by a Court to permit an Advocate to appear before it does not amount to extinction of the Advocate's legal entity as an Advocate. It merely bars his physical appearance in a particular Court on a definite occasion.

Five Judges Bench of Hon'ble Supreme Court in *Harish Uppal (Ex-Capt.) v. Union of India*<sup>10</sup>, observed that the firstly that the right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie & second that the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. Right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file *vakalat* on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other.”

**Practice of law does not necessarily mean rendering professional services on primary/legal basis in the territory of India.**

The latest affidavit, filed by BCI's counsel Ardhendumauli K Prasad, has explicitly repelled any form of involvement by foreign lawyers in India, giving a wide connotation to the term “legal practice”<sup>11</sup>.

“Practice of law does not necessarily mean rendering professional services on primary/legal basis in the territory of India. Further more, it will not be just and proper to state that discussion/negotiation by way of seminars, conferences and arbitration will not constitute practicing profession of law,” it stated.

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<sup>9</sup> AIR1974All133.

<sup>10</sup> (2003) 2 SCC 45 at page 71

<sup>11</sup>

Available

at

<http://indianexpress.com/article/india/india-others/bci-to-sc-foreign-lawyers-cant-be-allowed-even-in-seminars/>  
(viewed on 20.12.2017)

The BCI said it ought to be clarified that “the practice of law, irrespective of its manner, form or time period involved, is contrary to the provisions as well as the principles of the Advocates Act and the Bar Council of India Rules”.

### **Work of patent agent is in fact a practice of law in non litigious matters better known as**

#### **Chamber practice**

This extract is taken from Lawyers Collective v. Bar Council of India<sup>12</sup>,

“48. In the statements of Objects and Reasons for enacting the 1961 Act, it is stated that the main object of the Act is to establish All India Bar Council and a common roll of advocates and Advocate on the common roll having a right to practise in any part of the country and in any Court, including the Supreme Court. Thus, from the Statement of Objects and Reasons, it is seen that the 1961 Act is intended to apply to (one) persons practising the profession of law in any part of the country and (two) persons practising the profession of law in any Court including the Supreme Court. Thus, from the statement of objects and reasons it is evident that the 1961 Act is intended to apply not only to the persons practising before the Courts but it is also intended to apply to persons who are practising in non-litigious matters outside the Court.”

#### ***Continuous infringement of the Advocates Right to get registered as Patent Agent***

Examiner of Patents & Designs O/o CGPDTM, Mumbai, was directed to state in reply<sup>13</sup> to a query as to whether an Advocate, having graduation / post graduation in science can get himself registered as patent agent without any further examination. It was stated by the then Examiner of Patents on behalf of Indian Patent Office that in light of the judgment passed in the matter of S. P. Chockalingam vs. Controller of Patents & others, an advocate who has a degree in science or engineering from any university established under law in India would be eligible for registration as a patent agent without clearing the Patent Agent Examination. An appeal has been filed against the Judgement and the matter is sub-judice. Controller General of Patents Design and Trade Marks<sup>14</sup> in an RTI query informed that the application for registration as a Patent Agent would be considered in due course of time only after the Writ appeal WA.532/2014 filed against Judgment passed in the W.P. 8472 of 2006 in the matter of S.P.Chockalingam vs. Controller of Patents & Ors. by Hon’ble High Court of Madras. But subsequently in the Patent Agent Examination, conducted in 2016, it was mandated, taking a contumacious stand to the aforesaid Madras High Court Judgment in S. P. Chockalingam case, that even advocates would be required to appear in Patent Agent Examination for registration as patent agent.

Perusal of the aforesaid observations of Hon’ble High Court leads to the irresistible conclusion that the work of a patent agent is nothing but practice in *non- litigious matters( chamber Practice)* & it is no more a res-integra that a person who is not enrolled as an advocate, cannot practise in non-litigious matters also. Therefore the appeal filed by the Patent Office/Union of India against the decision of the Madras High Court, is misconceived & here lies the panacea which is evident on the proper interpretation of the Advocates Act & International Laws along with the Patents Act.

Madras High Court in A.K. Balaji v. Government of India<sup>15</sup> observed

“The Bar Council of India, which is the 7th respondent herein, in its counter stated that the issue involved in the present writ petition is no longer res integra and has been settled by the Bombay High Court by holding that practice of law would include even non-litigious practice, and therefore, foreign lawyers i.e., lawyers not enrolled as Advocates under the provisions of the Advocates Act, 1961 would not be entitled to practice law in India (In

<sup>12</sup> (2010) 2 Bom CR 753 at page 744

<sup>13</sup> Reply from Examiner of Patents Examiner of Patents & Designs O/o CGPDTM, Mumbai Kundan Kumar <kundankumar.ipa@nic.in> via nic.in to P S GUPTA <psgupta81asi@gmail.com>Thu, Mar 3, 2016 at 3:13 PM on the subject: Information pertaining to the Right of Advocates( with science graduation background) to get registered as Patent Agent.

<sup>14</sup> Letter No.CG/RTI/2015/266 dated 23.10.2015 disposing RTI application DOIPP/R/2015/60420 dated 03.10.15.

<sup>15</sup> 2012 SCC OnLine Mad 723 : (2012) 1 LW 785 : (2012) 2 CTC 1 : AIR 2012 Mad 124 at page 793

W.P. No. 1526 of 1995 by order dated 16.12.2009 in the matter of Lawyers Collective v. Bar Council of India). It is further stated that since against the said judgment of the Bombay High Court no appeal was preferred, it attained finality, and consequently, the present writ petition deserves to be dismissed. It is stated that as per the provisions contained in Sections 24 and 29 of the Advocates Act only persons who are citizens of India are eligible to be enrolled under Section 24 of the Act to practice the profession of law before the Indian Courts. However, the counter makes it clear that Bar Council of India has got the power under Section 47(2) read with Section 49(1)(e) to provide for relaxation of such a condition. The counter further makes it clear that the practice of foreign law within the territory of India would also be subject to the regulatory powers of the Bar Council of India. It is stated that in a Joint Consultative Conference of the Members of the Bar Council of India and the Chairmen, Vice-Chairmen, and Executive Committee Members of the State Bar Councils held at Kochi on 17th and 18th November, 2007 it was decided not to relax any of the statutory norms for practice of law in India by exercising the powers conferred to the Bar Council of India under Section 47(2) read with Section 49(1)(e) of the Advocates Act, 1961. Finally, it is stated that the provisions of the Advocates Act, 1961 would apply with equal force to both litigious and non-litigious practice of law, and only persons enrolled under Section 24 of the Act can engage in the same.

42. The question then to be considered is, whether the foreign law firms could carry on the practise in non litigious matters in India by obtaining permission from R.B.I. under Section 29 of the 1973 Act ' Section 29 of the 1973 Act provides that without the permission of RBI, no person resident outside India or a person who is not a citizen of India but is resident in India or a Company which is not incorporated in India shall establish in India a branch office or other place of business, for carrying any activity of a trading, commercial or industrial nature. Foreign law firms engaged in practising the profession of law in the foreign countries cannot be said to be engaged in industrial, commercial and trading activities. The liaison activities of respondent Nos. 12 to 14 in India being activities relating to the profession of law, no permission could be granted to the foreign law firms under Section 29 of the 1973 Act. The Apex Court in the case of *M.P. Electricity Board v. Shiv Narayan* reported in (2005) 7 SCC 283 has held that there is a fundamental distinction between the professional activity and the activity of a commercial character. The Apex Court has further held that to compare the legal profession with that of trade and business would be totally incorrect. Therefore, in the facts of the present case, the RBI could not have granted permission to carry on the practise in non litigious matters by opening liaison offices in India under Section 29 of the 1973 Act.”

Delhi High Court in *Krishan Dutt Sharma vs. Saket District Court Lawyers Chambers Allotment Committee and Ors*<sup>16</sup>. Observed that “Undoubtedly, an advocate who does chamber practice is also practicing the profession of law.

On the basis of foregoing binding authorities of the Courts, & interpretation of the Apex Court on Sec 29 of the Advocates Act, 1961 with regards to inclusion of non litigious practice in it, it is crystal clear that, an advocate even without science/engineering degree, is legally entitled to be registered as a patent agent without requirement of appearing in any examination whatsoever. As already discussed, an appeal was filed by Indian Patent Office against the aforesaid Madras High Court judgement & is still pending. Indian Patent Office, it seems is reluctant in implementing the constitutional & legal dictates. The legal conundrums so created has proved fatal to the field of the innovations & inventions as India is emerging as jurisdiction with a distinctive patent regime and on the other hand there are no legal grounds left for the Indian Patent Office for not considering the entitlement of the advocates to get registered as patent agents. Moreover in case of advocates with science/engineering degree, there is no impediment left, with regard to their entitlement to get registered as a patent agent without appearing in any exams.

#### **Implementation of Judgment of Madras High Court in S. P. Chockalingam case:**

The Madras High Court Judgement in S.P.Chockalingam case missed the key term *practice in non- litigious matters*, origin of which can be traced to *Lawyers Collective Case* due to which, it could not be implemented, perusal of *S.P.Chockalingam case* would reveal that the work of patent agent is actually a non- litigious practice of law better known as chamber practice but it has not been used & it is *per incurium* in this sense. Bar Council of

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<sup>16</sup> MANU/DE/0024/2014

India vs. A.K. Balaji and Ors<sup>17</sup> settled finally that practicing of law includes not only appearance in courts but also giving of opinion, drafting of instruments, participation in conferences involving legal discussion. These are parts of non-litigation practice which is part of practice of law. Regulatory mechanism for conduct of advocates applies to non-litigation work also. Ethics of the legal profession apply not only when an advocate appears before the Court. The same also apply to regulate practice outside the Court. Adhering to such Ethics is integral to the administration of justice. The professional standards laid down from time to time are required to be followed. Thus, Hon'ble Supreme Court uphold the view that practice of law includes litigation as well as non litigation.

Recognizing the ratio –decidendi of *A.K. Balaji case*, in *S.P.Chockalingam case*, it becomes clear that the issue is no more a *res-integra* & has already been decided by the Hon'ble Supreme Court. The appeal filed by the patent office is not maintainable because Madras High Court is already bound by the Judgement of Hon'ble Supreme Court.

### **University-Industry Relationships:**

#### **Contribution of Law faculty to the field of patent litigation**

##### ***Advocates Right to Take Up Law Teaching***

Universities, in India are the main source of inventions, in the fields of biotechnology, engineering, robotics, nanotechnology, medicine etc, & which are required to be registered as patents to promote the spirit of innovation & commercial utilization thereof by Industry. The services of Advocates ,who took up law teaching, in time scale or in any other manner, while practising as an advocate, in pursuance of the over- riding & prevailing, the Advocates, (Right to Take Up Law Teaching) Rules, 1979, wherein by virtue of legislative device of legal fiction shall for the purposes of the Advocates Act, 1961, be deemed to be part time employment,can be utilized in both litigious & non –litigious practice (chamber practice /legal consultancy), to cater to the needs of the inventors, research scholars & Assistant Professors/Professors, working in the Universities & in the field of Science & Technology.The legal fiction in the said Rules framed by the Central Government under section 49A of the Advocates Act, 1961 shall not be extended beyond the purposes of the Advocates Act like UGC Act etc. It is noteworthy that the rules if any, framed by the Bar Council, before or after the notification of the aforesaid Central Government Rules,1979 shall if, repugnant to the said Central Government Rules under section 49A of the Advocates Act, 1961, be void, to the extent of repugnancy & the Central Government Rules shall prevail.

With regard to the recruitments of teachers & law faculty , The Supreme Court in *Bar Council of India v. Board of Management, Dayanand College of Law*<sup>18</sup>, notwithstanding the procedure to be followed under the University Act it is necessary for the recommending authority and the State Government when concerned with the appointment of a teacher including Principal of a law college, also to adhere to the requirements of the Advocates Act and the Rules of the Bar Council of India. This would ensure a harmonious working of the universities and the Bar Council of India in respect of legal education and the avoidance of any problems for the students coming out of the institution wanting to pursue the legal profession.

##### ***UGC acknowledges crying need for involvement of professionals like advocates etc in teaching, training & research on regular basis to enhance quality of education & skills.***

University Grants Commission, in view to enhance quality of education and skills asked<sup>19</sup> the Vice-Chancellors of all the universities to utilize the services professionals like advocates etc in teaching training, research & related services on regular basis & issued general 'Guidelines for Empanelment of Adjunct Faculty in Universities & Colleges'<sup>20</sup>; in 2015, obviously subject to rules made under the Advocates Act, 1961 but of course, in line with the

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<sup>17</sup> (13.03.2018 - SC) : MANU/SC/0239/2018

<sup>18</sup> (2007) 2 SCC 202 at page 212

<sup>19</sup> D.O.No.F.7-1/2015 (NSQF) issued by UGC dated 27<sup>th</sup> April, 2015.

<sup>20</sup> Available at [https://www.ugc.ac.in/pdfnews/7992137\\_Adjunct-Faculty.pdf](https://www.ugc.ac.in/pdfnews/7992137_Adjunct-Faculty.pdf) (viewed on 20.12.2017)

Central Government Rules in *parimateria*. General statutory UGC guidelines acknowledges that it is imperative that the expertise & experience of professionals like advocates etc., who are outside the main stream academic system, flows into our universities.

### **Legal Consultancy & chamber practice/non-litigious practice of law by Law faculty**

#### **Contribution of Law faculty to the field of patent practice**

#### **University-Industry Inter Linkage Centres in Universities**

##### *UGC Guidelines for UIL Centres*

Considering the importance of the issue, the UGC has framed guidelines for the scheme of Establishing University-Industry Inter- linkage Centres (UIL Centres) in the Universities UGC has emphasized the significance of university-industry interactions<sup>21</sup> by stating that it has become an important agenda of higher education on policy making front at both national & institutional levels. Participation of expertise available in the Faculty of the universities in offering consultancy services to industries and assisting their R & D activities & participation of industries in placements and internship of students and in their skill development and employability are cases in point. There are many areas of collaboration between universities and industries which are mutually beneficial. In furtherance of the aforesaid general guidelines, the implementation of plethora of provisions made by statutory bodies and many masters of legal education pertaining to utilization of expertise and experience of professionals and experts in legal education, legal training & research is cumbersome task.

A lot of delegated legislation occupies the same field wherein harmonious interpretation is the way out. Harmonious interpretation of statutes is rarely resorted to by the statutory bodies, resulting in exclusion of the other pieces of important legislations in *parimateria*. This is because of the lack of domain knowledge among senior officers & bureaucrats, who are generalists in the field of legal education regarding the interpretation of statutes, lack of legislative competence, improper or no consultation between various statutory bodies & masters of legal education. Lack of judicial review & no control of parliament/legislature over the delegated legislation.

Full time law teachers are allowed chamber practice & legal consultancy. Delhi High Court took judicial notice of the following decision of the UGC in *Anees Ahmed v. University of Delhi, 2002*<sup>22</sup> The University Grants Commission vide its letter dt. 7-12-1995 informed the Registrar of Delhi University that Chamber practice/legal consultancy work should be allowed to full time law teachers in the University system on the same basis as other professional and technical consultancy work such as to the teachers in the faculties of Business Management and Engineering. Chamber practice is recognized by Bar Council of India & the Apex Court as non-litigious practice & included in section 29 of the Advocates Act, 1961.

## **II. CONCLUSION**

Seen in the light of the foregoing authorities, various provisions stands harmoniously interpreted, on the basis of settled canons of construction & interpretation of the statutes, the mind boggling varieties of rules & laws framed by the many masters of legal education viz. Bar Council of India, University Grants Commission, Central Government, State Government & the Universities, but it seems that the various bodies are quite often framing the rules, oblivious of the existing rules framed by the other statutory bodies, thereby legislating in the field, already occupied, resulting in frustration of the object of Advocates Act, 1961, Patents Act & other statutes, which is proving a fatal blow to the innovation & inventions, deteriorating also the standards of legal education. Non recognition of the legislative incompetence pertaining to delegated legislation by the Masters of legal education itself viz. Statutory bodies like UGC, Bar Council or Universities & persistently legislating thereof in the already occupied field, with utter disregard to the field of legislation, clearly demarcated by the constitution & established canons of constructions, declared by the Supreme Court, is the root cause of all the problems & is clearly evident in many cases,

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<sup>21</sup> Available at [https://www.ugc.ac.in/pdfnews/1538041\\_industry-inter-linkage-notice.pdf](https://www.ugc.ac.in/pdfnews/1538041_industry-inter-linkage-notice.pdf) (viewed on 20.12.2017)

<sup>22</sup> AIR 2002 Del 440

Correct interpretation on the aforesaid binding authorities will remove the impediments in way of advocates with or without science/engineering background in getting registered as patent agents without appearing in patent agent examination. It will promote the participation, specially as patent agents & patent attorneys, of legal expertise available in the law faculty of the universities in offering legal consultancy services to law firms, pharmaceutical & other industries and assisting their R & D activities and participation of aforesaid law firms & legal cell/IPR cell of industries in placements & internships of students of universities and in their skill development and employability will be facilitated. This research will remove the impediments (& removal thereof by innovation) in adopting the policy which can enhance, strengthen, and improve the quality & delivery of legal education, legal training & legal research in line with various statutory provisions & statutory councils besides implementation of recommendations of 184<sup>th</sup> Law Commission & National Knowledge Commission etc so as to develop competency & legal skills, of global standards in litigation, judiciary & law firms etc.