



## **LL.B. VI TERM**

### **LB-601 - Professional Ethics and Accounting System**

**Course materials Selected and Edited by**

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*(For private use only in the course of instruction)*

## **LL.B. VI TERM**

### **Paper – LB-601 Advocacy, Professional Ethics and Accountancy for Lawyers**

#### **Objectives of the Course:**

Professional ethics form the foundation in the lives of the lawyers. Every person has been given the right to engage a lawyer of their choice to represent their case. It means that lawyers have the constitutional obligation to take up the case of every person who approaches them for legal representation. Does it mean that the lawyer is obligated to represent a self-confessed murderer, rapist, and other accused persons who are alleged to have committed very serious offences against the nation even though his conscience or his personal beliefs do not permit that? How can the lawyer do that when his inner conscience revolts at the thought of represent a certain category of persons? All clients approach the lawyer with hope and desire that their lawyers will zealously represent their case. Does zealous representation mean that the lawyers must get the relief sought by the clients by all means? Are there any boundaries set by law or professional ethics that a lawyer must not cross? What is the role of truth and morality in determining the standards of professional ethics for lawyers? What conduct amounts to professional misconduct? What are the repercussions if a lawyer does not follow the principles of professional ethics? What are the mechanisms set by law to deal with complaints of professional misconduct? These and many other similar other questions trouble the mind of new entrants to law practice. The lawyers have to adopt ethical practices in all spheres of their profession from meeting clients, giving them legal counseling, presenting their cases before appropriate bodies, managing client's accounts, etc. This paper covers this wide spectrum of lawyers' conduct and specifically aims to

1. Have a discourse on the legal provisions, guidelines, and judicial decisions on the subject of professional conduct for advocates and on Contempt of Court Act;
2. Discuss the opinions/decisions of the State Bar Councils/Bar Council of India on professional misconduct;
3. Familiarize the students about the basics of professional accountancy

The course will be conducted through lectures, case method as well as participatory methods involving students in problem-solving, role plays, and simulation, etc. The full course is primarily class based but students are encouraged to focus on ethical issues during their internship in the other CLE course, namely, Moot Court, Mock Trial and Internship and raise those issues in the classes in this course

#### **Learning Outcomes**

It is expected that at the end of semester, the students will be able to

1. Identify situations of professional dilemmas
2. Understand the concept of contempt of court and its implications on legal profession
3. Analyse the law and principles of legal ethics under the Advocates Act, 1961
4. Evaluate the ethical dilemmas.

### **Evaluation Method and Scheme**

The students will be evaluated out of 100 marks. Considering that the course is aimed at providing theoretical knowledge and practical skills, evaluation for this course has following components: (1) the end-semester written examination for 60 marks, (2) MCQ based test on select opinions of Bar Council of India for 20 marks, (3) classroom assignment on ethical dilemma for 10 marks, and (4) 10 marks as per criteria below for attendance. The end-semester written examination will consist of eight questions. Students will be required to answer 5 questions of 12 marks each. The question paper may have parts requiring a certain number of compulsory questions to be answered from each part.

The students are required to self-study the prescribed opinions of the Bar Council of India. There will be a MCQ test at the time of end-semester examination consisting of multiple-choice questions based on these prescribed opinions of the Bar Council for 20 marks.

In addition, students are expected to identify an ethical dilemma faced during their internship and present their response in that regard. In doing so, they are required to explain the nature of unethical practice, its resultant effects and the possible actions which could be taken to address it in the light of BCI rules on professional standards. Precisely, students are required to relate the problem to the code of conduct for lawyers and their duties to court, colleagues and clients. Besides, students are also expected to submit a 700-word write-up covering the aspects mentioned above.

**Alternatively,** teachers may provide factual descriptions involving ethical dilemmas and ask the students to respond to it. Like mentioned above, students are required to explain the nature of unethical practice, its resultant effects and the possible actions which could be taken to address it in the light of BCI rules on professional standards. Precisely, students are required to relate the problem to the code of conduct for lawyers and their duties to court, colleagues and clients. Besides, students are also expected to submit a 700-word write-up covering the aspects mentioned above. *This exercise carries 10 marks*

Another 10 marks is for class attendance in the following manner:

96-100% - 10 Marks, 91-95% - 8 Marks, 86-90% - 6 Marks, 81-85- 4 Marks, 76-80- 2 Marks

70-75 – 1 Marks

### **Contents**

#### **Prescribed Legislations:**

The Advocates Act, 1961

The Contempt of Courts Act, 1971

### **Prescribed Books:**

Krishnaswami Iyer's Professional Conduct and Advocacy (1945), available at <https://archive.org/details/professionalcond029273mbp>

GCV Subba Rao, Commentary on Contempt of Courts Act 1971 (2014)

Ranadhir Kumar De, Contempt of Court Law & Practice (2012) Wadhwa Book Company

Francis L. Wellman, The Art of Cross Examination, available at [http://www.delhihighcourt.nic.in/library/articles/the%20art%20of%20cross%20examination\[1\].pdf](http://www.delhihighcourt.nic.in/library/articles/the%20art%20of%20cross%20examination[1].pdf)

Dr Kailash Rai, Legal Ethics, Accountability for Lawyers and Bench-Bar Relations (2015)

### **Suggested Readings:**

*Justice Mirza Hameedullah Beg*, Role of the Bench and the Bar, available at <http://www.allahabadhighcourt.in/event/RoleoftheBenchandtheBarMHBeg.pdf>

*J.W. Smyth Q.C.*, The Art of Cross Examination (1961), available at <http://www.allahabadhighcourt.in/event/RoleoftheBenchandtheBarMHBeg.pdf>

*Champ S. Andrews*, The Law: A Business or a Profession (1908), available at <https://www.jstor.org/stable/pdf/784941.pdf>

Ben W. Heineman, Jr., William F. Lee, David B. Wilkins, Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21<sup>st</sup> Century (2014) available at [https://clp.law.harvard.edu/assets/Professionalism-Project-Essay\\_11.20.14.pdf](https://clp.law.harvard.edu/assets/Professionalism-Project-Essay_11.20.14.pdf)

Geoffrey C. Hazard Jr., Responsibilities of Judges and Advocates in Civil and Common Law: Some Lingering Misconceptions Concerning Civil Lawsuits (2006), available at [http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2091&context=faculty\\_scholarship](http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2091&context=faculty_scholarship)

## **PART A- ADVOCACY**

### **I The Advocates Act, 1961- ( 4-5 Lectures)**

- (a) **Introduction:** (i) Brief History of Legal Profession in India 1
- (ii) *Judge Edward Abbott Parry*, The Seven Lamps of Advocacy (1923), available at <https://archive.org/details/sevenlampsfadvo00parr> 4
- (b) **Bar Councils- Sections-4 to 7:** Bar Council of India, Bar Council to be body corporate, Functions of State Bar Councils and Functions of Bar Council of India

- (c) **Admissions and Enrollment of Advocates** – Section- 16: Senior and other Advocates, Section-17 – State Bar Councils to maintain roll of Advocates, Section -22- Certificate of Enrollment, Section- 24: Persons who may be admitted as an Advocates on state roll, Section- 24A: Disqualification for Enrollment, Section 26A: Power to remove names from roll

*Indira Jaising v. Supreme Court of India and Ors.*, AIR 2017 SC 5017 15

- (d) **Right to Practice:** Section 29-30,33: Advocates to be only recognized class of persons entitled to practice, Right of Advocates to Practice

*Bar Council of India v. A K Balaji and Ors.*, (2018) 5 SCC 379 37

- (e) **Conduct of Advocates and Disciplinary Proceedings:** Section 35-36, 37-38: Punishment of Advocates for misconduct, Disciplinary Powers of Bar Council of India, Appeal to Bar Council of India, Appeal to the Supreme Court

**Reading Material:** Fifty Selected opinions of the Disciplinary Committees of Bar Councils [only soft copy will be supplied to students]

## II **Contempt of Court - Contempt of Courts Act, 1971**

- (a) **Contempt - Meaning and Purpose** section 2(a), Civil Contempt 2 (b), Criminal Contempt 2 (c), Criminal Contempt - Mens Rea Principle in Contempt Cases Contempt by State Government **(3-4 Lectures)**

1. *Maninderjeet Singh Bitta v. UOI*, (2011) 11 SCALE 634 62
2. *R.K. Anand v. Registrar, Delhi High Court* (2009) 8 SCC 106 67
3. *In Re Arundhati Roy*, AIR 2002 SC 1375 102
4. *Mrityunjay Das v. Sayed Rahaman*, AIR 2001 SC 1293 112
5. *In Re: Hon'ble Justice C S Karnan*, AIR 2017 SC 3191 116

- (b) **Defences– Sections 3 to 8 (2-3 Lectures)**

Innocent Publication, Fair and accurate report of judicial proceedings, Fair Criticism of Judicial act, Complaint against presiding officers of subordinate courts , Publication of information relating to proceedings in camera & other defences, Contempt and Freedom of Speech

6. <i>Bhuramal Swami v. Raghuveer Singh &amp; Ors.</i> (Judgment delivered on 21 <sup>st</sup> Oct 2016)	144
7. <i>Perspective Publication v. State of Maharashtra</i> , AIR 1970 SC 221	149
8. <i>Narmada Bachao Andolan v. UOI</i> , AIR 1999 SC 3345	159
9. <i>EMS Naboodiripad v. T Narayanan Nambiar</i> , 1970 KLJ 859	163
<b>(c) Contempt by Judges &amp; Magistrates- Section 16 (One Lecture)</b>	
<b>(d) Punishment for Contempt - Sections 10 to 13 (2-3 Lectures)</b> Power of the High Court to punish contempt of subordinate courts and try offences committed outside jurisdiction, Punishment for Contempt and Contempt not punishable in certain cases, Purging of contempt	
10. <i>SC Bar Association v. UOI</i> , AIR 1998 SC 1895	175
11. <i>Smt Pushpaben &amp; others v. Narandas V Badani</i> , AIR 1979 SC 1536	188
12. <i>Daroga Singh v. B K Pandey</i> , (2004) 5 SCC 26	190
13. <i>Pravin C. Shah v. K.A. Mohd. Ali</i> , (2001) 8 SCC 650	200
<b>(e) Procedure Section 14- 15, 17-18 (2-3 Lectures)</b> Procedure where contempt is in the face of the Supreme Court or High Court, Cognizance of Criminal Contempt, Procedure after Cognizance AND Hearing of Criminal Contempt cases by Benches,	
14. <i>R.K. Anand v. Registrar, Delhi High Court</i> (2009) 8 SCC 106	
15. <i>R. Muthukrishnan v. The Registrar General of the High Court of Judicature at Madras</i> , AIR 2019 SC 849	206
16. <i>Bal Thackery v. Harish Pimpalkhute and Others</i> (2005) 1 SCC 254E	233

**Further readings:**

Law Commission of India, Report No.274: Review of the Contempt of Courts Act, 1971 (Limited to Section 2 of the Act), April 2018.

Law Commission of England and Wales, Report –Contempt of Court: Scandalising the Court (2012).

Abhinav Chandrachud, *Republic of Rhetoric: Free Speech and the Constitution of India* (Penguin 2017) 155-217.

## **PART –B: Professional Ethics**

### **Rules Governing Advocates: (10-11 lectures)**

#### **(a) Restrictions on Senior Advocates**

#### **(b) Standards of Professional Conduct and Etiquette**

- (i) Duty to the Court
- (ii) Duty to the Client
- (iii) Duty to the opponent
- (iv) Duty to Colleagues
- (v) Duty in Imparting Training
- (vi) Duty to render Legal Aid
- (vii) Section on other employments

(c) 50 Selected Opinions of the Disciplinary Committees of the Bar Council of India, available at: <http://203.153.33.250:8282/gsd1?e=d-010-00-off-1lawbook--00-1----0--0direct-10----4-----0-11-11-en-50---20-about---00-3-1-00-00--4--0--0-0-11-10-0utfZz-8-00&cl=CL1.1&d=HASH01690220b11483f79d156200&hl=0&gc=0&gt=0>

### **(Self-Reading for MCQ Test during semester for 20 marks)**

#### **(d) Cases on Professional Misconduct**

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|---|-----|
| 17 <i>An Advocate v. Bar Council of India</i> , 1989 Supp (2) SCC 25            | 239 |
| 18 <i>Salil Dutta v. T.M. and M.C. (P) Ltd.</i> (1993) 2 SCC 185                | 249 |
| 19 <i>C. Ravichandran Iyer v. Justice A.M. Bhattacharjee</i> , (1995) 5 SCC 457 | 253 |

20 <i>P.D. Gupta v. Ram Murti</i> , (1997) 7 SCC 147	264
21 <i>Kaushal Kishore Awasthi v. Balwant Singh Thakur and Ors.</i> , AIR 2018 SC 199	269
22 <i>T.C. Mathai v. District &amp; Sessions Judge, Thiruvananthapuram</i> , (1999)3SCC 614	272
23 <i>R.D. Saxena v. Balram Prasad Sharma</i> , (2000) 7 SCC 264	275
24 <i>D.P. Chadha v. Triyugi Narain Mishra</i> , (2001) 2 SCC 221	279
25 <i>Shambhu Ram Yadav v. Hanuman Das Khatri</i> , (2001) 6 SCC 1	288
26 <i>Ex-Capt. Harish Uppal v. Union of India</i> , (2003) 2 SCC 45	291
27 <i>Mahipal Singh Rana v. State of U.P.</i> , MANU/SC/0730/2016	301

**(d) Rules relating to Advocates' Right to take up Law Teaching**

28 <i>Anees Ahmed v. University of Delhi</i> , AIR 2002 Del. 440	321
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**PART C- Accountancy for Lawyers (one lecture)**

Management of time, human resources, office, etc, Accountancy knowledge for lawyers [like evidentiary aspects, interpreting financial accounting statements in the process of lawyering, etc], Nature and functions of accounting, important branches of accounting. Accounting and Law, Use of knowledge of accountancy in Legal Disputes especially arising out of Law of Contracts, Tax Law, etc.,

Accountancy in Lawyers' office/firm: Basic financial statements, -Income & Loss account, Balance-sheet- Interpretation thereof, -Feature of Balance sheet Standard Costing.

29. Standards of Professional Conduct and Etiquette: Duties to the Clients	329
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## PART A – ADVOCACY

### Legal Profession in India

The history of the legal profession in India can be traced back to the establishment of the First British Court in Bombay in 1672 by Governor Aungier. The admission of attorneys was placed in the hands of the Governor-in-Council and not with the Court. Prior to the establishment of the Mayor's Courts in 1726 in Madras and Calcutta, there were no legal practitioners.

The Mayor's Courts, established in the three presidency towns, were Crown Courts with right of appeal first to the Governor-in-Council and a right of second appeal to the Privy Council. In 1791, Judges felt the need of experience, and thus the role of an attorney to protect the rights of his client was upheld in each of the Mayor's Courts. This was done in spite of opposition from Council members or the Governor. A second principle was also established during the period of the Mayor's Courts. This was the right to dismiss an attorney guilty of misconduct. The first example of dismissal was recorded by the Mayor's Court at Madras which dismissed attorney Jones.

The Supreme Court of Judicature was established by a Royal Charter in 1774. The Supreme Court was established as there was dissatisfaction with the weaknesses of the Court of the Mayor. Similar Supreme Courts were established in Madras in 1801 and Bombay in 1823. The first barristers appeared in India after the opening of the Supreme Court in Calcutta in 1774. As barristers began to come into the Courts on work as advocates, the attorneys gave up pleading and worked as solicitors. The two grades of legal practice gradually became distinct and separate as they were in England. Madras gained its first barrister in 1778 with Mr. Benjamin Sullivan.

Thus, the establishment of the Supreme Court brought recognition, wealth and prestige to the legal profession. The charters of the Court stipulated that the Chief Justice and three puisne Judges be English barristers of at least 5 years standing.

The charters empowered the Court to approve, admit and enrol advocates and attorneys to plead and act on behalf of suitors. They also gave the Court the authority to remove lawyers from the roll of the Court on reasonable cause and to prohibit practitioners not properly admitted and enrolled from practising in the Court. The Court maintained the right to admit, discipline and dismiss attorneys and barristers. Attorneys were not admitted without recommendation from a high official in England or a Judge in India. Permission to practice in Court could be refused even to a barrister.

In contrast to the Courts in the presidency towns, the legal profession in the mofussil towns was established, guided and controlled by legislation. In the Diwani Courts, legal practice was neither recognized nor controlled, and practice was carried on by vakils and agents. Vakils had even been appearing in the Courts of the Nawabs and there were no laws concerning their qualification, relationship to the Court, mode of procedure of ethics or practice. There were two kinds of agents – a. untrained relatives or servants of the parties in Court and b. professional pleaders who had training in either Hindu or Muslim law. Bengal Regulation VII of 1793 was enacted as it was felt that in order to administer justice, Courts, must have pleading of causes administered by a distinct profession. Only men of character and education, well versed in the Mohamedan or Hindu law and in the Regulations passed by the British Government, would be admitted to plead in the Courts.

They should be subjected to rules and restrictions in order to discharge their work diligently and faithfully by upholding the client's trust.

### Establishment of the High Courts

In 1862, the High Courts started by the Crown were established at Calcutta, Bombay and Madras. The High Court Bench was designed to combine Supreme Court and Sudder Court traditions. This was done to unite the legal learning and judicial experience of the English barristers with the intimate experience of civil servants in matters of Indian customs, usages and laws possessed by the civil servants. Each of the High Courts was given the power to make rules for the qualifications of proper persons, advocates, vakils and attorneys at Bar. The admission of vakils to practice before the High Courts ended the monopoly that the barristers had enjoyed in the Supreme Courts. It greatly extended the practice and prestige of the Indian laws by giving them opportunities and privileges equal to those enjoyed for many years by the English lawyers. The learning of the best British traditions of Indian vakils began in a guru-shishya tradition: "Men like Sir V. BashyamAyyangar, Sir T. MuthuswamyAyyar and Sir S. SubramaniaAyyar were quick to learn and absorb the traditions of the English Bar from their English friends and colleagues in the Madras Bar and they in turn as the originators of a long line of disciples in the Bar passed on those traditions to the disciples who continued to do the good work." Additional High Courts were established in Allahabad (1886), Patna (1916), and Lahore (1919).

There were six grades of legal practice in India after the founding of the High Courts – a) Advocates, b) Attorneys (Solicitors), c) Vakils of High Courts, d) Pleaders, e) Mukhtars, f) Revenue Agents. The Legal Practitioners Act of 1879 in fact brought all the six grades of the profession into one system under the jurisdiction of the High Courts. The Legal Practitioners Act and the Letters Patent of the High Courts formed the chief legislative governance of legal practitioners in the subordinate Courts in the country until the Advocates Act, 1961 was enacted. In order to be a vakil, the candidate had to study at a college or university, master the use of English and pass a vakil's examination. By 1940, a vakil was required to be a graduate with an LL.B. from a university in India in addition to three other certified requirements. The certificate should be proof that a. he had passed in the examination b. read in the chamber of a qualified lawyer and was of a good character. In fact, Sir Sunder Lal, Jogendra Nath Chaudhary, Ram Prasad and Moti Lal Nehru were all vakils who were raised to the rank of an Advocate. Original and appellate jurisdiction of the High Court.

The High Courts of the three presidency towns had an original side. The original side included major civil and criminal matters which had been earlier heard by predecessor Supreme Courts. On the original side in the High Courts, the solicitor and barrister remained distinct i.e. attorney and advocate. On the appellate side every lawyer practiced as his own attorney.

However, in Madras the vakils started practice since 1866. In 1874, the barristers challenged their right to do original side work. However, in 1916, this right was firmly established in favour of the vakils. Similarly, vakils in Bombay and Calcutta could be promoted as advocates and become qualified to work on the original side. By attending the appellate side and original side Courts each for one year, a vakil of 10 years service in the Court was permitted to sit for the advocates' examination.

**Indian Bar Councils Act, 1926.**

The Indian Bar Councils Act, 1926 was passed to unify the various grades of legal practice and to provide self-government to the Bars attached to various Courts. The Act required that each High Court must constitute a Bar Council made up of the Advocate General, four men nominated by the High Court of whom two should be Judges and ten elected from among the advocates of the Bar. The duties of the Bar Council were to decide all matters concerning legal education, qualification for enrolment, discipline and control of the profession. It was favourable to the advocates as it gave them authority previously held by the judiciary to regulate the membership and discipline of their profession.

The Advocates Act, 1961 was a step to further this very initiative. As a result of the Advocates Act, admission, practice, ethics, privileges, regulations, discipline and improvement of the profession as well as law reform are now significantly in the hands of the profession itself.

**Excerpts:**

## **THE SEVEN LAMPS OF ADVOCACY**

**BY EDWARD ABBOTT PARRY**

There are seven lamps of advocacy: The lamp of honesty, the lamp of courage, lamp of industry, the lamp of wit, the lamp of eloquence, the lamp of judgment, and the lamp of fellowship.

### **I. THE LAMP OF HONESTY**

The great advocate is like the great actor : he fills the stage for his span of life, succeeds, gains our applause, makes his last bow, and the curtain falls. Nothing is so elusive as the art of acting, unless indeed it be the sister art of advocacy.

The young student of acting or advocacy is eager to believe that there are no methods and no technique to learn, and no school in which to graduate. Youth is at all times prone to act on the principle that there are no principles, that there is no one from whom it can learn, and nothing to teach. Any one, it seems, can don a wig and gown, and thereby become an advocate. Yet there are principles of advocacy ; and if a few generations were to forget to practise these, it would indeed be a lost art. The student of advocacy can draw inspiration and hope from the stored-up experience of his elders. He can trace in the plans and life-charts of the ancients the paths along which they strode, journeyed. They can be seen pacing the ancient halls with their clients, proud of the traditions of their great profession — advocates — advocates all.

Without a free and honourable race of advocates the world will hear little of the message of justice. Advocacy is the outward and visible appeal for the spiritual gift of justice. The advocate is the priest in the temple of justice, trained in the mysteries of the creed, active in its exercises. Advocacy connotes justice. Upon the altars of justice the advocate must keep his seven lamps clean and burning rightly. In the centre of these must ever be the lamp of honesty.

The order of advocates is, in D'Aguesseau's famous phrase, " as noble as virtue." Far back in the Capitularies of Charlemagne it was ordained of the profession of advocates " that nobody should be admitted therein but men mild, pacific, fearing God, and loving justice, upon pain of elimination." So may it continue, world without end.

From the earliest, Englishmen have understood that advocacy is necessary to justice, and honesty is essential to advocacy. Every pleader who acts in the business of another should have regard to four things : — First, that he be a person receivable in court, that he be no heretic, nor excommunicate, nor criminal, nor man of religion, nor woman, nor ordained clerk above the order of sub- deacon, nor beneficed clerk with the cure of souls, nor infant under twenty-one years of age, nor judge in the same cause, nor open leper, nor man attainted of falsification against the law of his office.

Secondly, that every pleader is bound by oath that he will not knowingly maintain or defend wrong or falsehood, but will abandon his client immediately that he perceives his wrong-doing. Thirdly, that he will never have recourse to false delays or false witnesses, and never allege, proffer, or consent to any corruption, deceit, lie, or falsified law, but loyally will maintain the right of his client, so that he may not fail through his folly or negligence, nor by default of him, nor by default of any argument that he could urge ; and that he will not by blow, contumely, brawl, threat, noise, or villain conduct disturb any judge, party, serjeant, or other in court, nor impede the hearing or the

course of justice. Fourthly, there is the salary, concerning which four points must be regarded — the amount of the matter in dispute, the labour of the serjeant, his value as a pleader in respect of his (learning), eloquence, and repute, and lastly the usage of the court."

Nevertheless, although an advocate is bound by obligations of honour and probity not to overstate the truth of his client's case, and is forbidden to have recourse to any artifice or subterfuge which may beguile the judge, he is not the judge of the case, and within these limits must use all the knowledge and gifts he possesses to advance his client's claims to justice. Boswell asked Doctor Johnson whether he did not think " that the practice of the law in some degree hurt the nice feeling of honesty ? " To whom the doctor replied : " Why no, Sir, if you act properly. You are not to deceive your clients with false representations of your opinion : you are not to tell lies to a judge." Boswell : " But what do you think of supporting a cause which you know to be bad ? " Johnson : " Sir, you do not know it to be good or bad till the judge determines it. I have said that you are to state facts fairly ; so that your thinking, or what you call knowing, a cause to be bad must be from reasoning, must be from your supposing your arguments to be weak and inconclusive. Lord Chief Justice Cockburn, set forth his views of an advocate's duty, concluding with these memorable words : " The arms which an advocate wields he ought to use as a warrior, not as an assassin. He ought to uphold the interests of his client per fas, and not per nefas. He ought to know how to reconcile the interests of his clients with the eternal interests of truth and justice." If an advocate knows the law to be x, it is not honest to lead the court to believe that it is y. Whether the advocate does this by directly mis-stating the law, or by deliberately omitting to state it fully within the means of his knowledge, it is equally without excuse, and dims the lamp of honesty.

For the advocate must remember that he is not only the servant of the client, but the friend of the court, and honesty is as essential to true friendship as it is to sound advocacy.

## **II. THE LAMP OF COURAGE**

Advocacy needs the " king-becoming graces : devotion, patience, courage, fortitude." Advocacy is a form of combat where courage in danger is half the battle. Courage is as good a weapon in the forum as in the camp. The advocate, like Csesar, must stand upon his mound facing the enemy, worthy to be feared, and fearing no man. Unless a man has the spirit to encounter difficulties with firmness and pluck, he had best leave advocacy alone.

A modern advocate kindly reproving a junior for his timidity of manner wisely said : " Remember it is better to be strong and wrong than weak and right." The belief that success in advocacy can be attained by influence, apart from personal qualifications, is ill-founded.

It is very true that learning begets courage, and wise self-confidence can only be founded on knowledge. The long years of apprenticeship, the studious attention to "preparatives," are, to the advocate, like the manly exercises of the young squire that enabled the knight of old to earn his spurs on the field of battle. In no profession is it more certain that " knowledge is power," and when the opportunity arrives, knowledge, and the courage to use it effectively, proclaim the presence of the advocate.

There have been many advocates whose courage was founded on humor rather than knowledge, and who have successfully asserted their independence in the face of an impatient or overbearing Bench through the medium of wit, where mere wisdom might have failed in effect.

Independence without moderation becomes licentiousness, but true independence is an essential attribute of advocacy, and the English Bar has never wanted men endowed with this form of true courage. The sacrifice of the highest professional honors to the maintenance of principle has been a commonplace in the history of English advocates, and the names of the living could be added if need be to those who have passed away, leaving us this clean heritage as example.

The true position of the independence of the English Bar, the right and the duty of the advocate to appear in every case, however poor, degraded, or wicked the party may be, is laid down once and for all in a celebrated speech of Erskine's in his defence of Thomas Paine, who was indicted in 1792 for publishing the Rights of Man. Great public indignation was expressed against Erskine for daring to defend Paine. As he said in his speech, " In every place where business or pleasure collects the public together, day after day, my name and character have been the topics of injurious reflection. And for what ? Only for not having shrunk from the discharge of a duty which no personal advantage recommended, and which a thousand difficulties repelled." He then continued, in words which the learned editor of Howell's State Trials emphasises by printing in capital letters, to enunciate one of the basic principles of English advocacy : " Little, indeed, did they know me, who thought that such alumnies would influence my conduct : I will for ever, at ALL HAZARDS, ASSERT THE DIGNITY, INDEPENDENCE, AND INTEGRITY OF THE ENGLISH Bar ; without which, impartial justice, the most valuable part of the English Constitution, can have no existence. From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in the court where he daily sits to practise — from that moment the liberties of England are at an end. If the advocate refuses to defend, from what he may think of the charge or of the defence, he assumes the character of the judge ; nay, he assumes it before the hour of judgment ; and, in proportion to his rank and reputation, puts the heavy influence of perhaps a mistaken opinion into the scale against the accused, in whose favour the benevolent principle of English law makes all presumptions, and which commands the very judge to be his counsel."

William Henry Seward was acting in the defence of the negro Freeman in 1846, who killed a farmer and several of his family. His advocacy was of no avail to the negro, but his eloquent speech remains a noble statement of the duty of the advocate, and a fine example of devotion and courage in the exercise of that duty.

The whole speech is worthy of study, as it contains a glowing and reasoned appeal for the right of the most degraded human being in a civilised state to a real hearing of his case in a judicial court, which can only be obtained through honest and competent advocacy.

" In due time, gentlemen of the jury, when I shall have paid the debt of nature, my remains will rest here in your midst with those of my kindred and neighbours.

It is very possible they may be unhonoured, neglected, spurned ! But perhaps years hence, when the passion and excitement which now agitate this community shall have passed away, some wandering stranger, some lone exile, some Indian, some negro, may erect over them an humble stone, and thereon this epitaph : 'He was faithful.' " These words, as he desired, are engraved on the marble over him, and he is remembered at the American Bar as an advocate who upheld its best traditions, and feared not to hold aloft the Lamp of Courage.

### **III. THE LAMP OF INDUSTRY**

The first task of the advocate is to learn to labour and to wait. There never was a successful advocate who did not owe some of his prowess to industry. From the biographies of our ancestors we may learn that the eminent successful ones of each generation practised at least enough industry in their day to preach its virtues to aspiring juniors. Work soon becomes a habit. It may not be altogether a good habit, but it is better to wear out than to rust out. Nothing, we are told, is impossible to industry. Certainly without industry the armoury of the advocate will lack weapons on the day of battle.

There must be years of what Charles Lamb described with graceful alliteration as " the dry drudgery of the desk's dead wood " before the young advocate can hope to dazzle juries with eloquent perorations, confound dishonest witnesses by skilful cross-examination, and lead the steps of erring judges into the paths of precedent.

All great advocates tell us that they have had either steady habits of industry or grand outbursts of work. Charles Russell had a continuous spate of energy. " Do something ! "

Abraham Lincoln owed his sound knowledge of law to grim, zealous industry. In after-life to every student who came near him his advice was, " Work ! work !work ! "

Advocacy is indeed a life of industry. Each new success brings greater toil. Campbell, writing home from the Oxford Circuit, describes the weary round of his daily task. Some advocates suffer thus every day the court sits, whilst others sit round and suffer envy. " I ought to have got so far to-night on my way to Hereford, but we have a long day's work before us, and I shall be obliged to travel all to-morrow night. You can hardly form a notion of the life of labour, anxiety, and privation which I lead upon the circuit. I am up every morning by six. I never get out of court till seven, eight, or nine in the evening, and, having swallowed any indifferent fare that my clerk provides for me at my lodgings, I have consultations and read briefs till I fall asleep. This arises very much from the incompetence of the judge. It is from the incompetency of judges that the chief annoyances I have in life arise. I could myself have disposed of the causes here in half the time the judge employed. He has tried two causes in four days. Poor fellow, he is completely knocked up." An advocate must study his brief in the same way that an actor studies his part. Success in advocacy is not arrived at by intuition.

You have to work hard and to think hard. I get some good help, as I tell you. My mode of work is this : One of these young men reads the brief and makes a note — a full one. I go through the note with him ' (smiling), ' cross-examining him, if you like. Sometimes, I admit, it may not be necessary for me to read the brief; the note may be so complete, and the man's knowledge of the case so exact, that I get everything from him. But it often is — in fact, generally is — necessary to go to the brief. You have seen me reading briefs here. I admit that I am quick in getting at the kernel of a case, and that saves me some trouble ; but I must read the brief with my own eyes, or somebody else's.' " I said, ' Sir John Karslake went blind because he could only read his brief with his own eyes. It is a great point to be able to read your brief with somebody else's eyes ! ' " Russell— Well, well, well, that's so ! but it is not intuition.' " I said, ' It has been said that O'Connell never read his brief when he appeared for the defendant. He made his case out of the plaintiff's case.' " Russell — ' I don't think that is likely ; I think O'Connell knew his case — the vital points in his case — before he went into court. There is often a great deal in a brief which is not vital, which is not even pertinent. I can

read a brief quickly ; I can take in a page at a glance, if you like ; I can throw the rubbish over easily, and come right on the marrow of the case. But I can only do that by reading the brief, or by the help of my friends. I learn a great deal at consultations ; I am not above taking hints from everybody, and I think carefully over everything that is said to me ' (holding his hand up with open palm) ; ' I shut out no view. If I have a good point, it is that I can see quickly the hinge on which the whole case turns, and I never lose sight of it. But that is not intuition, my friend ; it is work.' " Industry in reading and book-learning may make a man a good jurist, but the advocate must exercise his industry in the double art of speaking and arranging his thoughts in ordered speech. He must be ready to leave his books awhile and practise the athletics of eloquence with equal industry. The silver-tongued Heneage Finch advises students " to study all the morning and talk all the afternoon."

For " bare reading without practice makes a student, but never makes him a clever lawyer." Our fathers understood this better perhaps than we do, and made provision of halls and cloisters and gardens, where students could take exercise and discuss the mysteries of their profession when the hours of reading were over.

The days of wandering in cloisters and gardens, putting cases to one's fellow- students, and listening to the wisdom of elders by the margin of the fountain are, alas !not for us. But even to-day a wise youngster should recognise that sitting in court to listen to the conduct of cases, attendance at circuit mess and dining in Hall, where the law-talk of seniors may still on occasion be of value — these things are all forms of industry, for the advocate can only learn the true creed of his faith from oral tradition.

If a man is endowed with health and industry, the profession of an advocate is not "a rash and hazardous speculation." He may even without blame give hostages to fortune, remembering that when Erskine made his first appearance at the Bar his agitation nearly overcame him, and he was just about to sit down a failure when, he says, " I thought I felt my little children tugging at my gown, and the idea roused me to an exertion of which I did not think myself capable." He succeeded, indeed, far beyond his expectations, and he found, when he had overcome that first modest inertia which benumbs even the greatest genius, that he was fully equipped to fight the battles of his clients against all comers. And the reason of it was that he had not failed to read and learn and digest beneath the Lamp of Industry.

#### **IV. THE LAMP OF WIT**

At the back of this little word " wit " lies the idea of knowledge, understanding, sense. In its manifestation we look for a keen perception of some incongruity of the moment. The murky atmosphere of the court is illuminated by a flash of thought, quick, happy, and even amusing. Wit, wisely used, bridges over a difficulty, smooths away annoyance, or perhaps turns aside anger, dissolving embarrassment in a second's laughter." Laughter may be derisive, unkind, even cruel, or it may be rightly used as a just weapon of ridicule wherewith to smite pretension and humbug. It may be gracious and full of kindness, putting a timid man at his ease, or instinct with good-humour, softening wrath or mitigating tedious irrelevancy. It may be the due recognition of a witty text preaching a useful truth, that could otherwise be expressed only in a treatise : " From the earliest times wit has been a light to lighten the darkness of advocacy.

Pedants and bores resent all forms of wit, but a real humorist rejoices in nothing so much as a good story against himself.



Often the wit of an advocate will turn a judge from an unwise course where argument or rhetoric would certainly fail. Lord Mansfield paid little attention to religious holidays. He would sit on Ash-Wednesday, to the scandal of some members of the Bar, whose protests made no impression upon him. At the end of Lent he suggested that the court might sit on Good Friday. The members of the Bar were horrified. Serjeant Davy, who was in the case, bowed in acceptance of the proposition." If your lordship pleases ; but your lordship will be the first judge that has done so since Pontius Pilate." The court adjourned until Saturday

"Wit is often the fittest instrument with which to destroy the bubble of bombast. "

Wit may fairly be used to strip the cloak of pretension from the shoulders of impudence. Holker was cross-examining a big vulgar Jew jeweller in a money- lending case and began by looking him up and down in a sleepy dismal way and drawled out : " Well, Mr. Moselwein, and what are you ? "

" Agenschelman," replied the jeweller with emphasis. " Just so, just so," ejaculated Holker with a dreary yawn, " but what were you before you were a gentleman ? " Wit, skilfully used, is the kindest and most effective method of exhibiting the futility of judicial interruptions. " Where do you draw the line, Mr. Bramwell ? " asked a learned judge in the Court of Common Pleas. " I don't know, and I don't care, my lord. It is enough for me that my client is on the right side of it."

Wit and courtesy need never be divorced. They are, indeed, complementary. Wit, deftly used, refreshes the spirit of the weary judge. Lord Chief Justice Coleridge, writing from the Northern Circuit, says : " Gully was excellent. His phrase, when he asked for a stay of execution ' in order to consider more at leisure some of your lordship's observations,' tickled my fancy very much. Misdirection was never more courteously described."

Satire or irony is often in danger of being misunderstood by the simple- minded jury. Ridicule, to be effective, must be pointed, even extravagant. In combating the defence of Act of God set up by an American advocate defending a client on the charge of arson, Governor Wisner, for the prosecution, disposed of the theory of spontaneous combustion, and succeeded in satisfying the jury of its absurdity : " It is said, gentlemen, that this was Act of God. It may be, gentlemen. I believe in the Almighty's power to do it, but I never knew of His walking twice round a straw stack to find a dry place to fire it, with double-nailed boots on so exactly fitting the ones worn by the defendant."

Bowen, on the Western Circuit, was less fortunate. Prosecuting a burglar caught red-handed on the roof of a house, he left the case to the jury in the following terms : " If you consider, gentlemen, that the accused was on the roof of the house for the purpose of enjoying the midnight breeze, and, by pure accident, happened to have about him the necessary tools of a housebreaker, with no dishonest intention of employing them, you will, of course, acquit him." The simple sons of Wessex nodded complacently at counsel, and, accepting his invitation, acquitted the prisoner.

" brevity is the soul of wit."

Good advocacy displays the highest form of wit in an instinct for brevity. The healthy appetite of judge and advocate alike is shown in a keenness to " get through the rind of the orange and reach the pulp as soon as possible."

## V. THE LAMP OF ELOQUENCE

The eloquence of advocates of the past must largely be taken on trust. There is no evidence of it that is not hearsay. For, though we have the accounts of earwitnesses of the eloquence of Erskine, Scarlett, Choate, or Lincoln, and can ourselves read their speeches, the effect of their eloquence does not remain. We are told about it by those who experienced it, and can believe or not as we choose. It is the same with actors. It requires genius to describe acting, so that the reader captures some of the experience of the witness. The most eloquent advocacy that is reported in print is to be found not in law reports, but in fiction — in the speeches of Portia and Serjeant Buzfuz, for instance, where for all time the world continues hanging on the lips of the advocate in excited sympathy with the client. There are some who think that rhetoric at the Bar has fallen in esteem. The modern world has certainly lost its taste for sweet and honeyed sentences, and sets a truer value on fine phrases and the fopperies of the tongue ; but there will always be a high place in the profession for the man who speaks good English with smooth elocution, and whose speeches fall within Pope's description : Fit words attended on his weighty sense, And mild persuasion flow'd in eloquence. The test of eloquence in advocacy is necessarily its effect upon those to whom it is addressed. The aim of eloquence is persuasion. The one absolute essential is sincerity, or, perhaps one should say, the appearance of sincerity.

It would appear from the history of advocacy that the flame of the lamp of eloquence may vary from time to time in heat and colour. One cannot say that the style of one advocate is correct and another incorrect, since the style is the attribute of the man and the generation he is trying to persuade. Yet, however different the style may be, the essential power of persuasion must be present. He must, as Hamlet says, be able to play upon his jury, knowing the stops, and sounding them from the lowest note to the top of the compass. Brougham's tribute to Erskine's eloquence is perhaps the best pen-picture of an English advocate we possess, and it is noticeable how he emphasises this power of persuasion and endeavours to solve the psychology of it. He places in the foreground the physical appearance of the man, a great factor in each style of advocacy.

" Nor let it be deemed trivial," he says, " or beneath the historian's province, to mark that noble figure, every look of whose countenance is expressive, every motion of whose form graceful, an eye that sparkles and pierces, and almost assures victory, while it speaks audience ere the tongue.' Juries have declared that they felt it impossible to remove their looks from him when he had riveted and, as it were, fascinated them by his first glance; and it used to be a common remark among men who observed his motions that they resembled those of a blood-horse, as light, as limber, as much betokening strength and speed, as free from all gross superfluity or encumbrance. Then hear his voice of surpassing sweetness, clear, flexible, strong, exquisitely fitted to strains of serious earnestness, deficient in compass indeed, and much less fitted to express indignation, or even scorn, than pathos, but wholly free from harshness or monotony. All these, however, and even his chaste, dignified, and appropriate action, were very small parts of this wonderful advocate's excellence. He had a thorough knowledge of men, of their passions, and their feelings — he knew every avenue to the heart, and could at will make all its chords vibrate to his touch. His fancy, though never playful in public, where he had his whole faculties under the most severe control, was lively and brilliant ; when he gave it vent and scope it was eminently sportive, but while representing his client it was wholly subservient to that in which his whole soul was wrapped up, and to which each faculty of body and of mind was subdued — the success of the cause."

Eloquence of manner is real eloquence, and is a gift not to be despised. There is a physical as well as a psychological side to advocacy, documentary evidence of which may be found in the old prints and portraits.

Mr. Montagu Williams has pointed out that the best English eloquence of his time was founded on what he calls a solid style of advocacy. Nearly every great advocate has found it necessary to make use of the eloquence of persuasion. Charles Russell is the one exception. He did not seek to persuade, he directed the court and jury. Whether or not he was, as Lord Coleridge said, "the biggest advocate of the century," he was undoubtedly a very great advocate. Clearness, force, and earnestness were the basic qualities of his eloquence. It was said of him that "ordinarily the judge dominates the jury, the counsel, the public, — he is the central figure of the piece. But when Russell is there the judge isn't in it. Russell dominates every one."

The moral of the lives of the advocates seems to be that in the house of eloquence there are many mansions, and any style natural to the man who uses it is his right style, and may succeed. One besetting sin of many would-be eloquent speakers is fatal, and that is bombast. And though eloquence at its highest is a gift, the art of speaking can be learned and personal difficulties overcome. Demosthenes, with his pebbles in his mouth or running up a hill spouting an oration, has been an example to us from the school-room.

There is no golden rule of method, but there is this golden principle to remember that the message of eloquence is addressed to the heart rather than the brain." Gain the heart, or you gain nothing ; the eyes and the ears are the only road to the heart. Merit and knowledge will not gain hearts, though they will secure them when gained. Pray have that truth ever in your mind. Engage the eyes by your address, air, and motions ; soothe the ears by the elegance and harmony of your diction ; the heart will certainly follow ; and the whole man and woman will as certainly follow the heart."

## **VI. THE LAMP OF JUDGMENT**

Judgment inspires a man to translate good sense into right action. I would not quarrel with the philosopher who describes judgment as an instinct, but I would bid him remember that even an instinct is acquired by " cunning " rather than luck. Let no one think that he can attain to sound judgment without hard work. The judgment of the advocate must be based on the maxim, " He that judges without informing himself to the utmost that he is capable cannot acquit himself of judging amiss."

A client is entitled to the independent judgment of the advocate. Whether his judgment is right or wrong, it is the duty of the advocate to place it at the disposal of his client. In the business of advocacy judgment is the goods that the advocate is bound to deliver. Yet he is under constant temptation to please his client by giving him an inferior article. The duty of the advocate to give only his best.

The above question frequently arises, and some counsel have considered themselves bound to obey the wishes of the solicitor. There is no doubt that this is the safest course for the advocate, for, if he does otherwise and the result is adverse, he is likely to be much blamed, and the solicitor also is exposed to disagreeable comments ; but I hold, and have always acted upon the opinion, that the client retains counsel's judgment, which he has no right to yield to the wishes or opinions of any one else. He is bound, if required, to return his brief, but if he acts against his own convictions he sacrifices, I think, his duty as an advocate."

An advocate of judgment has the power of gathering up the scattered threads of facts and weaving them into a pattern surrounding and emphasising the central point of the case. In every case there is one commanding theory, to the proof of which all the facts must be skilfully marshalled. An advocate with one point has infinitely greater chances than an advocate with twenty points. Rufus Choate was an advocate of great judgment, and not only was he enthusiastic and diligent in searching for the central theory, or 44 hub of his case, as he called it, but having made up his mind what it was, he rightly put it forward without delay, believing that it was the "first strike" that conquered the jury. Parker, his biographer, tells us that 44 he often said to me that the first moments were the great moments for the advocate. Then, said he, the attention is all on the alert, the ears are quicker, the mind receptive. People think they ought to go on gently, till, somewhere about the middle of their talk, they will put forth all their power. But this is a sad mistake. At the beginning the jury are all eager to know what you are going to say, what the strength of your case is. They don't go into details and follow you critically all along : they try to get hold of your leading notion, and lump it all up. At the outset, then, you want to strike into their minds what they want — a good, solid, general view of your case ; and let them think over that for a good while. 4 If,' said he emphatically, 4 you haven't got hold of them, got their convictions at least open, in your first half-hour or hour, you will never get at them at all.' "

Abraham Lincoln had a genius for seeing the real point of his case and putting it straight to the Court. A contemporary who was asked in later life what was Lincoln's trick with the jury replied, " He saw the kernel of every case at the outset, never lost sight of it, and never let it escape the jury. That was the only trick I ever saw him play."

In nothing does the advocate more openly exhibit want of judgment than in prolixity. Modern courts of justice are blamed by the public, not wholly without cause, for the length and consequent expense of trials. To poor people this may mean a denial of justice. No one desires that the judge should constantly interfere with counsel in the discharge of their duties, but it seems to be his duty on occasion to blow his whistle and point out to the combatants that they are offside.

If every one connected with the trial of an action were to train and use his judgment and co-operate with the judgments of his fellow-workers in a policy of anti-waste, a great reproach would be lifted from our courts of justice. Prolixity is no new disease.

" In his lordship's conduct of trials he was very careful of three matters : 1. To adjust what was properly the question, and to hold the counsel to that ; for he that has the worst end of the staff, is very apt to fling off from the point and go out of the right way of the cause. 2. To keep the counsel in order ; for in trials they have their parts and their times. His lordship used frequently to inculcate to counsel the decorum of evidencing practice. 3. To keep down repetition, to which the counsel, one after another, are very propense;

The judgment of an advocate may be called upon at any moment for a sudden decision that may mean the victory or defeat of his client. For this reason it is necessary that he should be always alert. The contents of his brief must be already in his mind, and his attention must be fixed on what is happening in court, which has rarely been foreseen in the best-prepared brief ever delivered to counsel. "Watch the case!" It is a golden rule.

An advocate who is always fumbling with his brief when he is examining a witness cannot follow the game that is on the table before him. Sound judgment is essential to the examination of witness.

Two golden rules handed down from the eighteenth century, and maybe from beyond, are still unlearned lessons to each succeeding generation of advocates: 1. Never ask a question without having a good reason to assign for asking it. 2. Never hazard a critical question without having good ground to believe that the answer will be in your favour.

Most re-examination intending to rehabilitate the character of a witness is apt to make matters worse. These stories of actual happenings, trivial in themselves, teach us the necessity of judgment in advocacy. And I pray the young advocate not to rejoice too merrily over the errors of judgment of his seniors or lament too grievously about his own. Bear in mind that by acknowledged error we may learn wisdom, and that the only illuminant for the lamp of judgment is the oil of experience.

## **VII. THE LAMP OF FELLOWSHIP**

An advocate lacking in fellowship, careless of the sacred traditions of brotherhood which have kept the lamp of fellowship burning brightly for the English Bar through many centuries, a man who joins the Bar merely as a trade or business, and does not understand that it is also a professional community with public ideals, misses the heart of the thing, and he and his clients will suffer accordingly.

Fitzjames Stephen wisely said of the English Bar that it is " exactly like a great public school, the boys of which have grown older, and have exchanged boyish for manly objects. There is just the same rough familiarity, the general ardour of character, the same kind of unwritten code of morals and manners, the same kind of public opinion expressed in exactly the same blunt, unmistakable manner."

It was for this reason that the judges always addressed a serjeant as " Brother." It seems a pity that this fraternal greeting, this courteous link of fellowship between Bench and Bar, necessarily disappeared with the abolition of Serjeant's Inn. Yet, though the talisman is no longer spoken, the spirit of brotherhood will always be with us.

In the old days education in the law was undertaken very seriously, but in a fraternal spirit. The reader would propound a case, the utter barristers would declare their opinion, the reader would confute the objections laid against him, and the students would eagerly note the learned points of the seniors. These readings took four or five hours daily, and were held in the halls. The moots and the boltings took place after supper, and at other times among the students under the leadership of a barrister. But the whole term was not taken up with the dry study of the law. There were feastings, grand nights.

For though some of this ancientry is better honoured in the breach than the observance, yet even the buffoonery, as Stephen called it, of Grand Court has its value as a link with the past. It is an excellent thing for the profession that in the same way as the lessons of advocacy in the past were learned by the young students from their elders, who sat at meat with them and shared their lives in intimate and homely fashion, so to-day we enter a common Inn, dine at a common table, join a common mess upon circuit, all of which is evidence of the continuance of that right spirit of fellowship which, to my mind, is an essential of advocacy. The fellowship of the Temple springs from its long traditions of brotherhood among the Templars. To turn out of the Strand into its quiet courts brings over your brooding spirit something of that sacred melancholy pleasure which one feels on entering the old school or dining once again in the college hall. But you are no longer actor, art and part, in the school and college life. Here in the Temple, though others are judges and

benchers and fashionable leaders, you can still wander in shabby honesty in the gardens, pull down some of the old volumes in the library, and dine below the salt with your fellow-ancients.

The Temple is full of ghosts — honest ghosts with whom it is a privilege to claim fellowship. There are some who speak of the Bar sneeringly as a Trade Union — which it certainly is, and to my thinking one of the oldest and best unions. And if advocacy could be honestly described as a trade, then the phrase trade union might be accepted without demurrer. For the basic quality of a trade union, that which has made these institutions thrive against opposition, is the spirit of fellowship and un- selfishness which is the ideal of its members.

We have seen how of old the senior members of the Bar trained up the juniors in the mystery of their craft, and throughout the practice of the profession it has always been a point of honour for the elders to assist the beginners in those difficult days of apprenticeship. What could be more delightful and encouraging to a youngster than to be received by his genial, handsome leader in the presence of an admiring attorney.

No man ever attains a position at the Bar in which he can afford to despise the opinion of his fellow-men. The eulogies of public journals, even the praise and patronage of attorneys, are of no worth compared with the respect of the Bar.

Charles Russell, during the course of a trial, cross-examined a lady with great severity, and afterwards received an anonymous letter of a very abusive character, in which he was charged with having been guilty of conduct in his cross-examination "which no gentleman should pursue towards any woman." He thereupon sat down and wrote a letter to the counsel on the other side, in which he said, " I should be sorry to think this was true, but I am not the best judge of my own conduct,"

Russell's learned friend cleverly evaded responsibility by telling him that the character of a gentleman was one " we all know you eminently possess," with which certificate of character the great man was soothed and satisfied. With the decay of circuits and the passing of old customs and the silence of ancient convivialities, some of the spirit of fellowship may be lost. But we must remember that even the good old days were not without evidence of professional malice and uncharitableness. As far back as the reign of Francois I. it was a rule of the French Bar that " advocates must not use contentious words or exclamations the one toward the other ; or talk several at the same time, or interrupt each other." These words might still be engraved in letters of gold on the walls of our own law-courts, for on occasion the lamp of fellowship burns so low that such things occur. Still, at the English Bar we may claim that we set a good example to other bodies of learned men by our real attachment to the precepts and practice of fellowship, and may, without hypocrisy, commend the rest of mankind to follow in our footsteps, And do as adversaries do in law, Strive mightily, but eat and drink as friends.

***Indira Jaising v. Supreme Court of India and Ors.***

AIR 2017 SC 5017

**Judges/Coram:** *Ranjan Gogoi, Rohinton Fali Nariman and Navin Sinha, JJ.*

**JUDGMENT**

**Ranjan Gogoi, J.:**

1. The Petitioner in Writ Petition (C) No. 454 of 2015 is a Senior Advocate designated by the High Court of Bombay in the year 1986. She has been in practice in the Supreme Court of India for the last several decades and has also served as an Additional Solicitor General for the Union of India. The perception of the Petitioner that the present system of designation of Senior Advocates in the Supreme Court of India is flawed and the system needs to be rectified and acceptable parameters laid down has led to the institution of Writ Petition (C) No. 454 of 2015 with the following prayers.

(a) Issue writ order, or direction declaring that the system of designation of Senior Advocates by recently introduced method of vote is arbitrary and contrary to the notions of diversity violating Articles 14, 15 and 21 and therefore, it is unconstitutional and null and void; and

(b) Issue writ order or direction for appointment of a permanent Selection Committee with a secretariat headed by a lay person, which includes the Respondent 4 Attorney General of India, representatives from the Respondent 5 -SCBA and the Respondent 6- AOR Association and academics, for the designation of Senior Advocates on the basis of an assessment made on a point system as suggested in Annexure P8; and

(c) Issue a writ of mandamus or direction directing the Respondent-1 representing Chief Justice and Judges of the Supreme Court to appoint a Search Committee to identify the Advocates who conduct Public Interest Litigation (PIL) cases and Advocates who practice in the area of their Domain Expertise viz., constitutional law, international arbitration, inter-State water disputes, cyber laws etc. and to designate them as Senior Advocates;

(d) Issue a writ of mandamus or direction directing the Respondent-1 representing Chief Justice and Judges of the Supreme Court to frame guidelines requiring the preparation of an Assessment Report by the Peers Committee on the Advocates who apply for designation based on an index 100 points as suggested in Annexure P8;

(e) Issue a writ of mandamus or direction directing the Respondent-1 representing Chief Justice and Judges of the Supreme Court to reconsider its decision taken in the Full Court held on 11.02.2014 and 23.04.2015 and designate as Senior Advocate all those Advocates

whose applications seeking designation had received recommendation by not less than five Judges of the Supreme Court (including deferred applicants) during the process of circulation ordered by the Chief Justice.

2. Legal practice in India, though a booming profession, success has come to a few select members of the profession, the vast majority of them being designated Senior Advocates. The issues raised in the writ petition, therefore, are highly contentious issues raising question of considerable magnitude so far as the Indian Bar and in fact the Country's legal system is concerned. Intervention applications, as expected, have been filed by several individuals and associations, including the Bar Association of India. The Attorney General for India was requested to appear in the case and he has very magnanimously responded to the request of the Court by remaining present throughout the prolonged hearing that had taken place.

3. By Order of the Court dated 24.04.2017 passed in I.A. No. 5, notice of this case was directed to be put up on the website of this Court to enable the High Courts and the Bar Associations of the different High Courts to participate in the proceedings. Pursuant thereto many High Courts have communicated to the Registry of this Court "the Rules - (Guidelines)" framed by the High Courts in the matter of designation of Senior Advocates. The Gujarat High Court Advocates' Association has filed an intervention application (I.A. No. 53321 of 2017) which goes beyond four corners of the writ petition itself inasmuch as the association has challenged the validity of Section 16 of the Advocates Act, 1961 (hereinafter referred to as "the Act") which empowers the Supreme Court or a High Court to designate Senior Advocates. In view of the importance of the issue, we have permitted the Gujarat High Court Advocates' Association to urge all contentions, as raised, by virtually treating the Intervention application filed to be a substantive writ petition. Over and above, there is a writ petition filed before the Delhi High Court which has been transferred to this Court for being heard along with Writ Petition (C) No. 454 of 2015. In the said writ petition (Writ Petition (C) No. 6331 of 2016 titled "National Lawyers Campaign for National Lawyers Campaign for Judicial Transparency and Reforms and Anr. v. The Bar Council of India and Anr.") Section 16 of the Act as well as Rule 2 of Chapter IV of the Supreme Court Rules 2013 has been challenged as constitutionally impermissible. Alternatively, it has been prayed that the designation of Senior Advocates by the Supreme Court of India as well as the High Courts of the country be rationalized by laying down acceptable parameters to govern the exercise of designation. There is yet another connected writ petition i.e. Writ Petition (C) No. 33 of 2016 filed by The High Court of Meghalaya Bar Association, which was heard by this Court separately on 14.09.2017. In the aforesaid writ petition the validity of the guidelines framed by the High Court of Meghalaya for designation of Senior Advocate(s) on 13.1.2016 is under challenge. By the aforesaid amendment, an Advocate General of any State of the Country so long as he himself is a designated Senior Advocate and any Senior Advocate practicing in any High Court has been authorized to propose the name of an Advocate, practicing in any court of the Country, for designation as a Senior Advocate by the High Court of Meghalaya. In other words, the effect of the amendment, in departure to the prevailing practice, is to



enable any Senior Advocate of any High Court to propose the name of any Advocate practicing in any High Court in the country for designation as a Senior Advocate of the Meghalaya High Court. Also challenged is the amendment of the said Guidelines made on 31.03.2015 by which the requirement of practice of 5 years in any Court within the jurisdiction of the High Court of Meghalaya has been deleted and instead 5 years practice in any court, namely, the Supreme Court of India, High Courts or District Courts has been introduced as a condition of eligibility for designation. Writ Petition (C) No. 819 of 2016 also raises the very same questions.

4. We will deal with each of the cases separately and in the order in which, according to us, the cases should receive our consideration.

5. Before embarking upon what has been indicated above, it is necessary to go back into history and trace the origins of what today has come to be recognized as a special class of Advocates, namely, Senior Advocates.

6. The profession of Advocacy was firmly in existence in the Greek and Roman legal systems. Emperor Justinian (circa 482-565) had put lawyers in a high pedestal comparing them with regular soldiers engaged in the defence of the empire, inasmuch as with the gift of advocacy, lawyers protect the hopes, the lives and the children of those who are in serious distress.

7. Towards the end of the Medieval Period (500 A.D. to 1500 A.D.), the Roman Law had made inroads in the rest of Europe influencing it immensely. The reason attributed to this is the discovery of the *Corpus Juris Civilis* (Civil Law) in the 11<sup>th</sup> century. While in other countries Civil Law prevailed, in England, Common Law emerged. The *Magna Carta* came into being in year 1215.

It has been said that, "*of the rise of advocacy in England, not a great deal can be said of the ancient origin of the profession in that country, for much of it is hazed in uncertainty. Very early in the history of England, justice was crudely and arbitrarily administered. The village moots, the shire courts, and in feudal times, the barons' courts, administered justice without formality. A lawyer was not a necessity.*"<sup>1</sup> During these times, the practice of advocacy was within the realm of priests, monks (it be reminded, that these are the times when the Church Law/Canon Law prevailed). While the priests/the clergy would be insistent upon the study and application of the Civil Law and Common Law and of the hybrid of both, the nobility/laity (privileged class/aristocracy, but not privileged to undertake priestly responsibilities) would adhere to the Common Law. This led to dissatisfaction amongst both these classes (clergy and nobility). "*The early English lawyers, in the main, seem to have been ecclesiastics, but about the year 1207, priest, and persons in holy orders generally were forbidden to act as advocates in the secular courts, and from thenceforward we find the profession composed entirely of a specially trained class of laymen.*"<sup>2</sup>

8. It was in the 13<sup>th</sup> century that, the professional lawyers emerged in England, after a centralised system for courts had been established to exercise the royal prerogative of dispensing justice. While earlier, a litigant could resort to the help of a knowledgeable friend, the litigation soon became complex and opened room for expert assistance. In this backdrop, came into being two classes of lawyers - 'Pleaders' and 'Attorneys'. The Attorneys would perform the representative functions for the litigant. Attorney's act would be the act of the litigant. Their functions would comprise administrative activities like serving process, following *lis* progress etc. The Pleaders, on the other hand, would be the voice of the aggrieved. Their functions would include a relatively more complex league of activities - formulating pleadings, arguing questions of law before the courts.

9. By the time 13<sup>th</sup> century concluded, a distinguished class of senior pleaders with considerable status and experience emerged, and they came to be known as Serjeants-at-Law. These eminent pleaders had some special privileges. These were retained specially by the King, and had exclusive rights of audience before the Court of Common Pleas and other Common Law Courts like King's Bench. It was mandatory for the serjeants to have taken the coif, and as a consequence of this headdress, their corporate society was called as the Order of the Coif. The serjeants were at the pinnacle of the legal profession for a long time and it is from this pool of men that the selection of judges would be made. They were so exclusive and rare, that at a given point of time, there would be only about ten serjeants in the practice of the law. It would be the serjeants' arguments that would get reported in the year books, and since they had the exclusive audience rights in the Common Law Courts, the evolution of Common Law jurisprudence has been attributed to them. Soon, they acquired great eminence and close affinity with the judges as well. It is said, that they had more judicial element than the practicing element. Exclusive audience rights made them most affluent legal practitioners of that era and they remained to be distinguished and most prominent jurists during the 13<sup>th</sup> to 16<sup>th</sup> century i.e. during the period when the most of the civil litigation would be carried out at the Court of Common Pleas.

10. After this point of time, these awe-inspiring class of legal practitioners witnessed a decline. The descent in their Order has been referenced to the rise of Crown Law Officers like the Attorney-General, Solicitor General. These Crown Law Officers were retained by the monarch as '*Counsels-in-Ordinary*'; however, the eminent order of serjeants sustained a more perilous dent in the 16<sup>th</sup> century when the Office of Queen's Counsel came to fore. This was an unprecedented office. In the year 1597, Francis Bacon was appointed by Queen Elizabeth I as "*Learned Counsel Extraordinary*", without patent (i.e. it was not a formal order). In 1603, the King designated Francis Bacon as the King's Counsel, and bestowed upon him the right of pre-audience and precedence, and a few years later, in 1670, it was declared that the serjeants shall not take precedence over this new league of officers, thus relegating the otherwise eminent serjeants to a somewhat subordinate position, and eventually their decline. The final straw; however, was in the year 1846 when the Court of Common Pleas was made open to the entire Bar and in the year 1875 when the Judicature Act was enacted that removed the requirement for the judges to have taken the coif.

11. It is not clear as to why the Office of Queen's Counsel was really needed, however, they were appointed to assist the other Crown Law Officers. Further, bestowing of such designations, as a favour, was a common feature of this era. The Queen's Counsels in return for a small remuneration held permanent retainers and they were prohibited from appearing against the Crown. And, in return, they would be entitled to enjoy the valuable right of pre-audience before the courts. These counsels were required to wear silk gowns (till date, Queen's Counsels are either referred to as 'silks', or when elevated to this office, they are said to have 'taken silk'). Gradually; however, the cleavage between the Queen's Counsel/King's Counsel and Law Officers disappeared. The appointments as Queen's Counsel were made to recognize professional eminence, or political influence; but soon thereafter, the public nature of the office declined. They were no longer required to assist the Crown Law Officers. During the 18<sup>th</sup> century, selection as Queen's Counsel became a matter of honour and dignity and a recognition of professional eminence. And, in the year 1920, the injunction on a Queen's Counsel to appear against the Crown, was vacated too<sup>3</sup>.

12. The process of appointment of Queen's Counsel in United Kingdom came in for sharp criticism for reasons like anti-competitive practices, propagation of coterie etc.. It was felt that the selection process was secretive and admission and appointment of a Queen's counsel was virtually like an admission to an exclusive club. Recommendations were made by Sir Leonard Peach (appointed by the then Lord Chancellor) in a report titled as "An Independent Scrutiny of the Appointments Process of Judges and Queen's Counsel in England and Wales". In another report, titled as "Report on Competition in Professions" published by Director General of Fair Trading, United Kingdom in the year 2001, the monopolistic nature of the practice that develops after appointment as a Queen's counsel was highlighted. Some of the observations recorded in the said report would be worthy of notice for the purpose of appreciating the issues that have arisen before us. We would therefore reproduce the relevant extracts of the report hereinafter.

**276.** The appointments system (despite recent reform following the Peach report) does not appear to operate as a genuine quality mark. The system is secretive and, so far as we can tell, lacks objective standards. It also lacks some of the key features of a recognised accreditation system, such as examinations, peer review, fixed term appointments and quality appraisal to ensure that the quality mark remains justified. We were told that many solicitors and some barristers criticise the lack of objectivity of the system.

**277.** xxx

**278.** In our view, therefore, the existing Queen's Counsel system does not operate as a genuine quality accreditation scheme. It thus distorts competition among junior and senior barristers. Our evidence indicates that clients do not generally need the assistance of a quality mark, but if there is to be such a scheme, it should be administered by the profession itself on transparent and objective grounds. Furthermore, there is some evidence that an informal quota is in operation within the current Queen's Counsel appointment system, and that it appears to have the effect of raising fees charged to litigation clients.

**279.** We do not think that a mark of quality or experience is necessarily anticompetitive, so long as the award is governed by transparent and objective criteria, and restrictions are based on qualitative, rather than quantitative, factors. On the evidence available to us, however, the current system does not pass these tests.

13. On account of such and similar highly adverse views in the matter, details of some of which have been noticed above, in the year 2004-2005 the appointment of Queen's Counsel was suspended temporarily. It was felt that the designation/appointment may be abolished in the light of growing concerns of many. However, a new framework was brought into existence in the year 2005, the salient features whereof are set out below:

The recommendations are made by an independent body called as Queen's Counsel Selection Panel annually. The final appointments are made by the Queen on the advice of the Lord Chancellor, following consideration by this Panel; the Panel comprises retired judges, senior barristers, solicitors, distinguished lay member (who also chairs the Panel). After an application is made by the aspirant to the Panel, professional conduct checks are performed; thereafter, the list of candidates is sent to members of the Judiciary/Bench including the Lord Chief Justice, the Master of the Rolls, President of the Queen's Bench Division etc. These distinguished Bench members can raise objections regarding the candidate's integrity and the Panel will then allow the candidate to show cause. Additionally, the candidates are required to submit written references from judges, fellow practitioners, professional clients to enable the understanding of the candidate's demonstration of competencies. Interviews are then conducted by Panel members with a view to adducing further evidence as to the candidate's demonstration of competencies. After the interview, candidates are graded by two Panel members; then the full Selection Panel conducts a review of these initial grades. After collective moderation, scrutiny of borderline cases, the final list is prepared. While inviting applications every year, emphasis is laid on obtaining representation from all quarters -- like, women, LGBTQ community, other ethnicities, persons with disabilities.

14. At this stage, we may take notice of what is the prevailing practice in some other jurisdictions.

## **NIGERIA**

### **(Nomenclature-Senior Advocate of Nigeria)**

The Legal Practitioners' Privileges Committee (established under the Legal Practitioners Act, 2004) may, by instrument, confer on a legal practitioner the rank of Senior Advocate of Nigeria.

The award of the rank of Senior Advocate of Nigeria is a privilege awarded as mark of excellence to members of the legal profession who are in full time legal practice; who have distinguished themselves as advocates; who have made significant contribution to the development of the legal profession.

The Committee shall consist of the Chief Justice (as Chairman); the Attorney General; one Justice of the Supreme Court; the President of the Court of Appeal; five Chief Judges of the

States; Chief Judge of the Federal High Court; five legal practitioners who are Senior Advocates of Nigeria.

**1. Principles:** The award shall be an independent indication of excellence in the legal profession. It is to provide a public identification of advocates whose standing and achievement would justify an expectation on the part of clients, the judiciary and the public that they can provide outstanding services as advocates and advisers in the overall best interest of administration of justice; every effort shall be made to ensure that the conferment of the rank of Senior Advocate of Nigeria on candidates who have met the criteria reflect national character by achieving as much geographical spread and gender representation as is possible

**2. Role of the Legal Practitioners' Privileges Committee:** The Committee shall exercise full control and management of the process of appointing and preserving the dignity of the Rank of Senior Advocate of Nigeria. The primary mode of consultation will be by way of confidential reference from Judges of superior Courts, not as primary means of selection of candidates but more as a final check in the selection procedure.

**3. Methods of Appointment:** Call for Applications will be made not later than 7<sup>th</sup> January (or such other date). Application in the prescribed form must be returned not later than 31<sup>st</sup> March of the year (or such other date) to the Committee Secretariat at the Supreme Court of Nigeria. Candidate shall pay a non-refundable processing fee in the sum of 400,000 Naira (or such other sum).

**4. References by Judges and Legal Practitioners & Particulars of Contested Cases:** The application form shall require each candidate to provide a list of at least 10 judges of superior courts before whom he had appeared in contested cases of significance. The Committee will select three Judges from the list provided by the candidate from whom it will request a detailed confidential reference. The judges will be selected in such a manner as to ensure that a cross Section of Judges from different Courts is represented.

The application form shall require candidates to identify at least 6 legal practitioners by whom the candidate has been led or that have led or against whom by whom the candidate has been led or that have led or against whom they have appeared, in contested cases of significance. The Committee will select 3 such legal practitioners' from the list from whom it will request a detailed written confidential reference.

The candidate has to provide particulars of contested cases which s/he considers to be of particular significance to the evaluation of his competence in legal practice and contribution to the development of the law.

**5. Competence/Yardsticks:** A Candidate must - (a) demonstrate high professional and personal integrity; (b) be honest and straightforward in all his professional/personal dealings; (c) be of good character and reputation; (d) be candid with clients and professional colleagues; (e) demonstrate high level of understanding of cultural and social diversity characteristic of the Nigerian society; (f) show observance of the Code of Conduct and Etiquette at the Bar; (g) demonstrate tangible contribution to the development of the Law through case Law or publications in recognized journals at national/international conferences considered by the Committee to be of particular significance; (h) have been involved in the provision of at least 3 pro bono legal services for indigent clients or some form of community services.

**6. Oral Interview:** There will be oral interview at the final stage to enable the Committee to verify the information provided and afford the committee a further opportunity to ascertain the candidates' competence. Before the oral interview, the number of candidates shall be pruned to a final list not exceeding three times the number of applicants to be appointed.

**7. Interview Process:** The Committee shall constitute sub-committees which shall comprise of three members. Every candidate that makes the short list shall be interviewed by a sub-committee.

The evaluation of the candidate's competence shall be based on the following weighted criteria--

- a) Integrity - 20%
- b) Opinion of Justices/Judges and the strength of references received by candidates - 20%
- c) General knowledge of Law - 25%
- d) Contribution to development of Law - 10%
- e) Leadership qualities in the profession - 10%
- f) Qualities of Law Office/Library - 15%

### **AUSTRALIA**

In Australia, Senior Counsel is a person who is admitted to practise as a barrister and solicitor of the Supreme Court of the Australian Capital Territory and who practises exclusively or substantially as counsel (Senior Counsel SC, previously described as Queen's Counsel (QC)).

The Senior Counsel Protocol, states that designation as Senior Counsel is intended to serve the public, whose standing and achievements justify an expectation, on the part of the those who may need their services, as well as on the part of the judiciary and the public, that they can provide outstanding services as independent barristers of the private bar, for the good of the administration of justice. Moreover, Appointment as Senior Counsel should be restricted to Local Practising Barristers, Ordinary Members Class A, with acknowledgment of the importance of the work performed by way of giving advice as well as appearing in or sitting on courts and other tribunals and conducting or appearing in alternative dispute resolution, including arbitrations and mediations.

#### **Process for appointment:**

President of the Australian Capital Territory ("ACT") Bar calls for applications for appointment as Senior Counsel after which the applicant (junior counsel) submits the application in writing to the President accompanying with an application fee as set. Applications for appointment as Senior Counsel may also be accepted from Government Practising Certificate Holders issued by the ACT Bar Association. Applicants must provide in respect of all cases, including contested interlocutory applications (but excluding directions hearings), in which they have appeared in the last 18 months, and if desired, a longer period:

- (a) the name of the case and, if available, its citation;
- (b) the name of the judicial officer, tribunal or arbitrator before whom they appeared;
- (c) the name of any counsel who led them or whom they led;

- (d) the name of opposing counsel;
- (e) the name of their instructing solicitor; and
- (f) a brief description of the nature of the proceedings.

The details required in (a) to (f) may be modified in alternative dispute resolution matters or otherwise when confidentiality required.

The applicants must also identify not more than five members of the profession who are familiar with their recent work and qualities (references).

Criteria for selection: The following qualities are required to a high degree before the appointment:

- (a) learning: Must be learned in the law so as to provide sound guidance to their clients and to assist in the judicial interpretation and development of the law.
- (b) Skill: Must be skilled in the presentation and testing of litigants' cases, so as to enhance the likelihood of just outcomes in adversarial proceedings.
- (c) Integrity and honesty: Must be worthy of confidence and implicit trust by the judiciary and their colleagues at all times, so as to advance the open, fair and efficient administration of justice.
- (d) Independence: Must be committed to the discharge of counsel's duty to the court, especially in cases where that duty may conflict with clients' interests.
- (e) Disinterestedness: Those who are in private practice must honour the cab-rank rules; namely, the duty to accept briefs to appear for which they are competent and available, regardless of any personal opinions of the parties or the causes, and subject only to exceptions related to appropriate fees and conflicting obligations.
- (f) Diligence: Must have the capacity and willingness to devote themselves to the vigorous advancement of the clients' interests.
- (g) Experience: Must have the perspective and knowledge of legal practice acquired over a considerable period.

Also, some or all of the following may be demonstrated by the Advocate's practice:

- i) Experience in arguing cases on appeal; ii) A position of leadership in a specialist jurisdiction;

- iii) Experience in conducting major cases in which the other party is represented by Senior Counsel;
- iv) Experience in conducting cases with a junior;
- v) Considerable practice in giving advice in specialist fields of law;
- vi) Experience and practice in alternative dispute resolution, including arbitration and mediations; and
- vii) Experience in sitting on courts or tribunals.

Additionally, demonstrated leadership in:

- i) Developing the diverse community of the Bar; or
- ii) Making a significant contribution to Australian society as a barrister.

#### Criteria for Cessation of appointment:

1. Whose name has been removed from the roll of persons admitted as lawyers in any Australian jurisdiction; or
2. Whose practicing certificate has been cancelled or suspended; or
3. Against whom a finding of professional misconduct has been made by a competent court or tribunal.
4. Who has been convicted of a serious offence as defined in the Legal Profession Act 2006, ceases to hold the appointment and is not permitted to retain or use the title of Senior Counsel.
5. A finding of unsatisfactory professional conduct has been made against the appointee by a competent court or tribunal; or
6. The appointee has conditions imposed on his or her practicing certificate.

#### Determination of Applications:

The Selection Committee must seek comments on each applicant from the following members of the private bar and the judiciary: (a) All Senior Counsel and Queens Counsel Members; (b) The President of the Court of Appeal; (c) The Chief Justice of the Supreme Court of the ACT; (d) Judges of the Supreme Court of the ACT; (e) Master of the Supreme Court of the ACT; (f) The Chief Magistrate of the ACT Magistrates Court; (g) The Chief Justice of the Federal Court of Australia; (h) The Chief Justice of the Family Court of Australia; (i) Other senior members of any other courts or tribunals in which the Selection Committee considers the applicant to have practiced to a substantial extent; and (j) The President of the ACT Law Society.



The President may, consult with as many other additional legal practitioners or members of the judiciary or other persons as is considered to be of assistance in consideration of the applications. He may also consult with any of the persons for whom comments have already been received, for the purposes of further discussion and clarification in considering the applications. The President and Assisting Counsel shall, after taking into account all comments received, make a final selection of the proposed appointees. He shall then inform the Chief Justice of the Supreme Court of the ACT of his/her final selection and seek the views of the Chief Justice on the proposed appointment as Senior Counsel. He shall not appoint any applicant whose appointment the Chief Justice opposes. He then publishes the name/s of the successful applicants for appointment as Senior Counsel for that year in order of intended seniority. After publication of the list of successful applicants, any unsuccessful applicant may discuss his or her application with the President.

### **SINGAPORE**

In Singapore, under Part IV: Privileges of Advocates and Solicitors in the Legal Profession Act, the process for Appointment of Senior Counsel is prescribed. Under Section 30, the following process is laid down:

1. A Selection Committee comprising the Chief Justice, the Attorney-General and the Judges of Appeal may appoint an advocate and solicitor or a Legal Service Officer as Senior Counsel if the Selection Committee is of the opinion that, by virtue of the person's ability, standing at the Bar or special knowledge or experience in law, he is deserving of such distinction.
2. At every meeting of the Selection Committee, 3 members shall constitute a quorum, and no business shall be transacted unless a quorum is present.
3. Subject to this section, the Selection Committee may establish its own practice and regulate its own procedure.
4. The appointment of a Senior Counsel shall be deemed to be revoked if the Senior Counsel
  - a) Deleted.
  - b) being a Legal Service Officer, is dismissed from the Singapore Legal Service;
  - c) being a member of the Faculty of Law of the National University of Singapore or the School of Law of the Singapore Management University, is dismissed from the Faculty or School, as the case may be;
  - d) is convicted of an offence by a court of law in Singapore or elsewhere and sentenced to imprisonment for a term of not less than 12 months or to a fine of not less than \$2,000 and has not received a free pardon;
  - e) becomes mentally disordered and incapable of managing himself or his affairs;
  - f) is an undischarged bankrupt; or

g) enters into a composition with his creditors or a deed of arrangement with his creditors.

5. The appointment of a Senior Counsel shall be deemed to be revoked if, upon an application Under Section 82A(10) or 98(1) --

a) the Senior Counsel is suspended from practice or struck off the roll; or

b) a court of 3 Judges of the Supreme Court recommends that the appointment of the Senior Counsel be revoked.

6. No person shall be appointed as a Senior Counsel unless he has for an aggregate period of not less than 10 years been an advocate and solicitor or a Legal Service Officer or both.

7. On 21<sup>st</sup> April 1989, those persons who, on the date immediately preceding that date, are holding office as the Attorney-General and the Solicitor-General shall be deemed to have been appointed as Senior Counsel under this section.

8. Any person who, on or after 1<sup>st</sup> June 2007, holds office as the Attorney-General, a Deputy Attorney-General or the Solicitor-General shall, if he is not a Senior Counsel, be deemed to have been appointed as Senior Counsel under this Section on that date or the date on which he is appointed Attorney-General, Deputy Attorney-General or Solicitor-General, whichever is the later.

## **IRELAND**

### **(Nomenclature - Senior Counsel)**

The Legal Services Regulation Act, 2015's Part 12 (Patents of Precedence) provides for the process of designating the title 'Senior Counsel'.

A Patent of Precedence, if granted upon a barrister/solicitor entitles him to use the title of Senior Counsel. The Advisory Committee on the grant of Patent of Precedence shall consist of - (a) the Chief Justice (as Chairman); (b) the President of the High Court; (c) the Attorney General; (d) Bar Council's Chairperson; (e) Law Society's President; (f) a lay member. The criteria for grant of Patent of Precedence is as follows- (i) legal practitioner must have displayed a degree of competence and a degree of probity appropriate to and consistent with the grant to him or her of a Patent; (ii) s/he must have professional independence; (iii) s/he must have a proven capacity for excellence in the practice of advocacy; (iv) s/he must have a proven capacity for excellence in the practice of specialist litigation; (v) s/he must have specialist knowledge of an area of law; (vi) s/he must be suitable on grounds of character and temperament.

The Advisory Committee, if it finds that, the candidate meets the criteria, it will recommend the shortlisted names to the government to be granted the Patent of Precedence.

15. So far as India is concerned, it appears that the legal profession acquired roots in the years of British rule. The first British Court was established in Bombay in the year 1672. In the year 1726, the Mayor Courts were established in Madras, Bombay and Calcutta. By the

Charter of 1774, the Supreme Court of Judicature was established at Calcutta and, thereafter, in Bombay and Madras. The Charter allowed only English and Irish barristers to practice in these courts and no Indian had the right to appear in the Court. In 1862, High Courts were established at Calcutta, Bombay and Madras. Vakils could now practice before the High Courts ending the monopoly of barristers. There was Indian participation in the courts along with the presence of English lawyers. In 1879, the Legal Practitioners Act was enacted which defined 'Legal Practitioner' to mean an Advocate, a Vakil, an attorney of any High Court, a pleader, a Mukhtar, a revenue-agent. The Indian Bar Councils Act, 1926 was then passed to unify the various grades of legal practice and to provide autonomy to the Bar. Prior to the coming into force of the Advocates Act, 1961, so far as the Supreme Court of India is concerned, designation as a senior Advocate was a matter of choice for any Advocate, who had completed 10 years of practice and who was otherwise willing to abide by certain conditions, e.g., not to directly deal with clients or file papers and documents in the courts etc. Designations which were exclusively dealt with by the Bar came to be vested in the Supreme Court with the enactment of the Supreme Court Rules of the year 1966. Similar was the earlier position in the Bombay High Court. The change in the scenario could be attributed to the enactment of the Advocates Act, 1961 whereunder the task of designating Senior Advocate was, for the first time, statutorily entrusted to the Supreme Court/High Courts. Section 16 of the Act which deals with the matter and has led to the present debate, is in the following terms.

**16. Senior and other advocates.--**

- (1) There shall be two classes of advocates, namely, senior advocates and other advocates.
- (2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction.
- (3) Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.
- (4) An advocate of the Supreme Court who was a senior advocate of that Court immediately before the appointed day shall, for the purposes of this section, be deemed to be a senior advocate:

Provided that where any such senior advocate makes an application before the 31<sup>st</sup> December, 1965 to the Bar Council maintaining the roll in which his name has been entered that he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly.

16. Rule 2 of Order IV of the Supreme Court Rules 2013 and its sub-rules may also be seen at this stage:

(a) The Chief Justice and the Judges may, with the consent of the advocate, designate an advocate as senior advocate if in their opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said advocate is deserving of such distinction.

(b) A senior advocate shall not-

(i) file a vakalatnama or act in any Court or Tribunal in India;

(ii) appear without an advocate-on-record in the Court or without a junior in any other Court or Tribunal in India;

(iii) accept instructions to draw pleadings or affidavit, advise on evidence or do any drafting work of an analogous kind in any Court or Tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior;

(iv) accept directly from a client any brief or instructions to appear in any Court or Tribunal in India.

Explanation.-

In this order-

(i) 'acting' means filing an appearance or any pleadings or applications in any Court or Tribunal in India, or any act (other than pleading) required or authorized by law to be done by a party in such Court or Tribunal either in person or by his recognized agent or by an advocate or attorney on his behalf.

(ii) 'tribunal' includes any authority or person legally authorized to take evidence and before whom advocates are, by or under any law for the time being in force, entitled to practice.

(iii) 'junior' means an advocate other than a senior advocate.

(c) Upon an advocate being designated as a senior advocate, the Registrar shall communicate to all the High Courts and the Secretary to the Bar Council of India and the Secretary of the State Bar Council concerned the name of the said Advocate and the date on which he was so designated.

17. So far as the practice prevailing in the Supreme Court of India for designation of senior advocates is concerned, from the Affidavits filed on behalf of the Registry of the Supreme Court it seems that the essence of the practice in vogue is that 20 years of combined standing as an Advocate or a District and Sessions Judge or a Judicial Member of any Tribunal (qualification for eligibility for appointment in such Tribunal should not be less than what is prescribed for appointment as a District Judge), entitles an Advocate to apply

for being designated as a Senior Advocate by the Supreme Court. A relaxation to the aforesaid requirement i.e. length of practice was recommended in the year 1996 by an Administrative Committee of three Hon'ble Judges which also appears to have been acted upon in specific cases. All applications received are circulated to the Hon'ble Chief Justice and all Hon'ble Judges. Only those cases which have been approved by a minimum of five Hon'ble Judges are put up before the Full Court. If the Hon'ble Chief Justice or any Hon'ble Judge of the Supreme Court is of the view that a particular Advocate deserves the distinction of being designated as a Senior Advocate, the Hon'ble Chief Justice or the Hon'ble Judge, as may be, can also recommend the name of such Advocate for being considered for designation. All such names would also be circulated amongst the Judges in the same manner and undergo the same process until the short-listed names reach the Full Court. In the Full Court, decisions are taken on the basis of voting by secret ballot and by the Rule of majority.

18. Insofar as the High Courts of the country are concerned, it appears that there is no uniform criteria or yardstick. Age; income; length of practice; requirement of practice in the High Court in which designation is sought or in a court subordinate to such High Court appear to be the broad parameters which different High Courts have adopted either by incorporation of all such parameters or some or few of them. The position would be clear from the following resume which indicates the practice prevailing in different High Courts of the country.

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19. We may now proceed to take up the cases in such seriatim as would be required.

I.A. No. 53321 OF 2017 IN WRIT PETITION (CIVIL) No. 454 OF 2015 [FILED BY GUJARAT HIGH COURT ADVOCATE'S ASSOCIATION] & TRANSFERRED CASE No. 1 OF 2017 [I.E. WRIT PETITION (CIVIL) No. 6331 OF 2016 FILED BY THE NATIONAL LAWYERS CAMPAIGN FOR JUDICIAL TRANSPARENCY AND REFORMS]

20. We have heard Shri Ashim Anand, learned Counsel appearing for the applicant (Gujarat High Court Advocate's Association), Shri Mathews J. Nedumpara, learned Counsel for the Petitioner in Transferred Case No. 1 of 2017, Shri R.S. Suri, learned Senior Counsel, who is also the President, Supreme Court Bar Association, Shri Annam D.N. Rao, learned Counsel for the Supreme Court of India through Secretary General and the learned Counsels for the interveners.

21. The challenge to Section 16 of the Act and Order IV Rule 2 of the Supreme Court Rules, 2013 is primarily founded on the basis that the classification made resulting in two classes of Advocates i.e. 'Senior Advocates' and 'Advocates' is not based on any reasonable and acceptable basis; even if there be one, the same has no connection with the object sought to be achieved by such classification. It is argued that not only the practice of designation of Senior Advocates is a relic of the feudal past but it negates the concept of equality inasmuch as the professional qualifications of a "Senior Advocate" and an "Advocate" are the same and so also the competence and ability in most cases; yet, a Senior Advocate, by virtue of his designation, stands out as a class apart not only because of the special dress code prescribed but also because of the right of pre-audience conferred by Section 23 of the Act. A Senior Advocate steals an undeserving head start in the profession. It is further contended that the designation of Senior Advocate being a conferment made by the Judges, the same gives the impression of recognition of an Advocate by the Judges which professionally has an adverse impact on others who have not been so designated, besides giving an unfair advantage to the person so designated. It is argued that because designation is conferred by the Judges there is a public perception that it is only the Senior Advocates who have been recognized by the Judges to be persons of competence, ability and merit. It is the perception of the Petitioner - Association that undue indulgence is shown to Senior Advocates by the Courts. The litigant, in the circumstances, is left with no choice but to engage a Senior Advocate who in turn charges high fees for his/her services to the prejudice of the litigants. It is further contended that the entire exercise of designation is a subjective process disclosing no basis for the particular conclusion reached. There being nothing to differentiate a person designated and a person who has not been so designated, the equality Clause enshrined in Article 14 of the Constitution of India is violated. It is also contended that even if an objective criteria is laid down and is followed, the distinction between the two classes of Advocates has no nexus with the object sought to be achieved i.e. advancement of the legal system which in any case is also and, in fact, effectively serviced by Advocates who are not designated as Senior Advocates. The practice of designation of Senior Advocates has also been challenged on the ground that the same violates Article 18 of the Constitution of India which imposes an embargo on conferment of title by the State. Though state honours like 'Bharat Ratna', Padma Vibhushan' etc. are still being conferred, the said honours are not prefixed or suffixed to the names of the recipients unlike that of a 'Senior Advocate'. The conferment of designation being an instance of exercise of the administrative power of the Supreme Court and the High Courts the same is contrary to the mandate of Article 18 of the Constitution of India, it is argued.

22. We have considered the matter.

23. The exercise of the power vested in the Supreme Court and the High Courts to designate an Advocate as a Senior Advocate is circumscribed by the requirement of due satisfaction that the concerned advocate fulfills the three conditions stipulated Under Section 16 of the Advocates Act, 1961, i.e., (1) ability; (2) standing at the bar; and/or (3) special knowledge or experience in law that the person seeking designation has acquired. It is not an uncontrolled, unguided, uncanalised power though in a given case its exercise may

partake such a character. However, the possibility of misuse cannot be a ground for holding a provision of the Statute to be constitutionally fragile. The consequences spelt out by the intervener, namely, (1) indulgence perceived to be shown by the Courts to Senior Advocates; (2) the effect of designation on the litigant public on account of high fees charged; (3) its baneful effect on the junior members of the bar; and (4) the element of anti-competitiveness, etc. are untoward consequences occasioned by human failures. Possible consequences arising from a wrong/improper exercise of power cannot be a ground to invalidate the provisions of Section 16 of the Act. Recognition of qualities of merit and ability demonstrated by in-depth knowledge of intricate questions of law; fairness in court proceedings consistent with the duties of a counsel as an officer of the Court and contributions in assisting the Court to charter the right course of action in any given case, all of which would go to determine the standing of the Advocate at the bar is the object behind the classification. Such an object would enhance the value of the legal system that Advocates represent. So long as the basis of the classification is founded on reasonable parameters which can be introduced by way of uniform guidelines/norms to be laid down by this Court, we do not see how the power of designation conferred by Section 16 of the Act can be said to be constitutionally impermissible.

24. Similar is the position with regard to the challenge founded on the alleged violation of Article 18 of the Constitution of India. The designation 'Senior Advocate' is hardly a title. It is a distinction; a recognition. Use of the said designation (i.e. Senior Advocate), per se, would not be legally impermissible inasmuch as in other vocations also we find use of similar expressions as in the case of a doctor referred to as a 'Consultant' which has its own implications in the medical world. There are doctors who are referred to as 'Senior Consultants' or as a 'Senior Surgeon'. Such expressions are instances of recognition of the talent and special qualities of a person which has been proved and tested over a period of time. In fact, even in bureaucratic circles such suffixes and prefixes are also not uncommon. We, therefore, take the view that the designation of 'Advocates' as 'Senior Advocates' as provided for in Section 16 of the Act would pass the test of constitutionality and the endeavour should be to lay down norms/guidelines/parameters to make the exercise conform to the three requirements of the Statute already enumerated herein above, namely, (1) ability of the advocate concerned; (2) his/her standing at the bar; and (3) his/her special knowledge or experience in law.

25. I.A. No. 53321 of 2017 in Writ Petition (Civil) No. 454 of 2015 filed by the Gujarat High Court Advocates' Association is accordingly disposed of in the above terms. So is the Transferred Case No. 1 of 2017 [i.e. Writ Petition (Civil) No. 6331 of 2016 filed by the National Lawyers Campaign for Judicial Transparency and Reforms in the Delhi High Court].

**WRIT PETITION (CIVIL) Nos. 33 AND 819 OF 2016 [FILED BY THE HIGH COURT OF MEGHALAYA BAR ASSOCIATION, SHILLONG]**

26. As already indicated, the grievance of the Petitioner in these writ petitions is with regard to the amendment of the guidelines framed by the High Court of Meghalaya governing the issue of designation of Senior Advocates. The grievance specifically is directed against the amendment dated 31<sup>st</sup> March, 2015 by which the requirement of 05 years' practice in any Court within the jurisdiction the High Court of Meghalaya has been done away with and an Advocate practicing in any court of the country has been made eligible.

27. There is a further amendment made on 13<sup>th</sup> January, 2016 by which any Senior Advocate of any High Court in the country can sponsor any advocate in any court in India to be designated as a Senior Advocate by the High Court of Meghalaya. Even at first blush, the guidelines have been couched, by the amendments thereto, in too wide terms for acceptance.

28. The power of designating any person as a Senior Advocate is always vested in the Full Court either of the Supreme Court or of any High Court. If an extraordinary situation arises requiring the Full Court of a High Court to depart from the usual practice of designating an advocate who has practiced in that High Court or in a court subordinate to that High Court, it may always be open to the Full Court to so act unless the norms expressly prohibit such a course of action. If the power is always there in the Full Court, we do not see why an express conferment of the same by the Rules/Guidelines is necessary. It is instances like these that bring the system of designation of Senior Advocates into disrepute. Beyond the above, we do not consider it necessary to say anything further as Shri P.S. Patwalia, learned Senior Counsel appearing for the High Court of Meghalaya has submitted, on instructions received, that the High Court would be willing to reconsider the changes brought in by the amendments and remedy the situation by taking appropriate measures. We leave it open for the High Court of Meghalaya to act accordingly and close the writ petitions (Nos. 33 and 819 of 2016) in terms of the aforesaid liberty.

29. Shri K.K. Venugopal, learned Attorney General for India, Shri R.S. Suri, learned Senior Counsel and President, SCBA, Shri C.U. Singh, learned Senior Counsel appearing for the Bar Association of India, Shri Annam D.N. Rao, learned Counsel for the Supreme Court of India through the Secretary General and Shri V.K. Biju, the intervener have all urged that existing practice of designation of Senior Advocates should continue though there is room to add to the existing guidelines/parameters governing the exercise. The arguments advanced by Shri K.K. Venugopal, the learned Attorney General for India and Shri R.S. Suri, learned Senior Counsel would seem to suggest that in the process of designation some amount of say of the Bar by including participation of the representatives of the Bar should be provided. The representatives of the Bar can provide valuable inputs to the Hon'ble Judges who may not be, at all times, familiar with the credentials of a person seeking designation as a Senior Advocate. It is urged that this is particularly true in the case of the Supreme Court of India where the Hon'ble Judges hold office for short tenures and may not have had the opportunity to experience the conduct of cases by a particular advocate seeking designation.



30. Ms. Indira Jaising, who has spearheaded the entire exercise before the Court, at no stage, pressed for declaration of Section 16 of the Act or the provisions of the Supreme Court Rules, 2013 as unconstitutional. Her endeavour, particularly in the rejoinder arguments, has been to make the exercise of designation more objective, fair and transparent so as to give full effect to consideration of merit and ability, standing at the bar and specialized knowledge or exposure in any field of law.

31. Both Section 16(2) of the Act and Order IV Rule 2 of the Supreme Court Rules, 2013 are significant in use of the expression "is of opinion" and "in their opinion" respectively which controls the power of the Full Court to designate an Advocate as a Senior Advocate. It is a subjective exercise that is to be performed by the Full Court inasmuch as a person affected by the refusal of such designation is not heard; nor are reasons recorded either for conferring the designation or refusing the same. But the opinion, though subjective, has to be founded on objective materials. There has to be a full and effective consideration of the criteria prescribed, namely, ability; standing at the Bar, special knowledge or experience in law in the light of materials which necessarily has to be ascertainable and verifiable facts. In this regard we would like to reiterate the view expressed by this Court in its report in *Tata Chemicals Limited v. Commissioner of Customs (Preventive)* MANU/SC/0617/2015 : (2015) 11 SCC 628 which may provide a valuable insight in the matter:

14. In our opinion, the expression "deems it necessary" obviously means that the proper officer must have good reason to subject imported goods to a chemical or other tests. And, on the facts of the present case, it is clear that where the importer has furnished all the necessary documents to support the fact that the ash content in the coking coal imported is less than 12%, the proper officer must, when questioned, state that, at the very least, the documents produced do not inspire confidence for some good prima facie reason. In the present case, as has been noted above, the Revenue has never stated that CASCO's certificate of quality ought to be rejected or is defective in any manner. This being the case, it is clear that the entire chemical analysis of the imported goods done by the Department was ultra vires Section 18(1)(b) of the Customs Act. 15. Statutes often use expressions such as "deems it necessary", "reason to believe", etc. Suffice it to say that these expressions have been held not to mean the subjective satisfaction of the officer concerned. Such power given to the officer concerned is not an arbitrary power and has to be exercised in accordance with the restraints imposed by law. That this is a well-settled position of law is clear from the following judgments. [See *Rohtas Industries Ltd. v. S.D. Agarwal*, SCC at p. 341, para 11: SCR at p. 129.] To similar effect is the judgment in *Sheo Nath Singh v. CIT*, SCR at p. 182. In that case it was held as under: (SCC p. 239, para 10)

10. ...There can be no manner of doubt that the words 'reason to believe' suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court.

32. What is merit? Is it the academic qualification or brilliance or is it something more? The matter has been considered earlier by this Court in **K.K. Parmar v. High Court of Gujarat** MANU/SC/8166/2006 : (2006) 5 SCC 789. Placing reliance on an earlier view in

**Guman Singh v. State of Rajasthan** MANU/SC/0663/1971 : (1971) 2 SCC 452 it has been held that:

27. Merit of a candidate is not his academic qualification. It is sum total of various qualities. It reflects the attributes of an employee. It may be his academic qualification. He might have achieved certain distinction in the university. It may involve the character, integrity and devotion to duty of the employee. The manner in which he discharges his final duties would also be a relevant factor. (See *Guman Singh v. State of Rajasthan*.)

28. For the purpose of judging the merit, thus, past performance was a relevant factor. There was no reason as to why the same had been kept out of consideration by the Selection Committee. If a selection is based on the merit and suitability, seniority may have to be given due weightage but it would only be one of the several factors affecting assessment of merit as comparative experience in service should be.

33. The guidelines governing the exercise of designation by the Supreme Court have already been noticed so also the guidelines in force in the various High Courts. Though steps have been taken to bring in some objective parameters, we are of the view that the same must be more comprehensively considered by this Court to ensure conformity of the actions/decisions taken Under Section 16 of the Act with the requirement of constitutional necessities, particularly, in the domain of a fair, transparent and reasonable exercise of a statutory dispensation on which touchstone alone the exercise of designation Under Section 16 of the Act can be justified. We have also noticed the fact that until the enactment of the Advocates Act, 1961 and the Supreme Court Rules, 1966 the option to be designated as a Senior Advocate or not was left to the Advocate concerned, with the Full Court having no role to play in this regard. We have also noticed that in other jurisdictions spread across the Globe, where the practice continues to be in vogue in one form or the other, participation in the decision making process of other stakeholders has been introduced in the light of experience gained. We are, therefore, of the view that the framework that we would be introducing by the present order to regulate the system of designation of Senior Advocates must provide representation to the community of Advocates though in a limited manner. That apart, we are also of the view that time has come when uniform parameters/guidelines should govern the exercise of designation of Senior Advocates by all Courts of the country including the Supreme Court. The sole yardstick by which we propose to introduce a set of guidelines to govern the matter is the need for maximum objectivity in the process so as to ensure that it is only and only the most deserving and the very best who would be bestowed the honour and dignity. The credentials of every advocate who seeks to be designated as a Senior Advocate or whom the Full Court *suomotu* decides to confer the honour must be subject to an utmost strict process of scrutiny leaving no scope for any doubt or dissatisfaction in the matter.

34. A word with regard to minimum age and income as conditions of eligibility would be appropriate at this stage. From the narration contained hereinabove with regard to the norms and guidelines prevailing in different High Courts, it is evident that varying periods of practice and different slabs of income have been, *inter alia*, prescribed as minimum conditions of eligibility for consideration for designation as a Senior Advocate. If merit and ability is to be the determining factor, in addition to standing in the Bar and expertise in any specialized field of law, we do not see why we should insist on any minimum income as a

condition of eligibility. The income generated by a lawyer would depend on the field of his practice and it is possible that a lawyer doing *pro bono* work or who specializes in a particular field may generate a lower return of income than his counterpart who may be working in another field of law. Insistence on any particular income, therefore, may be a self-defeating exercise. Insofar as age is concerned, we are inclined to take the view that instead of having a minimum age with a provision of relaxation in an appropriate case it would be better to go by the norm of 10 years practice at the Bar which is also what is prescribed by Article 217 of the Constitution as a condition of eligibility for being considered for appointment as a Judge of the High Court.

35. It is in the above backdrop that we proceed to venture into the exercise and lay down the following norms/guidelines which henceforth would govern the exercise of designation of Senior Advocates by the Supreme Court and all High Courts in the country. The norms/guidelines, in existence, shall be suitably modified so as to be in accord with the present.

I. All matters relating to designation of Senior Advocates in the Supreme Court of India and in all the High Courts of the country shall be dealt with by a Permanent Committee to be known as "Committee for Designation of Senior Advocates";

II. The Permanent Committee will be headed by the Hon'ble the Chief Justice of India and consist of two senior-most Judges of the Supreme Court of India (or High Court(s), as may be); the learned Attorney General for India (Advocate General of the State in case of a High Court) will be a Member of the Permanent Committee. The above four Members of the Permanent Committee will nominate another Member of the Bar to be the fifth Member of the Permanent Committee;

III. The said Committee shall have a permanent Secretariat the composition of which will be decided by the Chief Justice of India or the Chief Justices of the High Courts, as may be, in consultation with the other Members of the Permanent Committee;

IV. All applications including written proposals by the Hon'ble Judges will be submitted to the Secretariat. On receipt of such applications or proposals from Hon'ble Judges, the Secretariat will compile the relevant data and information with regard to the reputation, conduct, integrity of the Advocate(s) concerned including his/her participation in pro-bono work; reported judgments in which the concerned Advocate(s) had appeared; the number of such judgments for the last five years. The source(s) from which information/data will be sought and collected by the Secretariat will be as decided by the Permanent Committee;

V. The Secretariat will publish the proposal of designation of a particular Advocate in the official website of the concerned Court inviting the suggestions/views of other stakeholders in the proposed designation;

VI. After the data-base in terms of the above is compiled and all such information as may be specifically directed by the Permanent Committee to be obtained in respect of any particular candidate is collected, the Secretariat shall put up the case before the Permanent Committee for scrutiny;

VII. The Permanent Committee will examine each case in the light of the data provided by the Secretariat of the Permanent Committee; interview the concerned Advocate; and make its overall assessment on the basis of a point-based format indicated below:

VIII. All the names that are listed before the Permanent Committee/cleared by the Permanent Committee will go to the Full Court.

IX. Voting by secret ballot will not normally be resorted to by the Full Court except when unavoidable. In the event of resort to secret ballot decisions will be carried by a majority of the Judges who have chosen to exercise their preference/choice.

X. All cases that have not been favourably considered by the Full Court may be reviewed/reconsidered after expiry of a period of two years following the manner indicated above as if the proposal is being considered afresh;

XI. In the event a Senior Advocate is guilty of conduct which according to the Full Court disentitles the Senior Advocate concerned to continue to be worthy of the designation the Full Court may review its decision to designate the concerned person and recall the same;

36. We are not oblivious of the fact that the guidelines enumerated above may not be exhaustive of the matter and may require reconsideration by suitable additions/deletions in the light of the experience to be gained over a period of time. This is a course of action that we leave open for consideration by this Court at such point of time that the same becomes necessary.

37. With the aforesaid observations and directions and the guidelines framed we dispose of the Writ Petition (Civil) No. 454 of 2015.

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<sup>1</sup>Robbins, American Advocacy, page 4; 'Origin and Development of Advocacy as a Profession', Virginia Law Review Volume 9, No. 1 (November, 1922), page 28.

<sup>2</sup>Warvelle, Essays in Legal Ethics, page 27; 'Origin and Development of Advocacy as a Profession', Virginia Law Review Volume 9, No. 1 (November, 1922), page 30

<sup>3</sup>'Lawyers' by Julian Disney, Paul Redmond, John Basten, Stan Ross; 2<sup>nd</sup> Edition; The Law Book Company Limited, 1986.

***Bar Council of India v. A.K. Balaji and Ors.***

AIR 2018 SC 1382

**Judges/Coram:** *A.K. Goel and U.U. Lalit, JJ.*

**A.K. Goel, J.:**

1. The issue involved in this batch of matters is whether foreign law firms/lawyers are permitted to practice in India. Reference needs to be made to two leading matters. Civil Appeal Nos. 7875-79 of 2015 have been filed by the Bar Council of India against the judgment of Madras High Court dated 21<sup>st</sup> February, 2012 in ***A.K. Balaji v. The Government of India*** MANU/TN/0192/2012 : AIR 2012 Mad 124. Civil Appeal No. 8028 of 2015 has been filed by Global Indian Lawyers against the judgment of Bombay High Court dated 16<sup>th</sup> December, 2009 in ***Lawyers Collective v. Bar Council of India*** MANU/MH/1467/2009 : 2010 (2) Mah LJ 726.

2. The Madras High Court held as follows:

**63.** *After giving our anxious consideration to the matter, both on facts and on law, we come to the following conclusion:*

*(i) Foreign law firms or foreign lawyers cannot practice the profession of law in India either on the litigation or non-litigation side, unless they fulfil the requirement of the Advocates Act, 1961 and the Bar Council of India Rules.*

*(ii) However, there is no bar either in the Act or the Rules for the foreign law firms or foreign lawyers to visit India for a temporary period on a "fly in and fly out" basis, for the purpose of giving legal advise to their clients in India regarding foreign law or their own system of law and on diverse international legal issues.*

*(iii) Moreover, having regard to the aim and object of the International Commercial Arbitration introduced in the Arbitration and Conciliation Act, 1996, foreign lawyers cannot be debarred to come to India and conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration.*

*(iv) The B.P.O. Companies providing wide range of customised and integrated services and functions to its customers like word-processing, secretarial support, transcription services, proof-reading services, travel desk support services, etc. do not come within the purview of the Advocates Act, 1961 or the Bar Council of India Rules. However, in the event of any complaint made against these B.P.O. Companies violating the provisions of the Act, the Bar Council of India may take appropriate action against such erring companies.*

3. The Bombay High Court, on the other hand, concluded as follows:

**60.** *For all the aforesaid reasons, we hold that in the facts of the present case, the RBI was not justified in granting permission to the foreign law firms to open liaison offices in India Under*

*Section 29 of the 1973 Act. We further hold that the expressions 'to practise the profession of law' in Section 29 of the 1961 Act is wide enough to cover the persons practising in litigious matters as well as persons practising in non litigious matters and, therefore, to practise in non litigious matters in India, the Respondent Nos. 12 to 14 were bound to follow the provisions contained in the 1961 Act. The petition is disposed of accordingly with no order as to costs.*

4. When the matter against the judgment of the Madras High Court came up for hearing before this Court on 4<sup>th</sup> July, 2012, following interim order was passed:

*In the meanwhile, it is clarified that Reserve Bank of India shall not grant any permission to the foreign law firms to open liaison offices in India Under Section 29 of the Foreign Exchange Regulation Act, 1973. It is also clarified that the expression "to practice the profession of law" Under Section 29 of the Advocates Act, 1961 covers the persons practicing litigious matters as well as non-litigious matters other than contemplated in para 63(ii) of the impugned order and, therefore, to practice in non-litigious matters in India the foreign law firms, by whatever name called or described, shall be bound to follow the provisions contained in the Advocates Act, 1961.*

The said order has thereafter continued and is still in force.

5. In Civil Appeal Nos. 7875-7879 of 2015, writ petition was filed before the Madras High Court by one A.K. Balaji, Advocate. Apart from official Respondents, 32 law firms of U.K., U.S.A., France and Australia have been impleaded as Respondents 9 to 40. Prayer in the writ petition is to take action against the original Respondents 9 to 40 or any other foreign law firms or foreign lawyers illegally practicing the profession of law in India and direct them to refrain from having any illegal practice on the litigation side and in the field of commercial transactions in any manner whatsoever.

## **PLEADINGS**

6. Averments in the petition are that the writ Petitioner was an advocate enrolled with the Bar Council of Tamil Nadu. To practice law in India, a person has to be Indian citizen and should possess degree in law from a recognized University in India. Nationals of other countries could be admitted as advocates in India only if citizens of India are permitted to practice in such other countries. Foreign degree of law from a University outside India requires recognition by the Bar Council of India. The Indian advocates are not allowed to practice in U.K., U.S.A., Australia and other foreign nations except on fulfilling onerous restrictions like qualifying tests, experience, work permit. Foreign lawyers cannot be allowed to practice in India without reciprocity.

7. Under the Advocates Act (the Act), a foreigner is not entitled to practice in India in view of bar contained in Section 29. However, under the guise of LPOs (Legal Process Outsourcing), conducting seminars and arbitrations, foreign lawyers are visiting India on Visitor Visa and practicing illegally. They also violate tax and immigration laws. They have also opened their offices in India for practice in the fields of mergers, take-overs, acquisitions, amalgamations, etc. Disciplinary jurisdiction of the Bar Council extends only to advocates enrolled under the Act. In India, the legal profession is considered as a noble profession to serve the society and not treated as a business but the foreign law firms treat the profession as trade and business venture to earn money. Indian lawyers are prohibited from advertising, canvassing and solicit work but foreign law

firms are advertising through websites and canvass and solicit work by assuring results. Many accountancy and management firms are also employing graduates and thus rendering legal services.

8. The stand of the Union of India initially was that if foreign law firms are not allowed to take part in negotiations, settling of documents and arbitrations in India, it will obstruct the aim of making India a hub of international arbitration. Many arbitrations with Indian Judges as arbitrators and Indian lawyers are held outside India where foreign and Indian law firms advise their clients. Barring the entry of foreign law firms for arbitrations in India will result in many arbitrations shifting to Singapore, Paris and London, contrary to the declared policy of the Government and against national interest. However, its final stand in affidavits dated 19<sup>th</sup> April, 2011 and 17<sup>th</sup> November, 2011 was different as recorded in Para 3 of the High Court judgment as follows:

*3. The first Respondent Union of India filed four counter affidavits on 19.08.2010, 24.11.2010, 19.04.2011 and 17.11.2011. In one of the counter affidavits, it is stated that the Bar Council of India, which has been established under the Advocates Act, 1961, regulates the advocates who are on the "Rolls", but law firms as such are not required to register themselves before any statutory authority, nor do they require any permission to engage in non-litigation practice. Exploiting this loophole, many accountancy and management firms are employing law graduates who are rendering legal services, which is contrary to the provisions of the Advocates Act. It is stated that the Government of India along with the Bar Council of India is considering this issue and is trying to formulate a regulatory framework in this regard. The 1<sup>st</sup> Respondent in his counter warns that if the foreign law firms are not allowed to take part in negotiations, settling up documents and arbitrations in India, it will have a counterproductive effect on the aim of the government to make India a hub of International Arbitration. In this connection, it is stated that many arbitrations with Indian Judges and Lawyers as Arbitrators are held outside India, where both foreign and Indian Law Firms advise their clients. If foreign law firms are denied entry to deal with arbitrations in India, then India will lose many of the arbitrations to Singapore, Paris and London. It will be contrary to the declared policy of the government and against the national interest. **In the counter affidavit filed on 19.04.2011, it is stated that a proposal to consider an amendment to Section 29 of the Advocates Act, 1961 permitting foreign law firms to practice law in India in non litigious matters on a reciprocity basis with foreign countries is under consultation with the Bar Council of India. Finally, in the counter filed on 17.11.2011, it is stated that the Government of India has decided to support the stand of the Bar Council of India that the provisions of the Advocates Act, 1961 would apply with equal force to both litigious and non-litigious practice of law, and it is only persons enrolled Under Section 24 of the Act, who can practice before the Indian Courts.***

9. In this Court, stand of the Union of India is that presently it is waiting for the Bar Council of India to frame Rules on the subject. However, it can frame Rules Under Section 49A at any stage.

10. Stand of the Bar Council of India before the High Court is that even non litigious practice is included in the practice of law which can be done only by advocates enrolled under the Act. Reliance was placed on the judgment of the Bombay High Court in **Lawyers Collective** (supra). Further reference was made to Sections 24 and 29 of the Act. Section 47(2) read with Section 49(1)(e) provides for recognition of qualifications of foreigners being recognized for practice. It was submitted that practice of foreign lawyers in India should be subject to regulatory powers of the Bar Council.

11. Stand of the foreign law firms, *inter alia*, is that there is no bar to a company carrying on consultancy/support services in the field of protection and management of intellectual, business and industrial proprietary rights, carrying out market service and market research, publication of reports, journals etc. A person not appearing before Courts or Tribunals and not giving legal advice cannot be said to be practice of law. The ninth Respondent stated that it was a part of group of companies and not a law firm and was duly registered under the Indian Companies Act, 1956. The tenth Respondent, another foreign law firm, submitted that there is no violation of law in giving advice on foreign law. Even Indian lawyers are permitted to practice outside India and issue of reciprocity is a policy matter to be decided by the Government of India. It does not have a law office in India and does not give advice on Indian laws. In England, foreign lawyers are free to advice on their own system of law without nationality requirement or qualification of England. The eleventh Respondent is an American law firm and submitted that it advises clients on international legal issues from different countries. Indian clients are given advice through Indian lawyers and law firms which are enrolled with the Bar Council. There is no discrimination in U.S. against Indian citizens practicing law. Indian lawyers travel to US on temporary basis for consultation on Indian law issues.

12. The Act and the Bar Council Rules govern practice of Indian law and not foreign law. Participation in seminars and conferences does not constitute practice in law. The fourteenth Respondent denied the existence of its office in India and that it was practicing Indian law. It also took the same stand as Respondent No. 11 that regulatory framework for advocates did not govern practice of foreign law. It denied that it is operating a Legal Process Outsourcing office (LPOs) in India. Its lawyers fly in and fly out of India on need basis to advice clients on international transactions. To the extent Indian law is involved, such matters are addressed by Indian lawyers. If the foreign law firms are prevented from advice on foreign law, the transaction cost of Indian clients for consultation on foreign law will increase. Other foreign law firms have also taken more or less similar stand. Fifteenth Respondent stated that it is a Business Process Outsourcing (BPO) company providing wide range of customized and integrated services and functions. The sixteenth Respondent also stated that it has no office in India and is only rendering services other than practice of Indian law. The eighteenth Respondent stated that it does not have any office in India and does not practice law in India. It only advises on non Indian law. Respondent Nos. 19, 26, 39 and 40 stated that they are limited law partnerships under Laws of England. They do not have any law office in India. Respondents Nos. 20, 21, 24, 25, 27, 28, 30, 31, 32, 33, 34 and 38 also stated that they do not have any office in India and do not practice Indian law. Indian lawyers cannot advice on foreign laws and the requirement of Indian litigants in regard is met by foreign lawyers. Its lawyers fly in and fly out of India on need basis to advise the clients on international transactions. To the extent Indian law is involved such matters are addressed by Indian lawyers.

13. The Respondent No. 22 stated that it is an international law firm but does not have any office in India. It advises clients on laws other than Indian laws. Its India Practice Group advises clients on commercial matters involving an "Indian Element" relating to mergers, acquisitions, capital markets, projects, energy and infrastructure, etc. from an international legal perspective and it does not amount to practice in Indian law. Respondent No. 23 stated that it is only advising on matters of English, European Union and Hong Kong laws. It has working relationships with leading law firms in major jurisdictions and instructs appropriate local law firms to provide local law advice. Respondent No. 29 stated that it is a limited law partnership registered in England and Wales and does not have office in India. It does not represent parties in Indian courts nor advises on Indian law. Respondent No. 35 stated that it does not maintain any office in India and its expertise in



international law. 36<sup>th</sup> Respondent stated that it does not practice Indian law and has no office in India nor it operates any LPO. Its lawyers fly in and fly out on need basis to advise clients on international transactions or matters involving Australian laws or international Benches to which there is an Indian component. Working of Indian laws is entrusted to Indian lawyers. The 37<sup>th</sup> Respondent denied that it has any office in India or is running LPO in India. It only advises with respect to regulatory laws other than Indian law.

## **FINDINGS**

14. The High Court upheld the plea of the foreign law firms to the effect that there was no bar to such firms taking part in negotiations, settling of documents and conducting arbitrations in India. There was no bar to carrying on consultancy/support services in the field of protection and management of intellectual, business and industrial proprietary rights, carrying out market survey and research, publication of reports, journals etc. without rendering any legal advice. This could not be treated as practice of law in India. Referring to Section 2(1)(f) of the Arbitration and Conciliation Act, 1996 (the Arbitration Act), it was observed that if in international commercial arbitration, India is chosen as the seat of arbitration, the foreign contracting party is bound to seek assistance from lawyers of their own country on the contract. There could be no prohibition for such foreign lawyers to advise their clients on the foreign law.

15. Judgment of the Bombay High Court in *Lawyers Collective* (supra) was distinguished on the ground that setting up of law offices for litigious and non litigious matters was different but if a foreign law firm without establishing any liaison office in India offers advice to their clients on foreign law, there was no legal bar to do so.

16. The Bombay High Court in its judgment observed:

*44. It appears that before approaching RBI, these foreign law firms had approached the Foreign Investment Promotion Board (FIPB for short) a High Powered body established under the New Industrial Policy seeking their approval in the matter. The FIPB had rejected the proposal submitted by the foreign law firms. Thereafter, these law firms sought approval from RBI and RBI granted the approval in spite of the rejection of FIPB. Though specific grievance to that effect is made in the petition, the RBI has chosen not to deal with those grievances in its affidavit in reply. Thus, in the present case, apparently, the stand taken by RBI & FIPB are mutually contradictory.*

*45. In any event, the fundamental question to be considered herein is, whether the foreign law firms namely Respondent Nos. 12 to 14 by opening liaison offices in India could carry on the practise in non litigious matters without being enrolled as Advocates under the 1961 Act ?*

*46. Before dealing with the rival contentions on the above question, we may quote Sections 29, 30, 33 and 35 of the 1961 Act, which read thus:*

*29. Advocates to be the only recognised class of persons entitled to practice law.-Subject to the provisions of this Act and any Rules made there under, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates, (not brought into force so far)*

**30. Right of advocates to practise.**-Subject to provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends,

(i) in all Courts including the Supreme Court;

(ii) before any tribunal or person legally authorized to take evidence;

(iii) before any other authority or person before whom such advocate by or under any law for the time being in force entitled to practise.

**33. Advocates alone entitled to practise.**-Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any Court or before any authority or person unless he is enrolled as an advocate under this Act.

**35. Punishment of advocates for misconduct.**-(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(1-A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.

(2) The disciplinary committee of a State Bar Council [\*\*\*] shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) reprimand the advocate;

(c) suspend the advocate from practice or such period as it may deem fit;

(d) remove the name of the advocate from the State roll of advocates.

(4) Where an advocate is suspended from practice under Clause (c) of Sub-section (3), he shall, during the period of suspension, be debarred from practising in any Court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General Under Sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or

*through any advocate appearing on his behalf. Explanation-In this section, (Section 37 and Section 38), the expressions "Advocate-General" and "Advocate-General of the State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.*

**47.** *The argument of the foreign law firms is that Section 29 of the 1961 Act is declaratory in nature and the said Section merely specifies the persons who are entitled to practise the profession of law. According to the Respondent Nos. 12 to 14, the expression 'entitled to practise the profession of law' in Section 29 of the 1961 Act does not specify the field in which the profession of law could be practised. It is Section 33 of the 1961 Act which provides that advocates alone are entitled to practise in any Court or before any authority or person. Therefore, according to Respondent Nos. 12 to 14 the 1961 Act applies to persons practising as advocates before any Court/authority and not to persons practising in non litigious matters. The question, therefore, to be considered is, whether the 1961 Act applies only to persons practising in litigious matters, that is, practising before Court and other authorities ?*

**48.** *In the statements of Objects & 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.*

**49.** *Apart from the above, Section 29 of the 1961 Act specifically provides is that from the appointed day, there shall be only one class of persons entitled to practice the profession of law, namely Advocates. It is apparent that prior to the 1961 Act there were different classes of persons entitled to practise the profession of law and from the appointed day all these class of persons practising the profession of law, would form one class, namely, advocates. Thus, Section 29 of the 1961 Act clearly provides that from the appointed day only advocates are entitled to practise the profession of law whether before any Court/authority or outside the Court by way of practise in non litigious matters.*

**50.** *Section 33 of the 1961 Act is a prohibitory Section in the sense that it debars any person from appearing before any Court or authority unless he is enrolled as an advocate under the 1961 Act. The bar contained in Section 33 of the 1961 Act has nothing to do with the persons entitled to be enrolled as advocates Under Section 29 of the 1961 Act. A person enrolled as an advocate Under Section 29 of the 1961 Act, may or may not be desirous of appearing before the Courts. He may be interested in practising only in non litigious matters. Therefore, the bar Under Section 33 from appearing in any Court (except when permitted by Court Under Section 32 of the 1961 Act or any other Act) unless enrolled as an advocate does not bar a person from being enrolled as an advocate Under Section 29 of the 1961 Act for practising the profession of law in non litigious matters. The Apex Court in the case of Ex-Capt. Harish Uppal (supra) has held that the right to practise is the genus of which the right to appear and conduct cases in the Court may be a specie. Therefore, the fact that Section 33 of the 1961 Act provides that advocates alone are entitled to*

*practice before any Court/authority it cannot be inferred that the 1961 Act applies only to persons practising in litigious matters and would not apply to person practising in non litigious matters.*

*51. It was contended that the 1961 Act does not contain any penal provisions for breaches committed by a person practicing in non-litigious matter and, therefore, the 1961 Act cannot apply to persons practising in non-litigious matters. There is no merit in this contention, because, Section 35 of the 1961 Act provides punishment to an advocate who is found to be guilty of professional or other misconduct. The fact that Section 45 of the 1961 Act provides imprisonment for persons illegally practicing in Courts and before other authorities, it cannot be said that the 1961 Act does not contain provisions to deal with the persons found guilty of misconduct while practising in non litigious matters. Once it is held that the persons entitled to practice the profession of law under the 1961 Act covers the persons practising the profession of law in litigious matters as well as non-litigious matters, then, the penal provisions contained in Section 35 of the 1961 Act would apply not only to persons practising in litigious matter, but would also apply to persons practising the profession of law in non-litigious matters. The very object of the 1961 Act and the Rules framed by the Bar Council of India are to ensure that the persons practising the profession of law whether in litigious matters or in non litigious matters, maintain high standards in professional conduct and etiquette and, therefore, it cannot be said that the persons practising in non litigious matters are not governed by the 1961 Act.*

*52. Strong reliance was placed by the counsel for the Respondent No. 12 on the decision of the Apex Court in the case of O.N. Mohindroo (supra) in support of his contention that the 1961 Act applies only to persons practising the profession of law before Courts/Tribunals/other authorities. It is true that the Apex Court in the above case has held that the 1961 Act is enacted by the Parliament in exercise of its powers under entry 77 and 78 in List I of the Seventh Schedule to the Constitution. However, the fact that entry 77 and 78 in List I refers to the persons practising before the Supreme Court and the High Courts, it cannot be said that the 1961 Act is restricted to the persons practising only before the Supreme Court and High Courts. Practising the profession of law involves a larger concept whereas, practising before the Courts is only a part of that concept. If the literal construction put forth by the Respondents is accepted then, the Parliament under entry 77 & 78 in List I of the Seventh Schedule to make legislation only in respect of the advocates practicing before the Supreme Court/High Courts and the Parliament cannot legislate under that entry in respect of advocates practising before the District Courts/Magistrate's Courts/other Courts/Tribunals/authorities and consequently, the 1961 Act to the extent it applies to advocates practising in Courts other than the High Courts and Supreme Court would be ultra vires the Constitution. Such a narrow construction is unwarranted because, once the Parliament invokes its power to legislate on advocates practising the profession of law, then the entire field relating to advocates would be open to the Parliament to legislate and accordingly the 1961 Act has been enacted to cover the entire field. In any event, the question as to whether the persons practicing the profession of law exclusively in non-litigious matters are covered under the 1961 Act, or not was not an issue directly or indirectly considered by the Apex Court in the case of O.N. Mohindroo (supra). Therefore, the decision of the Apex Court in the above case does not support the case of the contesting Respondents.*

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**55. It was contended by the counsel for Union of India that if it is held that the 1961 Act applies to persons practising in non-litigious matters, then no bureaucrat would be able to draft or give any opinion in non-litigious matters without being enrolled as an advocate. There is no merit in the above argument, because, there is a distinction between a bureaucrat drafting or giving opinion, during the course of his employment and a law firm or an advocate drafting or giving opinion to the clients on professional basis. Moreover, a bureaucrat drafting documents or giving opinion is answerable to his superiors, whereas, a law firm or an individual engaged in non litigious matters, that is, drafting documents/giving opinion or rendering any other legal assistance are answerable to none. To avoid such anomaly, the 1961 Act has been enacted so as to cover all persons practising the profession of law be it in litigious matters or in non-litigious matters within the purview of the 1961 Act.**

**56. The argument that the 1961 Act and the Bar Councils constituted there under have limited role to play has been time and again negated by the Apex Court. Recently, the Apex Court in the case of Bar Council of India v. Board of Management, Dayanand College of Law reported in MANU/SC/5219/2006 : (2007) 2 SCC 202 held thus:**

*It may not be correct to say that the Bar Council of India is totally unconcerned with the legal education, though primarily legal education may also be within the province of the universities. But, as the apex professional body, the Bar Council of India is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. Therefore, instead of taking a pendantic view of the situation, the State Government and the recommending authority are expected to ensure that the requirement set down by the Bar Council of India is also complied with.*

*Thus, when efforts are being made to see that the legal profession stand tall in this fast changing world, it would be improper to hold that the 1961 Act and the Bar Council constituted there under have limited role to play in the field relating to practising the profession of law.*

**57. It is not in dispute that once a person is enrolled as an advocate, he is entitled to practise the profession of law in litigious matters as well as non-litigious matters. If the argument of the Respondents that the 1961 Act is restricted to the persons practising the profession of law in litigious matters is accepted, then an advocate found guilty of misconduct in performing his duties while practising in non-litigious matters cannot be punished under the 1961 Act. Similarly, where an advocate who is debarred for professional misconduct can merrily carry on the practise in non litigious matters on the ground that the 1961 Act is not applicable to the persons practising the profession of law in non litigious matters. Such an argument which defeats the object of the 1961 Act cannot be accepted.**

**58. It may be noted that Rule 6(1) in Chapter III Part VI of the Bar Council of India Rules framed Under Section 49(1)(ah) of the 1961 Act provides that an advocate whose name has been removed by an order of the Supreme Court or a High Court or the Bar Council as the case may be, shall not be entitled to practise the profession of law either before the Court and authorities mentioned Under Section 30 of the 1961 Act, or in chambers, or otherwise. The above Rule clearly shows that the chamber practise, namely, practise in non litigious matters is also within the purview of the 1961 Act.**

*59. Counsel for the Union of India had argued that the Central Government is actively considering the issue relating to the foreign law firms practising the profession of law in India. Since the said issue is pending before the Central Government for more than 15 years, we direct the Central Government to take appropriate decision in the matter as expeditiously as possible. Till then, the 1961 Act as enacted would prevail, that is, the persons practising the profession of law whether in litigious matters or non litigious matters would be governed by the 1961 Act and the Bar Councils framed there under, apart from the powers of the Court to take appropriate action against advocates who are found guilty of professional misconduct.*

*60. For all the aforesaid reasons, we hold that in the facts of the present case, the RBI was not justified in granting permission to the foreign law firms to open liaison offices in India Under Section 29 of the 1973 Act. We further hold that the expressions ' to practise the profession of law' in Section 29 of the 1961 Act is wide enough to cover the persons practising in litigious matters as well as persons practising in non litigious matters and, therefore, to practise in non litigious matters in India, the Respondent Nos. 12 to 14 were bound to follow the provisions contained in the 1961 Act. The petition is disposed of accordingly with no order as to costs.*

17. The Madras High Court agreed with the above view as follows:

*44. As noticed above, the facts of the case before the Bombay High Court were that the Respondents which were foreign law firms practising the profession of law in US/UK sought permission to open their liaison office in India and render legal assistance to another person in all litigious and non-litigious matters. The Bombay High Court, therefore, rightly held that establishing liaison office in India by the foreign law firm and rendering liaisoning activities in all forms cannot be permitted since such activities are opposed to the provisions of the Advocates Act and the Bar Council of India Rules. **We do not differ from the view taken by the Bombay High Court on this aspect.***

18. The Madras High Court after above observation proceeded to consider the matter as follows:

*45. However, the issue which falls for consideration before this Court is as to whether a foreign law firm, without establishing any liaison office in India visiting India for the purpose of offering legal advice to their clients in India on foreign law, is prohibited under the provisions of the Advocates Act. In other words, the question here is, whether a foreign lawyer visiting India for a temporary period to advise his client on foreign law can be barred under the provisions of the Advocates Act. This issue was neither raised nor answered by the Bombay High Court in the aforesaid judgment.*

19. It was held:

*51. We find force in the submission made by the learned Counsel appearing for the foreign law firms that if foreign law firms are not allowed to take part in negotiations, for settling up documents and conduct arbitrations in India, it will have a counterproductive effect on the aim of the Government to make India a hub of International Arbitration. According to the learned Counsel, many arbitrations with Indian Judges and Lawyers as Arbitrators are held outside India, where both foreign and Indian law firms advise their clients. If foreign law firms are denied entry to deal with arbitrations in India, then India will lose many of the arbitrations to foreign countries. It will be contrary to the declared policy of the Government and against the national interest. Some of the companies have been carrying on consultancy/support services in the field of protection and*

*management of intellectual, business and industrial proprietary rights, carrying out market surveys and market research and publication of reports, journals, etc. without rendering any legal service, including advice in the form of opinion, but they do not appear before any courts or tribunals anywhere in India. Such activities cannot at all be considered as practising law in India. It has not been controverted that in England, foreign lawyers are free to advice on their own system of law or on English Law or any other system of law without any nationality requirement or need to be qualified in England.*

*52. Before enacting the Arbitration and Conciliation Act, 1996 the Law Commission of India, several representative bodies of trade and industry and experts in the field of arbitration have proposed amendments to the Act to make it more responsive to contemporary requirements. It was also recognised that the economic reforms in India may not fully become effective if the law dealing with settlement of both domestic and international commercial disputes remains out of tune with such reforms. The United Nations Commission on International Trade Law (UNCITRAL) adopted in 1985 the Model Law on International Commercial Arbitration. The Arbitration and Conciliation Act is, therefore, consolidated and amended to the law relating to domestic and international commercial arbitration as well as for the enforcement of foreign arbitral award. The Act was enacted as a measure of fulfilling India's obligations under the International Treaties and Conventions. On account of the growth in the international trade and commerce and also on account of long delays occurring in the disposal of suits and appeals in courts, there has been tremendous movement towards the resolution of disputes through alternative forum of arbitrators.*

*53. Section 2(1)(f) of the Act defines the term "International Commercial Arbitration" as under:*

*(f) International Commercial Arbitration means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is*

*(i) an individual who is a national of, or habitually resident in, any country other than India; or*

*(ii) a body corporate which is incorporated in any country other than India; or*

*(iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or*

*(iv) the Government of a foreign country.*

*54. From the above definition, it is manifestly clear that any arbitration matter between the parties to the arbitration agreement shall be called an "international commercial arbitration" if the matter relates to the disputes, which may or may not be contractual, but where at least one of the parties habitually resides abroad whether a national of that country or not. The New York Convention will apply to an arbitration agreement if it has a foreign element or flavour involving international trade and commerce, even though such an agreement does not lead to a foreign award.*

*55. International arbitration is growing big time in India and in almost all the countries across the globe. India is a signatory to the World Trade Agreement, which has opened up the gates for many*

*international business establishments based in different parts of the world to come and set up their respective businesses in India.*

*56. Large number of Indian Companies have been reaching out to foreign destinations by mergers, acquisition or direct investments. As per the data released by the Reserve Bank of India during 2009, the total outward investment from India excluding that which was made by Banks, had increased 29.6% to U.S. Dollar 17.4 billion in 2007-08 and India is ranked third in global foreign direct investment. Overseas investments in joint ventures and wholly owned subsidiaries have been recognized as important avenues by Indian Entrepreneurs in terms of foreign exchange earning like dividend, loyalty, etc. India is the 7<sup>th</sup> largest, the second most populated country and the fourth largest economy in the world. Various economic reforms brought about have made India grow rapidly in the Asia-Pacific Region, and the Indian Private Sector has offered considerable scope for foreign direct investment, joint-venture and collaborations. Undoubtedly, these cross-border transactions and investments would give bigger opportunities for members of the legal fraternity, in order to better equip themselves to face the challenges. It is common knowledge that in the recent past, parties conducting International Commercial Arbitrations have chosen India as their destination. The arbitration law in India is modelled on the lines of the UNCITRAL Model Law of Arbitration and makes a few departures from the principles enshrined therein. The Arbitration and Conciliation Act 1996, provides for international commercial arbitration where at least one of the parties is not an Indian National or Body corporate incorporated in India or a foreign Government.*

*57. Institutional Arbitration has been defined to be an arbitration conducted by an arbitral institution in accordance with the Rules of the institution. The Indian Council of Arbitration is one such body. It is reported that in several cases of International Commercial Arbitration, foreign contracting party prefers to arbitrate in India and several reasons have been stated to choose India as the seat of arbitration. Therefore, when there is liberalization of economic policies, throwing the doors open to foreign investments, it cannot be denied that disputes and differences are bound to arise in such International contracts. When one of the contracting party is a foreign entity and there is a binding arbitration agreement between the parties and India is chosen as the seat of arbitration, it is but natural that the foreign contracting party would seek the assistance of their own solicitors or lawyers to advise them on the impact of the laws of their country on the said contract, and they may accompany their clients to visit India for the purpose of the Arbitration. Therefore, if a party to an International Commercial Arbitration engages a foreign lawyer and if such lawyers come to India to advise their clients on the foreign law, we see there could be no prohibition for such foreign lawyers to advise their clients on foreign law in India in the course of a International Commercial transaction or an International Commercial Arbitration or matters akin thereto. Therefore, to advocate a proposition that foreign lawyers or foreign law firms cannot come into India to advise their clients on foreign law would be a far-fetched and dangerous proposition and in our opinion, would be to take a step backward, when India is becoming a preferred seat for arbitration in International Commercial Arbitrations. It cannot be denied that we have a comprehensive and progressive legal frame work to support International Arbitration and the 1996 Act, provides for maximum judicial support of arbitration and minimal intervention. That apart, it is not in all cases, a foreign company conducting an International Commercial Arbitration in India would solicit the assistance of their foreign lawyers. The legal expertise available in India is of International standard and such foreign companies would not hesitate to avail the services of Indian lawyers. Therefore, the need to make India as a preferred seat for International Commercial Arbitration would benefit the economy of the country.*



**58.** *The Supreme Court in a recent decision in Vodafone International Holdings B.V. v. Union of India and Anr., SLP(C) No. 26529 of 2010, dated 20.01.2012, observed that every strategic foreign direct investment coming to India, as an investment destination should be seen in a holistic manner. The Supreme Court observed that the question involved in the said case was of considerable public importance, especially on Foreign Direct Investment, which is indispensable for a growing economy like India. Therefore, we should not lose site of the fact that in the overall economic growth of the country, International Commercial Arbitration would play a vital part. The learned Counsel appearing for the foreign law firms have taken a definite stand that the clients whom they represent do not have offices in India, they do not advise their foreign clients on matters concerning Indian Law, but they fly in and fly out of India, only to advise and hand-hold their clients on foreign laws. The foreign law firms, who are the private Respondents in this writ petition, have accepted the legal position that the term "practice" would include both litigation as well as non-litigation work, which is better known as chamber practice. Therefore, rendering advice to a client would also be encompassed in the term "practice".*

**59.** *As noticed above, Section 2(a) of the Advocates Act defines Advocate' to mean an advocate entered in any roll under the provisions of the Act. In terms of Section 17(1) of the Act, every State Bar Council shall prepare and maintain a roll of Advocates, in which shall be entered the names and addresses of*

*(a) all persons who were entered as an Advocate on the roll of any High Court under the Indian Bar Council Act, 1926, immediately before the appointed date and (b) all other persons admitted to be Advocates on the roll of the State Bar Council under the Act on or after the appointed date. In terms of Section 24(1) of the Act, subject to the provisions of the Act and the Rules made thereunder, a person shall be qualified to be admitted as an advocate on a state roll if he fulfills the conditions (a) a citizen of India, (b) has completed 21 years of age and (c) obtained a degree in Law. The proviso to Section 24(1)(a) states that subject to the other provisions of the Act, a National of any other country may be admitted as an Advocate on a State roll, if a citizen of India, duly qualified is permitted to practice law in that other country. In terms of Section 47(1) of the Act, where any country specified by the Central Government by notification prevents citizens of India practicing the profession of Law or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to practice the profession of Law in India. In terms of Sub-section (2) of Section 47, subject to the provision of Sub-section (1), the Bar Council of India may prescribe conditions, if any, subject to which foreign qualifications in law obtained by persons other than citizens of India shall be recognized for the purpose of admission as an Advocate under the Act. Thus, Section 47 deals with reciprocity. As per the statement of objects and reasons of the Advocates Act, it was a law enacted to provide one class of legal practitioners, specifying the academic and professional qualifications necessary for enrolling as a practitioner of Indian Law, and only Indian citizens with a Law Degree from a recognized Indian University could enrol as Advocates under the Act. The exceptions are provided under the proviso to Section 24(1)(a), Section 24(1)(c)(iv) and Section 47(2). In the light of the scheme of the Act, if a lawyer from a foreign law firm visits India to advice his client on matters relating to the law which is applicable to their country, for which purpose he "flies in and flies out" of India, there could not be a bar for such services rendered by such foreign law firm/foreign lawyer.*

**60.** *We are persuaded to observe so, since there may be several transactions in which an Indian company or a person of Indian origin may enter into transaction with a foreign company, and the*

*laws applicable to such transaction are the laws of the said foreign country. There may be a necessity to seek legal advice on the manner in which the foreign law would be applied to the said transaction, for which purpose if a lawyer from a foreign law firm is permitted to fly into India and fly out advising their client on the foreign law, it cannot be stated to be prohibited. The corollary would be that such foreign law firm shall not be entitled to do any form of practice of Indian Law either directly or indirectly. The private Respondents herein, namely the foreign law firms, have accepted that there is express prohibition for a foreign lawyer or a foreign law firm to practice Indian Law. It is pointed out that if an interpretation is given to prohibit practice of foreign law by a foreign law firms within India, it would result in a manifestly absurd situation wherein only Indian citizens with Indian Law degree who are enrolled as an advocate under the Advocates Act could practice foreign law, when the fact remains that foreign laws are not taught at graduate level in Indian Law schools, except Comparative Law Degree Courses at the Master's level.*

*61. As noticed above, the Government of India, in their counter affidavit dated 19.08.2010, have stated that the contention raised by the Petitioner that foreign law firms should not be allowed to take part in negotiating settlements, settling up documents and arbitrations will be counterproductive, as International Arbitration will be confined to a single country. It is further pointed out that many arbitrations are held outside India with Indian Judges and Lawyers as Arbitrators where both foreign and Indian Law firms advise their clients. It has been further stated if foreign law firms are denied permission to deal with arbitration in India, then we would lose many arbitrations to other countries and this is contrary to the declared policy of the Government and will be against the National interest, especially when the Government wants India to be a hub of International Arbitration.*

*62. At this juncture, it is necessary to note yet another submission made by the Government of India in their counter. It has been stated that law firms as such or not required to register themselves or require permission to engage in non-litigation practice and that Indian law firms elsewhere are operating in a free environment without any curbs or Regulations. It is further submitted that the oversight of the Bar Council on non-litigation activities of such law firms was virtually nil till now, and exploiting this loop hole, many accountancy and management firms are employing law graduates, who are rendering legal services, which is contrary to the Advocates Act. Therefore, the concern of the Government of India as expressed in the counter affidavit requires to be addressed by the Bar Council of India. Further, it is seen that the Government in consultation with the Bar Council of India proposes to commission a study as to the nature of activities of LPOs, and an appropriate decision would be taken in consultation with the Bar Council of India.*

### **RIVAL CONTENTIONS**

20. Shri C.U. Singh, learned senior Counsel for the Bar Council of India submitted that Advocates enrolled with the Bar Council of India are the only recognized class of persons entitled to practice law in India. Unless any other law so permits, no person can practice before any 'Court, authority or person' other than an Advocate enrolled under the Act. In particular cases, the 'Court, authority or person' may permit a person other than an advocate enrolled under the Act to appear before him. It was submitted that the expression "practice profession of law" covered not only appearance before the Court but also opinion work which is also known as chamber practice. The Ethics prescribed by the Bar Council of India covered not only conduct in appearing before Court or authority but also in dealing with the clients including giving legal opinion, drafting or participation in law conference.

If a person practices before any 'Court, authority or person' illegally, is liable to punishment for imprisonment which may extend to six months. Thus, the view taken by the Madras High Court that visit by a foreign lawyer on fly in and fly out basis to give advice on foreign law or to conduct arbitration in international commercial arbitrations was erroneous. Reference has also been made to definition of the term 'advocate' Under Section 2(a) of the Act. Section 6 lays down functions of the Bar Council including admission of persons as advocates, safeguarding rights, privileges and interests of advocates. Section 17 lays down that every State Bar Council shall prepare a roll of advocates and no person can be enrolled in more than one State Bar Council. Section 24 lays down qualifications for admission on the roll of a State Bar council. The qualifications include the citizenship of India, unless a person is national of a country where citizens of India are permitted to practice. One is required to have the prescribed qualification from India or out of India if such degree is recognized by the Bar Council of India, being a Barrister called to the Bar before 31<sup>st</sup> December, 1976, passing of articulated clerks examination or any other examination specified by the Bombay or Calcutta High Court or obtaining foreign qualification recognized by the Bar Council of India are also the prescribed qualifications. It was submitted that even in other jurisdictions, persons other than those enrolled with the concerned Bar Council are not allowed to practice. Even short term running of legal service is subject to regulatory regime.

21. Learned Counsel for the foreign law firms S/Shri Arvind Datar, Sajjan Poovayya, Dushyant Dave, learned senior Counsel and Mr. Nakul Dewan, learned Counsel supported the direction of the Madras High Court permitting foreign lawyers to render legal services on fly in and fly out basis and also with reference to international commercial arbitrations. It was submitted that Bar Council could come into picture only in respect of advocates enrolled with it. It is only with reference to appearance before the Courts or other authorities or persons that the regulatory regime of the Bar Council may apply but with regard to non litigation/advisory work even those not enrolled as advocates under the Advocates Act are not debarred. It was also submitted by Shri Dewan that Advocates Act applies only to individuals and not to law firms. Provision for reciprocity applies only for enrolment under the Advocates Act and not for casual legal services on fly in and fly out basis or in connection with international commercial arbitration. Foreign lawyers are regulated by the disciplinary regime applicable to them and only their Bar Councils could take action with regard to their working in India also. Practice of law in India did not cover advising on foreign law. Thus, if by a pre-determined invitation, a foreign lawyer visited India to advise on a foreign law, there is no bar against doing so.

22. Certain decisions have been cited at the Bar to which reference may be made. In **Roel v. New York County Lawyers Association** MANU/USSC/0249/1958 : 3 N.Y. 2d 224 (1957), the Court of Appeals of the State of New York dealt with a case where a Mexican citizen and lawyer, who was not a citizen of the United States nor a member of the New York Bar, maintained his office in New York and advised members of the public on Mexican law. He did not give any advice as to New York law. The majority held that this was not permissible. It was observed:

*To allow a Mexican lawyer to arrange the institution of divorce proceedings for a New York resident in a Mexican court, without allowing him to tell the client that the divorce might be invalid (Querze v. Querze, 290 N.Y. 13) or that it might adversely affect estate or other property rights or status in this State (Matter of Rathscheck, 300 N.Y. 346), is to give utterly inadequate protection to him (See 70 Harv. L. Rev. 1112-1113). Nor are we in anywise persuaded by the argument in the brief of the Association of the Bar that there is any difference between the right of a Mexican lawyer*

*to act and advise the public in divorce matters and the right (3 N.Y. 2d 232) of foreign lawyers generally to act and advise with respect to foreign law.....*

***The complex problem posed by the activities of foreign attorneys here is a long-standing one. It may well be that foreign attorneys should be licensed to deal with clients in matters exclusively concerning foreign law, but that is solely within the province of the Legislature. Our courts are given much control over the lawyers admitted to the Bar of our State; we have no control, however, over those professing to be foreign law experts.***

***We see no substance in Appellant's claim that Section 270 of the Penal Law when applied to him deprives him of liberty and property without due process of law, in that the statute as so construed is unreasonable and serves no public purpose.***

23. The minority view, on the other hand, held that:

*In this century when the United States has become the creditor nation of the world and when the ramifications of our industrial, commercial, financial and recreational lives extend to every corner of the globe, it is especially improbable that the Legislature intended to preclude the giving of legal advice in this State to our citizens concerning these far-flung enterprises by trained lawyers from abroad who are equipped to give accurate information and opinions regarding them. The customary residential requirements for admission to the Bar would in themselves often preclude their becoming admitted to our Bar.....*

*The omission of the Legislature to enact statutes licensing or regulating the conduct of foreign lawyers in practicing purely foreign law in this State, does not indicate that such conduct is prohibited by Sections 270 and 271 of the Penal Law, but merely that the Legislature has not seen fit to subject them to Regulation. Whatever the merits of such proposed legislation, it is not for us to enact it. If foreign lawyers came Under Section 270 and 271 of the Penal Law, it would stifle their activities to the detriment of the large and increasing number of our nationals who engage in transactions in foreign countries, inasmuch as it would be impossible for most of them to be admitted to practice in this State.*

24. In ***Appell v. Reiner*** 43 N.J. 313 (1964) : 204 A.2d 146, the Supreme Court of New Jersey dealt with a case of New York lawyer, who was not admitted to the New Jersey Bar, giving legal services to New Jersey residents in a matter involving the extension of credit and the compromise of claims held by New York and New Jersey creditors. The Chancery Division held that the New York lawyer could not advise in respect of New Jersey creditors. The Supreme Court of New Jersey held:

*The Chancery Division correctly delineated the generally controlling principle that legal services to be furnished to New Jersey residents relating to New Jersey matters may be furnished only by New Jersey counsel. We nevertheless recognize that there are unusual situations in which a strict adherence to such a thesis is not in the public interest. In this connection recognition must be given to the numerous multi-state transactions arising in modern times. This is particularly true of our State, situated as it is in the midst of the financial and manufacturing center of the nation. An inflexible observance of the generally controlling doctrine may well occasion a result detrimental to the public interest, and it follows that there may be instances justifying such exceptional treatment warranting the ignoring of state lines. This is such a situation. Under the peculiar facts here*

*present, having in mind the nature of the services to be rendered, the inseparability of the New York and New Jersey transactions, and the substantial nature of the New York claim, we conclude that Plaintiff's agreement to furnish services in New Jersey was not illegal and contrary to public policy.*

*It must be remembered that we are not here concerned with any participated by Plaintiff in a court proceeding. What is involved is the rendering of advice and assistance in obtaining extensions of credit and compromises of indebtedness.....*

25. Again, there was a dissenting view as follows:

*.....Regulation of the interests of the public and the bar requires a Rule of general application. In cases such as we have here, the only fair and workable Rule is one which recognizes that the client's matter is primarily a New Jersey one and calls for the engagement of a member of our bar for the legal services to be rendered here. And, in that connection, in the interest of interstate amity, if an out-of-state attorney renders legal services in New Jersey which are a minor or incidental part of a total problem which has its principal and primary aspects in his state, he should be allowed to recover in our courts for the work done in this jurisdiction.*

26. Mr. Poovayya referred to Rules of the Indian Council of Arbitration which could apply only if there was an agreement between the parties that the arbitration was to be in accordance with the Rules of the Indian Council of Arbitration. Rule 45 laid down that parties have no right to be represented by lawyers unless the arbitral tribunal considers it necessary and allows.

27. Referring to the Arbitration Act, it was submitted that international commercial arbitration is defined Under Section 2(f) which covers arbitration relating to disputes where one of the parties is a national or habitual resident of a country other than India or a body corporate incorporated outside India or an association of body of individuals whose management and control is exercised in a country other than India or a Government of a foreign country. In such cases, parties may agree to have an arbitrator of any nationality, to any language to be used in arbitration proceedings, to any place of arbitration. Section 28(b) permits Arbitral Tribunal to decide disputes in accordance with Rules of law applicable to the substance of the dispute as agreed by the parties. The arbitrator has to give equal opportunity to the parties to present their case (Section 18). Parties can agree on the procedure to be followed (Section 19). Section 34(2)(a)(iii) provides that an award may be set aside, inter-alia, on the ground that the party was unable to present its case in the arbitration proceedings. Procedure for presenting case of a party before the arbitrator may be governed by agreement or by the procedural rules.

28. Shri Dushyant Dave referred to Rules of certain Arbitration Institutions to the effect that the parties are free to be represented by an outside lawyer. It was submitted that by way of Convention in international commercial arbitrations, there cannot be any compulsion to engage only a local lawyer. Section 48(1)(b) of the Arbitration Act provides that enforcement of a foreign award can be refused if the parties were unable to present their case. The New York Convention Awards are governed by the First Schedule to the Act. Article-II provides for recognition of an arbitration agreement between the parties. Article-V(1)(b) provides that if the party against whom the award is invoked was not given proper notice or could not present his case, the award cannot be enforced. Section 53 of the Arbitration Act refers to Geneva Convention Awards which is regulated by the Second Schedule to the Act containing similar provisions.

29. Mr. Dave submitted that the Special Leave Petition arising out of the Delhi High Court order is on the question whether London Court of International Arbitration could use the expression "COURT" had become infructuous as the Respondent had closed its working in India. He, however, referred the following:

**I) Handbook of ICC Arbitration-Commentary. Precedents. Materials-Second Edition (Michael W. Buhler and Thomas H. Webster)**

***Article 21(4): "The parties may appear in person or through duly authorized representatives. In addition, they may be assisted by advisers."***

The authors' comment is as follows:

*In an ICC arbitration, parties have the right to be represented by the persons of their choice. A distinction should however be made between "authorized representatives" and "advisors". Usually, the parties have attorneys represent them in the arbitration. Thus, an attorney may have both capacities, but this may not always be the case. As an adviser, he or she would not need a power of attorney. On the other hand, as a representative of a party, he or she might need a power of attorney. In arbitration. The major centres of arbitration do not appear to have restrictions on the right of lawyers from other countries to argue cases in those countries, with the possible exception of California.*

The footnote 31 is as follows:

*See Birbower, Montabano, Condon & Frank, P.C. v. The Superior Court of Santa Clara, 949 P.2d 1 (Cal. 1998); see also Holtzmann and Donovan, "United States Country Report" in ICCA Handbook, Supp. 28 (Paulssonedn, 1999). The California Rules of Court were modified in 2004 in order to permit any US qualified lawyer to represent a party in an arbitration (r. 966). However, it remains unclear whether lawyers admitted to foreign bars can represent parties in national or international arbitration.*

**II) Arbitration of Commercial Disputes International and English Law and Practice (Andrew Tweeddale and Keren Tweeddale).**

**Representation of the parties**

*10.15. The right to legal representation at trial has existed both in the common law and in international treaties for centuries<sup>1</sup>. However, the right to legal representation is not absolute. The parties may agree to dispense with legal representation<sup>2</sup>. Furthermore, some Rules of arbitration prohibit the use of legal representation<sup>3</sup>. In international commercial arbitrations it is generally accepted that the parties may choose their own advocate without necessarily choosing one qualified at the seat of the arbitration<sup>4</sup>. However, in a few recent cases that principle has been challenged<sup>5</sup>.*

**III) Redfern and Hunter on International Arbitration**

*In general, the parties may also be represented by engineers, or commercial men, for the purpose of putting forward the oral submissions, and even for the examination of witnesses. It is not*

*uncommon, where a case involves technical issues, for an engineer or other professional man to be part of the team of advocates representing a party at a hearing, although it is more usual for such technical experts to be called as witnesses in order that their opinions and submissions may be tested by cross-examination. However, it may sometimes be convenient and save time if technical experts address the arbitral tribunal directly as party representatives<sup>6</sup>.*

*The Supreme Court of California held in 1998 that representing a party in an arbitration without its seat in California was 'engaging in the practice of law' in that state. It followed that a New York lawyer, not a member of the Californian Bar, was not qualified to represent his client in a Californian arbitration; and was thus unable to recover his fee when he sued for it<sup>7</sup>. Fortunately the court stated that the Rule did not apply in international arbitration. IN England there is not, and never has been, any danger of a similar situation arising<sup>8</sup>. A party to an arbitration may, in theory, be represented by his plumber, his dentist, or anyone else of his choosing, although the choice usually falls on a lawyer or specialist claims consultant in the relevant industry<sup>9</sup>.*

#### **IV) LONDON COURT OF INTERNATIONAL ARBITRATION (LCIA) RULES (2014)**

##### **Article 18-Legal Representatives**

*18.1 Any party may be represented in the arbitration by one or more authorized legal representatives appearing by name before the Arbitral Tribunal.*

*18.2 Until the Arbitral Tribunal's formation, the Registrar may request from any party: (i) written proof of the authority granted by that party to any legal representative designated in its Request or Response; and (ii) written confirmation of the names and addresses of all such party's legal representatives in the arbitration. After its formation, at any time, the arbitral Tribunal may order any party to provide similar proof or confirmation in any form considers appropriate.*

#### **V) CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION (CIETAC) ARBITRATION RULES.**

##### **Article 22-Representation**

*A party may be represented by its authorized Chinese and/or foreign representative(s) in handling matters relating to the arbitration. In such a case, a Power of Attorney shall be forwarded to the Arbitration Court by the party or its authorized representative(s).*

#### **VI) ARBITRATION RULES. MEDIATION RULES OF INTERNATIONAL CHAMBER OF COMMERCE-ARTICLE 26-Hearings**

*4. The parties may appear in person or through duly authorized representatives. In addition, they may be assisted by advisers.*

#### **VII) COMMERCIAL ARBITRATION RULES AND MEDIATION PROCEDURES OF AMERICAN ARBITRATION ASSOCIATION**

## R-26. Representation

*Any party may participate without representation (pro se), or by counsel or any other representative of the party's choosing, unless such choice is prohibited by applicable law. A party intending to be so represented shall notify the other party and the AAA of the name, telephone number and address, and email address if available, of the representative at least seven calendar days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.*

## **VIII) ARBITRATION RULES OF THE SINGAPORE INTERNATIONAL ARBITRATION CENTRE (SIAC)**

### Party Representatives

*23.1 Any party may be represented by legal practitioners or any other authorized representatives. The Registrar and/or the Tribunal may require proof of authority of any party representatives.*

*23.2 After the constitution of the Tribunal, any change or addition by a party to its representatives shall be promptly communicated in writing to the parties, the Tribunal and the Registrar.*

## **IX) RULES OF INTERNATIONAL COMMERCIAL ARBITRATION BY INDIAN COUNCIL OF ARBITRATION**

### **20. Party Representation and assistance**

*At the hearing, a party shall be entitled to appear through Attorney, Advocate or a duly authorized Advisor or Representative or in person, subject to such proof of authority to the satisfaction of the Registrar or the Tribunal.*

30. Shri C.U. Singh, learned senior Counsel, by way of rejoinder, opposed the submissions of learned Counsel appearing for the foreign law firms. He submitted that the stand of the Central Government finally was to support the stand of the Bar Council of India. The argument that participation of foreign lawyers will be in the interest of the country was raised by the foreign law firms only as shown from para 51 of the Madras High Court judgment. He submitted that the arbitrator was also an 'authority' before whom only advocates enrolled in India alone could appear. The arbitrator could record evidence and summon witnesses through Court (Section 27). Rules of Arbitration Institutions have to be in conformity with the law of the land. He also submitted that the Rules framed by the Bar Council of India Under Section 49 define the practice of law so as to cover even giving of opinion.

31. Shri Singh further pointed out that Ethics for the profession as applicable in India are different from the Ethics applicable in other countries. In this regard, it was submitted that Rule 36 in Part VI, Chapter II of the BCI Rules prohibits direct or indirect advertising by advocates, or solicitation by any means whatsoever. Rule 18 bars an advocate from fomenting litigation. In ***Bar Council of Maharashtra v. M.V. Dabholkar*** MANU/SC/0670/1975 : (1976) 2 SCC 291, this Court held that advertising was a serious professional misconduct for an advocate. As against this, in USA Rule 7.3 of the American Bar Association Rules bars only in-person or live telephonic solicitation of clients,



but expressly permits lawyer-to-lawyer solicitation, as well as client solicitation by written, recorded or electronic communication, unless the target of solicitation has made known to the lawyer his desire not to be solicited, or the solicitation involved coercion, duress or harassment. The US Supreme Court, inter alia, in *Zauderer v. Office of Disciplinary Counsel* MANU/USSC/0140/1985 : 471 US 626 (1985) and in *Shapero v. Kentucky Bar Association* MANU/USSC/0042/1988 : 486 US 466 struck down disciplinary actions against lawyers for soliciting clients through print advertisements or hoardings. In UK, Solicitors Regulation Authority(SRA) is a regulatory body established under the Legal Services Act, 2007. Chapter 8 of the SRA Handbook permits publicity of the law firm but prohibits solicitations.

32. In India, with regard to Contingency fees, Rule 20 in Part VI, Chapter II of the BCI Rules bars an advocate from stipulating a fee contingent on the results of the litigation or from agreeing to share the proceeds thereof. Rule 21 prohibits practices akin to champerty or maintenance, and prohibits an advocate from buying or trafficking in or stipulating or agreeing to receive any share or interest in an actionable claim. In USA Rule 1.5 (c) of the ABA Rules permits lawyers to charge contingency fees, except in certain specified cases like criminal defence, etc. Fee-splitting arrangements between lawyers from different firms are also permitted with some restrictions. In U.K., Section 58 of the Courts and Legal Services Act, 1990 permits "conditional fee agreements" except in criminal proceedings and family law matters and Section 58AA permits "damages-based fee agreements", all of which entitle legal practitioners to a share of the "winnings".

33. In India, there are no Rules framed by the Bar Council on the subject 'sale of law practice'. In U.S.A., Rule 1.17 permits law firms or lawyers having private practice to sell their practice including the goodwill. In U.K., SRA Guidelines permit sale of practice as a going concern or acquisition of a practice which is closing down.

34. In India, senior advocates are barred from interacting directly with clients, and are not permitted to draft pleadings or affidavits, correspond on behalf of clients, or to appear in court unassisted by an advocate (Part VI, Chapter I of the Bar Council of India Rules). In U.S.A., no such distinction or designations are made. In U.K., there appear to be no restrictions on Queen's Counsel (QCs) similar to the ones imposed by the Bar Council in India. QCs are permitted to join law firms as partners.

35. In India, funding of litigation by advocates is not explicitly prohibited, but a conjoint reading of Rule 18 (fomenting litigation), Rule 20 (contingency fees), Rule 21 (share or interest in an actionable claim) and Rule 22 (participating in bids in execution, etc.) would strongly suggest that advocates in India cannot fund litigation on behalf of their clients. There appears to be no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation. In U.S.A., lawyers are permitted to fund the entire litigation and take their fee as a percentage of the proceeds if they win the case. Third Party Litigation Funding/Legal Financing agreements are not prohibited. In U.K., Section 58B of the Courts and Legal Services Act, 1990 permits litigation funding agreements between legal service providers and litigants or clients, and also permits third party Litigation Funding or Legal Financing agreements, whereby the third party can get a share of the damages or "winnings".

36. In India, partnerships with non-lawyers for conducting legal practice is not permitted. In U.K., Section 66 of the Courts and Legal Services Act, 1990 expressly permits solicitors and barristers to enter into partnerships with non-solicitors and non-barristers.

## **CONSIDERATION OF THE ISSUES**

37. We have considered the rival submissions. Questions for consideration mainly arise out of directions in para 63 of the Madras High Court judgment which have already been quoted in the beginning of this judgment, viz.:

(i) Whether the expression 'practise the profession of law' includes only litigation practice or non-litigation practice also;

(ii) Whether such practice by foreign law firms or foreign lawyers is permissible without fulfilling the requirements of Advocates Act and the Bar Council of India Rules;

(iii) If not, whether there is a bar for the said law firms or lawyers to visit India on 'fly in and fly out' basis for giving legal advice regarding foreign law on diverse international legal issues;

(iv) Whether there is no bar to foreign law firms and lawyers from conducting arbitration proceedings and disputes arising out of contracts relating to international commercial arbitration;

(v) Whether BPO companies providing integrated services are not covered by the Advocates Act or the Bar Council of India rules.

### **RE: (i)**

38. In **Pravin C. Shah v. K.A. Mohd. Ali** MANU/SC/0622/2001 : (2001) 8 SCC 650, it was observed that right to practice is genus of which right to appear and conduct cases is specie. It was observed:

*.....The 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 etc.....*

In **Ex. Capt. Harish Uppal v. Union of India** MANU/SC/1141/2002 : (2003) 2 SCC 45, same view was reiterated.

39. 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, we uphold the view that practice of law includes litigation as well as non litigation.

### **RE: (ii)**

40. We have already held 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.

RE: (iii)

41. Visit of any foreign lawyer on *fly in and fly out* basis may amount to practice of law if it is on regular basis. A casual visit for giving advice may not be covered by the expression '*practice*'. Whether a particular visit is casual or frequent so as to amount to practice is a question of fact to be determined from situation to situation. Bar Council of India or Union of India are at liberty to make appropriate Rules in this regard. We may, however, make it clear that the contention that the Advocates Act applies only if a person is practicing Indian law cannot be accepted. Conversely, plea that a foreign lawyer is entitled to practice foreign law in India without subjecting himself to the regulatory mechanism of the Bar Council of India Rules can also be not accepted. We do not find any merit in the contention that the Advocates Act does not deal with companies or firms and only individuals. If prohibition applies to an individual, it equally applies to group of individuals or juridical persons.

RE: (iv)

42. It is not possible to hold that there is absolutely no bar to a foreign lawyer for conducting arbitrations in India. If the matter is governed by particular Rules of an institution or if the matter otherwise falls Under Section 32 or 33, there is no bar to conduct such proceedings in prescribed manner. If the matter is governed by an international commercial arbitration agreement, conduct of proceedings may fall Under Section 32 or 33 read with the provisions of the Arbitration Act. Even in such cases, Code of Conduct, if any, applicable to the legal profession in India has to be followed. It is for the Bar Council of India or Central Government to make a specific provision in this regard, if considered appropriate.

RE: (v)

43. The BPO companies providing range of customized and integrated services and functions to its customers may not violate the provisions of the Advocates Act, only if the activities in pith and substance do not amount to practice of law. The manner in which they are styled may not be conclusive. As already explained, if their services do not directly or indirectly amount to practice of law, the Advocates Act may not apply. This is a matter which may have to be dealt with on case to case basis having regard to a fact situation.

44. In view of above, we uphold the view of the Bombay High Court and Madras High Court in para 63 (i) of the judgment to the effect that foreign law firms/companies or foreign lawyers cannot practice profession of law in India either in the litigation or in non-litigation side. We, however,

modify the direction of the Madras High Court in Para 63(ii) that there was no bar for the foreign law firms or foreign lawyers to visit India for a temporary period on a "*fly in and fly out*" basis for the purpose of giving legal advice to their clients in India regarding foreign law or their own system of law and on diverse international legal issues. We hold that the expression "fly in and fly out" will only cover a casual visit not amounting to "practice". In case of a dispute whether a foreign lawyer was limiting himself to "fly in and fly out" on casual basis for the purpose of giving legal advice to their clients in India regarding foreign law or their own system of law and on diverse international legal issues or whether in substance he was doing practice which is prohibited can be determined by the Bar Council of India. However, the Bar Council of India or Union of India will be at liberty to make appropriate Rules in this regard including extending Code of Ethics being applicable even to such cases.

45. We also modify the direction in Para 63 (iii) that foreign lawyers cannot be debarred from coming to India to conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration. We hold that there is no absolute right of the foreign lawyer to conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration. If the Rules of Institutional Arbitration apply or the matter is covered by the provisions of the Arbitration Act, foreign lawyers may not be debarred from conducting arbitration proceedings arising out of international commercial arbitration in view of Sections 32 and 33 of the Advocates Act. However, they will be governed by code of conduct applicable to the legal profession in India. Bar Council of India or the Union of India are at liberty to frame Rules in this regard.

46. We also modify the direction of the Madras High Court in Para 63(iv) that the B.P.O. Companies providing wide range of customized and integrated services and functions to its customers like word processing, secretarial support, transcription services, proof reading services, travel desk support services, etc. do not come within the purview of the Advocates Act, 1961 or the Bar Council of India Rules. We hold that mere label of such services cannot be treated as conclusive. If in pith and substance the services amount to practice of law, the provisions of the Advocates Act will apply and foreign law firms or foreign lawyers will not be allowed to do so.

The Civil Appeals are disposed of accordingly.

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<sup>1</sup>See, for example, art 42 of the Statute of the International Court of Justice which states: '1. The parties shall be represented by agents. 2. They may have the assistance of counsel or advocates before the Court. 3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.' See also art 37 of the Hague Convention 1899 which states: 'The parties have the right to appoint delegates or special agents to attend the Tribunal, for the purpose of serving as intermediaries between them and the Tribunal. They are further authorized to retain, for the defense of their rights and interests before the Tribunal, counsel or advocates appointed by them for this purpose.'

<sup>2</sup>Henry Bath & Son Ltd. v. Birgby Products [1962] Lloyd's Rep 389; and see also the English Arbitration Act 1996, Section 36.

<sup>3</sup>The arbitration Rules of the Australian Football league, for example, limit legal representation.

<sup>4</sup>See, for example, *In the matter of an Arbitration between Lawler, Matusky and Skelly, Engineers and the Attorney General of Barbados* (No. 320 of 1981) 22 August 1983 where the High Court of Barbados held that there was a 'common law right of everyone who is *sui juris* to appoint an agent for any purpose'. The court held that this included the right to appoint a representative to appear as advocate on a party's behalf in a commercial arbitration.

<sup>5</sup> In the matter of an Arbitration between Builders Federal (Hong Kong) Ltd. and Joseph Gartner & Co., and Turner (East Asia) Pte. Ltd. (No. 90 of 1987) (1988) 2 MLJ 280 the Malaysian Judicial Commissioner Chan SekKeong ruled that the Respondents, who were a foreign company, could not select a counsel from their own country because Singapore's Legal Profession Act operated as a bar to foreign lawyers from representing their clients in international arbitrations in Singapore. However, in June 2004 Singapore finally amended its Legal Profession Act to eliminate this restriction on representation by foreign lawyers in arbitrations in Singapore. See also *Birbrower, Montabano, Condon & Frank v. Superior Court of Santa Clara County*, 1998 Cal LEXIS 2, 1998 WL 1346 (Cal 1/5/98) where the court held that a New York lawyer representing a client in a Californian arbitration was not qualified to act for his client because he was not called to the Californian bar and therefore not entitled to recover his fees. The court, however, stated that this principle would not apply to an international commercial arbitration.

<sup>6</sup> Both the UNCITRAL RULES (Article 4) and the LCIA Rules (Article 18) make it clear that parties are entitled to be represented by non-lawyers.

<sup>7</sup>*Birbrower, Montabane, Condon Frank v. The Superior Court of Santa Clara County*, 1998 Cal Lexis 2; 1998 WL 1346 (Cal 1/5/98)

<sup>8</sup>i.e. that only a member of the local bar should be entitled to represent a party in a judicial or quasi-judicial proceeding.

<sup>9</sup>English Arbitration Act, 1996, Section 36. This reaffirms the previous common law position.

## Contempt of Court: Meaning

### *Maninderjit Singh Bitta v. Union Of India &Ors*

(2011) 11 SCALE 634

Bench: S.H. Kapadia, K.S. Radhakrishnan, Swatanter Kumar

1. Government of India, on 28th March, 2001, issued a notification under the provisions of Section 41(6) of the Motor Vehicles Act, 1988 (for short, 'the Act') read with Rule 50 of the Motor Vehicles Rules, 1989 (for short, 'the Rules') for implementation of the provisions of the Act. This notification sought to introduce a new scheme regulating issuance and fixation of High Security Number Plates. In terms of sub-section (3) of Section 109 of the Act, the Central Government issued an order dated 22nd August, 2001 which dealt with various facets of manufacture, supply and fixation of new High Security Registration Plates (HSRP). The Central Government also issued a notification dated 16th October, 2001 for further implementation of the said order and the HSRP Scheme. Various States had invited tenders in order to implement this Scheme.

2. A writ petition being Writ Petition (C) No.41 of 2003 was filed in this Court challenging the Central Government's power to issue such notification as well as the terms and conditions of the tender process. In addition to the above writ petition before this Court, various other writ petitions were filed in different High Courts raising the same challenge. These writ petitions came to be transferred to this Court. All the transferred cases along with Writ Petition (C) No. 41 of 2003 were referred to a larger Bench of three Judges of this Court by order of reference dated 26th May, 2005 in the case of **Association of Registration Plates v. Union of India** [(2004) 5 SCC 364], as there was a difference of opinion between the learned Members of the Bench dealing with the case. The three Judge Bench finally disposed of the writ petitions vide its order dated 30th November, 2004 reported in *Association of Registration Plates v.*

*Union of India Association of Registration Plates v. Union of India* [(2005) 1 SCC 679]. While dismissing the writ petition and the connected matters, the Bench rejected the challenge made to the provisions of the Rules, statutory order issued by the Central Government and the tender conditions and also issued certain directions for appropriate implementation of the Scheme.

8. Now, we would examine certain principles of law which would normally guide the exercise of judicial discretion in the realm of contempt jurisdiction. 'Contempt' is an extraordinary jurisdiction of the Courts. Normally, the courts are reluctant to initiate contempt proceedings under the provisions of the 1971 Act. This jurisdiction, at least *suomoto*, is invoked by the courts sparingly and in compelling circumstances, as it is one of the foremost duty of the courts to ensure compliance of its orders. The law relating to contempt is primarily dissected into two main heads of jurisdiction under the Indian Law: (a) Criminal Contempt, and (b) Civil Contempt. It is now well settled and explained principle under the Indian contempt jurisdiction that features, ingredients, procedure, attendant circumstances of the case and the quantum of punishment are the relevant and deciphering factors.

Section 12 of the 1971 Act deals with the contempt of court and its punishment while Section 15 deals with cognizance of criminal contempt. Civil contempt would be wilful breach of an undertaking given to the court or wilful disobedience of any judgment or order of the court, while criminal contempt would deal with the cases where by words, spoken or written, signs or any matter

or doing of any act which scandalises, prejudices or interferes, obstructs or even tends to obstruct the due course of any judicial proceedings, any court and the administration of justice in any other manner. Under the English Law, the distinction between criminal and civil contempt is stated to be very little and that too of academic significance. However, under both the English and Indian Law these are proceedings sui generis. While referring to Justice J.D. Kapoor's Law of Contempt of Court, Second Edition, 2010 which mentioned the Phillimore Committee Report - Report of the Committee on Contempt of Court, of which importantly the following passage can be noticed:

"4. In England and Wales most forms of contempt have been regarded as of criminal character, and as such, are called "criminal contempts". In Scotland contempt of court is not a crime nor is a distinction between "criminal" and "civil" contempts recognised. Scots law regards contempt of court as a chapter of a law sui generis. This difference of approach is of little more than academic significance in modern practice, but the Scottish explain certain peculiar elements in its operation and procedure. What is of particular importance is that it is branch of the law in which breaches are investigated by a special and summary procedure and where, once established, they may be severely punished."

9. Under the Indian Law the conduct of the parties, the act of disobedience and the attendant circumstances are relevant to consider whether a case would fall under civil contempt or a criminal contempt. For example, disobedience of an order of a court simpliciter would be civil contempt but when it is coupled with conduct of the parties which is contemptuous, prejudicial and is in flagrant violation of the law of the land, it may be treated as a criminal contempt. Even under the English Law, the courts have the power to enforce its judgment and orders against the recalcitrant parties.

10. In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the orders of the court, even to constitute a civil contempt. Every party to lis before the court, and even otherwise, is expected to obey the orders of the court in its true spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. The Government Departments are no exception to it. The departments or instrumentalities of the State must act expeditiously as per orders of the court and if such orders postulate any schedule, then it must be adhered to. Whenever there are obstructions or difficulties in compliance with the orders of the court, least that is expected of the Government Department or its functionaries is to approach the court for extension of time or clarifications, if called for. But, where the party neither obeys the orders of the court nor approaches the court making appropriate prayers for extension of time or variation of order, the only possible inference in law is that such party disobeys the orders of the court. In other words, it is intentionally not carrying out the orders of the court. Flagrant violation of the court's orders would reflect the attitude of the concerned party to undermine the authority of the courts, its dignity and the administration of justice. In the case of **Re: Vinay Chandra Mishra** [(1995) 2 SCC 584], this Court held that 'judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. Dignity and authority of the Courts have to be respected and protected at all costs'.

11. Another very important aspect even of the Civil Contempt is, 'what is the attribution of the contemnor?' There may be cases of disobedience where the respondent commits acts and deeds leading to actual disobedience of the orders of the court. Such contemnor may flout the orders of the court openly, intentionally and with no respect for the rule of law. While in some other cases of

civil contempt, disobedience is the consequence or inference of a dormant or passive behaviour on the part of the contemnor. Such would be the cases where the contemnor does not take steps and just remains unmoved by the directions of the court. As such, even in cases where no positive/active role is directly attributable to a person, still, his passive and dormant attitude of inaction may result in violation of the orders of the court and may render him liable for an action of contempt.

12. It is not the offence of contempt which gets altered by a passive/negative or an active/positive behaviour of a contemnor but at best, it can be a relevant consideration for imposition of punishment, wherever the contemnor is found guilty of contempt of court. With reference to Government officers, this Court in the case of **E.T. Sunup v. Canss Employees Assoc.** [(2004) 8 SCC 683] took the view that it has become a tendency with the Government officers to somehow or the other circumvent the orders of the Court by taking recourse to one justification or the other even if ex-facie they are unsustainable. The tendency of undermining the court orders cannot be countenanced. Deprecating practice of undue delay in compliance with the orders of the court, this Court again in the case of **M.C. Mehta v. Union of India and Ors.** [(2001) 5 SCC 309] observed :

".....clear lapse on the part of NCT and Municipal Corporation. Even if there was not deliberate or wilful disregard for the court orders, there has clearly been a lackadaisical attitude and approach towards them. Though no further action in this matter need be taken for now, but such lethargic attitude if continues may soon become contumacious."

13. It is also of some relevancy to note that disobedience of court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result. Disobedience of orders of the court strikes at the very root of rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the Judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs (refer **T.N. GodavarmanThirumulpad's** case [(2006) 5 SCC 1]). The proceedings before the highest court of the land in a public interest litigation, attain even more significance. These are the cases which come up for hearing before the court on a grievance raised by the public at large or public spirited persons. The State itself places matters before the Court for determination which would fall, statutorily or otherwise, in the domain of the executive authority. It is where the State and its instrumentalities have failed to discharge its statutory functions or have acted adversely to the larger public interest that the courts are called upon to interfere in exercise of their extraordinary jurisdiction, to ensure maintenance of the rule of law. These are the cases which have impact in rem or on larger section of the society and not in personamsimplicitor. Courts are called upon to exercise jurisdiction with twin objects in mind. Firstly, to punish the persons who have disobeyed or not carried out orders of the court i.e. for their past conduct. Secondly, to pass such orders, including imprisonment and use the contempt jurisdiction as a tool for compliance of its orders in future. This principle has been applied in the United States and Australia as well. For execution of the orders of the court even committal for an indefinite term has been accepted under Australian law [**Australasian Meat Industry Employees Union v. Mudginberri Station Pty. Ltd.** (1986) 161 CLR 98 (Australian High Court)] and American law, though this is no longer permissible under English Law. While referring to detention of a person for a long period to ensure execution of the orders in **Re Nevitt** [117 F. 448, 461 (1902)] Judge Sanborn observed that the person subjected to such a term 'carries the keys of his prison in his own pocket.' Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. Inordinate delay in complying with the orders of the courts has also received judicial criticism. It is inappropriate for the parties concerned to keep



the execution of the court's orders in abeyance for an inordinate period. Inaction or even dormant behaviour by the officers in highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. Inordinate delay of years in complying with the orders of the court or in complying with the directed stipulations within the prescribed time, has been viewed by this Court seriously and held to be the contempt of court, as it undermines the dignity of the court. Reference in this regard can be made to **Maniyeri Madhavan v. Inspector of Police, Cannanore** [AIR 1993 SC 356] and **Anil Ratan Sarkar and Ors. v. Hirak Ghosh and Ors.** [(2002) 4 SCC 21].

Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding. Obviously, the purpose is to ensure compliance of the orders of the court at the earliest and within stipulated period.

14. Reverting back to the facts of the present case, it is undisputed that for years together the State of Haryana has failed to comply with the directions of this Court and implement the scheme. It has not only caused prejudice to the public at large but has even undermined the dignity of this Court. The attitude of the State of Haryana and the respective officers has been lackadaisical and of willful disregard. Despite repeated orders they have failed to take effective steps and whatever steps were taken the same are not in conformity with law. The repeated Orders of this Court have failed to bring any results from the recalcitrant State. The repeated opportunities and extension of time did not help in expeditious progress in the matter. On the contrary, there is apparent disobedience of the Orders of this Court and no compliance with the Orders of this court, by their completely passive and dormant behaviour. This behaviour, besides causing serious problems in the effective implementation of statutory scheme, has even undermined the dignity of this Court and impinged upon the basic rule of law. At the cost of repetition, we may notice that there is not even a word of explanation as to why no steps were taken by the State of Haryana for a long period of seven years and why tender has not been awarded till date. The vague averments made in the affidavit are nothing but a lame excuse to somehow avoid the present proceedings. The State of Haryana and the concerned officers, namely, the Secretary, Transport and the Commissioner, State Transport Authority have violated the Orders of this Court and are liable for the consequences of such disobedience.

15. It was expected of the officers in-charge and particularly the Secretary, Transport and Commissioner, State Transport Authority of the State of Haryana to at least carefully read the orders of this Court and ensure their implementation in their correct perspective. We would have expected such high officers of the State to act fairly, expeditiously and in accordance with the orders of this Court. If the concerned State would have taken timely and appropriate steps in accordance with the law and the orders of this Court, it would have not only saved the time of the Court, which it had spent on repeated hearings, but would have also saved the public money that it had spent so far.

16. We have no hesitation in coming to the conclusion that the Secretary, Transport and the Commissioner, State Transport Authority of the State of Haryana is guilty of willful disobedience/non-compliance of the orders of this Court, particularly the orders dated 30<sup>th</sup> November 2004, 7th April 2011 and 30th August 2011. Having found them guilty under the provisions of the 1971 Act and under Article 129 of the Constitution of India, we punish the Secretary, Transport and Commissioner, State Road Transport Authority of the State of Haryana as under :

- i) They are punished to pay a fine of Rs.2,000/- each and in default, they shall be liable to undergo simple imprisonment for a period of fifteen days;
- ii) We impose exemplary cost of Rs.50,000/- on the State of Haryana, which amount, at the first instance, shall be paid by the State but would be recovered from the salaries of the erring

officers/officials of the State in accordance with law and such recovery proceedings be concluded within six months. The costs would be payable to the Supreme Court Legal Services Committee.

iii) In view of the principle that the courts also invoke contempt jurisdiction as a tool for compliance of its orders in future, we hereby direct the State Government and the respondent/contemner herein now to positively comply with the orders and implement the scheme within eight weeks from today. Copy of this order be circulated to the Chief Secretary/Competent Authority of all the States/U.T.s. It is ordered accordingly.

***R.K. Anand v. Registrar, Delhi High Court***  
(2009) 8 SCC 106

**AFTAB ALAM, J.** 1. The present is a fall out from a criminal trial arising from a hit and run accident on a cold winter morning in Delhi in which a car travelling at reckless speed crashed through a police check post and crushed to death six people, including three policemen. Facing the trial, as the main accused, was a young person called Sanjeev Nanda coming from a very wealthy business family. According to the prosecution, the accident was caused by Sanjeev Nanda who, in an inebriated state, was driving a black BMW car at very high speed. The trial, commonly called as the BMW case, was meandering endlessly even after eight years of the accident and in the year 2007, it was not proceeding very satisfactorily at all from the point of view of the prosecution. The status of the main accused coupled with the flip flop of the prosecution witnesses evoked considerable media attention and public interest. To the people who watch TV and read newspapers it was yet another case that was destined to end up in a fiasco. It was in this background that a well known English language news channel called New Delhi Television (NDTV) telecast a programme on May 30, 2007 in which one Sunil Kulkarni was shown meeting with IU Khan, the Special Public Prosecutor and RK Anand, the Senior Defence Counsel (and two others) and negotiating for his sell out in favour of the defence for a very high price. Kulkarni was at one time considered the most valuable witness for the prosecution but afterwards, at an early stage in the trial, he was dropped by the prosecution as one of its witnesses. Nearly eight years later, the trial court had summoned him to appear and give his testimony as a court witness. The telecast came a few weeks after the court order and even as his evidence in the trial was going on. According to NDTV, the programme was based on a clandestine operation carried out by means of a concealed camera with Kulkarni acting as the mole. What appeared in the telecast was outrageous and tended to confirm the cynical but widely held belief that in this country the rich and the mighty enjoyed some kind of corrupt and extra-constitutional immunity that put them beyond the reach of the criminal justice system. Shocked by the programme the Delhi High Court suo moto initiated a proceeding (Writ Petition (Criminal) No. 796 of 2007). It called for from the news channel all the materials on which the telecast was based and after examining those materials issued show cause notices to RK Anand, IU Khan and Bhagwan Sharma, an associate advocate with RK Anand why they should not be convicted and punished for committing criminal contempt of court as defined under Section 2(c) of the Contempt of Courts Act. (In the sting operations there was another person called Lovely who was apparently sent to meet Kulkarni as an emissary of RK Anand. But he died in a freak accident even before the stage of issuance of notice in the proceeding before the High Court). On considering their show cause and after hearing the parties the High Court expressed its displeasure over the role of Bhagwan Sharma but acquitted him of the charge of contempt of court. As regards RK Anand and IU Khan, however, the High Court found and held that their acts squarely fell within the definition of contempt under clauses (ii) & (iii) of Section 2(c) of the Contempt of Courts Act. It, accordingly, held them guilty of committing contempt of Court vide judgment and order dated August 21, 2008 and in exercise of power under Article 215 of the Constitution of India prohibited them, by way of punishment, from appearing in the Delhi High Court and the courts subordinate to it for a period of four months from the date of the judgment. It, however, left them free to carry on their other professional work, e.g., 'consultations, advises, conferences, opinion etc'. It also held that RK Anand and IU Khan had forfeited their right to be designated as Senior Advocates and recommended to the Full Court to divest them of the honour. In addition to this the High Court also sentenced them to fine of rupees two thousand each.

2. These two appeals by RK Anand and IU Khan respectively are filed under Section [19\(1\)](#) of the Contempt of Courts Act against the judgment and order passed by the Delhi High Court.

## **THE CONTEXT**

3. Before proceeding to examine the different issues arising in the case it is necessary to first know the context in which the whole sordid episode took place. It will be, therefore, useful to put together the basic facts and circumstances of the case at one place. The occurrence in which six people lost their lives was reconstructed by the prosecution on the basis of police investigation as follows:

### ***The crime, the Police investigation & proceedings before the Trial court***

4. On January 10, 1999 at about half past four in the morning a speeding vehicle crashed through a police check-post on one of the Delhi roads and drove away leaving behind six people dead or dying. As the speeding car hit the group of persons standing on the road some were thrown away but two or three persons landed on the car's bonnet and rolled down to the ground under it. The car, however, did not stop. It moved on dragging along the persons who were caught in its underside. It halted only after the driver lost control and going down a distance of 200-300 feet hit the road divider. At this point the occupants came down from the car to inspect the scene. They looked at the front and the rear of the car and would not have failed to notice the persons caught under the car who were still crying for help and who perhaps might have been saved if they were taken out even at that stage. But the anxiety of the car's occupants to leave the accident site without delay seemed to override all other considerations. They got back into the car, reversed it and drove on. The car went on dragging the unfortunate victims trapped under it to certain and ghastly death and left behind at the accident site dismembered limbs and dead bodies of men.

5. The police investigation brought to light that the accident was caused by a black BMW car which was being driven by Sanjeev Nanda. He was returning from a late night party, under the influence of liquor, along with some friend(s).

6. Five days after the accident, on January 15, 1999 one Sunil Kulkarni contacted the Joint Commissioner of Police, Delhi, and claimed to be an eye witness to the occurrence. According to his story, at the time of the accident he was passing through the spot, on foot, on his way to the Nizamuddin Railway Station for catching a train for Bhopal. He described the accident in considerable detail and stated that at the sight of so many people being mowed down by the car he got completely unnerved. He proceeded for the railway station and on reaching there tried to ring up the police or the emergency number 100 but was unable to get through. He finally went to Bhopal and on coming back to Delhi, being bitten by conscience, he contacted the police. What was of significance in Kulkarni's statement is that the accident was caused by a car and when it stopped after hitting the people a man alighted from the driving seat and examined the front and rear of the car. Then, another person got down from the passenger seat called the other, "Sanjeev", and urged that they should go. On the same day his statement was recorded by the police under Section [161](#) of the Code of Criminal Procedure (CrPC). The following day he was shown Nanda's BMW car at Lodhi Colony Police Station and he identified it as the one that had caused the accident. On January 21, 1999 Kulkarni's statement was recorded before a magistrate under Section [164](#) of CrPC. Before the magistrate, in regard to the accident, he substantially reiterated the statement made before the police, lacing it up with details about his stay in Delhi from January 7 and his movements on the evening before the accident. In the statement before the magistrate the manner of identification of Sanjeev Nanda was also the same with the addition that after the accident when the car moved again the person on the driving seat was trying to look for the way by craning out his head out of the broken glass window and thus he was able to see him from a distance of no more than three and a

half feet when the car passed by his side. The police wanted to settle the question of the driver's identification by having Kulkarni identify Sanjeev Nanda in a test identification parade but Sanjeev Nanda refused to take part in any identification parade. Then, on March 31, 1999 when Sanjeev Nanda was produced in court Kulkarni also happened to be there. He identified him to the investigating officer as the driver of the car causing accident.

7. Kulkarni's arrival on the scene as an eye witness of the tragic accident got wide publicity and he was generally acclaimed as a champion of the public cause. He must have appeared to the police too as godsend but soon there were reasons for the police to look at him completely differently. He had given as his address a place in Mumbai. A summons issued by the trial court on the Mumbai address given by him returned unserved. The report dated August 30, 1999 on the summons disclosed that he had given a wrong address and his actual address was not known to anyone. It also stated that he was a petty fraudster who had defrauded several people in different ways. The report concluded by saying that he seemed to be a person of shady character.

8. At the same time Kulkarni also turned around. On August 31, 1999 a Habeas Corpus petition (Writ Petition (Crl) No. 846/99) was filed in the Delhi High Court making the allegation that he was being held by the Delhi Police in wrongful confinement. On the following day (September 1, 1999) when the writ petition was taken up the allegations were denied on behalf of the police. Moreover, Kulkarni was personally present in Court. The Court, therefore, dismissed the writ petition without any directions. Next, Kulkarni filed a petition (through a lawyer) before the trial court on September 13, 1999. In this petition, he stated that on the date of occurrence, that is, January 10, 1999 itself he had told the police that the accident was caused by a truck. But the police was adamant not to change the version of the FIR that was already registered and on the basis of which five persons were arrested. The police forced him to support its story, and his earlier statements were made under police coercion.

9. On September 23, 1999 a clash took place between some policemen and some members of the bar in the Patiala House court premises for the 'custody' of Kulkarni. A complaint about the alleged high handed actions of the police was formally lodged before the court and a notice was issued to the Jt. Commissioner. In response to the notice the Jt. Commissioner submitted a long and detailed report to the court on September 27, 1999. In the report, apart from defending the action of the policemen the Jt. Commissioner had a lot of things to say about Kulkarni's conduct since he became a witness for the prosecution in the BMW case. He noted that he would never give his address or any contact number to any police official. His life style had completely changed. He lived in expensive hotels and moved around in big cars. The Jt. Commissioner enclosed with his report a copy of the print-out of the cell phone of Kulkarni (the number of which he had given to one of the police officers) that showed that as early as on July 17, 1999 he was in touch with the counsel for the defence RK Anand (one of the appellants) and his junior Mr. Jai Bhagwan, Advocate and even with Suresh Nanda, father of Sanjeev Nanda. He cited several other instances to show Kulkarni's duplicity. The long and short of the report was that Kulkarni was bought off by the defence. He was in collusion with the defence and was receiving fat sums of money from the family of the accused. He was trying to play the two ends against the middle and he was completely unreliable.

10. On September 30, the date fixed for his examination, Kulkarni was duly present in court. He was, however, represented by his own lawyer and not by the prosecuting counsel. He was quite eager to depose. But the prosecution no longer wanted to examine him. IU Khan, the Special Prosecutor filed a petition stating that on the instructions of the State he gave up Kulkarni as one of the prosecution witness on the ground that he was won over by the accused. He also submitted before the court the report of the Joint Commissioner dated September 27. The allegation that he

was won over was of course, denied both by Kulkarni and the accused. The court, however, discharged him leaving the question open as to what inference would it draw as a result of his non-examination by the prosecution.

11. Earlier to Kulkarni's exit from the case, the prosecution had lost two other key witnesses. To begin with there were three crucial witnesses for the prosecution. One was Hari Shankar Yadav, an attendant on a petrol pump near the site of the tragedy; the other was one Manoj Malik who was the lone survivor among the victims of the accident and the third of course was Kulkarni. Hari Shankar Yadav was examined before the court on August 18, 1999 and he resiled from his earlier statement made before the police. Manoj Malik was scheduled to be examined on August 30, 1999 but he seemed to have disappeared and the police was unable to trace him out either in Delhi or at his home address in Orissa. On the date fixed in the case, however, he appeared in court, not with the prosecution team but with two other lawyers. He was examined as a witness notwithstanding the strong protest by the prosecution who asked for an adjournment. Not surprisingly, he too turned hostile. Lastly, Kulkarni too had to be dropped as one of the prosecution witness in the circumstances as noted above.

12. The trial proceeded in this manner and over a period of the next four years the prosecution examined around sixty witnesses on the forensic and other circumstantial aspects of the case. The prosecution finally closed its evidence on August 22, 2003. Thereafter, the accused were examined under Section 313 of CrPC and a list of defence witnesses was furnished on their behalf. While the case was fixed for defence evidence two applications came to be filed before the trial court, one was at the instance of the prosecution seeking a direction to the accused Sanjeev Nanda to give his blood sample for analysis and comparison with the blood stains found in the car and on his clothes, and the other by the defence under Section 311 of CrPC for recalling nine prosecution witnesses for their further cross-examination. By order dated March 19, 2007 the trial court rejected both the applications. It severely criticised the police for trying to seek its direction for something for which the law gave it ample power and authority. It also rejected the petition by the defence for recall of witnesses observing that the power under Section 311 of CrPC was available to the court and not to the accused. At the end of the order the court observed that the only witness in the case whose statement was recorded under Section 164 of CrPC was Kulkarni and even though he was given up by the prosecution, the court felt his examination essential for the case. It, accordingly, summoned Kulkarni to appear before the court on May 14, 2007. Kulkarni thus bounced back on the stage with greater vigour than before.

#### **MEDIA INTERVENTION**

13. In the trial court the matter was in this state when another chapter was opened up by a TV channel with which we are primarily concerned in this case. On April 19, 2007 one Vikas Arora, Advocate, an assistant of IU Khan sent a complaint in writing to the Chief Editor, NDTV with copies to the Commissioner of Police and some other authorities. In the complaint it was alleged that one Ms Poonam Agarwal, a reporter of the TV Channel was demanding copies of statements of witnesses and the Police Case-diary of the BMW case and was also seeking an interview with IU Khan or the complainant, his junior. On their refusal to meet the demands she had threatened to expose them through some unknown person and to let the people know that the police and the public prosecutor had been influenced and bribed by the accused party. He requested the authorities to take appropriate action against Poonam Agarwal.

14. On April 20, 2007 NDTV telecast a half hour special programme on how the BMW case was floundering endlessly even after more than seven years of the occurrence. Apparently, the telecast on April 20, 2007 brought Poonam Agarwal and Kulkarni together. According to Poonam

Agarwal, on April 22, 2007 she received a phone call from Kulkarni who said that he was deeply impressed by the programme telecast by her channel and requested for a meeting with her. (The version of Kulkarni is of course quite different). She met him on April 22 and 23. He told her that in the BMW case the prosecution was hand in glove with the defence; he wanted to expose the nexus between the prosecution and the defence and needed her help in that regard. Poonam Agarwal obtained the approval of her superiors and the idea to carry out the sting operation using Kulkarni as the decoy was thus conceived.

15. Even while the planning for the sting operation was going on, NDTV on April 26 gave reply to the notice by Vikas Arora. In their reply it was admitted that Poonam Agarwal had sought an interview with Arora's senior which was denied for reasons best known to him. All other allegations in Arora's notice were totally denied and it was loftily added that the people at NDTV were conscious of their responsibilities and obligations and would make continuous efforts to unravel the truth as a responsible news channel.

16. On April 28, 2007 Kulkarni along with one Deepak Verma of NDTV went to meet IU Khan in the Patiala House court premises. For the mission Poonam Agarwal 'wired' Kulkarni, that is to say, she equipped him with a concealed camera and a small electronic device that comprised of a tiny black button-shaped lens attached to his shirt front connected through a wire to a small recorder with a microchip hidden at his backside. Before sending off Kulkarni she switched on the camera and waited outside the court premises in a vehicle. Deepak Verma from the TV channel was sent along to ensure that everything went according to plan. He was carrying another concealed camera and the recording device in his handbag. Kulkarni and Deepak Verma were able to meet IU Khan while he was sitting in the chamber of another lawyer. Kulkarni entered into a conversation with IU Khan inside the crowded chamber (the details of the conversation we will examine later on at its proper place in the judgment). The conversation between the two that took place inside the chamber was recorded on the microchips of both the devices, one worn by Kulkarni and the other carried by Deepak Verma in his bag. After a while, on Kulkarni's request, both IU Khan and Kulkarni came out of the chamber and some conversation between the two took place outside the chamber. The recording on the microchip of Kulkarni's camera was copied onto magnetic tapes and from there to compact discs (CDs). The microchip in Kulkarni's camera used on April 28, 2007 was later reformatted for other uses. Thus, admittedly that part of the conversation between Kulkarni and IU Khan that took place on April 28, 2007 outside the chamber is available only on CD and the microchip on which the original recording was made is no longer available. The second operation was carried out on May 6, 2007 when Kulkarni met RK Anand in the VIP lounge at the domestic terminal of IGI Airport. The recording of the meeting was made on the microchip of the concealed camera carried by Kulkarni.

17. On May 8, 2007 the third sting operation was carried out when Kulkarni got into the back seat of RK Anand's car that was standing outside the Delhi High Court premises. RK Anand was sitting on the back seat of the car from before. The recording shows Kulkarni and RK Anand in conversation as they travelled together in the car from Delhi High Court to South Extension.

18. In the evening of the same day the fourth and final sting operation was carried out in South Extension Part II market where Kulkarni met one Bhagwan Sharma, Advocate and another person called Lovely. Bhagwan Sharma is one of the juniors working with RK Anand and Lovely appears to be his handyman who was sent to negotiate with Kulkarni on behalf of RK Anand.

19. According to Poonam Agarwal, in all these operation she was only at a little distance from the scene and was keeping Kulkarni, as far as possible, within her sight.

20. According to NDTV, in all these operations a total of five microchips were used. Four out of those five chips are available with them in completely untouched and unaltered condition. One microchip that was used in the camera of Kulkarni on April 28, 2007, as noted above, was reformatted after its contents were transferred onto a CD.

21. On May 13, 2007 NDTV recorded an interview by Kulkarni in its studio in which Kulkarni is shown saying that after watching the NDTV programme (on the BMW case) he got in touch with the people from the channel and told them that the prosecution and the defence in the case were in league and he knew how witnesses in the case were bought over by the accused and their lawyers. He also told NDTV that he could expose them through a sting operation. He further said that he carried out the sting operation with the help of NDTV. He first met IU Khan who referred him to RK Anand. He then met some people sent by RK Anand, including someone whose name was 'Lovely or something like that'. As to his objective he said quite righteously that he did the sting operation 'in the interest of the judiciary'. In answer to one of the questions by the interviewer he replied rather grandly that he would ask the court to provide him security by the NSG and he would try to go and depose as soon as security was provided to him. In the second part of the interview the interviewer asked him about the accident and in that regard he said briefly and in substance what he had earlier stated before the police and the magistrate.

#### **Back to the Court**

22. It is noted above that by order dated March 19, 2007 the trial court had summoned Kulkarni to appear before it as a court witness on May 14, 2007. The defence took the matter to the Delhi High Court (in CrI. M.C. No. 1035/2007 with CrI. M. 3562/2007) assailing the trial court order rejecting their prayer to recall some prosecution witnesses for further cross-examination and suo moto summoning Kulkarni under Section [311](#) of CrPC, to be examined as a court witness. The matter was heard in the High Court on several dates. In the meanwhile Kulkarni was to appear before the trial court on May 14, 2007. Hence, the High Court gave interim directions allowing Kulkarni to be examined by the court but not to put him to any cross-examinations till the disposal of the petition being argued before it. The petition was finally disposed of by a detailed order dated May 29, 2007. The High Court set aside the trial court order rejecting the defence petition for recall of certain prosecution witnesses and asked the trial court to reconsider the matter. It also held that the trial court's criticism of the police was unwarranted and accordingly, expunged those passages from its order. However, insofar as summoning of Kulkarni was concerned the High Court held that there was no infirmity in the trial court order and left it undisturbed.

23. On May 14, 2007 Kulkarni appeared before the trial court but on that date, despite much persuasion, the court was not able to get any statement from him. From the beginning he asked for an adjournment on the plea that he was not well. In the end the court adjourned the proceedings to May 17 with the direction to provide him police protection. On May 17, the examination of Kulkarni commenced and he described the accident more or less in the same way as in his statements before the police and the magistrate. He said that the accident was caused by a black car (and not by a truck) but added that the car was coming from his front and its light was so strong that he could not see much. He said about his identification of the car at the Lodhi Colony police station. But on the question of identification of the driver there was a significant shift from his earlier statements. He told the court that what he had heard was one of the occupants urging the other to go calling him "Sanch or Sanz". He had also heard another name 'Sidh' being mentioned among the car's occupants. In reply to the court's question he said that in his statement before the magistrate under Section [164](#) of CrPC he had stated the name 'Sanjeev', and not the nick names that he actually heard, under pressure from some police officials. He said that he was also put under pressure not to take the name of Sidharth Gupta and some police official told him that he was not in



the car at the time of the accident. He said that apart from the name that he heard being uttered by the occupant(s) of the car and the number of persons he saw getting down from the car the rest of his statement under Section [164](#) was correct. He said that actually three, and not two, persons had got down from the car. The court then asked him to identify the persons who came out of the offending car. Kulkarni identified Sanjeev Nanda who was present in court. He further said that the third occupant of the car was a hefty boy whom he did not see in the court. At this point IU Khan explained that he might be referring to Sidharth Gupta who was discharged by the order of the High Court. Kulkarni added that he was unable to identify the second occupant of the car and went on to declare, even without being asked, he could not say who came out of the driver's side. He was shown Manik Kapoor, another accused in the case, as one of the occupants of the car but he said that after lapse of nine years he was not in a position to identify him.

24. On May 29 Kulkarni was cross examined on behalf of the Prosecution by IU Khan. The prosecutor confronted him with his earlier statements recorded under Sections [161](#) and [164](#) of CrPC and he took it as opportunity to move more and more away from the prosecution case. He admitted that Sanjeev Nanda was one of the occupants of the car but positively denied that he came out from the driving seat of the offending car. He elaborated that the one to come out from the driving seat of the car was a fat, hefty boy who was not present on that date. (It does not take much imagination to see that he was trying to put Sidharth Gupta on the driving seat of the car who had been discharged from the case by the order of the Delhi High Court and was thus in no imminent danger from his deposition!). He denied that he disowned or changed some portions from his earlier statements under the influence of the accused persons. On May 29 Kulkarni's cross-examination by IU Khan was incomplete and it was deferred to May 31. But before that NDTV telecast the sting programme that badly jolted not only everyone connected with the BMW trial but the judicial system as well.

## **THE TELECAST**

25. Based on the sting operations NDTV telecast a programme called India 60 Minutes (BMW Special) on May 30, 2007 at 8.00 p.m. It was followed at 9.00 pm, normally reserved for news, as 'BMW Special'. From a purely journalistic point of view it was a brilliant programme designed to have the greatest impact on the viewers. The programmes commenced with the anchors (Ms. Sonia Singh in the first and Ms. BarkhaDutt in the second telecast) making some crisp and hard hitting introductory remarks on the way the BMW case was proceeding which, according to the two anchors, was typical of the country's legal system. The introductory remarks were followed by some clips from the sting recordings and comments by the anchors, interspersed with comments on what was shown in the programme by a host of well known legal experts.

26. It is highly significant for our purpose that both the telecasts also showed live interviews with RK Anand. According to the channel's reporter, who was posted at RK Anand's residence with a mobile unit, he initially declined to come on the camera or to make any comments on the programme saying that he would speak only the following day in the court at the hearing of the case. According to the reporter, in course of the telecast Sanjeev Nanda also arrived at the residence of RK Anand and joined him in his office. He too refused to make any comments on the on-going telecast. But later on RK Anand came twice on the TV and spoke with the two anchors giving his comments on what was being shown in the telecasts. We shall presently examine whether the programmes aired to the viewers were truly and faithfully based on the sting operations or whether in the process of editing for preparing the programmes any slant was given, prejudicial to the two appellants. This is of course subject to the premise that the Court has no reason to suspect the original materials on which the programme was based and it is fully satisfied in regard to the integrity and authenticity of the recordings made in the sting operations. That is to say, the

recordings of the sting operations were true and pure and those were not fake, fabricated, doctored or morphed.

27. In regard to the telecast it needs to be noted that though the sting operations were complete on May 8, 2007 and all the materials on which the telecast would be based were available with the TV channel, the programme came on air much later on May 30. The reason for withholding the telecast was touched upon by the anchors who said in their introductory remarks that after the sting operations were complete and just before his testimony began in court Kulkarni withdrew his consent for telecasting the programmes. Nevertheless, after taking legal opinion on the matter NDTV was going ahead with the airing of programme in larger public interest. Towards the end of the nine o'clock programme the anchor had a live discussion with Poonam Agarwal in which she elaborated upon the reason for withholding the telecast for about three weeks. Concerning Kulkarni, Poonam Agarwal said that he was the main person behind the stings and the sting operation was planned at his initiative. He had approached her and said to her that he wished to bring out into the open the nexus between the prosecution and the defence in the BMW case. He had also said to her that in connection with the case he was under tremendous pressure from both sides. But after the stings were complete he changed his stand and would not agree to the telecast of the programme based on the stings. In the discussion between the anchor and Poonam Agarwal it also came to light that initially NDTV had seen Kulkarni as one of the victims of the system but later on he appeared in highly dubious light. The anchor said that they had no means to know if he had received any money from any side. Poonam Agarwal who had the occasion to closely see him in course of the sting operations gave instances to say that he appeared to her duplicitous, shifty and completely unreliable.

28. NDTV took the interview of RK Anand even as the first telecasts were on and thus what he had to say on what was being shown on the TV was fully integrated in the eight o'clock and nine o'clock programmes on May 30. IU Khan was interviewed on the following morning when a reporter from the TV channel met him at his residence with a mobile transmission unit. The interview was live telecast from around eight to twenty three past eight on the morning of May 31. But that was the only time his interview was telecast in full. In the programmes telecast later on, one or two sentences from his interview were used by the anchor to make her comments.

29. In his interview IU Khan basically maintained that from the clandestine recording of his conversation with Kulkarni, pieces, were used out of context and selectively for making the programme and what he spoke to Kulkarni was deliberately misinterpreted to derive completely wrong inferences. He further maintained that in his meeting with Kulkarni he had said nothing wrong much less anything to interfere with the court's proceeding in the pending BMW case. Impact of the telecast:

30. On the same day IU Khan withdrew from the BMW case as Special Public Prosecutor. Before his withdrawal, however, he produced before the trial court a letter that finds mention in the trial court order passed on that date, written in the hand of Kulkarni stating that he collected the summons issued to him by the court from SHO, Lodhi Colony Police Station on the advice of IU Khan.

31. The trial court viewed the telecast by NDTV very seriously and issued notice to its Managing Director directing to produce 'the entire unedited original record of the sting operation as well as the names of the employees/reporters of NDTV who were part of the said sting operation' by the following day.

32. The further cross-examination of Kulkarni was deferred to another date on the request of the counsel replacing IU Khan as Special Public Prosecutor.

33. On June 1, 2007, RK Anand had a legal notice sent to NDTV, its Chairman, Directors and a host of other staff asking them to stop any further telecasts of their BMW programme and to tender an unconditional apology to him failing which he would take legal action against them inter alia for damages amounting to rupees fifty crores. NDTV gave its reply to the legal notice on July 20, 2007. No further action was taken by RK Anand in pursuance of the notice.

### **HIGH COURT TAKES NOTICE**

34. On the same day (May 31, 2007) a Bench of the Delhi High Court presided over by the Chief Justice took cognisance of the programme telecast by NDTV the previous evening and felt compelled to examine all the facts. The Court, accordingly, directed the Registrar General 'to collect all materials that may be available in respect of the telecast including copies of CDs/Video and transcript and submit the same for consideration within 10 days'. The court further directed NDTV 'to preserve the original material including the CDs/Video pertaining to the aforesaid sting operation.'

36. On June 2, 2007, Ms. Poonam Agarwal of NDTV submitted before the High Court six CDs; one of the CDs (marked '1') was stated to be edited and the remaining five (marked '2'-'6') unedited. In a written statement given on the same day she declared that NDTV News Channel did not have any other material in connection with the sting operation. She also stated that in accordance with the direction of the Court, NDTV was preserving the original CDs/ Videos relating to the sting operation. On June 6, 2007, Poonam Agarwal submitted true transcripts of the CDs duly signed by her on each page. She also gave a written statement on that date stating that the CDs submitted by her earlier were duplicated from a tape-recording prepared from four spy camera chips which were recorded on different occasions. (As we shall see later on, the total number of microchips used in all the four stings was actually five and not four). She also gave the undertaking, on behalf of NDTV that those original chips would be duly preserved.

39. In Poonam Agarwal's affidavit NDTV took the stand that the stings were conceived and executed by Kulkarni. Its own role was only that of the facilitator. Kulkarni would choose the date and time and venue of the meetings where he would like to do the sting. He would fix up the meetings not in consultation with Poonam Agarwal but on his own. He would simply tell her about the meetings and she would provide him with the wherewithal to do the sting. She would not ask him when and how and for what purpose the meeting was fixed even though it may take place at such strange places as the VIP lounge of the airport or a car travelling from outside the Delhi High Court to South Extension. She would not ask him even about any future meetings or his further plans. Proceeding resumes:

42. On August 7, 2007, the Court on a consideration of all the materials coming before it came to the view that prima facie the actions of RK Anand, IU Khan, Bhagwan Sharma and Lovely (who was dead by then) were aimed at influencing the testimony of a witness in a manner so as to interfere with the due legal process. Their actions thus clearly amounted to criminal contempt of court as defined under Clause (ii) & (iii) of Section 2(c) of the Contempt of Courts Act. The Court accordingly passed the following order:

From your aforesaid acts and conduct as discerned from the CDs and their transcripts, the affidavit 23rd July, 2007 of Ms. Poonam Agarwal along with its annexures, we are, prima facie, satisfied that you Mr. R.K. Anand, Senior Advocate, Mr. I. U. Khan, Senior Advocate, Mr. Sri Bhagwan, Advocate and Mr. Lovely have wilfully and deliberately tried to interfere with the due course of judicial proceedings and administration of justice by the courts. Prima facie your acts and conduct as aforesaid was intended to subvert the administration of justice in the pending trial and in particular influence the outcome of the pending judicial proceedings.

Accordingly, in exercise of the powers under Article [215](#) of the Constitution of India, we do hereby direct initiation of proceedings for contempt and issuance of notice to you, Mr. RK Anand, Senior Advocate, Mr. IU Khan, Senior Advocate, Mr. Shri Bhagwan, Advocate and Mr. Lovely to show cause as to why you should not be proceeded and punished for contempt of court as defined under Section [2\(c\)](#) of the Contempt of Courts Act and under Article [215](#) of the Constitution of India.

You are, therefore, required to file your reply showing cause, if any, against the action as proposed within four weeks.

43. In response to the notice RK Anand, instead of filing a show cause, first filed a petition (on September 5, 2007) asking one of the judges on the Bench, namely, Manmohan Sarin J. to recuse himself from the hearing of the matter. The recusal petition and the review petition arising from it were rejected by the High Court by orders dated October 4 and November 29, 2007. We will be required to consider the unpleasant business of the recusal petition in greater detail at its proper place later in the judgment.

46. On October 1, IU Khan filed his affidavit in reply to the notice issued by the High Court and RK Anand and Bhagwan Sharma filed their affidavits on October 3, 2007.

#### **YET ANOTHER TELECAST**

47. In the evening of December 3, 2007 NDTV telecast yet another programme from which it appeared that RK Anand and Kulkarni were by no means strangers to each other and the association between the two went back several years in the past. Kulkarni, under the assumed name of Nishikant, had stayed in RK Anand's villa in Shimla for some time. There he also had a brush with the law and was arrested by the police in Una (HP). He had spent about forty five days in jail. From the HP police record it appeared that after coming on the scene in the BMW case he spent some time in hotels in Rajasthan and Gurgaon with the Nanda's paying the bills.

48. This time RK Anand did not give any legal notice to NDTV seeking apology or claiming damages etc. but on the following day (December 4) he made a complaint about the telecast before the Court. The Court directed NDTV to produce all the original materials concerning the telecast and its transcript. The Court further directed NDTV to file an affidavit giving details in regard to the collection of the materials and the making of the programme.

49. In response to the High Court's direction one Deepak Bajpai, Principal Correspondent with NDTV filed an affidavit on its behalf on December 11, 2007. In the affidavit it was stated that following a reference to HP in the conversation between RK Anand and Kulkarni in the second sting that took place in the car he went to Shimla and other places in Himachal Pradesh and made extensive investigations there. Kulkarni was easily identified by the people there through his photograph. On making enquiries he came to learn that in the year 2000 Kulkarni lived in RK Anand's villa called 'Schilthorn' in Shimla for about a year under the assumed name of Nishikant. While staying there he corresponded with an insurance company on behalf of RK Anand, using his letter-head, in connection with some insurance claim. Interestingly, there he also obtained a driving licence describing himself as Nishikant Anand son of RK Anand. In Shimla and in other places in Himachal he also duped a number of traders and businessmen. In Una he was arrested by Police on suspicion and he had to spend about 45 days in jail.

#### **PROCEEDINGS BEFORE THE HIGH COURT**

51. After putting the recusal petition and the review application out of its way, the Court took up the hearing of the main matter that was held on many dates spread over a period of four months from December 4, 2007 to May 2, 2008. RK Anand appeared in person while IU Khan was

represented through lawyers. Neither RK Anand nor IU Khan (nor for that matter Bhagwan Sharma) tendered apology or expressed regret or contrition for their acts. IU Khan simply denied the charge of trying to interfere with the due course of judicial proceedings and administration of justice by the Courts. He took the stand that the expressions and words he is shown to have uttered in his meeting with Kulkarni were misinterpreted and a completely different meaning was given to them to suit the story fabricated by the TV channel for its programme.

53. The contemnors then raised the issues of the nature of contempt jurisdiction and the onus and the standard of proof in a proceeding for criminal contempt. They further questioned the admissibility of the sting recordings and contended that those recordings were even otherwise unreliable. In course of hearing RK Anand tried to assail the integrity of the CDs furnished to him that were the reproductions from the original of the sting recordings. According to him, there were several anomalies and discrepancies in those recordings and (on January 29, 2008) he submitted before the Court that from the CDs furnished to him he had got another CD of eight minutes duration prepared in order to highlight the tampering in the original recording. He sought the Court's permission to play his eight minute CD before it. On RK Anand's request the Court viewed the eight minute CD submitted by him on February 5, 2008. On February 27, 2008 the Court directed NDTV to file an affidavit giving its response to the CD prepared by RK Anand. As directed, NDTV filed the affidavit, sworn by one Dinesh Singh, on March 7, 2008. The affidavit explained all the objections raised by RK Anand in his eight minute CD. RK Anand then filed a petition (Crl. M. 4012/2008) on March 31, 2008 for sending the original CDs for examination by the Central Forensic Science Laboratory.

58. In the end the Court held that the circumstances and the manner in which the meetings took place between the proceedees and Kulkarni and the exchanges that took place in those meetings as evidenced from the sting recordings fully established that both IU Khan and RK Anand were guilty of the charges framed against them. It accordingly convicted them for criminal contempt of Court and sentenced them as noticed above.

#### **SOME OF THE ISSUES ARISING IN THE CASE**

59. These are broadly all the facts of the case. We have set out the relevant facts in considerable detail since we do not see this case as simply a matter of culpability, or otherwise, of two individuals. Inherent in the facts of the case are a number of issues, some of which go to the very root of the administration of justice in the country and need to be addressed by this Court.

The two appeals give rise to the following questions:

1. Whether the conviction of the two appellants for committing criminal contempt of court is justified and sustainable?
2. Whether the procedure adopted by the High Court in the contempt proceedings was fair and reasonable, causing no prejudice to the two appellants?
3. Whether it was open to the High Court to prohibit the appellants from appearing before the High Court and the courts sub-ordinate to it for a specified period as one of the punishments for criminal contempt of court?
4. Whether in the facts and circumstances of the case the punishments awarded to the appellants can be said to be adequate and commensurate to their misdeeds? Apart from the above, some other important issues arise from the facts of the case that need to be addressed by us. These are:
5. The role of NDTV in carrying out sting operations and telecasting the programme based on the sting materials in regard to a criminal trial that was going on before the court.

6. The declining professional standards among lawyers, and

7. The root-cause behind the whole affair; the way the BMW trial was allowed to go directionless

60. On these issues we were addressed at length by Mr. Altaf Ahmed, learned Senior Advocate appearing for RK Anand and Mr. P. P. Rao, learned Senior Advocate appearing on behalf of IU Khan. We also heard Mr. Harish Salve, learned Senior Advocate representing NDTV, which though not a party in the appeals was, nevertheless issued notice by us. We also received valuable assistance from Mr. Gopal Subramaniam, Senior Advocate and Mr. Nageshwar Rao, Senior advocate, the amici appointed by us having regard to the important issues involved in the case. We spent a full day viewing all the sting recordings, the recording of the programmes telecast by NDTV on May 30, 2007 and the eight minute CD prepared by RK Anand. Present at the viewing were all the counsel and one of the appellants, namely RK Anand.

### **RK ANAND'S APPEAL**

61. Before adverting to anything else we must deal with the appeals proper. In order to judge the charge of criminal contempt against the appellants it needs to be seen what actually transpired between Kulkarni and the two appellants in the stings to which they were subjected. And for that we shall have to examine the raw sting recordings.

65. Mr. Altaf Ahmed, learned senior counsel appearing for RK Anand, submitted that the High Court founded the appellant's conviction under the Contempt of Courts Act on facts that were electronically recorded, even without having the authenticity of the recording properly proved. The High Court simply assumed the sting recordings to be correct and proceeded to pronounce the appellant guilty of criminal contempt on that basis. Hence, the genuineness and accuracy of what appeared in the sting recordings always remained questionable. Mr. Ahmed submitted that the judgment and order coming under appeal was quite untenable for the simple reason that the integrity of its factual foundation was never free from doubt. Learned Counsel further submitted that the procedure followed by the High Court was not fair and the appellant was denied a fair trial. He also submitted that the High Court arrived at its conclusions without taking into consideration the appellant's defence and that was yet another reason for setting aside the impugned judgment and order. Nature of Contempt Proceeding:

66. Mr. Ahmed submitted that under the Contempt of Courts Act the High Court exercised extra-ordinary jurisdiction. A proceeding under the Act was quasi criminal in nature and it demanded the same standard of proof as required in a criminal trial to hold a person guilty of criminal contempt. In support of the proposition he cited two decisions of this Court, one in *Mritunjoy Das v. Sayed Hasibur Rahman* [2001] 2 SCR 471 and the other in *Chotu Ram v. Urvashi Gulati* [2001 Cri LJ 4204]. In both the decisions the Court observed that the common English phrase, "he who asserts must prove" was equally applicable to contempt proceedings. In both the decisions the Court cited a passage from a decision by Lord Denning in *Re Bramblevale Ltd.* [All ER 1063H and 1064B] on the nature and standard of evidence required in a proceeding of contempt.

A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence. Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt.



67. Seeking to buttress the point learned Counsel also referred to some more decisions of this Court in: (i) *Anil Rattan Sarkar v. Hirak Ghosh* [2002 Cri LJ 1814] (ii) *Bijay Kumar Mahanty v. Jadu @ Ram Chandra Sahoo* [2003 Cri LJ 841] (iii) *J. R. Parashar, Advocate v. Prashant Bhushan, Advocate* [2001 Cri LJ 4207] and (iv) *S. Abdul Karim v. NK Prakash* [1976 Cri LJ 641].

68. There cannot be any disagreement with the proposition advanced by Mr. Ahmed but as noted above if the sting recordings are true and correct no more evidence is required to see that RK Anand was trying to suborn a witness, that is, a particularly vile way of interfering with due course of a judicial proceeding especially if indulged in by a lawyer of long standing. Admissibility of electronically recorded & stored materials in evidence:

69. This leads us to consider the main thrust of Mr. Ahmed's submissions in regard to the integrity, authenticity, and reliability of the electronic materials on the basis of which the appellants were held guilty of committing contempt of Court. Learned Counsel submitted that the way the High Court proceeded in the matter it was impossible to say with any certainty that the microchips that finally came before it for viewing were the same microchips that were used in the spy cameras for the stings or those were not in any way manipulated or interfered with before production in court. He further submitted that the admissibility in evidence of electronic recordings or Electronically Stored Information (ESI) was subject to stringent conditions but the High Court completely disregarded those conditions and freely used the sting recordings as the basis for the appellants' conviction.

70. In support of the submissions Mr. Ahmed submitted a voluminous compilation of decisions (of this Court and of some foreign courts) and some technical literature and articles on ESI. We propose to take note of only those decisions/articles that Mr. Ahmed specifically referred to us and that have some relevance to the case in hand.

71. Two of the decisions of this Court referred by Mr. Ahmed, one in *S A Khan v. Bhajan Lal* [(1993) 3 SCC 151] and the other in *Quamarul Islam v. S. K. Kanta* [1973 Cri LJ 228] relate to newspaper reports. In these two decisions it was held that news paper report is hearsay secondary evidence which cannot be relied on unless proved by evidence aliunde. Even absence of denial of statement appearing in newspaper by its maker would not absolve the obligation of the applicant of proving the statement. These two decisions have evidently no relevance to the case before us.

72. In regard to the admissibility in evidence of tape recorded statements Mr. Ahmed cited a number of decisions of this Court in (i) *N. Shri Rama Reddy v. V. Giri* [1971] 1 SCR 399 (ii) *R.M. Malkani v. State of Maharashtra* 1973 Cri LJ 228 (iii) *Mahabir Prasad Verma v. Dr. Surinder Kaur* [1982] 3 SCR 607 and (iv) *Ram Singh v. Col. Ram Singh* AIR 1986 SC 3. He also referred to two foreign decisions on the point, one in (i) *R v. Stevenson* 1971 (1) All ER 678, and the other of the Supreme Court, Appellate Division of the State of New York in *The People of State of New York v. Francis Bell* (taken down from the internet). We need here refer to the last among the decisions of this Court and the English decisions in *R v. Stevenson*. In *Ram Singh*, a case arising from an election trial the Court examined the question of admissibility of tape recorded conversations under the relevant provisions of the Indian Evidence Act. The Court lay down that a tape recorded statement would be admissible in evidence subject to the following conditions. Thus, so far as this Court is concerned the conditions for admissibility of a tape-recorded statement may be stated as follows:

(1) The voice of the speaker must be duly identified by the maker of the record or by other who recognise his voice. In other words, it manifestly follows as a logical corollary that in the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the

voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

(2) The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence-direct or circumstantial.

(3) Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

(4) The statement must be relevant according to the rules of Evidence Act.

(5) The recorded cassette must be carefully sealed and kept in a safe or official custody.

(6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.

73. In **R v. Stevenson** too the Court was dealing with a tape recorded conversation in a criminal case. In regard to the admissibility of the tape recorded conversation the court observed as follows:

Just as in the case of photographs in a criminal trial the original un-retouched negatives have to be retained in strict custody so in my views should original tape recordings. However one looks at it, whether, as counsel for the Crown argues, all the prosecution have to do on this issue is to establish a prima facie case, or whether, as counsel for the defendant Stevenson in particular, and counsel for the defendant Hulse joining with him, argues for the defence, the burden of establishing an original document is a criminal burden of proof beyond reasonable doubt, in the circumstances of this case it seems to me that the prosecution have failed to establish this particular type of evidence. Once the original is impugned and sufficient details as to certain peculiarities in the proffered evidence have been examined in court, and once the situation is reached that it is likely that the proffered evidence is not the original-is not the primary and the best evidence -that seems to me to create a situation in which, whether on reasonable doubt or whether on a prima facie basis, the judge is left with no alternative but to reject the evidence. In this case on the facts as I have heard them such doubt does arise. That means that no one can hear this evidence and it is inadmissible.

74. Mr. Ahmed also referred to another decision by a US Court on the admissibility of video tapes. This is by the Court of Appeal of the State of North Carolina in **State of North Carolina v. Michael Odell Sibley**. In this decision there is a reference to an earlier decision of the same court in **State v. Cannon**. [92 N C App. 246] etc. in which the conditions for admissibility of video tape in evidence were laid down as under:

The prerequisite that the offer or lay a proper foundation for the videotape can be met by:

(1) testimony that the motion picture or videotape fairly and accurately illustrates the events filmed (illustrative purpose); (2) "proper testimony concerning the checking and operation of the video camera and the chain of evidence concerning the videotape..."; (3) testimony that "the photographs introduced at trial were the same as those [ the witness] had inspected immediately after processing," (substantive purposes); or (4) "testimony that the videotape had not been edited, and that the picture fairly and accurately recorded the actual appearance of the area `photographed.

75. On the different issues germane to the admissibility of ESI Mr. Ahmed also referred to a decision of the District Court of Maryland, United State in Civil Action No. PWG-06-1893, **Jack R. Lorraine and Beverly Mack v. Markel American Insurance Company**. Mr. Ahmed also cited before us an article captioned 'The Sedona Conference. Commentary on ESI Evidence & Admissibility': A Project of The Sedona Conference Working Group on Electronic Document Retention & Production (WGI). published in Sedona Conference Journal, Fall 2008. The article



deals extensively with the different questions relating to admissibility in evidence of ESI and one of its basic premises is that the mere fact that the information was created and stored within a computer system would not make that information reliable and authentic.

76. He also invited our attention to an article appearing in The Indian Police Journal, July-September 2004 issue under the caption “Detection Technique of Video Tape Alteration on the Basis of Sound Track Analysis”. From this article Mr. Ahmed read out the following passages:

The acceptance of recorded evidence in the court of law depends solely on the establishment of its integrity. In other words, the recorded evidence should be free from intentional alteration. Generally, examination of recorded evidence for establishing the integrity/authenticity is performed to find out whether it is a one-time recording or an edited version or copy of the original.

And further:

Alteration on an audio recording can be of Addition, Deletion, Obscuration, Transformation and Synthesis. In video recordings the alteration may be with the intention to change either on the audio track or on the video track. In both the ways there is always disturbance on both the track. Alterations in a video track are usually made by adding or removing some frames, by rearranging few frames, by distorting certain frames and lastly by introducing artificially generated frames. Alteration on a video recording

77. In light of the decisions and articles cited above Mr Ahmed contended that the High Court freely used the copies of the sting recordings and the transcripts of those recordings made and supplied by NDTV without caring to first establish the authenticity of the sting recordings. Learned Counsel submitted that the use of the CDs of the sting recordings and their transcripts by the High Court was in complete violation of the conditions laid down by this Court in Ram Singh.

78. Learned Counsel pointed out that at the threshold of the proceeding, started suo moto, the High Court, instead of taking the microchips used for the sting operations in its custody directed NDTV 'to preserve the original material including the CDs/Video' pertaining to the sting operations and to submit to the Court copies and transcripts made from those chips. Thus the microchips remained all along with NDTV, allowing it all the time and opportunity to make any alterations and changes in the sting recordings (even assuming there were such recording in the first place!) to suit its purpose. The petition filed by RK Anand for directing NDTV to submit the original microchips before the Court and to give him copies made in Court directly from those chips remained lying on the record unattended till it was rejected by the final judgment and order passed in the case. Another petition requesting to send the microchips for forensic examination also met with the same fate.

79. Mr. Ahmed further submitted that the procedure followed by the High Court was so flawed that even the number of chips used for the different sting operations remained indeterminate. The trial court order dated June 1, 2007 referred to three chips produced on behalf of NDTV. The written statement of Poonam Agarwal made before the High Court on June 6, 2007 mentioned four chips and finally their number became five in her affidavit dated October 1, 2007.

80. He further submitted that the audio and the video recording on the basis of which the NDTV telecast was based and that was produced before the High Court was done by Kulkarni and it was he who was the maker of those materials. The Court never got Kulkarni brought before it either for the formal proof of the electronic materials or for cross-examination by the contemnors. The finding of the High Court was thus based on materials of which neither the authenticity was proved nor the veracity of which was tested by cross-examination. He further submitted that the affidavit of the NDTV reporter (Poonam Agarwal) doesn't cure this basic flaw in the proceedings. The recordings

were not done by the TV channel's reporter: her participation in the process was only to the extent that she 'wired' Kulkarni and received from him the recorded materials. What she received from Kulkarni was also not identified, much less formally proved before the High Court. According to Mr. Ahmed, therefore, the finding of the High Court was wholly untenable and fit to be set aside.

### **SUBMISSIONS CONSIDERED**

81. The legal principles advanced by Mr. Ahmed are unexceptionable but the way he tried to apply those principles to the present case appear to us to be completely misplaced.

82. Here, we must make it clear that we are dealing with a proceeding under the Contempt of Courts Act. Now, it is one thing to say that the standard of proof in a contempt proceeding is no less rigorous than a criminal trial but it is something entirely different to insist that the manner of proof for the two proceedings must also be the same. It is now well settled and so also the High Court has held that the proceeding of contempt of court is sui generis. In other words, it is not strictly controlled by the provisions of the CrPC and the Indian Evidence Act. What, however, applies to a proceeding of contempt of court are the principles of natural justice and those principles apply to the contempt proceeding with greater rigour than any other proceeding. This means that the Court must follow a procedure that is fair and objective; that should cause no prejudice to the person facing the charge of contempt of court and that should allow him/her the fullest opportunity to defend himself/herself. [See *In Re Vinay Mishra*, 1995 Cri LJ 3994; *Daroga Singh v. B.K. Pandey* 2004 Cri LJ 2084].

### **CORRECTNESS OF STING RECORDINGS NEVER DISPUTED OR DOUBTED:**

83. Keeping this in mind when we turn to the facts of this case we find that the correctness of the sting recordings was never in doubt or dispute. RK Anand never said that on the given dates and time he never met Kulkarni at the airport lounge or in the car and what was shown in the sting recordings was fabricated and false. He did not say that though he met Kulkarni on the two occasions, they were talking about the weather or the stock market or the latest film hits and the utterances put in their mouth were fabricated and doctored. Where then is the question of proof of authenticity and integrity of the recordings? It may be recalled that both in the eight o'clock and nine o'clock programmes, RK Anand was interviewed by the programme anchors and the live exchange was integrated into the programmes. Let us see what his first response to the telecast was when the anchor of the eight o'clock programme brought him on the show.

[Following are the extracts from the exchange between the anchor and RK Anand]

85. We have gone through the transcripts of the exchange between the two anchors and RK Anand a number of times and we have also viewed the programme recorded on CDs. To us, RK Anand, in his interactions with the programme anchors, appeared to be quite stunned at being caught on the camera in the wrong act, rather than outraged at any false accusations.

90. Further, interestingly, though calling the sting recordings fabricated, manufactured, and distorted, he also relies on the very same sting recordings to make out some point or the other in his defence.

93. We also see no substance in the anomalies and alleged inter correlation in the sting recordings as pointed out on behalf of RK Anand on the basis of the eight minute CD which he got prepared from the materials supplied to him by the Court. Along with the other materials we also viewed eight minute CD produced by RK Anand. In the CD an attempt is made to show that the frames in the sting recordings some times jumped out of the sequence number and such other technical flaws. The objections raised by RK Anand were fully explained by the affidavit filed by Dinesh Singh on behalf of NDTV.

95. On a careful consideration of the materials on record we don't have the slightest doubt that the authenticity and integrity of the sting recordings was never disputed or doubted by RK Anand. As noted above he kept on changing his stand in regard to the sting recordings. In the facts and circumstances of the case, therefore, there was no requirement of any formal proof of the sting recordings. Further, so far as RK Anand is concerned there was no violation of the principles of natural justice inasmuch as he was given copies of all the sting recordings along with their transcripts. He was fully made aware of the charge against him. He was given fullest opportunity to defend himself and to explain his conduct as appearing from the sting recordings. The High Court viewed the microchips used in the spy camera and the programme telecast by TV channel in his presence and gave him further opportunity of hearing thereafter. The sting recordings were rightly made the basis of conviction and the irresistible conclusion is that the conviction of RK Anand for contempt of court is proper legal and valid calling for no interference.

#### ***IU KHAN'S APPEAL***

96. The sting on IU Khan was done on April 28, 2007 in one of the lawyers' chambers at the Patiala House court premises. The video CD begins by showing Poonam Agarwal fixing the recording device and the button camera on Kulkarni's person sitting inside the car. Then Kulkarni and Deepak Verma together enter the Patiala House. They move around in the court premises for a long time till just before the lunch recess they are able to find IU Khan sitting in someone else's chamber. The chamber seems to be quite crowded with people all the time coming and going away. The first exchange of greetings between IU Khan and Kulkarni as he, accompanied with Deepak Verma, enters into the chamber is not audible. But then IU Khan is heard describing Kulkarni, in a general sort of introduction to those present there, as 'the prime witness in the BMW case, 'star witness' 'a very public spirited and devoted man' etc. Kulkarni starts chatting with him about the summons issued to him by the court in the BMW case. In the meanwhile someone else comes into the chamber. IU Khan greets him loudly and starts talking to him. After a while, on Kulkarni's request, both IU Khan and Kulkarni come out of the chamber and some conversation between the two takes place outside the chamber. After the meeting is over Kulkarni and Deepak Verma together return back. As the recording devices carried by them are still on the conversation that takes place between the two is naturally recorded. Kulkarni does not allow Deepak Verma to go directly to the TV Channel's vehicle parked outside the Court premises where Poonam Agarwal would be waiting for their return, saying that they are bound to be followed. Instead, they take an auto-rickshaw and go to Pargati Maidan at a short distance from the court. From there they contact Poonam Agarwal on mobile phone, who goes there and joins them and de-wires Kulkarni. Only partial transcript of the sting recording submitted to Court:

100. What follows from the affidavit may be summarised as follows; (I) the conduct of NDTV before the High Court in a very serious proceeding was quite cavalier and causal. (II) At the time the High Court issued show cause notices to the three proceedees it did not have before it the recording on one of the five microchips used in the sting operations. (III) The materials given to the proceedees along with show cause notice were not exactly the same as submitted before the High Court. (IV) The explanation in the form of Poonam Agarwal's affidavit came on October 1, 2007 on the same day when IU Khan filed his reply affidavit in response to the show cause notice.

101. In those circumstances it was not wrong for IU Khan to state in paragraphs 14 and 15 of his memorandum of appeal as under:

14. ...This finding is again against the material on record as the original chip of the button camera carried by Mr. Kulkarni was formatted by the NDTV in violation of the direction issued by the Hon'ble Court. This part of the conversation is not available in the transcript of the bag camera.

15. Because the CD of the button camera firstly cannot be relied upon as it was filed after the reply was filed by the appellant on 1.10.2007...

***Submissions on behalf of IU Khan***

114. Mr. P. P. Rao, learned Senior Advocate appearing for IU Khan mainly submitted that even if the sting recording is accepted as true, on the basis of the exchange that took place between his client and Kulkarni it cannot be said that he acted in a way or colluded in any action aimed at interfering or tending to interfere with the prosecution of the accused in the BMW case or interfering or tending to interfere with or obstructing or tending to obstruct the administration of justice in any other manner. He further submitted that the findings of the High Court were based on assumptions that were not only completely unfounded but in respect of which the appellant was given no opportunity to defend himself. The High Court held the appellant guilty of committing criminal contempt of court referring to and relying upon certain alleged facts and circumstances that did not form part of the notice and in regard to which he was given no opportunity to defend himself. Mr. Rao submitted that along with the notice issued by the High Court the appellant was not given all the materials concerning his case and he was thus handicapped in submitting his show cause. He further submitted that the High Court erroneously placed the case of his client at par with RK Anand and convicted him because RK Anand was found guilty even though the two cases were completely different. Mr. Rao was also highly critical of the TV channel. He questioned the propriety of the sting operation and the telecast of the sting programme concerning a pending trial and involving a court witness without any information to, much less permission by the trial court or even the High Court or its Chief Justice. Mr. Rao submitted that when Kulkarni first approached Poonam Agarwal she thought it imperative to first obtain the approval of her superiors before embarking upon the project, but it did not occur to anyone, including her superiors in the TV channel to obtain the permission or to even inform at least the Chief Justice of the Delhi High Court before taking up the operation fraught with highly sinister implications. Mr. Rao also assailed the judgment coming under appeal on a number of other grounds.

***SUBMISSIONS CONSIDERED***

115. We have carefully gone through all the materials concerning IU Khan. We have perused the transcript of the exchange between Kulkarni and IU Khan and have also viewed the full recording of the sting several times since the full transcript of the recording is not available on the record. IU Khan's conduct quite improper:

116. We have not the slightest doubt that the exchange between Kulkarni and IU Khan far crosses the limits of proper professional conduct of a prosecutor (especially engaged to conduct a sensational trial) and a designated Senior Advocate of long standing. We are not prepared to accept for a moment that on seeing Kulkarni suddenly after several years in the company of a 'burly stranger' (Deepak Verma) IU Khan became apprehensive about his personal safety since in the past some violent incidents had taken place in the court premises and some lawyers had lost their lives and consequently he was simply play-acting and pampering Kulkarni in order to mollify him. The plea is not borne out from the transcript and much less from the video recording. In the video recording there is no trace of any fear or apprehension on his face or in his gestures. He appears perfectly normal and natural sitting among his colleagues (and may be one or two clients) and at no point the situation appears to be out of his control. As a matter of fact, we feel constrained to say that the plea is not quite worthy of a lawyer of IU Khan's standing and we should have much appreciated had he simply taken the plea of an error of discretion on his part.

117. Coming back to the exchange between IU Khan and Kulkarni, we accept that the transcript of the exchange does not present the accurate picture; listening to the live voices of the two (and

others present in the chamber) on the CD gives a more realistic idea of the meeting. We grant everything that can be said in favour of IU Khan. The meeting took place without any prior appointment from him. Kulkarni was able to reach him, unlike RK Anand, without his permission or consent. IU Khan did not seem to be overly enthused at the appearance of Kulkarni. Accosted by Kulkarni, he spoke to him out of civility and mostly responded only to his questions and comments. There were others present in the chamber with whom he was equally engaged in conversation. He also greeted someone else who came into the chamber far more cheerfully than Kulkarni. But the undeniable fact remains that he was talking to him all the time about the BMW trial and the related proceedings. Instead of simply telling him to receive the summons and appear before the court as directed, IU Khan gave reassurances to Kulkarni telling him about the revision filed in the High Court against the trial court's order. He advised him to relax saying that since he had dropped him (as a prosecution witness) the court was no one to ask for his statement. The part of the exchange that took place outside the chamber was worse. Inside the chamber, at one stage, IU Khan seemed even dismissive of Kulkarni but on coming out he appeared quite anxious to fix up another meeting with him at his residence giving promising good Scotch whisky as inducement. IU Khan would be the first person to deny any friendship or even a long acquaintanceship with Kulkarni. The only common factor between them was the BMW case in which one was the prosecutor and the other was a prosecution witness, later dropped from the list of witnesses. A lawyer, howsoever, affable and sociable by disposition, if he has the slightest respect for professional ethics, would not allow himself such degree of familiarity with the witness of a criminal trial that he might be prosecuting and would not indulge with him into the kind of exchange as admittedly took place between IU Khan and Kulkarni. We are also not prepared to believe that in his conversation with Kulkarni, IU Khan did not mean what he was saying and he was simply trying to somehow get rid of Kulkarni. The video of the sting recordings leaves no room for doubt that IU Khan was freely discussing the proceeding of BMW case with Kulkarni and was not at all averse to another meeting with him rather he was looking forward to it. We, therefore, fully endorse the High Court finding that the conduct of IU Khan was inappropriate for a lawyer in general and a prosecutor in particular.

### ***CRIMINAL CONTEMPT ???***

118. But there is a wide gap between professional misconduct and criminal contempt of court and we now proceed to examine whether on the basis of materials on record the charge of criminal contempt of court can be sustained against IU Khan.

119. The High Court held that there was an extraordinary degree of familiarity between IU Khan, Kulkarni and RK Anand and each of them knew that the other two were equally familiar with each other. So far as BMW trial is concerned Kulkarni was a link between IU Khan and RK Anand. IU Khan, by reason of his familiarity both with RK Anand and Kulkarni would also know about the game that was afoot for the subversion of the trial. He failed to inform the prosecution and the court about it and his omission to do so was likely to have a very serious impact on the trial. He was, therefore, guilty of actually interfering with due course of judicial proceeding, in the BMW case.

120. In the two sting recordings concerning RK Anand there are ample references to IU Khan to suggest a high degree of familiarity between the three. But in the sting on IU Khan the only words used by him that might connect him to RK Anand through Kulkarni are 'Bade Saheb'. If 'Bade Saheb' referred to RK Anand, the involvement of IU Khan needs no further proof. The question, however, is whether that finding can be safely arrived at.

121. Now, what are the materials that might suggest that while asking Kulkarni whether he had met Bade Saheb, IU Khan meant RK Anand. Apart from the piece of conversation between Deepak Verma and Kulkarni when they were returning after meeting with IU Khan, relied upon by the High

Court, there is another material, for whatever its worth, that doesn't find any mention in the High Court judgment. It is Kulkarni's statement in his interview recorded at the NDTV studio. He said as follows;

He (IU Khan) directed me to Mr RK Anand is in that video you can find 'Bade Saheb'. He meant that Mr. RK Anand.

122. We mention it only because it is one of the materials lying on the record. Not that we rely on it in the least. Having known the conduct of Kulkarni throughout this episode as discussed in detail in the earlier part of the judgment it is impossible to rely on this statement and we don't even fault the High Court for not taking any note of it.

123. The only other positive material in this regard is the one referred to by the High Court. The High Court observed that towards the end of the recording by the button camera, "Mr. Deepak Verma asked Mr. Kulkarni about the identity of Bade Saheb and Mr. Kulkarni responded by saying that it is Mr. Anand." But the reference by the High Court to that particular piece of conversation between Deepak Verma and Kulkarni is neither complete nor accurate. We have noted earlier that the transcript submitted to the High Court by NDTV was incomplete and it covered only the exchange between Kulkarni and IU Khan. If the High Court had before it the full transcript of the entire recording it might have taken a different view. We have viewed the CD labelled as "Button Spy cam Recording done by Sunil Kulkarni. IU Khan Sting Operation" a number of times and we find that on the way back after meeting IU Khan, Kulkarni was being quite voluble. He spoke to Deepak Verma and gave him some instructions. A part of their conversation, relevant for our purpose is as follows:

126. The High Court rejected IU Khan's explanation that what he meant by 'Bade Saheb' was some senior officer in the police headquarter.

127. Mr. P.P. Rao submitted that the approach of the High Court was quite unfair. The proceeding before the High Court was not in the nature of a suit or a criminal trial. In response to the notice issued by the Court the appellant had made a positive statement in his reply affidavit. The statement was not formally traversed by anyone. There was, therefore, no reason for the appellant to assume that he would be required to produce evidence in support of the statement. In case the High Court felt the need for some evidence in support of the averment it should have at least made it known to the appellant. But the High Court without giving any inkling to the appellant rejected the plea in the final judgment. The appellant was thus clearly denied a proper opportunity to defend himself. We find that the submission is not without substance. The proceeding before the High Court was under the Contempt of Courts Act and the High Court was not following any well known and well established format. In that situation it was only fair to give notice to the proceedees to substantiate the pleas taken in the reply affidavit by leading proper evidence. It must, therefore be held that the High Court rejected a material plea raised on behalf of the IU Khan without giving him any opportunity to substantiate it.

130. Mr. P.P. Rao submitted that the High Court convicted the appellant for something in regard to which he was never given an opportunity to defend himself. From the notice issued by the High Court it was impossible to discern that the charge of criminal contempt would be eventually fastened on him for his failure to inform the court and the prosecution about the way Kulkarni's was being manipulated by the defence. Mr. Rao further submitted that the reason assigned by the Court to hold the appellant guilty was based purely on assumption. The appellant was given no opportunity to show that, as a matter of fact, after Kulkarni met him at the Patiala House on April 28, 2007 he had informed the concerned authorities that after being summoned by the court Kulkarni was back to his old tricks. He further submitted that the appellant, given the opportunity,

could also show that the decision to not examine him as one of the prosecution witnesses was taken by the concerned authorities in consultation with him. We find substance in Mr. Rao's submission.

131. In our considered view, on the basis of materials on record the charge of criminal contempt cannot be held to be satisfactorily established against IU Khan. In our opinion he is entitled to the benefit of doubt.

#### **PROCEDURE FOLLOWED BY THE HIGH COURT**

132. A lot has been argued about the procedure followed by the High Court in dealing with the matter. On behalf of RK Anand it was strongly contended that by only asking for the copies of the original sting recordings and allowing the original microchips and the magnetic tapes to be retained in the custody of NDTV the High Court committed a serious and fatal lapse. Mr. Gopal Subramaniam also took the view that though the final judgment passed by the High Court was faultless, it was nevertheless an error on its part to leave the original sting recordings in the safe custody of the TV channel. On principle and as a matter of proper procedure, the Court, at the first instance, ought to have taken in its custody all the original electronic materials concerning the stings.

133. At first the direction of the High Court leaving the microchips containing the original sting recordings and the magnetic tapes with the TV channel indeed appears to be somewhat strange and uncommon but a moment's thought would show the rationale behind it. If the recordings on the microchips were fake from the start or if the microchips were morphed before notice was issued to the TV channel, those would come to the court in that condition and in that case the question whether the microchips were genuine or fake/morphed would be another issue. But once the High Court obtained their copies there was no possibility of any tampering with the microchips from that stage. Moreover, the High Court might have felt that the TV channel with its well equipped studio/laboratory would be a much better place for the handling and conservation of such electronic articles than the High Court Registry. On the facts of the case, therefore, there was no lapse on the part of the High Court in leaving the microchips in the safe custody of the TV channel and in any event it does not have any bearing on the final decision of the case.

134. However, what we find completely inexplicable is why, at least at the beginning of the proceeding, the High Court did not put NDTV, along with the two appellants, in the array of contemnors. Looking back at the matter (now that we have on the record before us the appellants' affidavits in reply to the notice issued by the High Court as well as their first response to the telecast in the form of their live interviews), we are in the position to say that since the contents of the sting recordings were admitted there was no need for the proof of integrity and correctness of the electronic materials. But at the time the High Court issued notices to the two appellants (and two others) the position was completely different. At that stage the issue of integrity, authenticity and reliability of the sting recordings was wide open. The appellants might have taken the stand that not only the sting recordings but their respective responses shown by the TV channel were fake and doctored. In such an event the TV channel would have been required to be subjected to the strictest proof of the electronic materials on which its programmes were based and, in case it failed to establish their genuineness and correctness, it would have been equally guilty, if not more, of serious contempt of court and other criminal offences. By all reckoning, at the time of initiation of the proceeding, the place of NDTV was along with the appellants facing the charge of contempt. Such a course would have put the proceeding on a more even keel and given it a more balanced appearance. Then perhaps there would have been no scope for the grievance that the High Court put the TV channel on the complainant's seat. And then perhaps the TV Channel too would have

conducted itself in a more careful manner and the lapses as indicated above in the case of IU Khan might not have occurred.

### **THE PUNISHMENT: PROHIBITION AGAINST APPEARING IN COURTS**

135. We were also addressed on the validity of the High Court's direction prohibiting the two appellants from appearing before the High Court and the courts subordinate to it for a period of four months. Though by the time the appeals were taken up for hearing the period of four months was over, Mr. Altaf Ahmed contended that the High Court's direction was beyond its competence and authority. In a proceeding of contempt punishment could only be awarded as provided under the Contempt of Courts Act, though in a given case the High Court could debar the contemnor from appearing in court till he purged himself of the contempt. He further submitted that professional misconduct is a subject specifically dealt with under the Advocates Act and the authority to take action against a lawyer for any professional misconduct vests exclusively in the State Bar Council, where he may be enrolled, and the Bar Council of India. The Counsel further submitted that a High Court could frame rules under Section 34 of the Advocates Act laying down the conditions subject to which an advocate would be permitted to practise in the High Court and the courts subordinate to it and such rules may contain a provision that an advocate convicted of contempt of court would be barred from appearing before it or before the subordinate courts for a specified period. But so far the Delhi High Court has not framed any rules under Section 34 of the Act. According to him, therefore, the punishment awarded to the appellant by the High Court had no legal sanction.

136. Mr. Nageshwar Rao learned Senior Advocate assisting the Court as amicus shared the same view. Mr. Rao submitted that the direction given by the High Court was beyond its jurisdiction. In a proceeding of contempt the High Court could only impose a punishment as provided under Section 12 of the Contempt of Courts Act, 1971. The High Court was bound by the provisions of the Contempt of Courts Act and it was not open to it to innovate any new kind of punishment in exercise of its powers under Article 215 of the Constitution or its inherent powers. Mr. Rao submitted that a person who is a law graduate becomes entitled to practise the profession of law on the basis of his enrolment with any of the State Bar Councils established under the Advocates Act, 1961. Appearance in Court is the dominant, if not the sole content of a lawyer's practice. Since, the authority to grant licence to a law graduate to practise as an advocate vests exclusively in a State Bar Council, the power to revoke the licence or to suspend it for a specified term also vests in the same body. Further, the revocation or suspension of licence of an advocate has not only civil but also penal consequences; hence, the relevant statutory provisions in regard to imposition of punishment must be strictly followed. Punishment by way of suspension of the licence of an advocate can only be imposed by the Bar Council, the competent statutory body, after the charge is established against the advocate concerned in the manner prescribed by the Act and the Rules framed thereunder. The High Court can, of course, prohibit an advocate convicted of contempt from appearing before it or any court subordinate to it till the contemnor purged himself of the contempt. But it cannot assume the authority and the power statutorily vested in the Bar Council.

137. Mr. Gopal Subramaniam the other amicus, however, approached the issue in a slightly different manner and took the middle ground. Mr. Subramaniam submitted that the power to suspend the licence of a lawyer for a reason that may constitute contempt of court and at the same time may also amount to professional misconduct is a power to be exercised by the disciplinary authority i.e. the Disciplinary Committee of the State Bar Council where the concerned advocate is registered or the Bar Council of India. The Supreme Court has held that even it, in exercise of its powers under Article 142, cannot override statutory provisions and, assuming the position of the Disciplinary Committee, suspend the licence of a lawyer. Such a course cannot be followed even by



taking recourse to the appellate powers of the Supreme Court under Section 38 of the Advocates Act while dealing with a case of contempt of court (and not an appeal relating to professional misconduct as such). But approaching the matter from a different angle Mr. Subramaniam submitted, it is, however, open to the High Court to make rules regulating the appearance of advocates in courts. He further submitted that although the Delhi High Court has not framed any specific rules regulating the appearance of advocates, it is settled law that power vested in an authority would not cease to exist merely because rules prescribing the manner of exercise of power have not been framed.

138. The contention that the direction debarring a lawyer from appearing before it or in courts subordinate to it is beyond the jurisdiction of the High Court is based on the premise that the bar is akin to revocation/suspension of the lawyer's licence which is a punishment for professional misconduct that can only be inflicted by the Bar Council after following the procedure prescribed under the Advocates Act. The contention finds support from the Constitution Bench decision of this Court in *Supreme Court Bar Association v. Union of India* MANU/SC/0291/1998 : [1998]2SCR795 . In paragraph 37 of the decision the Court observed and held as under:

37. The nature and types of punishment which a court of record can impose in a case of established contempt under the common law have now been specifically incorporated in the Contempt of Courts Act, 1971 insofar as the High Courts are concerned and therefore to the extent the Contempt of Courts Act, 1971 identifies the nature or types of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either. No new type of punishment can be created or assumed.

In Paragraph 57 it observed:

57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing “professional misconduct”, depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct vests exclusively in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts. Again in paragraph 80 it observed:

80. In a given case it may be possible for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules, itself, to withdraw his privilege to practice as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunals.

139. The matter, however, did not stop at *Supreme Court Bar Association*. In *Pravin C Shah v. K.A. Mohd. Ali* [AIR 2001 SC 3041], this Court considered the case of a lawyer who was found guilty of contempt of court and as a consequence was sought to be debarred from appearing in courts till he purged himself of contempt. Kerala High Court has framed Rules under Section 34 of the Advocates Act and Rule 11 reads thus:

No advocate who has been found guilty of contempt of court shall be permitted to appear, act or plead in any court unless he has purged himself of the contempt.

141. More importantly, another Constitution Bench of this Court in *Ex. Capt. Harish Uppal v. Union of India* [(2002) SUPP 5 SCR 186], examined the question whether lawyers have a right to strike and/or give a call for boycott of Court(s). In paragraph 34 of the decision the Court made highly illuminating observations in regard to lawyers' right to appear before the Court and sounded the note of caution for the lawyers.

142. In both *Pravin C. Shah* and *Ex. Capt. Harish Uppal* the earlier Constitution Bench decision was extensively considered. The decision in *Ex. Capt. Harish Uppal* was later followed in a three judge Bench decision in *Bar Council of India v. The High Court of Kerala* [AIR 2004 SC 2227].

143. In *Supreme Court Bar Association*, the direction prohibiting an advocate from appearing in court for a specified period was viewed as a total and complete denial of his right to practise law and the bar was considered as a punishment inflicted on him. 1 In *Ex. Capt. Harish Uppal* it was seen not as punishment for professional misconduct but as a measure necessary to regulate the court's proceedings and to maintain the dignity and orderly functioning of the courts. We may respectfully add that in a given case a direction disallowing an advocate who is convicted of criminal contempt from appearing in court may not only be a measure to maintain the dignity and Though in Paragraph 80 of the decision, as seen earlier there is an observation that in a given case it might be possible for this Court or the High Court to prevent the contemnor advocate to appear before it till he purge himself of the contempt. orderly functioning of the courts but may become necessary for the self protection of the court and for preservation of the purity of court proceedings. Let us, for example, take the case where an advocate is shown to have accepted money in the name of a judge or on the pretext of influencing him; or where an advocate is found tampering with the court's record; or where an advocate is found actively taking part in faking court orders (fake bail orders are not unknown in several High Courts!); or where an advocate has made it into a practice to browbeat and abuse judges and on that basis has earned the reputation to get a case transferred from an 'inconvenient' court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against judicial officers and judges to the superior courts. Unfortunately these examples are not from imagination. These things are happening more frequently than we care to acknowledge. We may also add that these illustrations are not exhaustive but there may be other ways in which a malefactor's conduct and actions may pose a real and imminent threat to the purity of court proceedings, cardinal to any court's functioning, apart from constituting a substantive offence and contempt of court and professional misconduct. In such a situation the court does not only have the right but it also has the obligation cast upon it to protect itself and save the purity of its proceedings from being polluted in any way and to that end bar the malefactor from appearing before the courts for an appropriate period of time. It is already explained in *Ex. Captain Harish Uppal* that a direction of this kind by the Court cannot be equated with punishment for professional misconduct. Further, the prohibition against appearance in courts does not affect the right of the concerned lawyer to carry on his legal practice in other ways as indicated in the decision.

144. We respectfully submit that the decision in *Ex-Capt. Harish Uppal v. Union of India* places the issue in correct perspective and must be followed to answer the question at issue before us.

145. Lest we are misunderstood it needs to be made clear that the occasion to take recourse to the extreme step of debarring an advocate from appearing in court should arise very rarely and only as a measure of last resort in cases where the wrong doer advocate does not at all appear to be

genuinely contrite and remorseful for his act/conduct, but on the contrary shows a tendency to repeat or perpetuate the wrong act(s).

146. Ideally every High Court should have rules framed under Section 34 of the Advocates Act in order to meet with such eventualities but even in the absence of the Rule the High Court cannot be held to be helpless against such threats. In a matter as fundamental and grave as preserving the purity of judicial proceedings, the High Court would be free to exercise the powers vested in it under Section 34 of the Advocates Act notwithstanding the fact that Rules prescribing the manner of exercise of power have not been framed. But in the absence of statutory Rules providing for such a course an advocate facing the charge of contempt would normally think of only the punishments specified under Section 12 of the Contempt of Courts Act. He may not even imagine that at the end of the proceeding he might end up being debarred from appearing before the court. The rules of natural justice, therefore, demand that before passing an order debarring an advocate from appearing in courts he must be clearly told that his alleged conduct or actions are such that if found guilty he might be debarred from appearing in courts for a specific period. The warning may be given in the initial notice of contempt issued under Section 14 or Section 17 (as the case may be) of the Contempt of Courts Act. Or such a notice may be given after the proceedee is held guilty of criminal contempt before dealing with the question of punishment.

147. In order to avoid any such controversies in future all the High Courts that have so far not framed rules under Section 34 of the Advocates Act are directed to frame the rules without any further delay. It is earnestly hoped that all the High Courts shall frame the rules within four months from today. The High Courts may also consider framing rules for having Advocates on Record on the pattern of the Supreme Court of India. Suborning a witness in a criminal trial is an act striking at the root of the judicial proceeding and it surely deserves the treatment meted out to the appellant. But the appellants were not given any notice by the High Court that if found guilty they might be prohibited from appearing in the High Court, and the courts subordinate to it, for a certain period. To that extent the direction given by the High Court was not in conformity with the principles of natural justice.

### **THE QUESTION OF SENTENCE**

148. Having regard to the misdeeds of which RK Anand has been found guilty, the punishment given to him by the High Court can only be regarded as nominal. We feel that the leniency shown by the High Court in meting out the punishment was quite misplaced. And the view is greatly reinforced if one looks at the contemnor's conduct before the High Court. As we shall see presently, before the High Court the contemnor took a defiant stand and constantly tried to obstruct the proceedings.

### **THE DIVERSIONARY & INTIMIDATORY TACTICS IN THE PROCEEDING**

149. Even as contempt notices were issued by the High Court, or even before it, some diversionary and even intimidatory tactics were employed to stonewall the proceeding initiated by it.

### ***REQUEST FOR RECUSAL***

156. Of all the obstructive measures adopted before the High Court the most unfortunate and undesirable came from RK Anand in the form of a petition 'requesting' Manmohan Sarin J., the presiding judge on the bench dealing with the matter, to recuse him from the proceeding. This petition, an ill concealed attempt at intimidation, was, as a matter of fact, RK Anand's first response to the notice issued to him by the Court. He stated in this petition that he had the feeling that he was not likely to get justice at the hands of Manmohan Sarin J. He further stated alluding to some past

events, that he had tried his best to forget the past and bury the hatchet but the way and the manner in which the matter was being dealt with had caused the greatest damage to his reputation. He made the prayer that the recusal application should be heard in camera and the main matter be transferred to another bench of which Sarin J. was not a member. Along with the petition he filed a sealed cover containing a note and the materials giving rise to the belief that he was not likely to get justice at the hands of Sarin J.

164. Both Mr. Salve and Mr. Subramaniam strongly submitted that the appellant had plainly no respect for the court or the court proceedings. Mr. Salve submitted that the recusal application was a brazen attempt to browbeat the High Court and in that attempt the appellant succeeded to a large extent since the prohibition to appear before the courts for a period of only four months could only be considered as a token punishment having regard to the gravity of his conduct. Mr. Subramaniam also felt strongly about the recusal application but before taking up the issue he fairly tried to give another opportunity to the appellant stating that perhaps even now the appellant might wish to withdraw the grounds in the SLP challenging the order passed by the High Court on the recusal application. The appellant was given ample time to consider the suggestion but later on enquiry Mr. Altaf Ahmed stated that he had not pressed those grounds in course of his submissions exercising his discretion as the Counsel but he had no instructions to get those grounds deleted from the SLP.

165. The action of the appellant in trying to suborn the court witness in a criminal trial was reprehensible enough but his conduct before the High Court aggravates the matter manifold. He does not show any remorse for his gross misdemeanour and instead tries to take on the High Court by defying its authority. We are in agreement with Mr. Salve and Mr. Subramaniam that punishment given to him by the High Court was wholly inadequate and incommensurate to the seriousness of his actions and conduct. We, accordingly, propose to issue a notice to him for enhancement of punishment. We also hold that by his actions and conduct the appellant has established himself as a person who needs to be kept away from the portals of the court for a longer time. The notice would therefore require him to show-cause why the punishment awarded to him should not be enhanced as provided under Section [12](#) of the Contempt of Courts Act. He would additionally show-cause why he should not be debarred from appearing in courts for a longer period. The second part of the notice would also cure the defect in the High Court order in debarring the appellant from appearing in courts without giving any specific notice in that regard as held in the earlier part of the judgment.

166. We have so far been considering the two appeals proper. We now proceed to examine some other important issues arising from the case.

#### ***THE ROLE OF NDTV***

167. NDTV came under heavy attack from practically all sides for carrying out the stings and airing the programme based on it. On behalf of RK Anand the sting programme was called malicious and motivated, aimed at defaming him personally. Mr. P P Rao appearing for IU Khan questioned the propriety of the stings and the repeated telecast of the sting programme concerning a pending trial and involving a court witness. Mr. Rao submitted that before taking up the sting operations, fraught with highly sinister implications, the TV channel should have informed the trial court and obtained its permission. If for any reason it was not possible to inform the trial judge then permission for the stings should have been taken from the Chief Justice of the Delhi High Court. Also, it was the duty of that TV channel to place the sting materials before the court before telecasting any programme on that basis.

172. We have already dealt with the allegations made on behalf of RK Anand while considering his appeal earlier in this judgment and we find no substance in those allegations. Reporting of pending trial:

173. We are also unable to agree with the submission made by Mr. P. P. Rao that the TV channel should have carried out the stings only after obtaining the permission of the trial court or the Chief Justice of the Delhi High Court and should have submitted the sting materials to the court before its telecast. Such a course would not be an exercise in journalism but in that case the media would be acting as some sort of special vigilance agency for the court. On little consideration the idea appears to be quite repugnant both from the points of view of the court and the media. It would be a sad day for the court to employ the media for setting its own house in order; and media too would certainly not relish the role of being the snoopers for the court. Moreover, to insist that a report concerning a pending trial may be published or a sting operation concerning a trial may be done only subject to the prior consent and permission of the court would tantamount to pre-censorship of reporting of court proceedings. And this would be plainly an infraction of the media's right of freedom of speech and expression guaranteed under Article 19(1) of the Constitution. This is, however, not to say that media is free to publish any kind of report concerning a sub-judice matter or to do a sting on some matter concerning a pending trial in any manner they please. The legal parameter within which a report or comment on a sub-judice matter can be made is well defined and any action in breach of the legal bounds would invite consequences. Compared to normal reporting, a sting operation is an incalculably more risky and dangerous thing to do. A sting is based on deception and, therefore, it would attract the legal restrictions with far greater stringency and any infraction would invite more severe punishment.

***Sting programme whether trial by media??***

174. The submissions of Mr. N. Rao are based on two premises: one, the sting programme telecast by NDTV was of the genre, 'trial by media' and two, the programme interfered or tended to interfere with or obstructed or tended to obstruct the proceedings of the BMW trial that was going on at the time of the telecast. If the two premises are correct then the rest of the submissions would logically follow. But are the two premises correct? What is trial by media? The expression 'trial by media' is defined to mean:

the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.

175. In light of the above it can hardly be said that the sting programme telecast by NDTV was a media trial. Leaving aside some stray remarks or comments by the anchors or the interviewees, the programme showed some people trying to subvert the BMW trial and the state of the criminal administration of justice in the country (as perceived by the TV channel and the interviewees). There was nothing in the programme to suggest that the accused in the BMW case were guilty or innocent. The programme was not about the accused but it was mainly about two lawyers representing the two sides and one of the witnesses in the case. It indeed made serious allegations against the two lawyers. The allegations, insofar as RK Anand is concerned, stand established after strict scrutiny by the High Court and this Court. Insofar as IU Khan is concerned, though this Court held that his conduct did not constitute criminal contempt of court, nonetheless allegations against him too are established to the extent that his conduct has been found to be inappropriate for a

Special Prosecutor. In regard to the witness the comments and remarks made in the telecast were never subject to a judicial scrutiny but those too are broadly in conformity with the materials on the court's record. We are thus clearly of the view that the sting programme telecast by NDTV cannot be described as a piece of trial by media. Stings & telecast of sting programmes not constituting criminal contempt:

176. Coming now to Section 3 of the Contempt of Courts Act we are unable to appreciate Mr. Rao's submission that NDTV did not have the immunity under Sub-section (3) of Section 3 as the telecast was hit by proviso (ii) Explanation (B) to that sub section. Section 3 of the Act insofar as relevant is as under:

**3. Innocent publication and distribution of matter not contempt.**-(1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) x xx

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in Sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid: Provided that this Sub-section shall not apply in respect of the distribution of-

(i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in Section 3 of the Press and Registration of Books Act, 1867 (25 of 1867);

(ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in Section 5 of the said Act.

*Explanation.*- For the purposes of this section, a judicial proceeding-

(a) is said to be pending-

(A) x xx

(B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898 ( 5 of 1898), or any other law-

(i) where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

(ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and xxx

(b) x xx

177. Section 5 provides that a fair criticism of a judicial act concerning any case which has been heard and finally decided would not constitute contempt.

178. Sub-section (1) of Section 3 provides immunity to a publisher of any matter which interferes or tends to interfere with, or obstructs or tends to obstruct the course of justice in any civil or criminal proceeding if he reasonably believed that there was no proceeding pending. A Sub-section (3) deal with distribution of the publication as mentioned in Sub-section (1) and provides immunity to the distributor if he reasonably believed that the publication did not contain any matter which interfered or tended to interfere with, or obstructed or tended to obstruct the course of justice

in any civil or criminal proceeding. The immunity provided under Sub-section (3) is subject to the exceptions as stated in the proviso and explanations to the Sub-section. We fail to see any application of Section 3(3) of the Contempt of Courts Act in the facts of this case. In this case there is no distribution of any publication made under Sub-section (1). Hence, neither Sub-section (3) nor its proviso or explanation is attracted. NDTV did the sting, prepared a programme on the basis of the sting materials and telecast it at a time when it fully knew that the BMW trial was going on. Hence, if the programme is held to be a matter which interfered or tended to interfere with, or obstructed or tended to obstruct the due course of the BMW case then the immunity under Sub-section (1) will not be available to it and the telecast would clearly constitute criminal contempt within the meaning of Section 2(c)(ii)& (iii) of the Act. But can the programme be accused of interfering or tending to interfere with, or obstructing or tending to obstruct the due course of the BMW case. Whichever way we look at the programme we are not able to come to that conclusion. The programme may have any other faults or weaknesses but it certainly did not interfere with or obstruct the due course of the BMW trial. The programme telecast by NDTV showed to the people (the courts not excluded) that a conspiracy was afoot to undermine the BMW trial. What was shown was proved to be substantially true and accurate. The programme was thus clearly intended to prevent the attempt to interfere with or obstruct the due course of the BMW trial.

#### **STINGS & TELECAST OF STING PROGRAMMES SERVED IMPORTANT PUBLIC CAUSE**

179. Looking at the matter from a slightly different angle we ask the simple question, what would have been in greater public interest; to allow the attempt to suborn a witness, with the object to undermine a criminal trial, lie quietly behind the veil of secrecy or to bring out the mischief in full public gaze? To our mind the answer is obvious. The sting telecast by NDTV was indeed in larger public interest and it served an important public cause.

180. We have held that the sting programme telecast by NDTV in no way interfered with or obstructed the due course of any judicial proceeding, rather it was intended to prevent the attempt to interfere with or obstruct the due course of law in the BMW trial. We have also held that the sting programme telecast by NDTV served an important public cause. In view of the twin findings we need not go into the larger question canvassed by Mr Salve that even if the programme marginally tended to influence the proceedings in the BMW trial the larger public interest served by it was so important that the little risk should not be allowed to stand in its way. Excesses in the telecast:

181. We have unequivocally upheld the basic legitimacy of the stings and the sting programmes telecast by NDTV. But at the same time we must also point out the deficiencies (or rather the excesses) in the telecast. Mr. Subramaniam spoke about the 'slant' in the telecast as 'regrettable overreach'. But we find many instances in the programme that cannot be simply described as 'slants'. There are a number of statements and remarks which are actually incorrect and misleading. In the first sting programme telecast on May 30, 2007 at 8.00 pm the anchor made the opening remarks as under:

Good Evening,...an NDTV expose, on how the legal system may have been subverted in the high profile BMW case. In 1999 six people were run over allegedly by a BMW driven by Sanjeev Nanda a young, rich industrialist but 8 years later every witness except one has turned hostile. Tonight NDTV investigates did the prosecution, the defence and the only witness not turned hostile Sunil Kulkarni collude...



182. The anchor's remarks were apparently from a prepared text since the same remarks were repeated word by word by another anchor as introduction to the second telecast on the same day at 9:00 pm.

183. Further, in the 9 o'clock telecast after some brief introductory remarks, clips from the sting recordings are shown for several minutes and a commentator from the background (probably Poonam Agarwal) introduces the main characters in the BMW case. Kulkarni is introduced by the commentator in the following words:

Sunil Kulkarni, a passerby, who allegedly saw the accident but inexplicably dropped as witness by prosecution. They claim he had been bought by the Nandas. This despite the fact that he is the only witness who still says the accident was caused by a 'black car' with two men in it one of them called Sanjeev.

184. [This statement does not find place in the manuscript of the telecast furnished to the court and can be found only by carefully watching the CD of the telecast submitted before the court. We are again left with the feeling that NDTV did not submit full and complete materials before the court and we are surprised that the High Court did not find it amiss]

185. In the first statement Kulkarni is twice described as the only witness in the BMW case who after eight years had not turned hostile. The statement is fallacious and misleading. Kulkarni was not being examined in the court as prosecution witness and, therefore, there was no question of his being declared 'hostile' by the prosecution. He was being examined as a Court witnesses. Nevertheless, the prosecution was cross-examining him in detail in course of which he was trying to sabotage the prosecution case.

186. The second statement is equally, if not more, fallacious. In the second statement it is said that Kulkarni was 'inexplicably' dropped as a prosecution witness. We have seen earlier that Kulkarni was dropped as a prosecution witness for good reasons summed up in the Joint Commissioner's report to the trial court and there was nothing 'inexplicable' about it. In the second statement it is further suggested that the prosecution's claim that Kulkarni was bought over by the accused was untrue because he was the only witness who still said that the accident was caused by a black car with two men in it, one of them being called Sanjeev. It is true that in his deposition before the court Kulkarni said that the accident was caused by a black car but he resiled from his earlier statements made before the police and the magistrate in a more subtle and clever way than the other two prosecution witnesses, namely, Hari Shankar Yadav and Manoj Malik. Departing from his earlier statements he said in the court that he heard one of the two occupants of the car addressing the other as 'Sanch or sanz' (and not as Sanjeev). Further, though admitting that Sanjeev Nanda was one of the occupants of the car, he positively denied that he got down from the driving seat of the car and placed someone else on the driving seat of the car causing the accident. Thus the damage to the prosecution case that he tried to cause was far more serious than any other prosecution witness. It is not that NDTV did not know these facts. NDTV was covering the BMW trial very closely since its beginning and was aware of all the developments taking place in the case. Then why did it introduce the programme in this way, running down the prosecution and presenting Kulkarni as the only person standing upright while everyone else had fallen down? The answer is not far to seek. One can not start a highly sensational programme by saying that it was prepared with the active help of someone whose own credibility is extremely suspect. The opening remarks were thus designed to catch the viewer and to hold his/her attention, but truth, for the moment at least was relegated to the sidelines. It is indeed true that later on in the programme facts concerning Kulkarni were stated correctly and he was presented in a more balanced way and Mr. Subramaniam wanted to give NDTV credit points for that. But the impact and value of the opening remarks in a



TV programme is quite different from what comes later on. The later corrections were for the sake of the record while the introductory remarks had their own value.

187. Further, on the basis of the sting recordings NDTV might have justifiably said that IU Khan, the Special Prosecutor appeared to be colluding with the defence (though this Court found that there was no conclusive evidence to come to such a finding). But there was no material before NDTV to make such allegation against the prosecution as a whole and thus to run down the other agencies and people connected with the prosecution. There are other instances also of wrong and inappropriate choice of words and expressions but we need not go any further in the matter.

188. Another sad feature is its stridency. It is understandable that the programme should have started on a highly sensational note because what was about to be shown was really quite shocking. But the programme never regained poise and it became more and more shrill. All the interviewees, highly eminent people, expressed their shock and dismay over the state of the legal system in the country and the way the BMW trial was proceeding. But as the interview progressed, they somewhat tended to lose their self restraint and did not pause to ponder that they were speaking about a sub-judice matter and a trial in which the testimony of a court witness was not even over. We are left with the feeling that some of the speakers allowed their passions, roused by witnessing the shocking scenes on the TV screen, to get better of their judgment and made certain very general and broad remarks about the country's legal system that they might not have made if speaking in a more dispassionate and objective circumstances. Unfortunately, not a single constructive suggestion came from anyone as to how to revamp the administration of criminal justice. The programme began on negative note and remained so till the very end. Conduct of NDTV in proceeding before High Court:

189. In the earlier part of the judgment some of the glaring lapses committed by NDTV in the proceeding before the High Court are already recounted. Apart from those one or two other issues need to be mentioned here that failed to catch the attention of the High Court. It seems that at the time the sting operations were carried out people were actually apprehensive of something of that kind. Vikas Arora, Advocate had stated in his complaint (dated April 19, 2007) about receiving such a threat from Poonam Agarwal. NDTV in its reply dated April 26, 2007 had denied the allegations in the complaint, at the same time, declaring its resolve to make continuous efforts to unravel the truth. At the same time Poonam Agarwal was planning the stings in her meetings with Kulkarni. As a matter of fact, the first sting was carried out on IU Khan just two days after giving reply to Arora's complaint. Further, from the transcript of the first sting carried out on RK Anand on May 6, 2007 it appears that he too had expressed some apprehension of this kind to which Kulkarni responded by saying that he did not have money enough to eat how could he do any recording of anyone. (It is difficult to miss the irony that the exchange took place while RK Anand was actually being subjected to the sting). It thus appears that at that time, for some reason, the smell of sting was in the air. In those circumstances we find it strange that in the affidavits filed on behalf of NDTV there should be absolutely no reference to Vikas Arora's complaint. In the earlier part of the judgment we have examined the affidavits filed by Poonam Agarwal and found that she states about all the aspects of the sting operations in great detail. But surprisingly those affidavits do not even refer to, much less deal with the complaint of Vikas Arora despite the striking similarity between the threat that was allegedly given to him and his senior IU Khan and the way the sting operation was actually carried out on IU Khan.

190. There is another loose end in the whole matter. Kulkarni's sting meeting with IU Khan had ended with fixing up another meeting for the following Sunday at the latter's residence. (It was the setting up of this meeting that is primarily the basis for holding him guilty of misconduct as the Special Public Prosecutor). One should have thought that this meeting would surely take place

because it provided a far better opportunity for the sting. With 'good Scotch whisky' flowing it was likely that the planners of the stings would get more substantial evidences of what they suspected. But we are not told anything about this meeting: whether it took place or not? If it took place what transpired in it and whether any sting recording was done? If it did not take place what was the reason for not keeping the appointment and giving up such a good opportunity. Here it may be noted that Kulkarni also in his affidavit filed before the High Court on August 6, 2007 stated that as arranged between them he again met IU Khan in the evening but the sting recording of that meeting was withheld by NDTV because that falsified their story. Kulkarni, as was his wont, might be telling lies but that was an additional reason for NDTV to clarify the issue regarding the second meeting between the two.

191. The next meeting between Kulkarni and IU Khan that was fixed up in the sting meeting on April 28, 2007 might or might not have taken place but there can be little doubt that they met again between April 28, 2007 and May 31, 2007 (the day following the first sting telecast) when Kulkarni gave IU Khan the 'certificate' that he had accepted the summons on his advice (which was submitted by IU Khan before the trial court when he withdrew from the case).

192. The affidavits filed on behalf of NDTV are completely silent on these aspects.

193. These omissions (and some similar others) on the part of NDTV leave one with the feeling that it was not sharing all the facts within its knowledge with the court. The disclosures before the Court do not appear to be completely open, full and frank. It would tell the court only so much as was necessary to secure the conviction of the proceedees-wrong doers. There were some things that it would rather hold back from the court. We would have appreciated the TV channel to make a fuller disclosure before the High Court of all the facts within its knowledge.

194. Having said all this we would say, in the end, that for all its faults the stings and the telecast of the sting programme by NDTV rendered valuable service to the important public cause to protect and salvage the purity of the course of justice. We appreciate the professional initiative and courage shown by the young reporter Poonam Agarwal and we are impressed by the painstaking investigation undertaken by NDTV to uncover the Shimla connection between Kulkarni and RK Anand.

195. We have recounted above the acts of omission and commission by NDTV before the High Court and in the telecast of the sting programme in the hope that the observations will help NDTV and other TV channels in their future operations and programmes. We are conscious that the privately run TV channels in this country are very young, no more than eighteen or twenty years old. We also find that like almost every other sphere of human activity in the country the electronic news media has a very broad spectrum ranging from very good to unspeakably bad.

196. The better news channels in the country (NDTV being one of them) are second to none in the world in matters of coverage of news, impartiality and objectivity in reporting, reach to the audience and capacity to influence public opinion and are actually better than many foreign TV channels. But that is not to say that they are totally free from biases and prejudices or they do not commit mistakes or gaffes or they some times do not tend to trivialise highly serious issues or that there is nothing wanting in their social content and orientation or that they maintain the same standards in all their programmes. In quest of excellence they have still a long way to go.

197. A private TV channel which is also a vast business venture has the inherent dilemma to reconcile its business interests with the higher standards of professionalism/demands of profession. The two may not always converge and then the TV channel would find its professional options getting limited as a result of conflict of priorities. The media trips mostly on TRPs (television rating

points), when commercial considerations assume dominance over higher standards of professionalism.

198. It is not our intent here to lay down any reformist agenda for the media. Any attempt to control and regulate the media from outside is likely to cause more harm than good. The norms to regulate the media and to raise its professional standards must come from inside.

## **ROLE OF THE LAWYER**

199. The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of court and the other found guilty of misconduct as Special Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation. The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers we find that even some highly successful lawyers seem to live by their own rules of conduct. We have viewed with disbelief Senior Advocates freely taking part in TV debates or giving interviews to a TV reporter/anchor of the show on issues that are directly the subject matter of cases pending before the court and in which they are appearing for one of the sides or taking up the brief of one of the sides soon after the TV show. Such conduct reminds us of the fictional barrister Rumpole, 'the Old Hack of Bailey', who self deprecatingly described himself as an 'old taxi plying for hire'. He at least was not bereft of professional values. When a young and enthusiastic journalist invited him to a drink of Dom Perignon, vastly superior and far more expensive than his usual 'plonk', 'Chateau Fleet Street', he joined him with alacrity but when in the course of the drink the journalist offered him a large sum of money for giving him a story on the case; 'why he was defending the most hated woman in England', Rumpole ended the meeting simply saying "In the circumstance I think it is best if I pay for the Dom Perignon"

200. We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a bar that enjoys the unqualified trust and confidence of the people, that share the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.

201. We are glad to note that Mr. Gopal Subramaniam, the amicus fully shared our concern and realised the gravity of the issue. In course of his submissions he eloquently addressed us on the elevated position enjoyed by a lawyer in our system of justice and the responsibilities cast upon him in consequence. His Written Submissions begin with this issue and he quotes extensively from the address of Shri M C Setalvad at the Diamond Jubilee Celebrations of the Bangalore Bar Association, 1961, and from the decisions of this Court in *Pritam Pal v. High court of Madhya Pradesh* [MANU/SC/0169/1992](#) : 1992CriLJ1269 (observations of Ratnavel Pandian J.) and Sanjeev Datta, In Re, [MANU/SC/0697/1995](#) : 1995CriLJ2910 (observations of Sawant J. at pp 634-635, para 20).

202. We respectfully endorse the views and sentiments expressed by Mr. M.C. Setalvad, Pandian J. and Sawant J.

203. Here we must also observe that the Bar Council of India and the Bar Councils of the different states cannot escape their responsibility in this regard. Indeed the Bar council(s) have very positively taken up a number of important issues concerning the administration of justice in the country. It has consistently fought to safeguard the interests of lawyers and it has done a lot of good

work for their welfare. But on the issue of maintaining high professional standards and enforcing discipline among lawyers its performance hardly matches its achievements in other areas. It has not shown much concern even to see that lawyers should observe the statutory norms prescribed by the Council itself. We hope and trust that the Council will at least now sit up and pay proper attention to the restoration of the high professional standards among lawyers worthy of their position in the judicial system and in the society. This takes us to the last leg of this matter.

### **THE LARGER ISSUE : BMW TRIAL GETTING OUT OF HAND**

204. Before laying down the records of the case we must also advert to another issue of great importance that causes grave concern to this Court. At the root of this odious affair is the way the BMW trial was allowed to be constantly interfered with till it almost became directionless. We have noted Kulkarni's conduct in course of investigation and at the commencement of the trial; the fight that broke out in the court premises between some policemen and a section of lawyers over his control and custody; the manner in which Hari Shankar Yadav, a key prosecution witness turned hostile in court; the curious way in which Manoj Malik, another key witness for the prosecution appeared before the court and overriding the prosecution's protest, was allowed to depose only to resile from his earlier statement. All this and several other similar developments calculated to derail the trial would not have escaped the notice of the Chief Justice or the judges of the Court. But there is nothing to show that the High Court, as an institution, as a body took any step to thwart the nefarious activities aimed at undermining the trial and to ensure that it proceeded on the proper course. As a result, everyone seemed to feel free to try to subvert the trial in any way they pleased.

205. We must add here that this indifferent and passive attitude is not confined to the BMW trial or to the Delhi High Court alone. It is shared in greater or lesser degrees by many other High Courts. From experience in Bihar, the author of these lines can say that every now and then one would come across reports of investigation deliberately botched up or of the trial being hijacked by some powerful and influential accused, either by buying over or intimidating witnesses or by creating insurmountable impediments for the trial court and not allowing the trial to proceed. But unfortunately the reports would seldom, if ever, be taken note of by the collective consciousness of the Court. The High Court would continue to carry on its business as if everything under it was proceeding normally and smoothly. The trial would fail because it was not protected from external interferences. Every trial that fails due to external interference is a tragedy for the victim(s) of the crime. More importantly, every frustrated trial defies and mocks the society based on the rule of law. Every subverted trial leaves a scar on the criminal justice system. Repeated scars make the system unrecognisable and it then loses the trust and confidence of the people. Every failed trial is also, in a manner of speaking, a negative comment on the State's High Court that is entrusted with the responsibility of superintendence, supervision and control of the lower courts. It is, therefore, high time for the High Courts to assume a more pro-active role in such matters. A step in time by the High Court can save a criminal case from going astray. An enquiry from the High Court Registry to the concerned quarters would send the message that the High Court is watching; it means business and it will not tolerate any nonsense. Even this much would help a great deal in insulating a criminal case from outside interferences. In very few cases where more positive intervention is called for, if the matter is at the stage of investigation the High Court may call for status report and progress reports from police headquarter or the concerned Superintendent of Police. That alone would provide sufficient stimulation and pressure for a fair investigation of the case. In rare cases if the High Court is not satisfied by the status/progress reports it may even consider taking up the matter on the judicial side. Once the case reaches the stage of trial the High Court obviously has far wider powers. It can assign the trial to some judicial officer who has made a reputation for independence and integrity. It may fix the venue of the trial at a proper place where

the scope for any external interference may be eliminated or minimized. It can give effective directions for protection of witnesses and victims and their families. It can ensure a speedy conclusion of the trial by directing the trial court to take up the matter on a day-to-day basis. The High Court has got ample powers for all this both on the judicial and administrative sides. Article [227](#) of the Constitution of India that gives the High Court the authority of superintendence over the subordinate courts has great dynamism and now is the time to add to it another dimension for monitoring and protection of criminal trials. Similarly Article [235](#) of the Constitution that vests the High Court with the power of control over sub-ordinate courts should also include a positive element. It should not be confined only to posting, transfer and promotion of the officers of the subordinate judiciary. The power of control should also be exercised to protect them from external interference that may sometime appear overpowering to them and to support them to discharge their duties fearlessly.

206. In light of the discussions made above we pass the following orders and directions.

1. The appeal filed by IU Khan is allowed and his conviction for criminal contempt is set aside. The period of four month's prohibition from appearing in Delhi High Court and the courts subordinate to it is already over. The punishment of fine given to him by the High Court is set aside. The Full Court of the Delhi High Court may still consider whether or not to continue the honour of Senior Advocate conferred on him in light of the findings recorded in this judgment.
2. The appeal of RK Anand is dismissed subject to the notice of enhancement of punishment issued to him as indicated in paragraph 165 of the judgment. He is allowed eight weeks time from the date of service of notice for filing his show-cause.
3. Those of the High Courts which have so far not framed any rules under Section [34](#) of the Advocates Act, shall frame appropriate rules without any further delay as directed in paragraph 147 of the judgment.
4. Put up the appeal of RK Anand after the show-cause is filed.

\* \* \* \* \*

## ***In Re: Arundhati Roy v. Unknown***

AIR 2002 SC 1375

**Bench: G Pattanaik, R Sethi**

JUDGMENT Sethi, J.

5. The facts of the case, which are not seriously disputed, are that an organisation, namely, Narmada BachaoAndolan filed a petition under Article 32 of the Constitution of India being Writ Petition No. 319 of 1994 in this Court. The petitioner was a movement or andolan, whose leaders and members were concerned about the alleged adverse environmental impact of the construction of the sardar Sarovar Reservoir Dam in Gujarat and the far-reaching and tragic consequences of the displacement of hundreds of thousands of people from their ancestral homes that would result from the submerging of vast extents of land, to make up the reservoir. During the pendency of the writ petition this Court passed various order. By one of the order, the Court permitted to increase the height of the dam to RL 85 meters which was resented to and protested by the writ petitioners and others including the respondent herein. The respondent Arundhati Roy, who is not a party to the writ proceedings, published an article entitled "The Greater Common Good" which was published in Outlook Magazine and in some portion of a book written by her. Two judges of this Court, forming the three-judge Bench felt that the comments made by her were, prima facie, a misrepresentation of the proceedings of the court. It was observed that judicial process and institution cannot be permitted to be scandalised or subjected to contumacious violation in such a blatant manner, it had been done by her. The action of the respondent had caused the court much anguish and when the court expressed its displeasure on the action of the respondent in making distorted writing or manner in which leaders of the petitioner Ms. Medha Patkar and one Dharmadikhari despite giving assurance to the court acted in breach of the injunction, the Court observed:

"We are unhappy at the way the leaders of NBA and Ms. Arundhati Roy have attempted to undermine the dignity of the Court. We expected better behavior from them."

6. Showing its magnanimity, the Court declared:

"After giving this matter our thoughtful consideration and keeping in view the importance of the issue of resettlement and rehabilitation of the PAFs, which we have been monitoring for the last five years, we are not inclined to initiate proceedings against the petitioner, its leaders or Ms. Arundhati Roy. We are of the opinion, in the largest interest of the issues pending before us, that we need not pursue the matter any further. We, however, hope that what we have said above would serve the purpose and the petitioner and its leaders would hereafter desist from acting in a manner which has the tendency to interfere with the due administration of justice or which violates the injunctions issued by this Court from time to time."

7. The third learned Judge also recorded his disapproval of the statement made by the respondent herein and others and felt that as the court's shoulders are broad enough to shrug off their comments and because the focus should not shift from the resettlement and rehabilitation of the oustees, no action in contempt be taken against them.

8. However, after the judgment was pronounced in IA No. 14 of 1999 on 15th October, 1999, an incident is stated to have taken place on 30th December, 2000 regarding which Contempt Petition No. 2 of 2001 was filed by J.R. Parashar, Advocate and others. According to the appellations made in that petition, the respondents named therein, led a huge crowd and held a Dharna in front of this Court and shouted abusive slogans against the court including slogans ascribing lack of integrity and dishonesty to his institution.

All the three respondents therein admitted that there was a Dharna outside the gates of this Court on 30th December, 2000 which was organised by Narmada Bachao Andolan and the gathered crowd were persons who lived in the Narmada Valley and were aggrieved by the majority judgment of this Court relating to the building of the dam on the Narmada River.

9. The assertions in the aforesaid contempt petition attributed that the contemnors shouted abusive slogans against the court including slogans ascribing lack of integrity and dishonesty to the institution undoubtedly made the action of the contemnor gross contemptuous and as such the court had initiated the contempt proceedings by issuing notice. But in view of the denial of the alleged contemnors to the effect that they had never shouted such slogans and used such abusive words as stated in the contempt petition, instead of holding an inquiry and permitting the parties to lead evidence in respect of their respective stand, to find out which version is correct, the court thought it fit not to adopt that course and decided to drop the proceedings. But in the very show cause that had been filed by the respondent No. 3, Smt. Arundhati Roy, apart from denying that she had not used any such words as ascribed to her.

However, the Court felt that respondent No. 3 therein (Arundhati Roy) was found to have, prima facie, committed contempt as she had imputed motives to specific courts for entertaining litigation and passing orders against her. She had accused courts of harassing her as if the judiciary were carrying out a personal vendetta against her. She had brought in matters which were not only not pertinent to the issues to be decided but has drawn uninformed comparisons to make statements about this Court which do not appear to be protected by law relating to fair criticism. It was stated by her in the court that she stood by the comments made by her even if the same are contumacious. For the reason recorded therein, the Court issued notice in the prescribed form to the respondent herein asking her to show cause as to why she should not be proceeded against for contempt for the statements in the offending three paragraphs of her affidavit, reproduced hereinafter.

10. In her reply affidavit, the respondent has again reiterated what she had stated in her earlier affidavit. It is contended that as a consequence of the Supreme Court judgment the people in the Narmada Valley are likely to lose their homes, their livelihood and their histories and when they came calling on the Supreme Court, they were accused of lowering the dignity of the court which, according to her is a suggestion that the dignity of the court and the dignity of the Indian citizens are incompatible, oppositional, adversarial things. She stated:

"I believe that the people of the Narmada valley have the constitutional right to peacefully protest against what they consider an unjust and unfair judgment. As for myself, I have every right to participate in any peaceful protest meeting that I choose to. Even outside the gates of the Supreme Court. As a writer I am fully entitled to put forward my views, my reasons and arguments for why I believe that the judgment in the Sardar Sarovar case is flawed and unjust and violates the human rights of Indian citizens. I have the right to use all my skills and abilities such as they are, and all the facts and figures at my disposal, to persuade people to my point of view."

11. She also stated that she has written and published several essays and articles on Narmada issue and the Supreme Court judgment. None of them was intended to show contempt to the court. She justified her right to disagree with the court's view on the subject and to express her disagreement in any publication or forum. In her belief the big dams are economically unviable, ecologically destructive and deeply undemocratic. In her affidavit she has further stated:

"But whoever they are, and whatever their motives, for the petitioners to attempt to misuse the Contempt of Court Act and the good offices of the Supreme Court to stifle criticism and stamp out dissent, strikes at the very roots of the notion of democracy. In recent months this Court has issued judgments on several major public issues. For instance, the closure of polluting industries in Delhi, the conversion of public transport buses from diesel to CNG, and the judgment permitting the construction of the Sardar Sarovar Dam to proceed. All of these have had far-reaching and often unanticipated impacts. They have materially affected, for better or for worse, the lives and livelihoods of millions of Indian citizens. Whatever the justice or injustice of these judgments whatever their finer legal points, for the court to become intolerant of criticism or expressions of dissent would mark the beginning of the end of democracy.

In conclusion, I wish to reaffirm that as a writer I have right to state my opinions and beliefs. As a free citizen of India I have the right to be part of any peaceful dharna, demonstration or protest march. I have the right to criticize any judgment of any court that I believe to be unjust. I have the right to make common cause with those I agree with. I hope that each time I exercise these rights I will not be dragged to court on false charges and forced to explain my actions."

17. The High Court in its judgment had concluded that the allegations made against the judicial officers come within the category of contempt which is committed by "scandalizing the court". The learned judges observed on the authority of the pronouncement of Lord Russell in *Reg. v. Gray* [(1900) 2 G.B. 36] that this class of contempt is subject to one important qualification. In the opinion of the judges of the High Court, the complaint lodged by the contemnors exceeded the bounds of fair and legitimate criticism. This Court referred to various judgments of English Courts and concluded:

"The position therefore is that a defamatory attack on a judge may be a libel so far as the judge is concerned and it would be open to him to proceed against the libeler in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the judge personally while the other is a wrong done to the public. It will be injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to interfere with the proper administration of law."

19. Similarly reliance of Shri Shanti Bhushan, Senior Advocate on *Shri Baradakanta Mishra v. The Registrar of Orissa High Court and Anr.* [1974 (1) 374] is of no great help to his client. After referring to the definition of criminal contempt in Section 2(c) of the Act, the court found that the



terminology used in the definition is borrowed from the English Law of contempt and embodies certain concepts which are familiar to that law which, by and large, was applied in India. The expressions "scandalized", "lowering the authority of the court," "interference", "obstruction" and "administration of justice" have all gone into the legal currency of our sub-continent and have to be understood in the sense in which they have been so far understood by our courts with the aid of English Law, where necessary. Sub-clause (i) of the definition was held to embody the concept of canalization, as discussed by Halsbury's Laws of England, 3rd Edition in Volume 8, page 7 at para 9. Action of scandalizing the authority of the court has been regarded as an "obstruction" of public justice whereby the authority of the court is undermined. All the three clauses of the definition were held to justify the contempt in terms of obstruction of or interference with the administration of justice. It was declared that the Act accepts what was laid down by the Privy Council and other English authorities that proceedings in contempt are always with reference to the administration of justice. The canalization within the meaning of Sub-section (i) must be in respect of the court or the judge with reference to administration of justice. This Court concluded that the courts of justice are, by their constitution, entrusted with functions directly connected with the administration of justice, and it is the expectation and confidence of all those who have or likely to have business therein that the court perform all their functions on a high level of rectitude without fear or favour, affection or ill-will. It is this traditional confidence in courts of justice that the justice will be administered to the people which is sought to be protected by proceedings in contempt. The object obviously is not to vindicate the judge personally but to protect the public against any undermining of their accustomed confidence in the institution of the judiciary. canalization of the court was held to be a species of contempt which may take several forms. Krishna Iyer, J. while concurring with the main judgment authored by Palekar, J. observed that the dilemma of the law of contempt arises because of the constitutional need to balance two great but occasionally conflicting principles - freedom of expression and fair and fearless justice. After referring to the judgments of English, American and Canadian Courts, he observed: "Before stating the principles of law bearing on the facts of contempt of court raised in this case we would like to underscore the need to draw the lines clear enough to create confidence in the people that this ancient and inherent power, intended to preserve the faith of the public in public justice, will not be so used as to provoke public hostility as overtook the Star Chamber. A vague and wandering jurisdiction with uncertain frontiers, a sensitive and suspect power to punish vested in the prosecutor, a law which makes it a crime to public regardless of truth and public good and permits a process of *brevimanu* conviction, may unwittingly trench upon civil liberties and so the special jurisdiction and jurisprudence bearing on contempt power must be delineated with deliberation and operated with serious circumspection by the higher judicial echelons. So it is that as the palladium of our freedoms, the Supreme Court and the High Courts, must vigilantly protect free speech even against judicial umbrage - a delicate but sacred duty whose discharge demands tolerance and detachment of a high order."

20. According to him the considerations, as noticed in the judgment, led to the enactment of the Contempt of Courts Act, 1971 which makes some restrictive departures from the traditional law and implies some wholesome principles which serve as unspoken guidelines in this branch of law. Section 2(c) emphasizes to the interference with the courts of justice or obstruction of the administration of justice or scandalizing or lowering the authority of the court - not the judge. According to him, "The unique power to punish for contempt of itself inheres in a court qua court, in its essential role of dispenser of public justice. After referring to host of judicial pronouncements, Krishna Iyer, J., concluded:

"We may now sum up. Judges and Courts have diverse duties. But functionally, historically and jurisprudentially, the value which is dear to the community and the function which deserves to be cordoned off from public molestation, is judicial. Vicious criticism of personal and administrative act of Judges may indirectly mar their image and weaken the confidence of the public in the judiciary but the countervailing good, not merely of free speech but also of greater faith generated by exposure to the actinic light of bona fide, even if marginally over-zealous, criticism cannot be overlooked. Justices is so cloistered virtue."

22. In *In Re: S. Mulgaokar Beg*, CJ observed that the judiciary is not immune from criticism but when that criticism is based on obvious distortion or gross mis-statement and made in a manner which is designed to lower the respect of the judiciary and destroy public confidence in it, it cannot be ignored. He further declared"

Krishna Iyer, J. while concurring observed:

"The contempt power, though jurisdictionally large, is discretionary in its unsheathed exercise. Every commission of contempt need not erupt in indignant committal or demand punishment, because Judges are judicious, their valour non-violent and their wisdom goes into action when played upon by a volley of values, the least of which is personal protection - for a wide discretion, range of circumspection and rainbow of public considerations benignantly guide that power. Justice if not hubris; power is not petulance and prudence is not pusillanimity, especially when Judges are themselves prospectors and mercy is a mark of strength, not whimper of weakness. Christ and Gandhi shall not be lost on the Judges at a critical time when courts are on trial and the people ("We, the People of India") pronounce the final verdict on all national institutions. Such was the sublime perspective, not plural little factors, that prompted me to nip in the bud the proceeding started for serving a larger cause of public justice than punitive action against a publisher, even assuming (without admitting) he was guilty. The preliminary proceeding has been buried publicly; let it lie in peace. Many values like free press, fair trial, judicial fearlessness and community confidence must generously enter the verdict, the benefit of doubt, without absolutist insistence, being extended to the defendants. Such are the dynamics of power in this special jurisdiction. These diverse indicators, carefully considered, have persuaded me to go no further, by a unilateral decision of the Bench. This closure has two consequences. It puts the lid on the proceedings without pronouncing on the guilt or otherwise of the opposite parties. In a quasi-criminal action, a presumption of innocence operates. Secondly, whatever belated reasons we may give for our action, we must not proceed to substantiate the accusation, if any. To condemn unheard is not fair play. Bodyline bowling, perhaps, is not cricket. So may reason do not reflect on the merits of the charge."

24. He further observed that contempt power is a wise economy to use by the Court of this branch of its jurisdiction. The court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. The court should harmonise the constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge.

25. In *Dr. D.C. Saxena v. Hon'ble the Chief Justice of India* this Court held that if maintenance of democracy is the foundation of free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. Nobody has a right to denigrate others right of person and reputation. Bonafide criticism of any system or institution including the judiciary cannot be

objected to as healthy and constructive criticism are fools to augment forensic tools for improving its function.

26. Relying upon some judgments of foreign courts and the cherished wishes expressed or observations made by the Judges of this country it cannot be held as law that in view of the constitutional protection of freedom of speech and expression no-one can be proceeded with for the contempt of court on the allegation of scandalizing or intending to scandalise the authority of any Court. The Act is for more comprehensive legislation which lays down the law in respect of several matters which hitherto had been the subject of judicial exposition. The legislature appears to have kept in mind to bring the law on the subject into line with modern trends of thinking in other countries without ignoring the ground realities and prevalent socio-economic system in India, the vast majority of whose people are poor, ignorant, uneducated, easily liable to be misled. But who acknowledge have the tremendous faith in the Dispensers of Justice. The Act, which was enacted in the year 1971, much after the adoption of the Constitution by the People of India, defined criminal contempt under Section 2(c) to mean:

"Criminal contempt" means the publication (whether by words, spoken or written or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which

i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court, or

ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."

27. This Court has occasion to deal with the constitutional validity of the Act and came to the conclusion that the same was intra vires. If the constitutional validity of criminal contempt withstood the test on the touchstone of constitutionality in the light of the fundamental rights, it is too late to argue at this stage that no contempt proceeding can be initiated against a person on the ground of scandalizing the authority of the court.

28. Dealing with the meaning of the word "scandalizing", this Court in D.C. Saxena's case (supra) held that it is an expression of scurrilous attack on the majesty of justice which is calculated to undermine the authority of the courts and public confidence in the administration of justice.

Dealing with Section 2(c) of the Act and defining the limits of scandalizing the court, it was held:

"scandalizing the court, therefore, would mean hostile criticism of judges as judges or judiciary. Any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalizing the judge as a judge, in other words, imputing partiality, corruption, bias improper motives to a judge is canalization of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a judge in the discharge of his official duties

amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemnor challenges the authority of the court, he interferes with the performance of duties of judge's office or judicial process or administration of justice or generation or production of tendency bringing the judge or judiciary into contempt. Section 2(c) of the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority or any court; or prejudices, or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, is a criminal contempt. Therefore, a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the judge or court into contempt or tends to lower the authority of the court would also be contempt of the court."

"The appellant has contended before us that the law of contempt should be so applied that the freedom of speech and expression are not whittled down. This is true. The spirit underlying Article 19(1)(a) must have due play but we cannot overlook the provisions of the second clause of the article. While it is intended that there should be freedom of speech and expression, it is also intended that in the exercise of the right, contempt of court shall not be committed. The words of the second clause are:

'Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restriction on the exercise of the right conferred by the sub-clause... in relation to contempt of court, defamation or incitement to an offence.' These provisions are to be read with Articles 129 and 215 which specially confer on this Court and the High Courts the power to punish for contempt of themselves. Article 19(1)(a) guarantees complete freedom of speech and expression but it also makes an exception in respect of contempt of court. The guaranteed right on which the functioning of our democracy rests, is intended to give protection to expression of free opinions to change political and social conditions and to advance human knowledge. While the right is essential to a free society, the Constitution has itself imposed restrictions, in relation to contempt of court and it cannot therefore be said that the right abolishes the law of contempt or that attacks upon judges and courts will be condoned."

30. In *Sheela Barse v. Union of India & Ors.* the Court acknowledged that the broader right of a citizen to criticise the systemic inadequacies in the larger public interest. It is the privileged right of the Indian citizen to believe what he considers to be true and to speak out his mind, though not, perhaps, always with the best of tastes; and speak perhaps, with greater courage than care for exactitude. Judiciary is not exempt from such criticism. Judicial institutions are, and should be made, of stronger stuff intended to endure the thrive even in such hardy climate. But we find no justification to the resort to this freedom and privilege to criticise the proceedings during their pendency by persons who are parties and participants therein.

31. The law of contempt itself envisages various exceptions as incorporated in Section 3, 4, 5, 6 and 7. Besides the aforesaid defences envisaged under the Act, the court can, in appropriate cases,

consider any other defence put forth by the respondent which is not incompatible with the dignity of the court and the law of contempt.

36. As already held, fair criticism of the conduct of a judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair criticism which, if not checked, would destroy the institution itself. Litigant losing in the Court would be the first to impute motives to the judges and the institution in the name of fair criticism which cannot be allowed for preserving the public faith in an important pillar of democratic set up, i.e., judiciary. In *Dr. D.C. Saxena's case* (supra) this Court dealt with the case of P. Shiv Shankar by observing:

"In *P.N. Duda v. P. Shiv Shankar* this Court had held that administration of justice and judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office, i.e, to defend and uphold the Constitution and the laws without fear and favour. Thus the judges must do, in the light given to them to determine, what is right. Any criticism about the judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of the judges and brings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticised. Motives to the judges need not be attributed. It brings the administration of justice into disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market-place of ideas criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice. This is how the courts should exercise the powers vested in them and judges to punish a person for an alleged contempt by taking notice of the contempt *suomotu* or at the behest of the litigant or a lawyer. In that case the speech of the Law Minister in a Seminar organised by the Bar Council and the offending portion therein were held not contemptuous and punishable under the Act. In a democracy judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good, no court would treat criticism as a contempt of court."

38. The Constitution of India has guaranteed freedom of speech and expression to every citizen as a fundamental right. While guaranteeing such freedom, it has also provided under Article 129 that the Supreme Court shall be a Court of Record and shall have all the powers of such a Court including the power to punish for contempt of itself. Similar power has been conferred on the High Courts of the States under Article 215. Under the Constitution, there is no separate guarantee of the freedom of the press and it is the same freedom of expression, which is conferred on all citizens under Article 19(1). Any expression of opinion would, therefore, be not immune from the liability for exceeding the limits, either under the law of defamation or contempt of Court or the other constitutional limitations under Article 19(2). If a citizen, therefore, in the grab of exercising right of free expression under Article 19(1), tries to scandalise the court or undermines the dignity of the court, then the court would be entitled to exercise power under Article 129 or Article 215, as the case may be. In relation to a pending proceeding before the Court, while showing cause to the notice issued, when it is stated the court displays a disturbing willingness to issue notice on an

absurd despicable, entirely unsubstantiated petition, it amounts to a destructive attack on the reputation and the credibility of the institution and it undermines the public confidence in the judiciary as a whole and by no stretch of imagination, can be held to be a fair criticism of the Court's proceeding. When a scurrilous attack is made in relation to a pending proceeding and the noticed states that the issuance of notice to show cause was intended to silence criticism and muzzle dissent, to harass and intimidate those who disagree with it, is a direct attack on the institution itself, rather than the conduct of an individual Judge. The meaning of the expressions used cannot come within the extended concept of fair criticism or expression of opinion particularly to the case of the contemner in the present case, who on her own right is an acclaimed writer in English. At one point of time, we had seriously considered the speech of Lord Atkin, where the learned Judge has stated:

"The path of criticism is public way: the wrongheaded are permitted to err therein... Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men." [Andre Paul v. Attorney General (1936), AC 322].

and to find out whether there can be a balancing between the two public interests, the freedom of expression and the dignity of the court. We also took note of observations of Bharucha, J. in the earlier contempt case against the present contemner, who after recording his disapproval of the statement, observed that the Court's shoulders are broad enough to shrug off the comments. But in view of the utterances made by the contemnor in her show causes filed and not a word of remorse, till the conclusion of the hearing, it is difficult for us either to shrug off or to hold the accusations made as comments of outspoken ordinary man and permit the wrongheaded to err therein, as observed by Lord Atkin.

40. In the offending portion of her affidavit, the respondent has accused the court of proceeding with absurd, despicable and entirely unsubstantiated petition which, according to her, amounted to the court displaying a disturbing willingness to issue notice. She has further attributed motives to the court of silencing criticism and muzzling dissent by harassing and intimidating those who disagree with it. Her contempt for the court is evident from the assertion "by entertaining a petition based on an FIR that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility consideration harm". In the affidavit filed in these proceedings, the respondent has reiterated what she has stated in her earlier affidavit and has not shown any repentance. She wanted to become a champion to the cause of the writers by asserting that persons like her can allege anything they desire and accuse any person or institution without any circumspection, limitation or restraint. Such an attitude shows her persistent and consistent attempt to malign the institution of the judiciary found to be most important pillar in the Indian democratic set up. This is no defence to say that as no actual damage has been done to the judiciary, the proceedings be dropped. The well-known proposition of law is that it punishes the archer as soon as the arrow is shot no matter if it misses to hit the target. The respondent is proved to have shot the arrow, intended to damage the institution of the judiciary and thereby weaken the faith of the public in general and if such an attempt is not prevented, disastrous consequences are likely to follow resulting in the destruction of rule of law, the expected norm of any civilised society.

41. On the basis of the record, the position of law our findings on various pleas raised and the conduct of the respondent, we have no doubt in our mind that the respondent has committed the criminal contempt of this Court by scandalizing its authority with malafide intentions. The

respondent is, therefore, held guilty for the contempt of court punishable under Section 12 of the Contempt of Courts Act.

42. As the respondent has not shown any repentance or regret or remorse, no lenient view should be taken in the matter. However, showing the magnanimity of law by keeping in mind that the respondent is a woman, and hoping that better sense and wisdom shall dawn upon the respondent in the future to serve the cause of art and literature by her creative skill and imagination, we feel that the ends of justice would be met if she is sentenced to symbolic imprisonment besides paying a fine of Rs. 2000/-.

43. While convicting the respondent for the contempt of the Court, we sentence her to simple imprisonment for one day and to pay a fine of Rs. 2,000/-. In case of default in the payment of fine, the respondent shall undergo simple imprisonment for three months.

***Mrityunjay Das & Anr. v. Sayed Hasibur Rahaman & Ors.***

AIR 2001 SC 1293

Bench: Umesh C. Banerjee, S.N. Phukan

BANERJEE, J.

The introduction of the Contempt of Courts Act, 1971 in the statute book has been for purposes of securing a feeling of confidence of the people in general for due and proper administration of justice in the country. It is a powerful weapon in the hands of the law courts by reason wherefor it must thus be exercised with due care and caution and for larger interest.

Incidentally, a special leave petition (1416/1997) was filed before this Court by PaschimBangaRajyaBhumijibiSangh against the judgment of the Calcutta High Court pertaining to the question of constitutionality of certain provisions of West Bengal Land Reforms Amendment Acts 1981 and 1986. The said Sangha filed an Interlocutory Application being I.A.No.3 OF 1999 for issuance of certain directions which inter alia reads as below:

(a) direct the State of West Bengal and its Revenue Authorities not to initiate any proceedings for vesting of the land against the members of the Petitioner Sangha and if any vesting proceeding has been already initiated against the members of the Petitioner Sangha in that event not to pass any order and maintain status-quo in respect of the land in question in all respect till the disposal of the Special Leave Petition (Civil) No.1416 of 1997 pending before this Honble Court or in alternative clarify that the order dated 20.3.1998 as quoted in paragraph 19-20 will apply only to the parties thereto and not to the members of the Petitioner No.1 Sangha.

The Interlocutory Application was heard on 29th October, 1999 and this Court was pleased to pass an order therein to the following effect: At the request of Learned counsel for the Applicants four weeks time is granted to enable him to put on record appropriate information regarding members of the Sangha for whom the application is moved and the nature of the stay required.

In the meantime Learned Counsel for the Respondent will also take appropriate instructions in connection with this I.A. Subsequently on 16th December, 1999, this Court in I.A.No.3 passed an interim order to the effect as below: Having heard Learned counsel for the parties, by way of an interim order, it is directed that status-quo regarding possession on spot shall be maintained by both the sides in connection with the members of the Petitioner-Sangha who were before the High Court in the Writ Petition out of which the present proceedings arise.

(Emphasis supplied) In the meantime, learned senior counsel for the respondent-State of West Bengal will verify the list of these members, (Emphasis supplied ) which is furnished to him by Learned Counsel for the Petitioner and subject to that verification further orders will be passed after three months.

To be placed after three months.



In the application (I.A.No.3) a further order was passed on 17th April, 2000 which reads as below: We have heard learned senior counsel for the Petitioners, Mr. Shanti Bhushan and Learned Senior Counsel for respondent-State of West Bengal, Mr. Ray, Learned Senior Counsel for respondent-State of West Bengal is right when he says that some more time is required as 13,000 persons are listed and they have to ascertain about their existence on the spot. We grant time up to the end of July, 2000. I.A. will be placed in the second week of August, 2000. In the meantime, at the request of Learned Counsel for the Petitioners, Mr. Shanti Bhushan we grant additional interim relief in continuation of our earlier order dated 16.12.1999 to the effect that if in the meantime, any vesting orders have been passed in respect of the lands of members of Petitioner Sangha who were before the High Court in the matter out of which the present proceedings arise, then those vesting orders shall not be implemented until further orders."

It is this order which is said to have been violated and thus bringing the orders of this Court into ridicule. The factum of violation is said to have been deliberate since in spite of the order as above and even after the service of the order dated 17th April, 2000 to the authorities of Land Reforms Department, Government of West Bengal for its compliance, the Petitioner No.1 being a resident of village Amriti, District, Malda, West Bengal and a life member of the PaschimBangaRajyaBhumijibiSangha was served with a notice dated 5.4.2000 under Section 57 of the West Bengal Land Reforms Act together with Section 14-T (3) of the said Act read with Rule 4 of the Rules framed thereunder by the Revenue Officer Cell, Malda asking to submit details of land held by him and his family members since 7.8.1969 and particulars of land transferred by him after that date. The records depict that a reply to the said notice was furnished as early as 30th April, 2000 alongwith the certification of membership of the Sangha and copy of the order dated 16th December, 1999 passed by this Court. It further appears that a hearing did take place and the Revenue Officer passed an order of vesting on 17th April, 2000. Subsequently, on the factual matrix, it appears that by the notice dated 26th April, 2000 issued by the Revenue Officer, possession of 37.47½ acres of land was directed to be made over to the Land Revenue Authority on 27.4.2000. It has been the definite case of the petitioners that in spite of receipt of both the orders dated 16th December, 1999 and 17th April, 2000, the Block Land & Land Reforms Officer, English Bazar, Malda came on the site and took possession of the said land. Similar is the situation as regards the land belonging to petitioner No.2 and possession 20.76 acres of land was also obtained by the Block Land & Land Reforms Officer, English Bazar, Malda. This act of obtaining possession from the applicants herein is stated to be a deliberate violation of this Courts order and thus cannot but be ascribed to be contemptuous in nature.

The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by Courts of Law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which even can remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus, would forfeit the trust and confidence of the people in general.

The other aspect of the matter ought also to be noticed at this juncture viz., the burden and standard of proof. The common English phrase he who asserts must prove has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the standard

of proof, be it noted that a proceeding under the extra-ordinary jurisdiction of the Court in terms of the provisions of the Contempt of Court Act is quasi criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt. The observations of Lord Denning in *Re Bramblevale* (1969 3 All ER 1062) lend support to the aforesaid. Lord Denning in *Re Bramblevale* stated:

A contempt of court is an offence of a criminal character. A man may be sent to prison for it,. It must be satisfactorily proved. To use the time- honoured phrase, it must be proved beyond all reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence. Where there are two equally consistent possibilities open to the Court, it is not right to hold that the offence is proved beyond reasonable doubt.

In this context, the observations of the Calcutta High Court in *Archana Guha v. Ranjit Guha Neogi* (1989 (II) CHN252) in which one of us was a party (Banerjee, J.) seem to be rather apposite and we do lend credence to the same and thus record our concurrence therewith. In *The Aligarh Municipal Board and Others v. Ekka Tonga Mazdoor Union and Others* (1970 (III) SCC 98), this Court in no uncertain term stated that in order to bring home a charge of contempt of court for disobeying orders of Courts, those who assert that the alleged contemnors had knowledge of the order must prove this fact beyond reasonable doubt. This Court went on to observe that in case of doubt, the benefit ought to go to the person charged. In a similar vein in *V.G. Nigam and others v. Kedar Nath Gupta and another* (1992 (4) SCC 697), this Court stated that it would be rather hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities.

Having discussed the law on the subject, let us thus at this juncture analyse as to whether in fact, the contempt alleged to have been committed by the alleged cotemnors, can said to have been established firmly without there being any element of doubt involved in the matter and that the Court would not be acting on mere probabilities having however, due regard to the nature of jurisdiction being quasi criminal conferred on to the law courts. Admittedly, this Court directed maintenance of status quo with the following words the members of the petitioner Sangha who were before the High Court in the writ petition out of which the present proceedings arise. And it is on this score the applicant contended categorically that the intent of the Court to include all the members presenting the Petition before this Court whereas for the Respondent Mr. Ray contended that the same is restricted to the members who filed the writ petition before the High Court which culminated in the initiation of proceeding before this Court. The Counter affidavit filed by the Respondents also record the same. The issue thus arises as to whether the order stands categorical to lend credence to the answers of the respondent or the same supports the contention as raised by the applicants herein. Incidentally, since the appeal is pending in this Court for adjudication, and since the matter under consideration have no bearing on such adjudication so far as the merits of the dispute are concerned, we are not expressing any opinion in the matter neither we are required to express opinion thereon, excepting however, recording that probabilities of the situation may also warrant a finding, in favour of the interpretation of the applicant. The doubt persists and as such in any event the respondents being the alleged contemnors are entitled to have the benefit or advantage of such a doubt having regard to the nature of the proceeding as noticed herein before more fully. In view of the observations as above, we are not also inclined to go into the question of apology. On

the wake of the aforesaid, this Contempt Petition fails and is dismissed without however, any order as to costs.

***In Re: Hon'ble Justice C.S. Karnan***

AIR 2017 SC 3191

**Judges/Coram:** *J.S. Khehar, C.J.I., Dipak Misra, Jasti Chelameswar, Ranjan Gogoi, Madan B. Lokur, Pinaki Chandra Ghose and Kurian Joseph, JJ.*

**J.S. Khehar, C.J.I.:**

1. The task at our hands is unpleasant. It concerns actions of a Judge of a High Court. The instant proceedings pertain to alleged actions of criminal contempt, committed by Shri Justice C.S. Karnan. The initiation of the present proceedings suo-motu, is unfortunate. In case this Court has to take the next step, leading to his conviction and sentencing, the Court would have undoubtedly travelled into virgin territory. This has never happened. This should never happen. But then, in the process of administration of justice, the individual's identity, is clearly inconsequential. This Court is tasked to evaluate the merits of controversies placed before it, based on the facts of the case. It is expected to record its conclusions, without fear or favour, affection or ill-will.

2. The factual position which emerged in this case, during the course of hearing, was almost entirely based on the contents of correspondence addressed by Justice Karnan. They eventually resulted in his transfer, from the Madras High Court to the High Court of Calcutta. The episode of his transfer, was preceded by letters written by a series of former Chief Justices of the Madras High Court, to the then Chief Justice(s) of the Supreme Court of India, seeking his transfer. The transfer of Shri Justice C.S. Karnan was also sought, through a joint representation addressed by 20 sitting Judges of the Madras High Court.

3. During this period, and unconnected with the reasons for seeking his transfer, the Registrar General of the Madras High Court approached this Court, highlighting the fact that Shri Justice C.S. Karnan had initiated suo-motu writ proceedings, wherein, he had stayed administrative orders passed by the Chief Justice of the Madras High Court. Having heard the matter, a Bench of this Court, presided over by the then Chief Justice of India, passed the following directions:

Permission to file special leave petition is granted.

Issue notice.

In the meantime, there shall be stay of interim order, dated 30.4.2015 passed in M.P. No. 1 of 2015 in Suo-motu Writ Petition No. (unnumbered) of 2015, until further orders.

We restrain the learned Judge, who has initiated proceedings relating to Suo-motu Writ Petition No. (unnumbered) of 2015 pending before the High Court of Judicature at Madras from either hearing or issuing any directions in said petition and other matters connected therewith.

There shall not be any interference by any person/authority or learned Judges in completing the process initiated by the High Court for selection and appointment of Junior Divisional Judicial Officers till the disposal of the special leave petition.

List after summer vacation.

The petition filed by the Registrar General was later assigned Special Leave Petition (Civil) No. 14842 of 2015.

4. Undeterred by the intervention of this Court, Shri Justice C.S. Karnan continued to foul mouth his colleagues at the High Court of Madras, by addressing communications to the highest executive and judicial authorities. We shall refer to only those available on the record of the case. We may, for reason of brevity, leave out the past, and commence with his letter dated 21.8.2015, addressed to the Chief Justice of the Madras High Court. A perusal of the aforesaid communication, reveals his dissatisfaction in not having been assigned an appropriate roster, when he was deputed to the Madurai Bench of the Madras High Court. Even when he returned to the Principal Bench, after a period of three months, he was unhappy with the roster assigned to him. In the instant letter, he also expressed his displeasure, when matters originally assigned to him, were taken away from his Board, by the Chief Justice of the Madras High Court, and assigned to other Benches. Besides the above personal grievances, he made direct and pointed allegations (in his above letter dated 21.8.2015) against Shri Justice "... V.D....", for having been appointed as a Judge of the High Court, even though (according to Justice Karnan) he did not possess the requisite academic qualifications for the position. Indeed, it was alleged, that his academic certificates were bogus. It was also alleged (in the above letter dated 21.8.2015) that the Judges of the Division Bench-Dr. Justice "... T.V...." and Shri Justice "... C.T.S. ..." had not exercised their judicial functions independently, but had been passing orders, at the asking of the then Chief Justice of the Madras High Court. He also Accused the Chief Justice of the High Court, for having approached this Court, against the suo-motu orders passed by him. The initiative at the hands of the Chief Justice of the Madras High Court (to approach the Supreme Court) was described by him (in the above communication dated 21.8.2015) as most insulting. Justice Karnan in the above letter, dated 21.8.2015, Accused the Chief Justice of the Madras High Court, for not having included him in any of the committees constituted for discharging administrative responsibilities of the High Court. For this reason, he Accused the Chief Justice, for segregating him on account of his belonging to an under-privileged caste. He also pointed out, that he had made a complaint in this behalf to the Chairman of the National Commission for Scheduled Castes and Scheduled Tribes. Justice Karnan also Accused the then Chief Justice of the Madras High Court (in the above communication) for having created a communal divide in the High Court. His contention in this behalf was, that he favoured the advanced communities, while making recommendations for appointment of High Court Judges, and at the same time ignored the under privileged castes and tribes, as well as, the minorities. While concluding the letter dated 21.8.2015, Shri Justice C.S. Karnan expressed, that the Chief Justice of the Madras High Court, had committed offences under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Another letter of Shri Justice C.S. Karnan, dated 5.2.2016, was addressed to the Home Secretary of Tamil Nadu. The instant letter was written to extend protection to a lawyer-Peter Ramesh Kumar, who had made serious allegations against a few Judges, especially against Shri Justice "... V.R.S.M. ....". The communication is interesting, because the Home Secretary had been directed to treat his letter as a "suo-motu judicial order". In the above letter, Justice Karnan had directed the Registry of the Madras High Court, to assign the suo-motu writ petition (-the letter dated 5.2.2016), a number. The direction contained in the letter dated 5.2.2016, required the Home Secretary, to arrange adequate police protection, for the safety of the afore-stated Advocate.

6. Shri Justice C.S. Karnan wrote another letter to the then Chief Justice of the Madras High Court, on 10.2.2016. In the instant communication he pointed out, that the High Court had arranged a function for the inauguration of Regional Centres of the Tamil Nadu State Judicial Academy, at Coimbatore and Madurai (-on 21.2.2016). He Accused the Chief Justice, of allowing only upper caste Judges, to participate in the function. It was pointed out, that no representation from scheduled castes or scheduled tribes, was included in the celebration. It was alleged, that even though his name was initially included, it was replaced by a junior upper caste Judge. He highlighted the fact, that he had been repeatedly agitating on this issue, even on earlier occasions. In the instant communication dated 10.2.2016, Justice Karnan again declared the Chief Justice of the Madras High Court, an offender under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

7. In the above Special Leave Petition (Civil) No. 14842 of 2015 filed by the Registrar General, High Court of Madras (see paragraph 3 above). I.A. No. 6 of 2016 was filed on 12.2.2016, by the Registrar General of the Madras High Court, for urgent directions. In the said application, reference was first made to the order dated 30.4.2015 passed by Justice Karnan, which was stayed by this Court on 11.5.2015 (order extracted in paragraph 3 above). Thereafter, Justice Karnan addressed a letter dated 21.8.2015 to the Chief Justice of the Madras High Court (details narrated above). Shri Justice C.S. Karnan then addressed a letter dated 10.2.2016, again allegedly in exercise of suo-motu judicial power (details expressed above). It was also sought to be highlighted in I.A. No. 6 of 2016, that on 10.2.2016, Justice Karnan, had raised objections in connection with a function organized by the Madras High Court, alongwith the Tamil Nadu State Judicial Academy to inaugurate Regional Centres at Coimbatore and Madurai, scheduled for 21.2.2016. Justice Karnan had alleged therein, that he had been removed as a member of the Board of Governors of the Judicial Academy. It was sought to be explained (in I.A. No. 6 of 2016), that the allegations levelled by Shri Justice C.S. Karnan were misconceived, because he had never been nominated as a member of the Board of Governors of the Judicial Academy, since its inception in 2001. The contents of I.A. No. 6 of 2016, also make a reference to another alleged suo-motu judicial order, dated 5.8.2016, passed by Shri Justice C.S. Karnan, directing the Home Secretary to the State of Tamil Nadu to provide police protection to one Shri Peter Ramesh Kumar on the ground, that he was facing threats to his life, from a few Judges of the Madras High Court, wherein he expressly named Shri Justice "... V.R. ...." (details narrated above). The background for passing the above order was sought to be explained in paragraph 10 of I.A. No. 6 of 2016, as under:

The above order has been passed in the following background, enumerated below:

(a) On 16.9.2015, few advocates along with W. Peter Ramesh Kumar barged into Court Hall No. 2 of the Madurai Bench, and stopped willing advocates from addressing the Hon'ble Bench to enforce a boycott call. Moreover, the concerned Advocate threatened the Hon'ble Bench to take any action against him. As a result, the Division Bench was forced to initiate contempt proceedings for his misdemeanors.

(b) The above named Advocate was previously hauled up for contempt on several occasions. Three years ago, the High Court directed the State Bar Council to initiate disciplinary proceedings for misconduct. Earlier, a Full Bench of the High Court had found him guilty of contempt and put him on probation for a period of one (1) year. Nonetheless, the concerned Advocate continued to

indulge in disruptive practices even during the probation and the matter is pending consideration before the Full Bench.

(c) On 30.11.2015, the Suo-motu Cont. Petition (MD) No. 1449 of 2015, registered pursuant to the Order dated 16.9.2015 passed by the Madurai Bench, came up for hearing for the first time before Mr. Justice "... R.S. ..." and Hon'ble Mr. Justice "... M.V.V...." The above named Advocate, appearing in person, prayed for time to file a response. However, the alleged Contemnor made offensive, and casteist allegations against the Presiding Judge of the Division Bench that initiated the proceedings in his Counter Affidavit. The alleged Contemnor also made false and scandalous imputations against certain women lawyers in connection with the learned Judge. He further circulated the contents of the affidavit including the offensive remarks through WhatsApp and Facebook.

(d) On 28.1.2016, the Hon'ble Chief Justice of the High Court transferred the Suo-motu Cont. Petition (MD) No. 1449 of 2015 before a specially constituted Bench at the Principal Seat of the High Court. In the meanwhile, the alleged Contemnor continued to circulate scurrilous and objectionable messages against the Hon'ble Judges hearing the aforesaid contempt petition, through social media.

(e) On 4.2.2016, the Division Bench framed charges against him in the Criminal Contempt proceedings and served copies of the charges on him. Upon receipt of the copy of the charges, he shouted slogans hailing the deceased leader of a banned organization and also made casteist remarks against the Judges. However, the Bench posted the case to 15.2.2016 for the contemnor's reply to the charges.

(f) On 5.2.2016, the Division Bench of the High Court passed an Order to restrain the concerned Advocate from indulging and circulating offensive and objectionable remarks against the women members of Bar on a Writ Petition moved by a group of six concerned women lawyers being aggrieved by these allegations. Moreover, all four associations of lawyers at Madurai passed resolutions to condemn the scurrilous campaign conducted by the alleged Contemnor and urged the High Court and the State Bar Council to take stringent action against him.

Last of all it was pointed out, that in terms of the roster issued by the Chief Justice of the Madras High Court, with effect from 1.2.2016, Justice Karnan was assigned to hear criminal revision-admission and final hearing, and specially ordered matters. It was pointed out, that Justice Karnan was passing orders in complete disregard to the roster assigned to him. It was also asserted, that Justice Karnan had been repeatedly interfering or reopening issues, even in currently pending matters before other Benches of the High Court. It was highlighted, that he had even stayed judicial proceedings pending before the High Court. In I.A. No. 6 of 2016, the Registrar General of the Madras High Court, sought appropriate directions through the following prayers:

#### PRAYER

In the premises, it is most respectfully prayed that this Hon'ble Court may be pleased to:

(a) stay the operation of Suo-motu Judicial Orders dated 5/8.2.2016 (Annexure A-6) and 10.2.2016 (Annexure A-4) passed by Hon'ble Mr. Justice C.S. Karnan of the High Court of Madras;

(b) direct Hon'ble Mr. Justice C.S. Karnan not to exercise any suo-motu powers of the High Court or to direct the Registrar, Madras High Court, to register such suo-motu orders as being pursuant to suo-motu writ petitions;

(c) restrain the Hon'ble Mr. Justice C.S. Karnan from hearing or issuing directions or in any manner dealing or connected with the proceedings relating to Suo-motu Judicial Order dated 5/8.2.2016 and 10.2.2016 of the High Court of Judicature at Madras;

(d) pass such other and further orders as this Hon'ble Court may deem fit in the facts and circumstances of the matter.

During the course of hearing in the above I.A. No. 6 of 2016 (wherein one of us-Jagdish Singh Khehar, and Mrs. R. Banumathi, JJ., were members of the Bench), the Court was informed, that Shri Justice C.S. Karnan had already received the proposal for his transfer from the High Court of Madras. Having taken into consideration, the totality of the facts and circumstances of the case, this Court passed the following order on 15.2.2016:

Mr. K.K. Venugopal, learned senior Counsel having entered appearance on behalf of the Petitioner has filed the affidavit of Mr. "... B.H....", Registrar-cum-Private Secretary to Hon'ble the Chief Justice, High Court of Madras, dated 14.02.2016. A perusal of the same reveals that Hon'ble Mr. Justice C.S. Karnan has received the proposal of his transfer from the High Court of Madras dated 12.02.2016.

Having taken note of the situation, in our view it would be appropriate, that Hon'ble Mr. Justice C.S. Karnan should hear and dispose of only such matters as are specially assigned to him by Hon'ble the Chief Justice of the Madras High Court. It will be open to Hon'ble the Chief Justice of the High Court, not to assign any further administrative/judicial work to him. This would imply, that no other orders shall be passed by Hon'ble Mr. Justice C.S. Karnan, suo-motu or otherwise, in any matter not specially assigned to him.

The operation of all or any administrative/judicial order(s) passed by Hon'ble Mr. Justice C.S. Karnan, after the issuance of the proposal of his transfer from the Madras High Court dated 12.02.2016.(unless specially assigned to him, by Hon'ble the Chief Justice), shall remain stayed till further orders.

A copy of the instant order shall be furnished to Hon'ble Mr. Justice C.S. Karnan, by the Registrar General of the High Court. It shall be open to the Hon'ble Judge to enter appearance before this Court, in case he is so advised (in respect of the instant/pending matter).

8. The next relevant letter, was issued by Justice Karnan, on 26.10.2016. It was addressed to the City Police Commissioner, requiring him to register criminal cases. In the instant letter, Justice Karnan claimed to be a victim of social and caste discrimination. He also alleged, that he had been subjected to agony, on account of ragging and demeaning actions, of Judges of the Madras High Court, spearheaded by Shri Justice "... F.M.I.K.....". These allegations of ragging were classified by him, into four categories, as under:

The social boycott by the ragging Judges could be classified into four categories as under:



1. The below mentioned Judges directly resorted to insulting me in public premises, namely Mr. Justice "... I.K....", Mr. Justice "... N.N....", Mr. Justice "... R.S....", who is now posted to Jammu & Kashmir, Mr. Justice "... K.N.B....", Mr. Justice "... R.S.M. ...." now posted as Judge of the Andhra Pradesh High Court, Mr. Justice "... A.A....", Mrs. Justice "... A.J....", Mr. Justice "... N.K....", Mr. Justice "... S.M.K...." and Mr. Justice "... M.S...." The below mentioned three Judges "... M.Y.E....", now retired Judge of the Supreme Court of India, Mr. Justice "... R.K.A....", now a serving Judge of the Supreme Court and Mr. Justice "... S.K.K....", who also extended their cooperation with the ragging Judges of the Madras High Court by operating administrative power and insulted me at the public institution/Judiciary, to that effect I have levelled complaints against them under the Schedule Caste/Schedule Tribes Atrocities Act which are pending enquiry at the respective high dignitary offices. Now I request you to include all the above mentioned three Judges along with the first category of Judges and register a F.I.R. accordingly and precisely. To prove my allegation against the said Judges, material evidences are available on the file of the Registry of the Madras High Court.

2. The second category Judges through indirectly extending their cooperation for social boycott and ragging with their physical presence at the venues.

3. The third category were enjoying by way of laughing and bodily gestures, and

4. The fourth category of Judges maintained their silence and showed their consternation of their actions metered out against me.

Based on the above insinuations, Justice Karnan made the following request to the City Commissioner of Police, Chennai:

Now I request you to register a criminal case against the first category of ragging Justices under the Ragging Act including social boycott. The other erring Judges will be included after investigation. My view of wanting to establish a prosecution case against Accused persons/Judges for which I take a major role in the instant case. Your role is only marginal as a competent officer to pursue such major offences to its logical conclusion before the concerned criminal Court. As per my complaint, I will file an affidavit in my name in order to establish the case against the Accused persons at an appropriate time. This kind of major offences is indeed a public crime against a Dalit Judge and this matter will also be placed before the Parliament against erring Judges after observing necessary formalities.

9. Reference also needs to be made to a letter dated 18.1.2017, which was addressed by Justice Karnan, to the State Public Prosecutor, Madras High Court, Chennai, wherein he highlighted the fact, that he had passed a suo-motu judicial order, against Shri Justice "... N.D...." (now retired), asserting that Shri Justice "... N.D...." had produced bogus educational qualification certificates, for procuring his appointment as Judge of the Madras High Court. In the above letter, it was also pointed out, that an enquiry into the matter was pending before the Supreme Court of India. It was alleged, that the Chief Justice of the Madras High Court, was shielding the said Shri Justice "... N.D....". It was also highlighted, that Shri Justice "... S.K.K...."-the then Chief Justice of the Madras High Court, was facing charges of corruption, and also, for having committed offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He also brought out that the then Chief Justice of the Madras High Court, had engaged Shri Elephant Rajendran, for

appearing before the Supreme Court, despite the fact that the said Advocate was involved in a murder case. It was also alleged, that a criminal case had also been registered against the said Advocate, for having committed forgery. In his letter, Justice Karnan had requested the Public Prosecutor to collect the particulars of the above cases, and to investigate them with the assistance of top police officials of the State. He had also requested the State Public Prosecutor, to forward the results of the investigation to him, so that he could produce the same before the Supreme Court.

10. Vide another letter dated 23.1.2017, Justice Karnan highlighted corruption in the High Court, inter alia at the hands of the following Judges:

1. Mr. Justice "... S.K.K. ...";
2. Mr. Justice "... S.M.K. ...";
3. Mr. Justice "... V.R.S.M. ...";
4. Mrs. Justice "... C.V....";
5. Mr. Justice "... R.S.R....";
6. Mr. Justice "... R.K.A....";
7. Mr. Justice "... T.S.T....";
8. Mr. Justice "... M.Y.I....";
9. Mr. Justice "... I.K....";
10. Mr. Justice "... A.K....";
11. Mr. Justice "... E.D.R....";
12. Mr. Justice "... K.N.B....";
13. Mr. Justice "... A.A....";
14. Mrs. Justice "... A.J....";
15. Mr. Justice "... V.D....";
16. Mr. Justice "... M.M.S....";
17. Mr. Justice "... N.K....";
18. Mr. Justice "... N.N....";
19. Mr. Justice "... T.R....";
20. Mr. Justice "... S....".

The instant letter dated 23.1.2017 was endorsed by Justice Karnan to Shri "... H....", Private Secretary-cum-Registrar attached with the Chief Justice of the Madras High Court, to Shri "... P.K....", Registrar of the Madras High Court, and also, to Shri "... S.P. ...", Advocate-President, Tamil Nadu Advocates Association.

11. The mindset of Shri Justice C.S. Karnan emerges from a communication dated 3.1.2017, addressed by him to the Prime Minister of India. It would be appropriate to extract the same hereunder, rather than recording a summary of its contents, as has been done hitherto before. The text of the aforesaid communication dated 3.1.2017 is accordingly reproduced below:

I request you to please peruse the following:

1. Mr. Justice "... T.S.T....", the Hon'ble Chief Justice of India comes in for retirement on 3.1.2017. The learned Judge had sent various lists of Judges as proposals for appointment to the High Courts. This list has not included adequate DALIT representation, neither from the minority communities like Muslims and Christians. The proposed list made up of financially sound candidates particularly from the upper caste and from the elite hereditary candidates. This kind of selective choice is not

appropriate in a democratic country and unbecoming of the judiciary since it evidently points to discrimination.

2. Mr. Justice "... T.S.T....", CJI, at a crucial meeting wherein all the Chief Ministers of various States and Union Territories, and Hon'ble Chief Justices of various High Courts met. After observing the weeping drama of this CJI, the Indian population of 125 crores are unable to determine the attitude of the CJI since he is the top most authority of the entire judiciary, to maintain law and justice from Kanyakumari to Kashmir and all about.

3. The above-mentioned Hon'ble Judge was found weeping, yet in another moment showing outbursts of anger against the Union Government in order to approve the Judges list while at another venue at Gujarat appreciated the Union Government. This kind of unbalance vicious behavior is similar to the chameleon lizard which changes its colour at random through various hues. This erratic behavior by a top dignitary is baffling the minds of vast Sections of our Indian populace numbering crores.

4. Mr. Justice "... T.S.T....", CJI and Justice "... S.K.K....", Chief Justice of Madras High Court conniving prevented me from participating at the inauguration of the Legal Aid Centre in Coimbatore. As such they discriminated me from joining in a public function even though being a Judge of a High Court. Both were Chief Guests presiding over the function. Therefore, I initiated preliminary legal action against them by invoking the Scheduled Caste and Scheduled Tribes Atrocity Act. This bonafide allegation will be proved on the basis of documentary evidence already available on file of the Madras High Court Registry besides circumstantial evidence.

5. Mr. Justice "... T.S.T....", who orally ordered the holding of my pronounced judgments to Mr. Justice "... S.K.K....", Chief Justice of the Madras High Court without assigning any valid reasons such as enquiry or any legal provisional requirement. As such both have jointly resorted to conniving by insulting me in a public institution. As such both including the Registrar (Judicial), Madras High Court are offenders under the SC/ST Act. Mr. Justice "... T.S.T...." ordered an enquiry against me on concocted complaints which I am now facing. In that enquiry both the said Judges have been included as co-respondents including the Registrar (Judicial). After the enquiry report being forwarded to Parliament for further discussion in order to determine the actual person for impeachment. Under these circumstances, I request the Hon'ble Prime Minister of India to nullify the perusal and consideration of any tentative plans for a suitable position after retirement by the present CJI. As such the matter may be kept on hold until suitable amends made to all the injustices shown to me.

6. Likewise Mr. Justice "... S.K.K....", Chief Justice of the Madras High Court may also be treated similarly as mentioned in (5) for conniving with the CJI and also keep him waiting for any tentative promotion until my accusations are cleared including corruption charges.

7. My critical position restrains me and I am unable to disclose the facts and circumstances of the judiciary in its entirety to the whole Nation in general only because I belong to the fraternity of Judges and its my bounden duty to uphold the dignity and sanctity of our courts at all times. However, the rampant irregularities continuously being perpetrated by many Judges which are incurring incurable injury to the judiciary must be curbed. I cannot say in public what is going on in

Madras High Court which has sunk to the bottom most level of degradation and sadly given leverage of support by the Apex Court.

8. As per the Indian Constitutional Law the judiciary is the highest branch in our Constitutional set up, as such other branches such as the Legislature, the Executive including the general public cannot be involved with judiciary orders and administrative methods. As such the judiciary is purely an independent body, so taking advantage of this many Judges are tarnishing the image of the judiciary for their own personal gains.

9. Mr. Justice "... M.K....", had committed custodial rape in the public premises particularly in the precincts of his Court chamber with his Law Intern namely Ms. "... D. ...", who is a victim and now restrained to move with society as an Indian high cultured lady, it also spoils her carrier in the legal field and most of all casting a stigma on the child begotten by the said Judge. It is a proved case but Justice "... S.K.K....", Chief Justice of Madras High Court is responsible for shielding the errant Judge. Therefore, Mr. Justice "... S.K.K....'s" administration has fallen to pieces and irreparable deterioration of ethical standards.

10. Mr. Justice "... V.D...." (retired) had produced bogus educational qualification certificates in obtaining the distinguished post of Judge at the Madras High Court, the crime was proved while he was a sitting Judge at the Madras High Court, however, the Chief Justice Mr. "... S.K.K...." misused his administrative and judicial powers by protecting the erring Judge until his retirement. This also being a proved case indicating vested interest.

11. Initially I lodged a written complaint before the Madras City Commissioner of Police around one month back against 13 Judges consisting of Supreme Court Judges and Madras High Court Judges, out of this group Mr. Justice "... E.K...." is 'captain' or "spear head" of the Accused Judges' 'team'. The allegation is that all the mentioned Judges in my complaint had ragged me continuously and persistently for eight years at public premises but the said enquiry is still pending with the Commissioner of Police for necessary action.

12. Mr. Justice "... K.S...." (retired) the father of Mr. Justice "... S.M.K...." has established an office in front of the Madras High Court and is always found wandering at the Madras High Court premises soliciting required clients with offers of favourable fruitful orders as consequence of him being an Ex-Judge and exerting good influence for his personal gain; this also being a proved case known to the entire judiciary, advocates besides the general public.

Hence, I request you, Hon'ble Prime Minister of India to initiate necessary steps in order to save the Top Most image of the judiciary. To that effect my sincerest request also goes out to all political parties of India to extend their fullest cooperation in maintaining the impeccable image at all times, a mission that you are striving for in order to cure all the ills that has befallen our great nation and importantly that the judiciary maintains an unblemished reputation for perpetuity.

12. It would be relevant to mention, that at the beginning of the year 2017, the issue of transfer of Shri Justice C.S. Karnan from the Madras High Court to the High Court of Calcutta, had evoked animated public debate. At this juncture, his attitude became far more aggressive, than hitherto before. His insinuations were now more pointed, his prominent singular focus being his colleague Judges, of the Madras High Court (present and former), and the Judges of the Supreme Court, who

had a nexus with the Madras High Court, possibly under the belief, that they were responsible for his tribulations. Included in the list, were also Judges of the Supreme Court (including Chief Justices), who had an occasion to deal with matters, involving Justice Karnan. It is essential to detail some of these communications, in order to understand the content and nature of the allegations.

13. In the above context, reference may first be made to three communications dated 27.1.2017. The first of these communications was addressed to Shri Justice "... M.M.S....", a Judge of the Madras High Court. The contents of the letter indicate, that the concerned Judge invited Shri Justice C.S. Karnan, to the weekly Wednesday-night dinner, hosted by Judges at the Madurai Bench. It was alleged, that even though the appointed time was 8.00 p.m., since he had not reached the dinner venue, he was called on his telephone by Shri Justice "... M.M.S....", and was requested, that the Judges at the dinner venue were waiting for him (Justice Karnan), and they would commence their dinner, only upon his arrival. It was alleged, that he (Justice Karnan) reached the venue immediately thereafter. It was alleged in the above letter, that on reaching the venue, he observed that most of the Judges had already had their dinner, while the rest had already commenced their dinner. It was the assertion of Justice Karnan, that he had been invited only for irritating him, ragging him, and ridiculing him. Since the above actions were committed with a malafide intention at a public place, Justice Karnan wrote in his above letter, that he reserved the right to invoke his judicial power, and thereby, to take action against the concerned Judges suo-motu, for their prosecution. A copy of the instant letter was endorsed to the Prime Minister of India, the Union Law Minister and the Chief Justice of India.

14. The second letter also dated 27.1.2017, was addressed to Shri Justice "... A.A...." (retired). In the instant letter, he Accused Justice "... A.A...." and Mrs. Justice "... A.J...." for their role along with the other Judges, in socially boycotting him (Justice Karnan), and for ragging him. It was pointed out, that he had lodged a complaint against the said Judges, before the National Commission for Scheduled Castes and Scheduled Tribes. He also affirmed, that copies of the said complaint, had been sent to various dignitaries, including the Chief Justice of India. The pointed insinuation against Shri Justice "... A.A...." and Mrs. Justice "... A.J...." was, that they had developed illicit relations, inasmuch as, they were behaving as husband and wife. It was also alleged, that the elder daughter of Mrs. Justice "... A.J...." had committed suicide by consuming poison, only to avoid the disgrace suffered by her, on account of the relationship between Shri Justice "... A.A...." and her mother Mrs. Justice "... A.J...." In the above second letter dated 27.1.2017, Justice Karnan alleged, that the above mentioned Judges were chargeable Under Section 306 of the Indian Penal Code, alongwith other Judges, namely, Shri Justice "... S.N....", Shri Justice "... N.K...." and Shri Justice "... S.M.K....", who had misused their judicial power, to prevent the initiation of criminal prosecution against them. In the instant letter, Justice Karnan also Accused the above two Judges, for having conspired with six other named sitting Judges of the Madras High Court, for having instructed the Registry of the High Court, not to extend assistance to Justice Karnan, in conducting religious ceremonies, after the demise of his father.

15. The third letter also dated 27.1.2017, was addressed by Justice Karnan, to the Registrar General of the Madras High Court. It was alleged therein, that he (Justice Karnan) had already lodged a complaint against Shri Justice "... S.N. ...", who had maintained two concubines, namely, Mrs. "... J.(M) ..." and Mrs. "... R.S. ..." It was also alleged, that the factual position pertaining to this illegal alliance, had been brought to the notice of the Acting Chief Justice. Through the third

communication dated 27.1.2017, Justice Karnan had also enquired about the stage of investigation, of the case.

16. In February, 2017, Justice Karnan assumed charge at the Calcutta High Court. From Calcutta, Justice Karnan addressed an undated letter to the Prime Minister of India, with copies to the Chief Minister of Tamil Nadu, the Chief Justice of the Supreme Court of India, the Chief Justice of the Madras High Court and the Registrar General of the Madras High Court. Besides ridiculing the system of appointment of Judges since 1990, which (according to him) favoured the upper castes, he adopted the following stance on the subject of appointments:

His Excellency, the President of India and Hon'ble Prime Minister of India have given their valid view that transparency and clarity are of paramount importance with the judiciary. Even then the Collegium is maintaining secrecy on the mode of appointment of Judges, since the appointment of Judges are evolving in the documents during the processing, where in unwanted things are actually happening like soliciting of pretty women, heavy liquor consumption, acquisition of mass wealth, forgery and other forms of gross misdemeanor, within a Court of law. I am not casting aspersions but rendering direct accusations for which I am prepared to stand at any time for a confrontation.

17. Having viewed the unsavory allegations levelled by Justice Karnan over a span of time, it was prima-facie felt, that his conduct towards a large number of named Judges and the judiciary in general, had seriously blemished and tarnished the image of those concerned in particular, and the judiciary as a whole. It was accordingly decided to initiate suo-motu proceedings, for contempt of Court. A Bench comprising of the seven senior most Judges of the Supreme Court was constituted, to examine whether or not Shri Justice C.S. Karnan was guilty of having committed contempt. On the administrative side, the entire material referred to above, was entrusted to the Attorney General for India. He was also requested to assist the Court, in the matter, on the judicial side. On 8.2.2017, the Bench passed the first judicial order:

1. Issue notice to Shri Justice C.S. Karnan, returnable on 13.02.2017.

2. The Registry is directed to ensure, that a copy of this order, and the letters taken note of while issuing notice, are furnished to Shri Justice C.S. Karnan, during the course of the day, through the Registrar General of the Calcutta High Court.

3. Shri Justice C.S. Karnan, shall forthwith refrain from handling any judicial or administrative work, as may have been assigned to him, in furtherance of the office held by him. He is also directed to return, all judicial and administrative files in his possession, to the Registrar General of the High Court immediately.

4. Shri Justice C.S. Karnan shall remain present in Court in person, on the next date of hearing, to show cause. 5. The learned Attorney General has assisted us during the 2 course of hearing, today. We request him to assist us, during the course of further proceedings in the matter.

18. Shri Justice C.S. Karnan in response to the order dated 8.2.2017 (extracted above) addressed a letter to the Registrar General of this Court on 10.2.2017. He expressed the following view, on the initiation of suo-motu contempt proceedings against him:

In the above mentioned suo-motu petition it is not maintainable against a sitting Judge of the High Court, further the Suo-motu Contempt order passed against me, since I have sent representations to the various Govt. Authorities regarding high irregularities and illegalities occurring at the Judicial Courts. I am also a responsible Judge to control such high irregularities especially corruption and malpractice. I have furnished comprehensive proof of unethical practices happening with the respective Courts.

Before obtaining any explanation from me, I wish to state that the Courts have no power to enforce punishment against a sitting Judge of the High Court. This said order does not conform to logic, therefore it is not suitable for execution. The characteristic of this order clearly shows that the upper caste Judges are taking the law in their hands and misusing their judicial power by operating the same against a SC/ST Judge (Dalit) with mala fide intention to get rid of him. Therefore the Suo-motu Contempt Order dated 8.2.2017 is not sustainable under law. On 15.2.2016 I proclaimed a statement in front of the Madras High Court premises which was attended by the Press Media and Electronic Media wherein the crucial statement by me was that Mr. Justice "... S.K.K...." is the root of all corruption at the above-mentioned Court. To substantiate my proclamation, I even offered to counteract any contempt order he may level against me. However, it is apparent that he was wary of facing the facts. Now, after keeping silence on this crucial issue for over a year, or as the adage which says: "The dust as settled down", he brought up the issue aspiring himself as a candidate for the elevation to the Apex Court. I now challenge him even at this 11<sup>th</sup> hour to prove himself being an unblemished Judge so that he may qualify for the elevation as a Supreme Court Judge.

Furthermore, I even gave a recent allegation that there were 20 Corrupt Judges at the Madras High Court and that the Hon'ble Justice "... K.K...." is No. 1, even this accusation was ignored although my complaint is still on file. It is observed that the 7 Judges mentioned above are all out for a Contempt Case against me, presumably to clear the path for Justice Mr. "... S.K.K....'s" elevation; Please don't let it be the case of "Locking the stable after the horse has bolted". The Suo-motu Contempt Order against me a Dalit Judge and restraining my judicial and administrative assignment is unethical and goes against the SC/ST Atrocities Act. It is certainly a National Issue and a wise decision would be to refer the issue to the House of Parliament. On 15.2.2016, I also included in my proclamation that Hon'ble Justice Mr. "... J.S.K...." and Mrs. Justice "... R.B...." passed a similar harsh order against me, therefore I am constraint to give a direction to the Commissioner of Police, Chennai, to register a criminal case against the both mentioned Hon'ble Judges. Therefore, the present Chief Justice of India is obviously bearing the same prejudice as in the past by passing the same order.

Therefore my deep request is to hear the Suo-motu Contempt after retirement of Chief Justice of India. In the meanwhile my administrative work and judicial assignment could be restored. My main contention is only to uproot the corruption prevailing at the Madras High Court, and not to spoil the sanctity and decorum of the Court.

The Hon'ble Judge have passed this sort of an unusual order which effect the Star Articles of 14 and 21 of the Constitution by derogating the principle of natural justice. I issued a list of the corrupt Judges wherein an enquiry is mandatory, as such the Suo-motu Contempt Petition is not maintainable. The order of the Apex Court in the Suo-motu Contempt Petition is erroneous and has been willfully wantonly and with mala fide intention was passed. Therefore, these proceedings may be referred to the Parliament, wherein I will establish the high rate of corruption prevailing with the

Judiciary at the Madras High Court. The said Order also violating Article 219 of the Constitution since there is distinct ill-will in the order. Hence, I request the Hon'ble Judges to hear the matter after the retirement of the present Chief Justice of India but if considered urgent then refer the matter to Parliament. This is my humble and urgent submission. Further the Hon'ble Supreme Court had not granted the stipulated time which is highly irregular.

A perusal of the above letter of Shri Justice C.S. Karnan very clearly demonstrates, that he had made allegations against a large number of Judges, which he continued to maintain, were correct. He also acknowledged, that he had addressed the media, after this Court had issued notice to him (on 8.2.2017), wherein he affirmed the allegations he had made against 20 named Judges of the Madras High Court. He also declared before the Press, that the then Chief Justice of the High Court, was at the top of the list, amongst corrupt Judges. He also affirmed, having issued a direction to the Commissioner of Police, Chennai, to register a case against two Judges of the Supreme Court (Shri Justice "... J.S.K. ..." and Mrs. Justice ... "R.B. ..."), with reference to a judicial order passed by them.

19. Shri Justice C.S. Karnan, was duly served the notice in the Suo-Motu Contempt Petition, for 13.2.2017. He had been asked through the earlier order dated 8.2.2017 to enter appearance in person. He chose to remain absent and unrepresented. It was, therefore, that the second judicial order was passed on 13.2.2017. The above order confirmed the interim directions issued by the first order (dated 8.2.2017). The Bench, rather than taking any stringent steps against Justice Karnan, for not having entered appearance as directed (despite due service), granted liberty to Justice Karnan to appear in person on 10.3.2017-the next date of hearing. The text of the order dated 13.2.2017 is reproduced below:

Sri Justice C.S. Karnan has been duly served, in terms of the motion Bench order dated 08.02.2017. A communication dated 10.02.2017 addressed by Sri Justice C.S. Karnan to the Secretary General of this Court has been received in the Registry of this Court. Every page of the above communication bears his signatures. The aforesaid letter of Sri Justice C.S. Karnan is taken on record.

2. Despite due notice, Shri Justice C.S. Karnan has not appeared. No one has been authorised by Sri Justice C.S. Karnan to represent him today. In any case, no one having a power of attorney, has represented him today. We are not aware of the reason(s) for his non-appearance. It is therefore, that we refrain from proceeding with the matter as of now.

3. Post for hearing on 10.03.2017 at 10.30 a.m. Sri Justice C.S. Karnan is directed to be present in Court in person, on the next date of hearing. We also hereby direct, that the interim order passed in this matter on 08.02.2017, shall continue till further orders.

4. It is necessary to notice, that certain counsel, appeared on their own. We enquired from them, whether they were duly authorised by Sri Justice C.S. Karnan, and were in possession of a power of attorney to represent him. They had no such authorization. These learned Counsel submitted, that they proposed to file impleadment application on behalf of certain organization. The oral prayer for impleadment is rejected.



5. Since contempt proceedings are a matter strictly between the Court and the alleged contemnor, anyone who enters appearance and disrupts the proceedings of this case in future, should understand that he/she can be proceeded against, in consonance with law. All that we need to say is, that no one should appear in this matter, without due consent and authorization.

6. The Registry shall communicate the instant order to Sri Justice C.S. Karnan, in the same manner as he was communicated the previous order.

20. On 13.2.2017, Justice Karnan addressed another letter to the Secretary General of this Court. And through the Secretary General, to the members of the Bench dealing with the contempt proceedings. In the instant letter he requested the Bench, to restore his judicial and administrative work, as he was to retire shortly. He also undertook to cooperate with this Court, in furtherance of the contempt proceedings initiated against him. The short text of the above communication dated 13.2.2017, is reproduced below:

My Hon'ble Lords, please resume my Administrative & Judicial work forthwith since my retirement is imminent. I will certainly co-operate with the Contempt proceedings; please circulate to all the concerned Hon'ble Judges and oblige.

Justice Karnan also addressed a separate letter dated 13.2.2017, purporting to be his explanation, to the show cause notice issued to him. Relevant extract of the same is reproduced below:

...The following purports to be my condensed explanation:

(1) I am fighting for righteousness and for the welfare of the general public of India.

(2) I reiterate as always done, during the last few years about the high rate of Corruption at the Courts I served and still serving, besides the Supreme Court of India. I will not cease my efforts and will continue to fight until every wrong doing is uprooted.

(3) It should be noted that there has been no adequate representation from the minority communities such as the Muslims, Christians, Schedule Caste and Schedule Tribe and of the most backward Communities, to the High Courts and Supreme Court even though the total strength of Judges is around 1100, an insignificant few including myself are holding the position of Justice of the peace.

(4) Therefore, I request the Hon'ble Supreme Court Collegium to appoint as Judges around 400 candidates from the Schedule Caste, Schedule Tribe and of the Minorities including most Backward Classes so that Justice will prevail on a neutral stance and that no quarter is biased and no one is benefited. The balance of power if unfortunately centred with the upper caste Judges resulting in the worst corrupt scenario ever witnessed since India attained Independence in 1947. I, as a serving Judge of the Judiciary cannot tolerate the degeneration of the Judiciary by corrupt Judges and in this regard I have placed on record the corruption of various Judges over the years.

(5) Mr. Justice "... N.K....", Judge of the Madras High Court kicked me with his shoe and slyly removed my name tag pinned on my seat at a public function and I immediately reported this matter to the Supreme Court with intimation to the Chairman of the Schedule Caste and Schedule Tribes Commission. This incident smacks of the prejudice coming from a dignified Judge and is the worst

form of corruption as per the Atrocities Act of the Indian Constitution. This complaint is pending with the Court for around 4 years. Hence, I am seeking a comprehensive enquiry to all my allegations.

(6) Mr. Justice "... S.M.K. ...." has committed a custodial rape with his intern, namely Ms. "... D. ..." and as a consequence of his dastardly crime she conceived and delivered a male baby. Both Ms. "... D. ..." and the boy child are living. If this atrocious crime coming from a High Court Judge, as alleged by me cannot be determined then why cannot the case be examined by more professional investigators? This incident coming from the precincts of the Madras High Court is now known to the general public. Is the general public to believe that Judges are above the law?

As anyone can easily discern, these are genuine reasons why I am looking forward to a comprehensive review of all my allegations and not be considered-"A spoil sport". All my efforts are most paramount and imperative since it is solemnly meant for the upholding of the sanctity and decorum of the Courts.

A perusal of the above reply of Justice Karnan reveals, his unequivocal and steadfast assertion, about the high rate of corruption in Courts, including Judges of the Supreme Court of India. His pointed and direct allegations against some individual Judges, were again reiterated.

21. Despite the fact that the Registry of this Court, had duly communicated the order dated 13.2.2017 to Shri Justice C.S. Karnan, he chose not to enter appearance even on 10.3.2017. To procure the presence of Shri Justice C.S. Karnan, this Court passed the following order on 10.3.2017:

1. Notice of this petition has been duly served. Despite service, wherein the personal presence of Shri Justice C.S. Karnan, in this Court, was imperative, he has neither entered appearance in person, nor through counsel.

2. It would be pertinent to mention, that the Registry of this Court received a fax message, from Shri Justice C.S. Karnan, dated 08.03.2017, seeking a meeting with the Chief Justice and the Hon'ble Judges of this Court, so as to discuss certain administrative issues expressed therein, which primarily seem to reflect the allegations levelled by him against certain named Judges. The above fax message, dated 08.03.2017, cannot be considered as a response of Shri Justice C.S. Karnan, either to the contempt petition, or to the notice served upon him.

3. In view of the above, there is no other alternative but to seek the presence of Shri Justice C.S. Karnan by issuing bailable warrants. Ordered accordingly. Bailable warrants, in the sum of Rs. 10,000/- (Rupees ten thousand), in the nature of a personal bond, to the satisfaction of the arresting officer, be issued, to ensure the presence of Shri Justice C.S. Karnan, in this Court, on 31.03.2017, at 10.30 A.M.

4. We would appreciate if the aforesaid bailable warrants, are served on Shri Justice C.S. Karnan, by the Director General of Police, West Bengal.

5. Post for hearing on 31.03.2017, at 10.30 A.M.

22. On the very day the third judicial order dated 10.3.2017 was passed, Shri Justice C.S. Karnan purportedly in exercise of suo-motu extra ordinary original jurisdiction (Under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure), passed an order dated 10.3.2017. Relevant part of the above order, is extracted below:

As known to law, no contempt either civil or criminal can be initiated against a sitting High Court Judge Under Sections 2(c), 12 and 14 of the Contempt of Courts Act or Under Article 20 of the Constitution of India. But subverting all cannons of justice the Accused persons due to pre-conceived prejudicial notion have initiated the above mentioned unlawful, illegal and unconstitutional suo-motu contempt proceedings only with the view to somehow punish a sitting Judge of this Court belonging to a Scheduled Caste community.

2. It is also a well-known factor only a motion of impeachment can be initiated against a sitting Judge of the higher judiciary before the Parliament after due enquiry under the Judges' Enquiry Act.

3. It is well within judicial knowledge a first attempt was made by the Apex Court in the colourful transfer from the High Court of Judicature at Madras to the High Court of Judicature at Calcutta.

4. It is also a open secret that a die-hard affidavit was filed before the Apex Court by Advocates Shanti Bhushan and Prashanth Bhushan in a similar contempt case touching upon several corruption charges on sitting and former Supreme Court Judges now pending in the cold storage of the Supreme Court for years, without any action either way.

5. It is also within judicial knowledge that all communications, draftings to the appropriate executive, legislative and judicial authorities is only permitted legal vantage which in no way invite suo-motu contempt proceedings much less on High Court Judges.

6. Another clinching matrix is that none of the following 13 persons have preferred any complaint or defence against, whereas the Accused persons have taken upon themselves as protocol guardians on the allegations of the following persons:

1. Mr. Justice "... S.K.K. ...";
2. Mr. Justice "... S.M.K. ...";
3. Mr. Justice "... V.R.S.M. ...";
4. Mrs. Justice "... C.V....";
5. Mr. Justice "... R.S.R....";
6. Mr. Justice "... R.K.A....";
7. Mr. Justice "... T.S.T....";
8. Mr. Justice "... M.Y.I....";
9. Mr. Justice "... I.K....";
10. Mr. Justice "... A.K....";
11. Mr. Justice "... E.D.R....";
12. Mr. Justice "... K.N.B....";
13. Mr. Justice "... A.A....";
14. Mrs. Justice "... A.J....";
15. Mr. Justice "... V.D....";
16. Mr. Justice "... M.M.S....";

17. Mr. Justice "... N.K....";
18. Mr. Justice "... N.N....";
19. Mr. Justice "... T.R....";
20. Mr. Justice "... S....".
21. Mr. "... H....", Private Secretary-cum-Registrar;
22. Mr. "... P.K....", Registrar; &
23. Mr. "... S.P....", Advocate & President,  
Tamil Nadu Advocates Association.

XXX XXXXXX

In the result, I direct the Central Bureau of Investigation to register, investigate and file a report before the appropriate Court of law Under Article 226 read with Section 482 Code of Criminal Procedure to prevent abuse of process of any Court and to secure the ends of justice invoking my inherent powers of this Hon'ble Court, under the appropriate criminal provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and other Penal provisions against the Accused persons and I further direct the Secretary Generals of the Lok Sabha and Rajya Sabha to place the entire facts of the case before the Speaker for appropriate enquiry under the Judges' Enquiry Act and consequently I request His Excellency the President of India to recall the bailable warrant illegally issued by the Supreme Court on 10.3.2017 and lift the non-work allotment ban of port-folio allocation and file a report within 7 (seven) days before this Hon'ble Court.

Dated and signed by me this day 10<sup>th</sup> of March, 2017.

The above suo-motu order was endorsed to this Court. It was also endorsed to the Rajya Sabha Secretariat (Legislative Section), whereupon, the Rajya Sabha Secretariat (Legislative Section) addressed the following letter to this Court:

RAJYA SABHA SECRETARIAT

(LEGISLATIVE SECTION)

Subject: Suo-motu extra ordinary special original jurisdiction Under Article 226 of the Constitution read with Section 482 of Code of Criminal Procedure, 1973-Communication from Shri Justice C.S. Karnan, Judge, Calcutta High Court regarding.

A copy of the communication on the above mentioned subject, containing, an order dated the 10<sup>th</sup> March, 2017 passed by Shri Justice C.S. Karnan, Judge, High Court of Calcutta in Suo-motu W.P. (Criminal) No. 1 of 2017 is sent herewith. It has been mentioned in the order that seven Judges of the Supreme Court, including the Chief Justice of India (names mentioned in the order), along with the Attorney General of India in suo-motu contempt petition (C) No. 1 of 2017 dated 8.2.2017 have called for his appearance on 10.3.2017 citing various reasons and has inter-alia directed that the Secretary-General of Rajya Sabha may place the entire facts of the case before the Hon'ble Chairman, Rajya Sabha for appropriate enquiry under the Judges (Inquiry) Act, 1968. Shri Justice C.S. Karnan has posted the matter to 31.3.2017 for compliance and reporting.

2. In this connection, it is stated that the provisions of the Judges (Inquiry) Act, 1968 become operative only when there is a substantive motion meeting requirements Under Section 3(1) of the Judges (Inquiry) Act, 1968 presented in either House of the Parliament. Hon'ble Chairman, Rajya Sabha cannot take any suo-motu action in this regard at this stage since there is no motion before him to consider taking the action desired by Justice Karnan. Further, as per practice and convention, Hon'ble Chairman, Rajya Sabha or Secretary-General, Rajya Sabha do not respond to the notices/orders received from the courts and all such communications are forwarded to the Ministry of Law and Justice for apprising the concerned court about the correct constitutional/legal procedure.

3. The Ministry of Law and Justice is therefore requested to kindly look into the above matter and inform Shri Justice C.S. Karnan, Judge, High Court of Calcutta about the procedure relating to the conducting an enquiry or constitution of an Inquiry Committee under the Judges (Inquiry) Act, 1968.

A perusal of the order passed by Justice Karnan, and the letter endorsed to the Supreme Court by the Rajya Sabha Secretariat (Legislative Section), affirm the continuation of his actions in levelling corruption charges against Judges by name. The above communications also demonstrate, that he wished to publicize the allegations of corruption, against his colleague Judges.

23. At this juncture, this Court received a very interesting communication, from the Registrar General of the High Court of Calcutta. Justice Karnan had addressed the above communication (-dated 14.3.2017) to the Registrar General of the High Court of Calcutta. The same is extracted below:

Dated the 14<sup>th</sup> March, 2017

To

The Registrar General,

High Court,

Calcutta

Respected Sir,

On 9.3.2017 one Mr. Mathew, Advocate, his Cell No. 9820535428, came to my residence voluntarily and insisted on me to sign an order which was already prepared in my name. In the said order I was required to give notice to the Hon'ble Judges as named below:

1. The Chief Justice of India, Mr. Justice "... J.S.K...." and Justice Mr. "... D.M. ...", on the basis of a suicide note written by former Chief Minister of Arunachal Pradesh, which I totally deny and simultaneously directed my personal security officer to send out the said Advocate from my residence. Accordingly he was sent out. The copy of the writ petition and the order prepared by the above mentioned Advocate Mr. Mathew is enclosed herewith. A detailed enquiry may be conducted

on this issue and have the report submitted to the Hon'ble Judges as mentioned above for necessary investigation and appropriate action.

The aforesaid communication was endorsed by the Registrar General of the Calcutta High Court to the Supreme Court, alongwith its enclosures. The enclosures contained the text of a writ petition filed in the name of Bijoy Krishna Adhikary, and also, the alleged draft order, which Justice Karnan claims, he was asked to sign.

24. Whilst the contempt proceedings were going on, Justice Karnan regularly addressed letters, to this Court with reference to his alleged conduct, and the proceedings that had been initiated against him, he also continued to address the media on the subject. At this very relevant juncture, he passed another suo-motu judicial order (purportedly, invoking Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure), dated 15.3.2017. The text of the above order is reproduced below:

IN THE HIGH COURT of JUDICATURE AT CALCUTTA Suo-motu Judicial Order passed after  
invoking Article 226 of the Constitution of India read with Section 482, Code of Criminal  
Procedure.

Present Justice C.S. Karnan

Dt. 15.03.2017

To

The Director,

Central Bureau of Investigation,

New Delhi

I have made a complaint before the Hon'ble Prime Minister of India, against 20 Hon'ble Judges consisting of Supreme Court and High Court Judges, namely:

1. Mr. Justice "... S.K.K. ...";
2. Mr. Justice "... S.M.K. ...";
3. Mr. Justice "... V.R.S.M. ...";
4. Mrs. Justice "... C.V....";
5. Mr. Justice "... R.S.R....";
6. Mr. Justice "... R.K.A....";
7. Mr. Justice "... T.S.T....";
8. Mr. Justice "... M.Y.E....";
9. Mr. Justice "... I.K....";
10. Mr. Justice "... A.K....";
11. Mr. Justice "... E.D.R....";
12. Mr. Justice "... K.N.B....";
13. Mr. Justice "... A.A....";

14. Mrs. Justice "... A.J....";
15. Mr. Justice "... V.D....";
16. Mr. Justice "... M.M.S....";
17. Mr. Justice "... N.K....";
18. Mr. Justice "... N.N....";
19. Mr. Justice "... T.R....";
20. Mr. Justice "... S....".

The said complaint is still pending enquiry on the file of the Hon'ble Prime Minister of India. In the said complaint I have mentioned 10 inferences in order to probe the dishonesty of Judges.

Under these circumstances the Hon'ble Supreme Court had issued Suo-motu Contempt Order on 8.2.2017 against me and also restraining my judicial and administrative work, the said order is not sustainable under law since no jurisdiction, no cause of action arise from the Supreme Court and no provision. As such the Hon'ble Judges have misused their judicial and administrative power. Further the Hon'ble 7 Judges who after breaking the Indian Constitutional Law by constituting an unconstitutional Bench, hence they are the contemnors since they have committed contempt of their own Court. Further the Hon'ble Judges have wantonly, deliberately and with mala fide intention insulted me at a public institution which amounts to harassment towards a Dalit Judge. As such all the 7 Hon'ble Judges have been squarely covered under the Scheduled Castes and Scheduled Tribes Atrocities Act. Hence, I have passed a Suo-motu Judicial Order to you on 10.03.2017 for a comprehensive enquiry and to submit the final report before the Parliament.

Now I am giving one more direction through my Suo-motu Judicial Order to conduct a detail enquiry on my complaint dated 23.1.2017 and submit the final report before the Parliament for further discussion, since it is a national issue. Further normally a complaint if levelled by any citizen of India against whomsoever he may address, then that complaint has to be disposed of on merits which is the procedure of law. In my case the Hon'ble 7 Judges without following the procedures of law whatsoever and by taking the law in their hands have operated their judicial and administrative power as per their own liking, besides the Hon'ble Judges wantonly and deliberately have ignored the Hon'ble Prime Minister's Office wherein my complaint is pending enquiry. As such the Hon'ble Judges have violated Article 219 of the Constitution besides violating the principle of natural justice besides functioning against Article 14, 21 and 19(g)(i) which are prime Articles of the Constitution.

Therefore, on my complaint on 23.1.2017 which has to be decided on merits is of paramount importance in order to maintain the public confidence and balance of convenience. Further I undertake that I will extend my full co-operation and co-ordination to establish my complaint dated 23.1.2017 and with sufficient documentary proof which is available at the Madras High Court Registry. Accordingly ordered.

1. Justice "... J.S.K. ..." - Chief Justice of India
2. Justice "... D.M. ..."
3. Justice "... J.C...."
4. Justice "... R.G...."
5. Justice "... M.B.L...."
6. Justice "... P.C.G...."
7. Justice "... K.J...."

My Lords, on my impugned complaint dated 23.1.2017 which has been levelled against 20 Judges under corruption charges. Now the said complaint has to be decided on merits by the Director, Central Bureau of Investigation, New Delhi. Therefore your Suo-motu Contempt Petition No. 1 of 2017 and its interim orders including bailable warrant becomes infructuous and null and void. Hence I make a deep request to cancel your above mentioned Constitutional Bench and restore my normal judicial and administrative work and oblige.

Yours,  
Sd/-  
(Justice C.S. Karnan)

It is not necessary for us to summarize the contents of the letter extracted above. We have chosen not to highlight any portion thereof. The contents of the letter however demonstrate, the extent of malice and contempt in the mind of Justice Karnan against his colleague Judges.

25. On 16.3.2017, Justice Karnan addressed the following communication to the members of this Bench:

To

Date: 16.03.2017

1. Justice "... J.S.K. ..." -Chief Justice of India
2. Justice "... D.M...."
3. Justice "... J.C. ..."
4. Justice "... R.G. ..."
5. Justice "... M.B.L. ..."
6. Justice "... P.C.G...."
7. Justice "... K.J...."

My Lords, you have constituted an unconstitutional Bench after breaking the Indian Constitutional Law and passed a Suo-Motu contempt order against me in Suo-Motu Contempt Petition No. 1 of 2017 wherein you have restrained my judicial and administrative work, the said order has been passed with malafide intention in order to harass a Dalit Judge (myself).

The factual position of the case is that I have levelled a complaint dated 23.1.2017, against 20 Judges for dishonesty before the Hon'ble Prime Minister of India which is pending enquiry. Under these circumstances, the above mentioned Hon'ble Judges have issued a Suo-Motu contempt order in order to protect the corrupt Judges. As such the above mentioned Hon'ble Judges have also colluded with them and secured their support by way of operating judicial power out of cause of action, out of jurisdiction, out of provision and constituted a wrong forum.

Judge means a dignified person of Law who has to hear both sides of the case and pass order in accordance with law. In the instant case the Hon'ble Judges have defended the case on behalf of the 20 erring Judges. Therefore, the Hon'ble seven Judges and other 20 Judges as mentioned are the Opposite parties/Respondents and myself a complainant. As such the Hon'ble seven Judges passed a Suo-Motu order which is illegal and improper. Hence I request you to cancel the unconstitutional Bench and restore my normal work.



However, the Hon'ble seven Judges have prevented me in carrying out my judicial and administrative work from 8.2.2017 until now. Therefore, I am calling up on all seven Judges to pay compensation, a sum of Rs. 14 Crores (Rupees fourteen crores only) as compensation since you have disturbed my mind and my normal life, besides you have insulted me in the general public consisting of a population of 120 crores in India due to lack of legal knowledge. Now all seven Judges shall pay a part of the compensation within a period of 7 days from the date of receipt of this order, failing which on the same stand of yours (same footing), I will restrain judicial and administrative work of yours.

This is for your information.

Yours,  
Sd/-  
(Justice C.S. Karnan)

The letter extracted above, also needs no further elaboration, and as such, we do not desire to substantiate the accusations levelled by Justice Karnan therein, any further.

26. The bailable warrant issued in this case, to procure the personal presence of Shri Justice C.S. Karnan, was served on him on 17.3.2017. Having signed the same in token of being duly served, Shri Justice C.S. Karnan recorded the following note thereon, in his own handwriting:

On my complaint dated 23.1.2017, the Supreme Court has issued a Suo-Motu Contempt Order. On the same complaint, I directed the CBI to conduct a detailed enquiry and submit a final report before the Parliament at Delhi. Under the circumstances the bailable warrant is duly rejected, further I ordered to the CBI to register a criminal case against seven Judges of the Supreme Court and Attorney General under the SC/ST Atrocities Act. As such all the seven Judges are Accused under the said Act. Hence I urge the Hon'ble seven Judges to resign their respective posts in the interest of justice and national welfare. Therefore the Hon'ble Judges have no locus standi to proceed the Contempt Proceedings against me any further. Since now the complaint regarding the SC/ST Act between the Hon'ble Judges and myself, I hope the Hon'ble Judges in future should not commit such a kind of illegal order with malafide intention otherwise the jurisdiction system will deteriorate, therefore I rejected the bailable warrant produced by the Ld. DGP & IG.

Shri Justice C.S. Karnan also addressed a letter dated 17.3.2017 to the members of the Bench hearing this case. The text of the same, is reproduced below:

To

Date: 17.03.2017

1. Justice "... J.S.K. ..." -Chief Justice of India
2. Justice "... D.M...."
3. Justice "... J.C...."
4. Justice "... R.G...."
5. Justice "... M.B.L...."
6. Justice "... P.C.G...."

7. Justice "... K.J...."

My Lords, your bailable order dated 10.3.2017 in the Suo-motu Contempt Proceedings today, top Police Officers from the Calcutta High Court Circle came to my residence in order to execute the bailable warrant earmarked for 10.30 am on 31.3.2017. I rejected the same after assigning valid reasons. This kind of demeaning acts from your Lordships and further perpetrating the Atrocities Act is absolutely out of law to the utter embarrassment of a Dalit Judge. Hence, I request you to stop your further harassments in order to uphold the dignity and decorum of our Courts.

Yours,  
Sd/-  
(Justice C.S. Karnan)

27. On 31.3.2017 (the next date of hearing, after 10.3.2017), Shri Justice C.S. Karnan appeared in person, and advanced submissions. During the course of hearing, he also handed over to the Bench, the following signed text, dated 25.3.2017:

To

Date: 25.03.2017

1. Justice "... J.S.K. ..." - Chief Justice of India
2. Justice "... D.M. ..."
3. Justice "... J.C. ..."
4. Justice "... R.G. ..."
5. Justice "... M.B.L. ..."
6. Justice "... P.C.G. ..."
7. Justice "... K.J. ..."

1. Now I unconditionally withdraw my complaint dated 23.1.2017 against 20 Hon'ble Judges alleging that they were dishonest in their behavior. The said complaint addressed to the Hon'ble Prime Minister of India. Hence I entreat this Hon'ble Court that the Suo-motu Contempt proceedings may be closed since my complaint is no more in force.

2. I unconditionally tender an apology before this Court if I committed contempt of Court.

3. I will follow Your Lordship's advice and guidelines in future in order to maintain the judicial system and its integrity.

4. I will be retiring on 11.6.2017, therefore, I make a deep request to permit me to retire from the Bench with the blessings of all brother and sister Judges of the Calcutta High Court. Hence, I pray Your Lordships to restore my judicial and administrative work and thus render justice and oblige.

Yours,  
Sd/-  
(Justice C.S. Karnan)

A perusal of the above communication, reveals an unmistakable acknowledgement by Justice Karnan, that he had factually addressed the letter dated 23.1.2017, wherein, he had levelled

allegations of corruption, against 20 Judges by name. However, in the submissions made in the open Court, he reiterated the allegations against his former colleague Judges. Since the oral submissions made by Shri Justice C.S. Karnan during the course of hearing on 31.3.2017, were in complete contrast with the contents of the note extracted above, this Court passed the following fourth judicial order, on 31.3.2017:

1. Shri Justice C.S. Karnan has entered appearance in Court in person. He was repeatedly asked, whether he affirms the contents of the letters, written by him, as are available on the record of the case. He was also asked whether he would like to withdraw the allegations. The instant latter query was made on the basis of a letter dated 25.03.2017, which Shri Justice C.S. Karnan personally handed over to us, in Court today. He has not responded, in any affirmative manner, one way or the other. We would therefore proceed with the matter only after receipt of his written response. Shri Justice C.S. Karnan is hereby called upon to respond to the factual position indicated in the various letters, addressed by him to this Court, within four weeks from today. His response shall be filed by way of an affidavit. Shri Justice C.S. Karnan is directed to appear in Court in person on the next date of hearing.

2. The repeated requests of Shri Justice C.S. Karnan, that he should be permitted to discharge judicial and administrative duties, are declined.

3. Post for hearing on 01.05.2017, at 10.30 A.M.

It is pertinent to record, that after the above order had been dictated, Justice Karnan while moving away commented, that he may be sent to jail, but he would not appear before this Court again.

28. True to his statement, Shri Justice C.S. Karnan did not enter appearance on next date of hearing, (on 1.5.2017). But having viewed his submissions and his demeanour during the course of hearing on 31.3.2017, and having contrasted the same with the written text (-dated 25.3.2017), this Court was prima facie of the view, that he may not be in a fit condition to defend himself. It was therefore, that his medical examination, was ordered on 1.5.2017. The above order dated 1.5.2017-the fifth judicial order of the proceedings, is reproduced below:

1. While issuing notice to Shri Justice C.S. Karnan on 8.2.2017, this Court had directed, that Justice Karnan would forthwith refrain from handling any judicial or administrative work, as may have been assigned to him, in furtherance of the office held by him. He was also directed to immediately return all judicial and administrative files in his possession to the Registrar General of the High Court.

2. Ever since the initiation of these proceedings, he has been expressing further disrespect to this Court, he has also been making press statements with abject impunity. However, after the last order dated 31.3.2017, he is stated to have issued orders (purported to be judicial) against the members of this Bench, as also, another Hon'ble Judge of this Court. Those orders have been received in the Registry of this Court, and are part of the present compilation. In order to ensure, that no Court, Tribunal, Commission or Authority takes cognizance of the orders passed by Shri Justice C.S. Karnan, we hereby refrain all Courts, Tribunals, Commissions or Authorities, from taking cognizance of any orders passed by Shri Justice C.S. Karnan, after the initiation of the proceeding by us on 8.2.2017.

3. The tenor of the press briefings, as also, the purported judicial orders passed by Shri Justice C.S. Karnan, prima facie suggest, that he may not be in a fit medical condition, to defend himself, in the present proceedings. We therefore consider it appropriate, to require him to be medically examined, before proceeding further. We, accordingly, direct the Director Health Services, Government of West Bengal, to constitute a Board of Doctors from Pavlov Government Hospital, Kolkata, to examine Shri Justice C.S. Karnan, and submit a report to this Court whether or not Shri Justice C.S. Karnan is in a fit condition to defend himself. The above Board shall conduct the examination on 4.5.2017. The Director General of Police, West Bengal, shall constitute a team of police personnel, to assist the Medical Board, in carrying out the directions, recorded hereinabove.

4. The Medical Board shall submit its report to this Court, on or before 8.5.2017.

5. Shri Justice C.S. Karnan may, if he is so advised, furnish his response to the notice issued to him on 8.2.2017, in the meantime. In case he does not choose to file a response on or before 8.5.2017, it shall be presumed, that he has nothing to say in the matter.

6. Post on 9.5.2017, at 10.30 A.M., for further orders.

7. Shri R.S. Suri, Senior Advocate, and Shri Ajit Kumar Sinha, Senior Advocate, President and Vice President respectively, of the Supreme Court Bar Association, have made an oral request, that they may be allowed to intervene and assist this Court in the matter, given the importance of the issue. Prayer is allowed. The Supreme Court Bar Association, is permitted to intervene in the matter, and assist this Court, on the merits of the controversy.

A perusal of the above order reveals, that a further direction was issued by this Court, keeping in mind strange suo-motu judicial orders passed by Shri Justice C.S. Karnan, from time to time. By the instant direction, Courts, Tribunals, Commissions and Authorities were directed not to take cognizance of any order passed by Shri Justice C.S. Karnan, after the initiation of the suo-motu contempt proceedings against him on 8.2.2017, wherein he had already been restrained from handling any judicial or administrative work.

29. In our considered view, it is not necessary for us to highlight all the submissions made by Shri Justice C.S. Karnan to the media, as well as, the orders passed by him. All these orders were placed in public domain (by Justice Karnan), well before the same were delivered to this Court. His interviews with the media, and the orders passed by him were extremely disparaging, illustratively, by an order dated 13.4.2017, he ordered the registration of a case under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, against all the 7 members of the Bench; by another order dated 28.4.2017, he directed the Air Control Authority, New Delhi, not to allow any of the 7 members of the Bench to travel abroad; and by yet another order dated 7.5.2017, he sentenced all the 7 members of the Bench, and Mrs. Justice "... R.B...." to 5 years rigorous imprisonment. All this was widely reported by the media in India, as well as, by the foreign media. The BBC also, reported on the issue.

30. The matter was finally taken up for hearing on 9.5.2017. During the course of hearing, Shri Rakesh Dwivedi, learned senior Counsel representing the State of West Bengal informed the Bench, that in compliance with the directions issued by this Court on 1.5.2017, the Director, Health Services, Government of West Bengal had constituted a Board of Doctors from Pavlov Government

Hospital, Calcutta, to examine Justice Karnan. He informed this Court, that the Board of Doctors had approached Shri Justice C.S. Karnan, at his residence (along with police personnel). He also informed the Bench, that Justice Karnan had met the Board of Doctors, and had spoken to them. Justice Karnan, the Bench was informed, told the Board of Doctors, that he was in a fit state of health, mentally and otherwise, and needed no medical evaluation. We are of the view, that psychiatrists on the Board of Doctors, would have been in opposition to evaluate the mental health of Justice Karnan, during the above interaction. Had they found anything remiss, they would have informed this Court accordingly. Since no report has been submitted by the Board of Doctors, we would assume, that they had found nothing significant enough to report. We would, therefore, accept the assertion of Justice Karnan, that he is medically and mentally fit, to defend himself.

31. In the above view of the matter, we would have to rely on the defence tendered by him, in the form of various communications dispatched to this Court from time to time, as also, during the course of hearing, when he appeared in person on 31.3.2017. There is no other alternative with us. We had granted liberty to Justice Karnan vide our order dated 1.5.2017, to furnish his response to the show cause notice (-before 8.5.2017), with the clear indication, that if he choose not to file any response, the Court would proceed with the matter by presuming, that he had nothing more to say.

32. On the merits of the controversy, this Court was assisted by Shri Mukul Rohtagi, learned Attorney General, from time to time. He was unequivocal in his submission, that Shri Justice C.S. Karnan had consistently committed gross contempt of this Court. In view of the factual position which had emerged, after this Court issued the show cause notice to Shri Justice C.S. Karnan (-on 8.2.2017), it was the pointed contention of the learned Attorney General, that Shri Justice C.S. Karnan had also committed contempt, in the face of this Court, by openly denouncing a large number of Judges with allegations of corruption, and by passing orders which had neither any legal sanction nor any justification. Mr. Maninder Singh, learned Additional Solicitor General, reiterated the above position. Shri Rupinder Singh Suri, the President of the Supreme Court Bar Association, and Shri Ajit Kumar Sinha, its Vice-President also assisted this Court. They were also unequivocal in their submission, that Shri Justice C.S. Karnan was guilty of having consistently and repeatedly committed criminal contempt. Shri K.K. Venugopal, learned senior Counsel representing the Registrar General of the Madras High Court, while endorsing the views expressed by all the other learned Counsel, submitted that a final decision in the matter, be deferred till such time as Shri Justice C.S. Karnan demits his office as Judge of the High Court. It was submitted, that Shri Justice C.S. Karnan, would retire on attaining the age of superannuation on 11.6.2017. It was urged, that the image of the institution would be tarnished, in case Shri Justice C.S. Karnan was punished for contempt of Court, whilst he is holding the high constitutional office.

33. We have given our thoughtful consideration to the factual position noticed hereinabove, as also, the submissions advanced by learned Counsel, who assisted us during the course of hearing. We have carefully examined the text of the letters written by Shri Justice C.S. Karnan, from time to time. We have closely examined the suo-motu procedure adopted by him, whereby he passed orders which were derogatory to the administration of justice, before he was issued notice for contempt, by this Court. We have also carefully analysed the orders passed by Shri Justice C.S. Karnan suo-motu (in the purported exercise of the jurisdiction vested in him Under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure), even after the issuance of the contempt notice to him, by this Court. His demeanour was found to have become further aggressive, after this Court passed orders from time to time, in this case. The contents of the letters addressed

by him contained scandalous material against Judges of High Courts and the Supreme Court. This correspondence was addressed to the highest constitutional authorities, in all three wings of governance-the legislature, the executive and the judiciary. His public utterances, turned the judicial system into a laughing stock. The local media, unmindful of the damage it was causing to the judicial institution, merrily rode the Karnan wave. Even the foreign media, had its dig at the Indian judiciary. None of his actions can be considered as bona fide, especially in view of the express directions issued by this Court on 8.2.2017, requiring him to refrain from discharging any judicial or administrative work. To restrain his abuse of suo-motu jurisdiction, a further order had to be passed by this Court on 1.5.2017, restraining Courts, Tribunals, Commissions and Authorities from taking cognizance of any order passed by Justice Karnan.

34. We are of the considered view, that Justice Karnan shielded himself from actions, by trumpeting his position, as belonging to an under-privileged caste. By assuming the above position, he levelled obnoxious allegations against innumerable Judges of the Supreme Court, Chief Justices of the High Courts, but mostly against Judges of the Madras High Court. The list of Judges against whom allegations were levelled by Justice Karnan, include the following:

1. Justice Jagdish Singh Khehar-Chief Justice of India,
2. Justice P. Sathasivam-former Chief Justice of India,
3. Justice T.S. Thakur-former Chief Justice of India,
4. Justice Dipak Misra-Judge, Supreme Court of India,
5. Justice J. Chelameswar-Judge, Supreme Court of India,
6. Justice Ranjan Gogoi-Judge, Supreme Court of India,
7. Justice Madan B. Lokur-Judge, Supreme Court of India,
8. Justice Pinaki Chandra Ghose-Judge, Supreme Court of India,
9. Justice Kurian Joseph-Judge, Supreme Court of India,
10. Justice R.K. Agrawal-Judge, Supreme Court of India,
11. Justice R. Banumathi-Judge, Supreme Court of India,
12. Justice Sanjay Kishan Kaul-Judge, Supreme Court of India,
13. Justice F.M.I. Kalifulla-former Judge, Supreme Court of India,
14. Justice M.Y. Eqbal-former Judge, Supreme Court of India,
15. Justice S.K. Agnihotri-Chief Justice, High Court of Sikkim,
16. Justice R. Sudhakar-Judge, High Court of Jammu & Kashmir,
17. Justice v. Ramasubramanian-Judge, High Court of Judicature at Hyderabad
18. Justice S. Manikumar-Judge, High Court of Madras,
19. Justice S. Nagamuthu-Judge, High Court of Madras,
20. Justice M. Sathyanarayanan-Judge, High Court of Madras,
21. Justice C.T. Selvam-Judge, High Court of Madras,
22. Justice N. Kirubakaran-Judge, High Court of Madras,
23. Justice M.M. Sundresh-Judge, High Court of Madras,
24. Justice T. Raja-Judge, High Court of Madras,
25. Justice K. Swamidurai-former Judge, High Court of Madras,
26. Justice Chitra Venkataraman-former Judge, High Court of Madras,
27. Justice K.N. Basha-former Judge, High Court of Madras,
28. Justice v. Dhanapalan-former Judge, High Court of Madras,
29. Justice S. Tamilvanan-former Judge, High Court of Madras,
30. Justice Elipe Dharma Rao-former Judge, High Court of Madras,
31. Justice R.S. Ramanathan-former Judge, High Court of Madras,

**32.** Justice ArunaJagdeesan-former Judge, High Court of Madras,

**33.** Justice G.M. Akbar Ali-former Judge, High Court of Madras.

35. None of the allegations levelled by Justice Karnan were supported by any material. His allegations were malicious and defamatory, and pointedly by name, against many of the concerned Judges. He carried his insinuations to the public at large, in the first instance, by endorsing his letters carefully so as to widely circulate the contents of his communications, to the desired circles. Some of his letters were intentionally endorsed, amongst others, to the President of the Tamil Nadu Advocate Association. And later, through the internet, he placed his point of view, and the entire material, in the public domain. During the course of hearing of the instant contempt petition, his ridicule of the Supreme Court remained unabated. In fact, it was heightened, as never before. In this process, he even stayed orders passed by this Court. One of the orders passed by him, restrained the Judges on this Bench, from leaving the country. By another order he convicted the Judges on this Bench, besides another Judge of this Court, and sentenced them to 5 years imprisonment, besides imposing individual costs on the convicted Judges. In the background of the factual position summarized above, while disposing of the suo-motu contempt petition on 9.5.2017, we had directed, that no further statements issued by Shri Justice C.S. Karnan would be publicized. The instant restraint order, however, does not prevent or hinder any public debate on the matter, academic or otherwise. We have not restricted, the media in any manner, other than, to the limited extent expressed above. We hope and expect, that a meaningful debate, would lead to a wholesome understanding of the issue, from all possible perspectives.

36. From the narration expressed in the preceding paragraphs, we have no hesitation in concluding, that the actions of Shri Justice C.S. Karnan constituted the grossest and gravest actions of contempt of Court. He has also committed contempt, in the face of the Court. He is therefore liable to be punished, for his unsavoury actions and behavior. We are satisfied that he should be punished for his above actions, with imprisonment for six months. Ordered accordingly.

Note: The emphasis supplied in all the quotations in the instant judgment, are ours.

## DEFENCES

CRIMINAL APPEAL No. 463 of 2006  
HET RAM BENIWAL & ORS.V. RAGHUVVEER SINGH & ORS.  
&  
CRIMINAL APPEAL No. 464 of 2006  
BHURAMAL SWAMI v. RAGHUVVEER SINGH & ORS.  
Delivered on 21<sup>st</sup> October 2016

### **L. NAGESWARA RAO, J.**

1. The Appellants were found guilty of committing contempt by the High Court of Judicature for Rajasthan at Jodhpur. Simple imprisonment of two months and fine of Rs. 2,000/- each was imposed. Aggrieved by the said judgment, the Appellants have filed these Criminal Appeals.
2. The Appellants along with Sheopat Singh belong to the Marxist Communist Party. Sheopat Singh died during the pendency of these proceedings. It is relevant to mention that Appellants Nos. 2 and 3 are advocates. A prominent trade union activist of Sri Ganganagar District Shri Darshan Koda was murdered on 18.12.2000. Some of the accused were granted anticipatory bail in February, 2001 by the High Court of Rajasthan. The Appellants addressed a huge gathering of their party workers in front of the Collectorate at Sri Ganganagar on 23.02.2001. While addressing the gathering, the Appellants made scandalous statements against the High Court which were published in Lok Sammat newspaper on 24.02.2001. The offending statements made by the Appellants (from the translated version) are summarized as under:

“Appellant No. 1 - “Ex MLA Het Ram Beniwal said that, there are two types of justice in the courts. A thief of Rs.100/- cannot get bail, if the lathi and gandasi is hit then the courts ask for the statements of the witnesses and diary, but Miglani and Gurdayal Singh committed the murder, even then anticipatory bail had been taken on the application without diary.”

“Appellant No. 2 - “Navrang Chaudhary, Advocate, District President, CITU said that the general public has lost confidence in the law and justice.”

“Appellant No. 3 - “MCP Leader Bhuramal Swami naming the judge of the High Court said in attacking way that all around there is rule of rich people whether it is bureaucracy or judiciary.”

“Appellant No. 4 - “Sarpanch Hardeep Singh told that there was influence of money behind the anticipatory bail of the accused.”

The Advocate General gave his consent to Respondent No.1 for initiation of contempt proceedings on 16.01.2002. Thereafter, Respondent No.1 filed a Contempt Petition in the High Court. It was stated by Respondent No. 1 in the contempt petition that baseless allegations of bias and corruption were made by the Appellants against the judiciary. He also alleged that the Appellants were guilty of a systematic campaign to destroy the public confidence in the judiciary.

3. The Appellants filed a common counter denying the allegations made against them. The appointment of the Special Public Prosecutor in the case of the murder of Shri Darshan Koda was in dispute and the Appellants contended that they were agitating for appointment of another competent lawyer as Special Public Prosecutor. They accused Respondent No.1 of initiating contempt proceedings only to harass and victimize them as they were agitating for a change of the Special Public Prosecutor. They denied making any defamatory statements against the judiciary. A compact disc



(CD) was produced on 15.07.2003 which was a video recording, of the press conference held on 15.05.2002 at Sri Ganganagar by the third Appellant and Sheopat Singh. The said press conference was also telecast on ETV (Rajasthan). The High Court viewed the CD after taking consent from both sides in the presence of the third Appellant and Sheopat Singh. The High Court directed a transcript of the video to be prepared and be kept on record.

4. The High Court framed three questions for consideration which are as follows:

*Whether statement published in "LokSammat" dtd. 24.2.2001 published from Sri Ganganagar amounts to criminal contempt?*

*Whether editor's liability for whatever is published in the newspaper is absolute or he is not liable for faithful reproduction of the statement made by somebody else in the news reporting?*

*Whether it is proved beyond reasonable doubt on the basis of material on record that respondents No.2 to 6 did make the statements attributed to them respectively so as to hold them liable for contempt?"*

5. In view of the disparaging remarks made by the Appellants against the judges of the Rajasthan High Court, the High Court held that the statement published in Lok Sammat on 24.02.2001 amounts to criminal contempt. The scathing remarks made by the Appellants have a tendency of creating a doubt in the minds of the public about the impartiality, integrity and fairness of the High Court in administering justice. According to the High Court, the scurrilous attack made by the Appellants against the judiciary lowers the authority of the Court.
6. In view of the unconditional apology tendered at the earliest point of time by Respondent No. 1, the Editor of Lok Sammat, the High Court discharged the notices against him in the contempt petition. The High Court answered the third point against the Appellants and held them guilty of contempt as the case was proved against them beyond reasonable doubt. The entire evidence on record was scrutinized carefully by the High Court to reach this conclusion. The press conference held by the third Appellant was highlighted by the High Court to conclude that the highly objectionable statements were, in fact, made by the Appellants on 23.02.2001. As the Appellants denied having made any statements against the judiciary in their reply to the contempt petition, the journalists demanded an explanation. The third Appellant stated that they stood by what was said on 23.02.2001. The High Court held the Appellants guilty of committing criminal contempt and sentenced them to simple imprisonment of two months and fine of Rs. 2000/- each.
7. We have heard Mr. Prashant Bhushan, Advocate for the Appellants. As Respondent No. 1 who was the petitioner in the contempt petition was unrepresented, we requested Ms. Aishwarya Bhati, Advocate to assist the Court to which she readily agreed. Apart from making oral submissions Ms. Bhati also gave a written note. Mr. Bhushan submitted that statements attributed to the Appellants only represent fair criticism which would not amount to contempt. According to him, the Appellants were in an agitated mood due to the murder of one of their leaders and the mishandling of the criminal case connected to that murder. Criticism of class bias and improper administration of justice cannot be considered to be contempt. He referred to a statement attributed to the fourth Appellant who alleged influence of money in the grant of anticipatory bail to the accused and explained that statement as having been made in a different context altogether. He stated that the influence of money was against the authorities and police force and not attributed to the judiciary. He also stated that the statement made by the third Appellant who named the judge who granted anticipatory bail and accused the judiciary of being partial to rich people does not tantamount to contempt. Strong reliance was placed on **Indirect Tax Practitioners Association v. R. K. Jain**, reported in (2010) 8 SCC 281 by Mr.

Bhushan to contend that the Courts should not be sensitive to fair criticism. He also stated that the power of punishing for contempt has to be exercised sparingly.

8. Ms. Aishwarya Bhati, the learned Amicus Curiae, submitted that the judgment of the High Court does not warrant any interference as the entire evidence was dealt with in detail. She submitted that all the relevant factors were taken into account by the High Court including the statements made by the Appellants which *ex facie* demonstrated contempt, the stand of the editor of the newspaper that they have scrupulously and correctly reported the statements in the newspaper and non denial of the Appellants addressing the public meeting at the Collectorate of Sri Ganganagar. She also submitted that the High Court took note of the press conference of the third Appellant and Sheopat Singh on 15.05.2002 and the affidavits of 5 journalists and one deed writer who were witness to the meeting on 23.02.2001. She placed reliance on a judgment of this Court reported in **Bal Kishan Giri v. State of Uttar Pradesh**, reported in (2014) 7 SCC 280 to contend that

vituperative comments undermining the judiciary would amount to contempt. She also relied upon **Vijay Kumar Singh v. Union of India**, reported in (2014) 16 SCC 460 to contend that the apology was made only for the purpose of avoiding punishment and was not *bona fide*. To avoid prolixity, we are not referring to other judgments cited by the learned Amicus Curiae. She referred to the affidavits filed by the Appellants in this Court apologizing for the statements and even they do not demonstrate any genuine contrition. She submitted that an apology by the contemnors should be tendered at the earliest opportunity and it should be unconditional.

9. Section 2 (c) of the Contempt of Courts Act, 1971 (*hereinafter referred to as 'the Act'*) defines criminal contempt as follows:

**“2. Definitions.** *In this Act, unless the context otherwise requires,*

- (1) *“criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which –*
  - (i) *scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or*
  - (ii) *prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or*
  - (iii) *interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;”*

10. Section 5 of the Act is as under:

**“5. Fair criticism of judicial act not contempt.**

*“A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.”*

- (1) Section 12 of the Act is as under:

**“12. Punishment for contempt of court (1)**

*Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.*

*Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.*

*Explanation.-An apology shall not be rejected merely on the ground that it is qualified or conditional if*

*the accused makes it bona fide.*

- (2) *Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.*
- (3) *Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.*
- (4) *Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:*

*Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.*

6. *Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or Connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.*

*Explanation.-For the purpose of sub-sections (4) and (5),-*

- (a) *"company" means anybody corporate and includes a firm or other association of individuals ; and*
- (b) *"director", in relation to a firm, means a partner in the firm.*

- (2) We are, in the present case, concerned with Section 2(c)(i) of the Act which deals with scandalizing or lowering the authority of the Court. It has been held by this Court that judges need not be protected and that they can take care of themselves. It is the right and interest of the public in the due administration of justice that have to be protected. **Se Asharam M. Jain v. A. T. Gupta**, reported in (1983) 4 SCC 125, "Vilification of judges would lead to the destruction of the system of administration of justice. The statements made by the Appellants are not only derogatory but also have the propensity to lower the authority of the Court. Accusing judges of corruption results in denigration of the institution which has an effect of lowering the confidence of the public in the system of administration of justice. A perusal of the allegations made by the Appellants cannot be termed as fair criticism on the merits of the case. The Appellants indulged in an assault on the integrity of the judges of the High Court by making baseless and unsubstantiated allegations. They are not entitled to seek shelter under Section 5 of the Act. The oft-quoted passage from **Ambard v. Attorney-General for Trinidad and Tobago**, [1936] A.C. is that "[j]ustice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men." The Privy Council "The path of in the same judgment held as follows:

criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune.” [Emphasis ours]

In Indirect Tax Practitioners Association v. R. K. Jain (supra) this Court held in paragraph 23 as follows:

“Ordinarily, the Court would not use the power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19 (1) (a) of the Constitution. Only when the criticism of judicial institution transgresses all limits of decency and fairness or there is total lack of objectivity or there is deliberate attempt to denigrate the institution then the court would use this power.”

(3) Every citizen has a fundamental right to speech, guaranteed under Article 19 of the Constitution of India. Contempt of Court is one of the restrictions on such right. We are conscious that the power under the Act has to be exercised sparingly and not in a routine manner. If there is a calculated effort to undermine the judiciary, the Courts will exercise their jurisdiction to punish the offender for committing contempt. We approve the findings recorded by the High Court that the Appellants have transgressed all decency by making serious allegations of corruption and bias against the High Court. The caustic comments made by the Appellants cannot, by any stretch of imagination, be termed as fair criticism. The statements made by the Appellants, accusing the judiciary of corruption lower the authority of the Court. The Explanation to sub-Section 12 (1) of the Act provides that an apology should not be rejected merely on the ground that it is qualified or tendered at a belated stage, if the accused makes it *bona fide*. The stand taken by the Appellants in the contempt petition and the affidavit filed in this Court does not inspire any confidence that the apology is made *bona fide*. After a detailed consideration of the submissions made by both sides and the evidence on record, we are in agreement with the judgment of the High Court that the Appellants are guilty of committing contempt of Court. After considering the peculiar facts and circumstances of the case including the fact that the contemptuous statements were made in 2001, we modify the sentence to only payment of fine of Rs. 2,000/- each.

(4) The Appeal is dismissed with the said modification.

15. Criminal Appeal No. 464 of 2006, which concerns the same facts as reported in another newspaper, stands disposed of in terms of Criminal Appeal No. 463 of 2006.

16. We record our appreciation for the assistance rendered by Ms. Aishwarya Bhati, Advocate as Amicus Curiae.

[ANIL R. DAVE]  
[L. NAGESWARA RAO]

***Perspective Publications (P) Ltd v. State of Maharashtra***

1971 AIR 221, 1969 SCR (2) 779

Bench: Grover, A.N.

JUDGMENT:

This is an appeal from the judgment of the Bombay High Court passed in exercise of ordinary original civil jurisdiction by which the appellants were found guilty of having committed contempt of Mr. Justice Tarkunde in his judicial capacity and of the court. Appellant No. 2 D.R. Goel, who is the Editor, Printer and Publisher of Perspective Publications (P) Ltd. --appellant No. 1, was sentenced to simple imprisonment for one month together with fine amounting to Rs. 1,000/-, in default of payment of fine he was to undergo further simple imprisonment for the same period. The appellants were also directed to pay the costs incurred by the State. On behalf of the first appellant it has been stated at the bar that the appeal is not being pressed.

The background in which the impugned article was published' on April 24, 1965, in a weekly periodical called "Mainstream" which is a publication brought out by the first appellant may be set out. In the year 1960 a suit was filed by one Krishnaraj Thackersey against the weekly newspaper "Blitz" and its Editor and others claiming Rs. 3 lacs as damages for libel. The hearing in that suit commenced on the original side of the Bombay High Court on June 24, 1964. The delivery of the judgment commenced on January 19, 1965 and continued till February 12, 1965. After June 24, 1964, that suit was heard from day to day by Mr. Justice Tarkunde. The suit was decreed in the sum of Rs. 3 lacs. An appeal is pending before a division bench of the High Court against that judgment.

The impugned article is stated to have been contributed by a person under the name of "Scribbler" but appellant No. 2 has taken full responsibility for its publication. Its heading was "STORY OF A LOAN and Blitz Thackersey Libel Case". It is unnecessary to reproduce the whole article which appears verbatim in the judgment of the High Court. The article has been ingeniously and cleverly worded. The salient matters mentioned in the article are these: After paying a tribute to the Indian judiciary the writers say that according to the report in "Prajatantra" a Gujarati paper architects Khare-Tarkunde Private Limited of Nagpur, hereinafter called "Khare-Tarkunde" (which is described a Firm in the article) got a loan facility of Rs. 10 lacs from the Bank of India on December 7, 1964. The partners of Khare-Tarkunde included the father, two brothers and some other relations of Justice Tarkunde who awarded a decree for Rs. 3 lacs as damages against Blitz and in favour of Thackersey. It is pointed out that the date on which Rs. 10 lacs loan facility was granted by the Bank of India was about five and a half months after the Thackersey-Blitz libel suit had begun and just over six weeks before Justice Tarkunde began delivering his "marathon judgment" on January 19, 1965. It is then said that for Rs. 10 lacs loan facility granted to Khare-Tarkunde, the New India Assurance Co. stood guarantee and that the two Directors of the Bank of India who voted in favour of the credit of Rs. 10 lacs being granted to Khare-Tarkunde were Thackersey and Jaisinh Vithaldas (believed to be a relative of Thackersey). Next it is stated that one of the Directors of the New India Assurance that stood guarantee for the loan facility was N.K. Petigara, who was also a senior partner of M/s. Mulla & Mulla Craigie Blunt & Caroe, Solicitors of Thackersey in the Blitz-Thackersey Libel Case before Justice Tarkunde 4 Sup. CI/69--17 Emphasis is laid on the fact that Khare-Tarkunde had a capital of Rs. 5 lacs only and the balance sheet of the firm of June 1964 revealed indebtedness to various financiers to the tune of Rs. 14 lacs. Thus Khare-Tarkunde is stated to be "lucky to get against all this a handsome loan of Rs. 10 lacs from the

Bank of India". The writer refers to the Code among college teachers and university professors of not examining papers when their own children and near relatives sit for examination and adds that Justice Tarkunde himself will recognize the rightness of such a Code. Referring to the unimpeachable integrity and reputation of judges of the Bombay High Court, the writer proceeds to say "there must not be allowed to be raised even the faintest whisper of any misgiving on that score." Paragraph 24 deserves to be reproduced :-

"If Sri Krishna Thackersey did not lay it bare at the time of the suit that he was one of the sponsors of a contract of which the judge's relations were the beneficiaries, it is up to the Chief Justice of the Supreme Court and the Bombay High Court including Justice Tarkunde as also the ever vigilant members of the Bar to consider all the implications of these disclosures which have distressed a common citizen like me, so that the finest traditions of our judiciary may be preserved intact."

A petition was filed before the Bombay High Court by the State of Maharashtra pointing out that the aforesaid article contained scandalous allegations and was calculated to obstruct the administration of justice and constituted gross contempt of court. The article purported to state certain facts relating to the transaction between Khare-Tarkunde and the Bank which were false and there were several mis-statements and suppression of facts some of which were:

(a) The article wrongly stated that the father of Mr. Justice Tarkunde was a partner in KhareTarkunde; and

(b) The article falsely described the transaction as a 'loan' by the Bank to Khare- Tarkunde. In fact the said transaction was only a guarantee given by the Bank which undertook to pay to the Govt. any amount not exceeding Rs. 10 lacs in the event of Khare- Tarkunde being unable to perform its obligations. The Bank was secured by a further guarantee given by the New India Assurance Co. Ltd. undertaking to secure the Bank in the event of the Bank having to pay the said amount or any part thereof.

Appellant No. 2 who also happens to be a Director and Principal Officer of the first appellant, filed a reply raising some objec-

tions of a legal and technical nature ,and took up the position that the impugned article was based on a report published in "Prajatantra" from which all the facts stated in the article were incorporated. It was asserted that certain 'major facts' had been verified by the appellant and found to be true. It was admitted that upon reading the petition for taking contempt proceedings it was found by appellant No. 2 that there were certain incorrect statements in the article. It was claimed that the article had been published in a bona fide belief that whatever was stated in the article in "Prajatantra" was true. The intention was to convey to the public at large that it was incumbent on the plaintiff Thackersey and Pettigara, one of the partners of Mulla & Mulla etc., his attorneys to inform Justice Tarkunde that the plaintiff had voted for a resolution of the Board of Directors of the Bank of India which, without reasonable doubt, would help Khare-Tarkunde in which Tarkunde happened to be a brother of the Judge. The High Court analysed the implications of the facts stated in each paragraph of the impugned article in great detail and observed :--

" ..... reading the article as a whole, taking care not to read into it anything more than its plain language implies and making every allowance for literary style and rhetorical flourish expressions which were often used in the arguments for the. respondents it is impossible to avoid the

conclusions that this article exceeds the bounds of fair and reasonable criticism. In so far as it suggests that there is some sort of casual connection between the granting of the loan to M/s. Khare-Tarkunde Pvt. Ltd., and the judgment of Mr. Justice Tarkunde in the Blitz- Thackersey case, it clearly attempts to lower the learned judge in his judicial capacity not to mention the fact that it would also tend to shake the confidence of the lay public in the High Court and impair the due administration of justice in that Court. In so far as there is a suggestion made be it ever so faint that Mr. Justice Tarkunde knew or must have known of the loan to his brother's firm before he delivered the judgment in the case, the article is malicious and 'not in good faith.'

The High Court also examined the misstatements and inaccuracies in the impugned article and held that there was no foundation for the suggestion that Khare-Tarkunde was an impecunious concern and therefore was "lucky" to get the handsome loan nor for the suggestion that either Thackersey and his co-Directors in the Bank of India or Thackersey's solicitor and his co-Directors in the New India Assurance Co. went out of their way to grant accom-

modation to Khare-Tarkunde. The High Court found no basis for the insinuation that there was any connection between the loan and the judgment in the Blitz-Thackersey case or that Justice Tarkunde knew or might have known about any loan having been granted to his brother's firm. No attempt was made to justify these suggestions in the return or in the argument before the High Court and all that was urged was that the words used by contestable did not give rise to the said imputations or innuendos and that the contemnor was only trying to communicate to the public at large what has been stated before. It is needless to refer to the other points raised before and decided by the High Court because none of them has been argued before us.

In this appeal, counsel for appellant no. 2 has made some attempt to establish that no aspersion was cast on the integrity of Justice Tarkunde in the article nor was any imputation of dishonesty made. His second contention is that proceedings for contempt for scandalising a Judge have become obsolete and the proper remedy in such a situation is for the Judge to institute action for libel. Thirdly, it is said that there was no evidence before the High Court that Justice Tarkunde did not know about the transaction or the dealings between the firm in which his brother was a partner and the bank of which Thackersey was a director. If, it is submitted, the allegations made in the article were truthful or had been made bona fide in the belief that they were truthful the High Court ought not to have found appellant no. 2 guilty of contempt. At any rate, according to counsel, the statements contained in the article only made out a charge of bias against the Judge and if such a charge is made it cannot be regarded as contempt. On the first point our attention has been invited to the paragraphs in the article containing expression of high opinion held by the writer of the judiciary in India. It is suggested that his attempt was only to make a fair and legitimate criticism of the proceedings in the Thackersey suit against the "Blitz" weekly. It has been emphasised in the article that the damages which were awarded to the tune of Rs. 3 lakhs were almost punitive and that it was a rare phenomenon that the plaintiff (Thackersey) did not step into the witness box and also a permanent injunction had been granted preventing Blitz from printing anything based on the subject matter of litigation. The law involving freedom of press fully warranted such criticism of a judgment or of the proceedings in a suit in a court of law.

It is true that the writer of the article could exercise his right of fair and reasonable criticism and the matters which have been mentioned in some of the paragraphs may not justify any proceedings being taken for contempt but the article read as a whole leaves no doubt that the conclusions of the

High Court were unexceptionable. It was a skillful attempt on the part of the writer to impute dishonesty and lack of integrity to Justice Tarkunde in the matter of Thackersey-Blitz suit, the imputation being indirect and mostly by innuendo that it was on account of the transaction and the dealings mentioned in the article that the suit of Thackersey was decreed in the sum of Rs. 3 lakhs which was the full amount of damages claimed by Thackersey. It may be that the article also suggests that Thackersey and his attorneys were to blame inasmuch as they did not inform the Judge about the transactions of Khare Tarkunde with the Bank of India with which Thackersey was associated in his capacity as a director but that cannot detract from the obvious implications and insinuations made in various paragraphs of the article which immediately create a strong prejudicial impact on the mind of the reader about the lack of honesty, integrity and impartiality on the part of Justice Tarkunde in deciding the Thackersey-Blitz suit. On the second point counsel for appellant no. 2 has relied a great deal on certain decisions of the Privy Council- and the Australian and American courts. In the matter of a Special Reference from the Bahama Islands(1) a letter was published in a colonial newspaper containing sarcastic allusions to a refusal by the Chief Justice to accept 'a gift of pineapples. No judgment was given by the Privy Council but their lordships made a report to Her Majesty that the impugned letter though it might have been made subject of proceedings for libel was not, in the circumstances, calculated to obstruct or interfere with the course of justice or the due administration of law and, therefore, did not constitute contempt of court. In that case there was no question of scandalising the court nor had any imputation been made against the Chief Justice in respect of any judicial proceedings pending before him or disposed of in his court. It is the next decision of the Privy Council in *McLeod v. St. Aubyn*(2) on which a great deal of argument has been built up before us that the courts, at least in England, have stopped committing anyone for contempt for publication of scandalising matter respecting the court after adjudication as well as pending a case before it. That case came by way of an appeal from an order of the Acting Chief Justice St. Aubyn of the Supreme Court of St. Vincent committing one McLeod to prison for 14 days for alleged contempt of court. It was said *inter alia* in the impugned publication that in Mr. Trifford the public had no confidence and his locus tenens, Mr. St. Aubyn was reducing the judicial character to the level of a clown. There were several other sarcastic and libelous remarks made about the Acting Chief Justice. While recognizing publication of scandalous matter of the court itself, as a head of contempt of court as (1) [1893] A.C. 138.

(2) [1899] A.C. 549.

laid down by Lord Hardwicke in *Re: Read and Huggonson*(1), Lord Morris proceeded to make the oft-quoted observation "commitments for contempt of Court 'by itself have become obsolete in this country even though in small colonies consisting principally of coloured population commitments might be necessary in proper cases". Only a year later Lord Russell of Killowen C.J., in *The Queen v. Gray*(2) reaffirmed that any act done or writing published calculated to bring a court or a judge of the court in contempt, or to lower his authority, was a contempt of court. The learned Chief Justice made it clear that judges and courts were alike open to criticism and if reasonable argument or expostulation was offered against any judicial act as contrary to law or the public good no court could or would treat that as contempt of court but it was to be remembered that the liberty of the press was not greater and no less than the liberty of every subject. In that case it was held that there was personal scurrilous abuse of a judge and it constituted contempt. All the three cases which have been discussed 'above were noticed by the Privy Council in *Debi Prasad Sharma & Ors. v. The King Emperor*(3) where contempt proceedings had been taken in respect of editorial comments published in a newspaper based on a news item that the Chief Justice of Allahabad High Court in his administrative capacity had issued a circular to judicial officers enjoining on them to raise



contributions to the war fund and it was suggested that he had done a thing which would lower the prestige of the court in the eyes of the public. This is what was said at page 224 :-

"In *In re a Special Reference from the Bahama Islands* [1893] A.C. 138, the test applied by the very strong Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law. In *Reg. v. Gray* [1900] 2Q.B. 36 it was shown that the offence of scandalising the court itself was not obsolete in this country.

A very scandalous attack had been made on a judge for his judicial utterances while sitting in a criminal case on circuit, and it was with the foregoing opinions on record that Lord Russell of Killowen C.J. adopting the expression of Wilmot C.J. in his opinion in *Rex v. Almon* (1765) Wilmot's Notes of Opinions 243, which is the source of much of the present law on the subject, spoke of the article complained of as calculated to lower the authority of the judge."

It is significant that their lordships made a distinction between a case where there had been criticism of the administrative act of (1) 2 Ark. 471.

(2) [1900] 2 Q.B.D. 36.

(3) 70 I.A. 216.

a Chief Justice and an imputation on him for having done or omitted to have done something in the administration of justice. It is further noteworthy that the law laid down in *McLeod v. St. Aubyn*(1) was not followed and it was emphasised that *Reg. v. Gray*(2) showed that the offence of scandalising the court itself was not obsolete in England. In *Rex v. Editor of the New Statesman*(3) an article had been published in the *New Statesman* regarding the verdict by Mr. Justice Savory given in a libel action brought by the Editor of the "Morning Post" against Dr. Marie Stopes (the well known advocate of birth control) in which it was said, inter alia, "the serious point in this case, however, is that an individual owing to such views as those of Dr. Marie Stopes cannot 'apparently hope for a fair hearing in a Court presided over by Mr. Justice Avory--and there are so many Avorys'. On behalf of the contemnor *McLeod v. St. Aubyn*(1) was sought to be pressed into service. The Lord Chief Justice in delivering the judgment of the Court said that the principle applicable to such cases was the one stated in *Reg. v. Gray*(2) and relied on the observations of Lord Russell at p. 40. It was observed that the article imputed unfairness and lack of impartiality to a judge in the discharge of his judicial duties. The gravamen of the offence was that by lowering his authority it interfered with the performance of his judicial functions. Again in *Ambard v. Attorney General for Trinidad and Tobago*(4) the law enunciated in *Reg. v. Gray*(2) by Lord Russell of Killowen was applied and it was said at page 335:

"But whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way; the wrong headed are permitted to err therein; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice, or attempting to

impair the administration of justice, they are immune. Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though spoken, comments of ordinary men."

It was, however, held that there was no evidence upon which the court could find that the alleged contemnor had exceeded fair and temperate criticism and that he had acted with untruth or malice (1) [1899] A.C. 549.

(2) [1900] 2 Q.B.D. 36.

(3) [1928] 44 T.L.R. 301.

(4) [1936] A.C. 322.

and with the direct object of bringing the administration of justice into disrepute.

Lord Denning M.R. in *Reg v. Commissioner of Police of the Metropolis, Ex parte Blackburn* (No.2)(1) made some pertinent observations about the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair and even outspoken comment on matters of public interest. In the words of the Master of Rolls, "those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticism. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication." In that case Mr. Quintin Hogg had written an article in "Punch" in which he had been critical of the Court of Appeal and had even made some erroneous statements. But reading of the article the salient passage of which is set out in the judgment of the Master of the Rolls makes it quite clear that there was no attempt to scandalise the Court and impute any dishonourable or dishonest motives or to suggest any lack of integrity in any particular Judge. Oswald in his book on the Contempt of Court has expressed the view that it would be going a great deal too far to say that commitments for contempt of court by scandalising the Court itself have become obsolete, and that there does not seem to be any good reason for ignoring the principles which govern the numerous early cases on the subject.

The American and the Australian cases viz., *John D. Pennekamp and The Miami Herald Publishing Co. v. State of Florida*(2) and *Bell v. Stewart*(a) to which reference has been made on behalf of appellant No. 2 can hardly be of much assistance because in this country principles have become crystallized by the decisions of the High Courts and of this Court in which the principles followed by English Courts have been mostly adopted.

We would now advert to the decisions of this Court. It was held in *Bathina Ramakrishna Reddy v. The State of Madras*(4) that the fact that the defamation of a Judge of a subordinate court constitutes an offence under s. 499 of the Indian Penal Code did not oust the jurisdiction of the High Court to take cognizance of the act as a contempt of court. In that case in an article in a Telugu weekly it was alleged that the Stationary Sub-Magistrate of Kovvur was known to the people of the locality for harassing (1) [1968] 2 W.L.R. 1206.

(2) 328 U.S. 331.

(3 ) 28 Com. L.R. 419.

(4) [1952] S.C.R. 425.

litigants in various ways etc. Mukherjea, J., (as he then was) who delivered the judgment described the article as a scurrilous attack on the integrity and honesty of a judicial officer. It was observed that if the allegations were false, they could not undermine the confidence of the public in the administration of justice and bring the judiciary into disrepute. The appellant there had taken the sole responsibility regarding the publication of the article and was not in a position to substantiate by evidence any of the allegations made therein. It was held that he could not be said to have acted bona fide, "even if good faith can be held to be a defence at all in a proceeding for contempt". The decision in *Re: The Editor, Printer and Publisher of "The Times of India"* and *In re Aswini Kumar Ghose and Anr. v. Arabinda Bose & Anr.*(1) is very apposite and may be next referred to. In a leading article in "The Times of India" on the judgment of this Court in *Aswini Kumar Ghose v. Arabinda Bose & Anr.*(2) the burden was that if in a singularly oblique and infelicitous manner the Supreme Court had by a majority decision tolled the knell of the much maligned dual system prevailing in the Calcutta and Bombay High Courts by holding that the right to practise in any High Court conferred on advocates of the Supreme Court had made the rules in force in those High Courts requiring advocates appearing on the original side to be instructed by attorneys inapplicable to them. This is what was said by Mahajan, J., (as he then was) speaking for the Court:

"No objection could have been taken to the article had it merely preached to the courts of law the sermon of divine detachment. But when it proceeded to attribute improper motives to the Judges, it not only transgressed the limits of fair and bona fide criticism but had a clear tendency 'to affect the dignity and prestige of this Court. The article in question was thus a gross contempt of court. It is obvious that if an impression is created in the minds of the public that the judges in the highest Court in the land act on extraneous considerations in deciding cases, the confidence of the whole community in the administration of justice is bound to be undermined and no greater mischief than that can possibly be imagined."

The Editor, Printer and Publisher of the newspaper tendered an apology which was accepted; but this Court concurred in the expression of views in *Ambard v. Attorney General of Trinidad*(3), a passage from which has already been extracted. The guiding principles to be followed by courts in contempt proceedings were enunciated in *Brahma Prakash Sharma & Ors. v. The State of* (1) [1953] S.C.R. 215.

(2) [1953] S.C.R. 1.

(3) [1936] A.C. 322.

*Uttar Pradesh*(1). The judgment again was delivered by Mukherjea, J., (as he then was) and the English decisions including those of the Privy Council were discussed. It is necessary to refer only to the principles laid down for cases of the present kind i.e. scandalising the court. It has been observed that there are two primary considerations which should weigh with the court when it is called upon to exercise summary power in cases of contempt committed by "scandalising" the court itself. In the first place, the reflection on the conduct or character of a Judge in reference to the discharge of his judicial duties would not be contempt, if such reflection is made in the exercise of

the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. Secondly, when attacks or comments are made on a Judge or Judges disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on a judge and what really amounts to contempt of court. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. "it will be 'an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to interfere with the proper administration of law." In that case it was held that the contempt was of a technical nature. This was based apparently on the reason that the Members of the Bar who had passed a resolution attributing incompetency, lack of courtesy etc. and had referred to complaints against two officers, one a Judicial Magistrate and the other a Revenue Officer and had sent those complaints to the District Magistrate, Commissioner and the Chief Secretary in the State and secondly because very little publicity had been given to the statement.

In *Re: Hira Lal Dixit & two Ors.*(2) the above principles were applied and reaffirmed. In that case words which had been used in a poster which was published had the necessary implication that the judges who decided in favour of the Government were rewarded by the Government with appointments to this Court. Although this case was not one of scandalizing of the court but the question that was posed was whether the offending passage was of such character and import or made in such circumstances- (1) [1953] S.C.R. 1169.

(2) [1955] 1 S.C.R. 677.

stances as would tend to hinder or obstruct or interfere with the due course of administration of justice by this Court and it was answered in the affirmative and the contemnor was held guilty of Contempt of Court. In *State of Madhya Pradesh v. Revashankar*(1) an application was made under s. 528 of the Code of Criminal Procedure in certain criminal proceedings containing serious aspersions against a Magistrate, Mr. N.K. Acharya. Reliance was once again placed on *Brahm Prakash Sharma*'s(2) case and the principles laid therein. It was held that the aspersions which had been made amounted to something more than a mere intentional personal insult to the Magistrate; they scandalised the court itself and impaired the administration of justice and that proceedings under the contempt of court could be taken against the contemnor.

There can be no manner of doubt that in this country the principles which should govern cases of the present kind are now fully settled by the previous decisions of this Court. we may restate the result of the discussion of the above cases on this head of contempt which is by no means exhaustive.

(1 ) It will not be right to say that committals for contempt for scandalizing the court have become obsolete.

(2) The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.

(3) It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because "justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men".

(4) A distinction must be made between a mere libel or defamation of a judge and what amounts to a contempt of the court.

The test in each case would be whether the impugned publication is a mere defamatory attack on the judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by his court. It is only in the latter case that it will be punishable as Contempt.

(1) [1959] S.C.R. 1367.

(2) [1953] S.C.R. 1169.

(5 ) Alternatively the test will be whether the wrong is done to the judge personally or it is done to the public. To borrow from the language of Mukherjea, J. (as he then was) (Brahma Prakash Sharma's case)(1) the publication of a disparaging statement will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties.

As regards the third contention no attempt was made before the High Court to substantiate that the facts stated in the article were true or were rounded on correct data. It may be that truthfulness or factual correctness is a good defence in an action for libel, but in the law of contempt there are hardly any English or Indian cases in which such defence has been recognized. It is true that in the case of Bathina Ramakrishna Reddy(2) there was some discussion about the bona fides of the person responsible for the publication but that was apparently done to dispose of the contention which had been raised on the point. It is quite clear that the submission made was considered on the assumption that good faith can be held to be a defence in a proceeding for contempt. The words "even if good faith can be held to be a defence at all in a proceeding for contempt" show that this Court did not lay down affirmatively that good faith can be set up as a defence in contempt proceedings. At any rate, this point is merely of academic interest because no attempt was made before the High Court to establish the truthfulness of the facts stated in the article. On the other hand, it was established that some of the material allegations were altogether wrong and incorrect.

Lastly the submission that the statements contained in the article made out only a charge of bias against the judge and this cannot constitute contempt has to be stated to be rejected. It is a new point and was never raised before the High Court. Moreover the suggestion that the charge in the article was of legal bias which meant that Justice Tarkunde had some sort of pecuniary interest in Khare-Tarkunde which had the transactions with the bank of which Thackersey was a Director is wholly baseless. Counsel had to agree that Justice Tarkunde was neither a shareholder nor was there

anything to show that he had any other interest in Khare- Tarkunde. The mere fact that his brother happens (1) [1953] S.C.R. 1169.

(2) [1952] S.C.R. 425., to have a holding in it cannot per se establish that Justice Tarkunde would also have some financial or pecuniary interest therein. It is not possible to accept nor has such extreme position been taken by the counsel for appellant no. 2 that there is any bar to a brother or 'a near relation of a judge from carrying on any business, profession or avocation. The entire argument on this point is wholly without substance.

The appellant No. 2 showed no contrition in the matter of publication of the impugned article. He never even tendered an unqualified apology. The High Court, in these circumstances, was fully justified in punishing him for contempt of court and in awarding the sentence which was imposed. In the impugned article there was a clear imputation of impropriety, lack of integrity and oblique motives to Justice Tarkunde in the matter of deciding the Thackersey-Blitz suit which, on the principles already stated, undoubtedly constituted contempt of court. The appeal fails and is hereby dismissed.

V.P.S.

Appeal dismissed.

***Narmada BachaoAndolan v. Union Of India And Ors.***

1999 Supp(4) SCR 5

**Bench: Dr. A.S. CJ, S.P. Bharucha, B.N. Kirpal**

**JUDGMENT:**

DR. A.S. ANAND, C.J. This petition has been filed by the State of Gujarat bringing to the notice of the Court how the petitioner-Narmada BachaoAndolan-had been reacting to the interim order of this Court permitting the increase of the height of the dam to RL 85 meters and about the threats of protests, public meetings and of undertaking Satyagrahas etc., on account of that order. Reference is made particularly to the interview of Ms. Medha Patkar which appeared in the Hindustan Times of 27.6.1999 and some other newspaper reports and press releases issued by the petitioner. Our attention has also been drawn to an article which appeared in the Weekly News Magazine 'Outlook' and to some portions of a Book titled "The Greater Common Good" by Ms. Arundhati Roy.

On 22nd July, 1999, we made the following order :

At the outset, our attention has been drawn to certain statements, press releases, interviews, etc., given by the petitioners themselves or by some others under the aegis of the petitioner-Narmada BachaoAndolan. Copies of some of those statements, etc., have been filed along with I.A. No. 14 by the State of Gujarat.

Our attention has also been drawn to an article in the weekly news magazine "Outlook" dated May 24, 1999 under the title "The Greater Common Good" by Ms. Arundhati Roy. A book under the same title, i.e., "The Greater Common Good" by Arundhati Roy, which appears to have been dedicated to "The Narmada, and all the life she sustains and Shripad, Nandini, Sylvie, Alok, Medha, Baba Amte and their colleagues in the NBA", has also been brought to our notice.

We have gone through the statements, the press releases, the article and certain portions of the book referred to above. Prima facie it appears to us that there is a deliberate attempt to undermine the dignity of the Court and to influence the course of justice. These writings, which present a rather one sided and distorted picture have appeared in spite of our earlier directions restraining the parties from going to the press, etc., during the pendency of the proceedings in this Court.

However, before we decide to proceed any further, we consider it proper to appoint an amicus to advise the Court about the action, if any, which is required to be taken in this respect as also in respect of the writ petition itself.

We request Mr. K.K. Venugopal, Senior Advocate, President of the Supreme Court Bar Association, to act as amicus and advise the court.

After hearing learned amicus as well as other learned counsel appearing in the case, who all rose above the case of their clients to assist the Court, we are of the opinion that the petitioner-NBA and

its leader Ms. Medha Patkar have knowingly made comments on pending proceedings and have prima facie disobeyed the interim injunctions issued by this Court on 11.4.1997 and 5.11.1998. Prima facie the threats held out by the petitioners and its leaders also appear to be an attempt to prejudice or interfere with the due course of judicial proceedings. Litigants must realise that Courts cannot be forced by pressure tactics to decide pending cases in the manner in which the concerned party desires. It will be a negation of the Rule of Law if the Courts were to act under such pressure.

Some of the objectionable passages in the Book, " The Greater Common Good" by Ms. Arundhati Roy are as follows:

I stood on a hill and laughed out loud.

I had crossed the Narmada by boat from Jalsindhi and climbed the headland on the opposite bank from where I could see, ranged across the crowns of law, bald hills, the tribal hamlets of Sikka, Surung, Neemgavan and Domkhedi. I could see their airy, fragile homes. I could see their fields and the forests behind them. I could see little children with littler goats scuttling across the landscape like motorised peanuts, I knew I was looking at a civilisation older than Hinduism, slated-sanctioned (by the highest court in the land) -to be drowned this monsoon when the waters of the Sardar Sarovar reservoir will rise to submerge it."

"Why did I laugh?

Because I suddenly remembered the tender concern with which the Supreme Court Judges in Delhi (before vacating the legal stay on further construction of the Sardar Sarovar dam) had enquired whether tribal children in the resettlement colonies would have children's park to play in. The lawyers representing the Government had hastened to assure them that indeed they would, and what's more, mat there were seesaws and slides and swings in every park. I looked up at the endless sky and down at the river rushing past and for a brief, brief moment the absurdity of it all reversed my rage and I laughed. I meant no disrespect."

"Who owns this land? Who owns its rivers? Its forests?Its fish? These are huge questions. They are being taken hugely seriously by the State. They are being answered in one voice by every institution at its command -the army, the police, the bureaucracy, the courts. And not just answered, but answered unambiguously, in bitter, brutal ways".

"According to the Land Acquisition Act of 1894 (amended in 1984) the Government is not legally bound to provide a displaced person anything but a cash compensation. Imagine that. A cash compensation, to be paid by an Indian government official to an illiterate tribal man (the women get nothing) in a land where even the postman demands a tip for a delivery! Most Tribal people have no formal title to their land and therefore cannot claim compensation anyway. Most tribal people-or let's say most small farmers-have as much use for money as a Supreme Court Judge has for a bag of fertiliser"

Ms. Arundhati Roy is not a party to the proceedings pending in this Court. She has, however, made comments on matters connected with the case being fully alive to the pendency of the proceedings in this Court. The comments made by her are prima facie a misrepresentation of the proceedings in



this Court. Judicial process and institution cannot be permitted to be scandalised or subjected to contumacious violation in such a blatant manner in which it has been done by her.

While hypersensitivity and peevishness have no place in judicial proceedings-vicious stultification and vulgar debunking cannot be permitted to pollute the stream of justice. Indeed under our Constitution there are positive values like right to life, freedom of speech and expression, but freedom of speech and expression does not include freedom to distort orders of the Court and present incomplete and a one side picture deliberately, which has the tendency to scandalise the Court. Whatever may be the motive of Ms. Arundhati Roy, it is quite obvious that she decided to use her literally fame by misinforming the public and projecting in a totally incorrect manner, how the proceedings relating to Resettlement and Rehabilitation had shaped in this Court and distorting various directions given by the Court during the last about 5 years. The writings referred to above have the tendency to create prejudice against this Court. She seems to be wholly ignorant of the task of the Court. The manner in which she has given twist to the proceedings and orders of the Court is in bad taste and not expected from any citizen, to say the least.

We wish to emphasise that under the cover of freedom of speech and expression no party can be given a licence to misrepresent the proceedings and orders of the Court and deliberately paint an absolutely wrong and incomplete picture which has the tendency to scandalise the Court and bring it into disrepute or ridicule. The right of criticising, in good faith in private or public, a judgment of the Court cannot be exercised, with malice or by attempting to impair the administration of justice. Indeed, freedom of speech and expression is "life blood of democracy" but his freedom is subject to certain qualifications. An offence of scandalising the Court is one such qualification, since that offence exists to protect the administration of justice and is reasonably justified and necessary in a democratic society. It is not only an offence under the contempt of Courts act but is sui generis. Courts are not unduly sensitive to fair comment or even outspoken comments being made regarding their judgments and orders made objectively, fairly and without any malice, but no one can be permitted to distort orders of the Court and deliberately give a slant to its proceedings, which have the tendency to scandalise the Court or bring it to ridicule, in the larger interest of protecting administration of justice.

The action of the petitioner and its leaders Ms. Medha Patkar as well as writings of Ms. Arundhati Roy have caused us much anguish and when we express our displeasure of the action of Ms. Arundhati Roy in making distorted writings or the manner in which the leaders of the petitioner Ms. Medha Patkar and Mr. Dharmadhikari have, after giving assurances to this Court, acted in breach of the injunctions, we do so out of anguish and not out of anger. May be the parties were over-zealous in projecting their point of view on a matter involving a large segment of tribal population, but they should not have given to themselves the liberty of acting in the objectionable manner as already noticed. We are unhappy at the way the leaders of NBA and Ms. Arundhati Roy have attempted to undermine the dignity of the Court. We expected better behaviour from them.

After giving this matter our thoughtful consideration and keeping in view the importance of the issue of Resettlement and Rehabilitation of the PAFs, which we have been monitoring for the last five years, we are not inclined to initiate contempt proceedings against the petitioner, its leaders or Ms. Arundhati Roy. We are of the opinion, in the larger interest of the issues pending before us, that we need not pursue the matter any further. We, however, hope that what we have said above would serve the purpose, and the petitioner and its leaders would hereafter desist from acting in a manner

which has the tendency to interfere with the due administration of justice or which violates the injunctions issued by this Court from time to time.

After 22nd of July, 1999 when learned amicus was appointed, nothing has come to our notice which may show that Ms. Arundhati Roy has continued with her objectionable writings insofar as the judiciary is concerned. She may have by now realised her mistake. We, therefore, consider it appropriate to now let the matter rest here and not to pursue it any further. The application (LA. 14) is accordingly disposed of.

Before parting with this order we wish to place on record our deep appreciation for the assistance rendered to us by the amicus, Shri K.K. Venugopal, Senior Advocate and all other learned counsel appearing in the case.

Let the main Writ Petition be now placed for directions on 4th Nov. 1999 at 2 P.M.

While I record my disapproval of the statements that are complained of, I am not inclined to take action in contempt against Medha Patkar, Shripad Dharmadhikari and Arundhati Roy because the Court's shoulders are broad enough to shrug off their comments and because the focus should not shift from the resettlement and rehabilitation of the oustees, I acknowledge with gratitude the assistance rendered to the Court by the learned amicus curiae and by learned counsel for the parties.

The LA. (no. 14) is, accordingly, disposed of.

***E.M. Sankaran Namboodiripad v. T. Narayanan Nambiar***

MANU/SC/0559/1970

**Judges/Coram:** *M. Hidayatullah, C.J., G.K. Mitter and A.N. Ray, JJ.*

**M. Hidayatullah, C.J.:**

1. Mr. E.M.S. Namboodiripad (former Chief Minister of Kerala) has filed this appeal against his conviction and sentence of Rs. 100/- fine or simple imprisonment for one month by the High Court of Kerala for contempt of Court. The judgment, February 9, 1968, was by majority--Mr. Justice Raman Nayar (now Chief Justice) and Mr. Justice Krishnamoorthy Iyer formed the majority. Mr. Justice Mathew dissented. The case has been certified by them as fit for appeal to this Court under Article 134(i)(c) of the Constitution. The conviction is based on certain utterances of the Appellant, when he was Chief Minister, at a Press Conference held by him at Trivandrum, on November 9, 1967. The report of the Press Conference was published the following day in some Indian newspapers. The proceedings were commenced in the High Court on the sworn information of an Advocate of the High Court, based mainly on the report in the Indian Express. The Appellant showed cause against the notice sent to him and in an elaborate affidavit stated that the report 'was substantially correct, though it was incomplete in some respects.'

2. The offending parts of the Press Conference will be referred to in this, judgment, but we may begin by reading it as a whole. This is what was reported:

Marx and Engels considered the judiciary as an instrument of oppression and even today when the State set up his (sic) not undergone any change continues to be so, Mr. Nambudiripad told a news conference this morning. He further said that Judges are guided and dominated by class hatred, class interests and class prejudices and where the evidence is balanced between a well dressed pot-bellied rich man and a poor ill-dressed and illiterate person the judge instinctively favours the former the Chief Minister alleged.

The Chief Minister said that election of Judges would be a better arrangement, but unless the basic state set up is changed, it could not solve the problem.

Referring to the Constitution the Chief Minister said the oath he had taken was limited only to see that the constitutional provisions are practiced. 'I have not taken any oath' the Chief Minister said "that every word and every clause in the Constitution is sacred."

Before that he had also taken an oath, Mr. Nambudiripad said holding aloft a copy of the Marxist party's programmed and read out extracts from it to say that the oath had always held that nothing much could be done under the limitations of the Constitution.

Raising this subject of Constitution and judiciary suomotu at the fag end of his news conference the Chief Minister said so many reports have appeared in the press that Marxists like himself, Mr. A.K. Gopalan, and Mr. ImbichiBava (Transport Minister) were making statements critical of the judiciary "presumably with the idea that anything spoken about the Court is contempt of Court."

His party had always taken the view, the Chief Minister said that judiciary is part of the class rule of the ruling classes. And there are limits to the sanctity of the judiciary. The judiciary is weighted against workers, peasants and other sections of the working classes and the law and the system of judiciary essentially serve the exploiting classes. Even where the judiciary is separated from the executive it is still subject to the influence and pressure of the executive. To say this is not wrong. The judiciary he argued was only an institution like the President or Parliament or the Public Service Commission. Even the President is subject, to impeachment. After all, sovereignty rested not with any one of them but with the people. Even with regard to Judges confidential records are being kept, why? The Judge is subject to his own idiosyncrasies and "prejudices. "We hold the view that they are guided by individual idiosyncrasies, guided and dominated by class interests, class hatred, and class prejudices. In these conditions we have not pledged ourselves not to criticise the judiciary or even individual judgments."

This did not mean, he explained that they could challenge the integrity of the individual judgments, the Chief Minister contended.

He did not subscribe to the view that it was an aspersion on integrity when he said that judges are guided and dominated by class hatred and class prejudices. "The High Court and the Supreme Court can haul me up, if they want" he said.

**3.** The affidavit which he filed later in the High Court explained his observations at the press conference, supplied some omissions and pleaded want of intention to show disrespect and justification on the ground that the offence charged could not be held to be committed, in view of guarantee of freedom of speech and expression under the Constitution. He stated that his observations at the press conference did no more than give expression to the Marxist philosophy and what was contained in Chapter 5 of the Program of the Communist Party of India (Marxist) adopted in November, 1964. His pleas in defence were accepted by Justice Mathew who found nothing objectionable which could be termed contempt of Court. The other two learned judges took the opposite view. Judgement was entered on the basis of the majority view.

**4.** In explaining his press conference the Appellant added that it did not offend the majesty of law, undermine 'the dignity of Courts' or obstruct the administration of justice. Nor did it have any such tendency. He claimed that it contained a fair criticism of the system of judicial administration in an effort to make it conform to the peoples objective of a democratic and egalitarian society based on socialism. He considered that it was not only his right but also his duty to educate public opinion. He claimed that the statement read as a whole amounted to a fair and reasonable criticism of the present judicial system in our country, that it was not intended to be a criticism of any particular

Judge, his judgment or his conduct, and that it could not be construed as contempt of Court. He added that he had always enforced the judgments of the courts and shown respect to the judiciary and had advocated the independence of the judiciary and decried all attempts to make encroachments upon it. Criticism of the judiciary, according to him, was his right and it was being exercised by other parties in India. He denied that it was for the Court to tell the people what the law was and asserted that the voice of the legislatures should be supreme. He, however, found his party at variance with the other parties in that according to the political ideology of his party the State (including all the three limbs--the Legislatures, the Executive and the Judiciary) was the instrument of the dominant class or classes, so long as society was divided into exploiting and exploited classes, and parliamentary democracy was an organ of class oppression. He concluded that his approach to the judiciary was:

- (a) the verdicts of the Courts much be respected and enforced;
- (b) no aspersions should be cast on individual judges or judgments by attributing motives to judges;
- (c) criticism of the judicial system or of judges going against the spirit of legislation should be permissible; and
- (d) education of the people that the State (including the judiciary) was an instrument of exploitation of the majority by the ruling and exploiting classes, was legitimate.

These principles, he submitted, were not transgressed by him and also summed up his observations at the press conference.

5. The law of contempt stems from the right of the Courts to punish by imprisonment or fines person guilty of words or acts which either obstruct or tend to obstruct the administration of justice. This right is exercised in India by all Courts when contempt is committed in *facie curiae* and by Superior Courts on their own behalf or on behalf of Courts subordinate to them even if committed outside the Courts. Formerly, it was regarded as inherent in the powers of a Court of Record and now by the Constitution of India, it is a part of the powers of the Supreme Court and the High Courts. There are many kinds of contempts. The chief forms of contempt are insult to judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of Courts, witnesses or the parties, abusing the process of the Court, breach of duty by officers connected with the Court and scandalising the judges or the Courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the Court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Such contempt may be committed in respect of a single judge or a single Court but may, in certain circumstances, be committed in respect of the whole of the judiciary or judicial system. The question is whether in the circumstances of this case the offence was committed.

6. In arguing the case of the Appellant Mr. V.K. Krishna Menon contended that the law of contempt must be read without encroaching upon the guaranteed freedom of speech and expression in Article 19(1)(a) of the Constitution, that the intention of the contemner in making his statement at the press conference should be examined in the light of his political views as he was at liberty to put them before the people and lastly the harm done to the Courts by his statements must be apparent. He admitted that it might be possible to say that the speech constituted contempt of Court but submitted that it would be inexpedient to do so. He stated further that the species of contempt called 'scandalising the Court' had fallen in desuetude and was no longer enforced in England and relied upon *McLeod v. St. Aubyn*, L.R. 1899 A.C. 549. He further submitted that the freedom of speech and expression gave immunity to the Appellant as all he did was to give expression to the teachings of Marx, Engels and Lenin. Lastly, he contended that a general remark regarding Courts in general did not constitute contempt of Court and relied upon *The Government Pleader High Court, Bombay v. Tulsidas Subharao Jadhav* I.L.R. 1938 Bom 179, and the observations of Lord Denning M.R. in *R. v. Metropolitan Police Commissioner* (1968) 2 W.L.R. 1204.

7. It is no doubt true that Lord Morris in *McLeod v. St. Aubyn*, L.R. 1899 A.C. 549 observed that the contempt of Court known from the days of the Star Chamber as *Scandalum Justitiae Curiae* scandalising the judges, had fallen into disuse in England. But as pointed out by Lord Atkin in *Andre Paul Terence Ambard v. The Attorney General of Trinidad and Tobago* A.I.R. 1936 P.C. 141 at 143, the observations of Lord Morris were disproved within a year in the *Queen v. Gray* (1900) 2 Q.B. 36 at 40. Since then many convictions have taken place in which offence was held to be committed when the act constituted scandalising a judge.

8. We may dispose of the Bombay case above cited. The contemner in that case had expressed contempt for all Courts. Beaumont C.J. (Wasoodew J. concurring) held that it was not a case in which action should be taken. The case did not lay down that there could never be contempt of Court even though the Court attacked was not one but all the Courts together. All it said was that action should not be taken in such a case. If the Chief Justice intended laying down the broad proposition contended for we must overrule his dictum as an incorrect statement of law. But we think that the Chief Justice did not say anything like that. He was also influenced by the unconditional apology and therefore discharged the rule.

9. Another case cited in this connection may be considered here. In *Re Basudeo Prasad*, Advocate, Patna High Court Crl. A. 110 of 196, decided on May 3, 1962, the offending statement was that many lawyers without practice get appointed as judges of the High Courts. The remark was held by this Court not to constitute contempt of Court. The remark was made after the report of the Law Commission was published and this Court held that the person concerned, who was then the Secretary of the Indian Council of Public Affairs and an advocate, was entitled to comment on the choice of judges and that the remarks were within the proper limits of public criticism on a question on which there might be differences of opinion. In our judgment that case furnished no parallel to the case we have here. Each case must be examined on its own facts and the decision must be reached in the context of what was done or said.

**10.** The Appellant has contended before us that the law of contempt should be so applied that the freedom of speech and expression are not whittled down. This is true. The spirit underlying Article 19(1)(a) must have due play but we cannot overlook the provisions of the second clause of the article. While it is intended that there should be freedom of speech and expression, it is also intended that in the exercise of the right, contempt of Court shall not be committed. The words of the second clause are:

Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law or prevent the state from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the sub-clause.....in relation to contempt of Court, defamation or incitement to an offence.

These provisions are to be read with Articles 129 and 215 which specially confer on this Court and the High Courts the power to punish for contempt of themselves. Article 19(1)(a) guarantees complete freedom of speech and expression but it also makes an exception in respect of contempt of Court. The guaranteed right on which the functioning of our democracy rests, is intended to give protection to expression of free opinions to change political and social conditions and to advance human knowledge. While the right is essential to a free society, the constitution has itself imposed restrictions in relation to contempt of Court and it cannot therefore be said that the right abolishes the law of contempt or that attacks upon judges and Courts will be condoned.

**11.** Mr. V.K. Krishna Menon read to us observations from *Samuel Roth v. United States of America* I.L. Ed. 2nd. 1484 at 1506, *Arthur Terminieilo v. City of Chicago*, 93 L.Ed. 1131 at 1134 *Charlotte Anita Whitney v. People of the State of California* 71 L.Ed. 1095 and *New York Times Company v. L.B. Sullivan* 11 L.Ed. 2nd. 686, on the high-toned objective in guaranteeing freedom of speech. We agree with the observations and can only say that freedom of speech and expression will always prevail except where contempt is manifest, mischievous or substantial. The question always is on which side of the line the case falls. The observations of this" Court in *Kedar Nath Singh v. State of Bihar* (1962) 2 Sup. S.C.R. 769, in connection with sedition do not lend any assistance because the topic there discussed was different. Freedom of speech goes far but not far enough to condone a case of real contempt of Court. We shall, therefore, see whether there was any justification for the Appellant which gives him the benefit of the guaranteed right.

**12.** The Appellant has maintained that his philosophy is based upon that of Marx and Engels. Indeed the claims to be descended from the last philosophe and seeks to educate the exploited peoples on the reality behind class oppression. As a Marxist-Leninist he advocates the radical and revolutionary transformation of the State from the coercive instrument of exploiting classes to an instrument which the exploited majority can use against these classes. In this transformation he wishes to make the state wither away and with the state its organs, namely, the Legislature, the Executive and the Judiciary also to change. He has justified the press conference as an exposition of his ideology and claims protection of the first clause of Article 19(1) which guarantees freedom of speech and expression. The law of contempt, he says, cannot be used to deprive him of his rights.

**13.** All this is general but the Appellant attacked the judiciary directly as "an instrument of oppression" and the judges as "dominated by class hatred, class interests and class prejudices," "instinctively" favouring the rich against the poor. He said that as part of the ruling classes the judiciary "works against workers" and "the law and the system of judiciary essentially serve the exploiting classes." Even these statements, he claims, are the teachings of Marx, Engels and Lenin whose follower he is. This was also the submission of his counsel to us.

**14.** The Appellant is only partly right. He and his counsel may be said to have distorted the approach of Marx, Engels and Lenin, and we proceed to explain how Marx believed in man's inherent rationalism and virtue and depended upon them to create a better society where there would be no injustice and oppression and everyone would be able to share the fruits of man's labour and genius. He attacked all forms of social evils. Hence his sympathy for the neglected and the 'injured and insisted' labouring masses. Marx was neither first nor alone in this. Before him the Judeo-Christians demanded social justice. Others who preached social equality and denounced social injustice were the Utopian Socialists and the Christian Socialists. They had all pointed out inequalities of civilisation based on urban industrial development. We had thus August Comte's *Course de philosophie positive*, Feuerbach's *History of New Philosophy* and the writings of Hegel.

**15.** Marx's contribution was to create a scientific and ethical approach to the problem of inequality. He adopted the Hegelian dialectical form to explain how the capitalist society had arisen and showed how it would meet its fall. His view was that it nursed with itself the germ of its own destruction. In his classic book *Das Kapital* he disclosed the clues for the transition from capitalism to socialism. His labour theory was that the capitalists did not give to labour a due share from the value and this left the surplus labour because of the iron law of wages and this left the surplus labour value thereby saved in the hands of the capitalist. In this way the capitalist became an exploiter who grew rich on the exploited labour surplus and could indulge in what he called 'capitalist luxuries'. The introduction of machinery further cut down labour value and increased unemployment leading to reduction of wages. In this way the means of production passed into the hands of a few. Marx saw that this led to tensions which Marx thought would ultimately destroy the capitalist system. He saw the revolution drawing nearer which would destroy 'classes' and the exploitation of man by man. There was in his view one obstruction to the triumph of the working classes and that was government established by the capitalists who could frame laws to enforce the differences. From this stemmed his hostility to the state, its government and its laws.

**16.** The communist Manifesto, which spoke of class struggle, particularly between the bourgeoisie and the proletarians, gave a history of the domination of the ruling classes converting everyone not belonging to itself into paid wage labourers. He said that these reactionaries were gearing all production to their own benefit and power. Describing the communists in this context, the Manifesto said that they had no separate interests but represented the proletariat as a whole, irrespective of nationalities and that the class struggle was universal. The communists were to settle the lines of action and their aim was abolition of property-not property of the common man but the bourgeois property of the capitalist created by surplus from wage-labour and resulting in



accumulation of capital in the hands of the capitalist. According to the communists, this capital became not a personal but social power and the fight visualized in the Manifesto was the termination of its class character. Wage-labour would thus leave no surplus, nor would it lead to a accumulation of more wage-labour yielding still greater surplus but the gains of production would go to enrich labour in the communist society. Freedom according to the Manifesto never meant the abolition of property into but the abolition of the bourgeois individuality. What was done away with was not property but the means of subjugating labour of others to one's own use. This in short is the communist thesis of social equality as one gather from the Manifesto.

**17.** Next follow the steps for achieving the betterment of what Saint Simon described as the largest and poorest class. Engels in his Analysis of Socialism explained the different types but we are not concerned with them here. The radicals' appeal followed the force of reaction released in the 1880s by Tzar Alexander III. The Populists of Plekhanov were routed and driven out. Then in 1890 the young intellectuals took up the cause of socialism and Marxism provided the answer where the moderation and escapism of the Populists had failed. The former was based on a scientific approach while Populism was empiric and tended to make Russia, as Bulgakov wrote, 'a peasant and crude country'. The rise of Vladimir Lenin at this time determined the future of Marxism and his classic "the State and Revolution" appears to be in the mind of the Appellant when he made his pronouncements. We are doubtful if he has fully appreciated the literature, if he has read it.

**18.** Lenin's teachings on the State had removed the distortions of Marxism from the minds of the people. He quoted long extracts from Marx and Engels to establish his points. Lenin first took up Engel's Origin of the Family, Private Property and the State. The State, according to Engels, was not the image and reality of Reason as Hegel had maintained before. It was the product of society, a power standing above society like the Leviathan of Hobbes. According to Lenin the State was the product and manifestation of the irreconcilability of class antagonism. The State emerged when class antagonisms could not objectively be reconciled. The distortion which had crept into Marxism was that the State was regarded as an organ for the reconciliation of the classes. Lenin reinterpreted Marx and according to him, the State could neither arise nor maintain itself if it were possible to reconcile classes, Marx had thought of the State as an organ of class rule and an organ of oppression. The views of the Mensheviks and other Socialist revolutionaries were exactly the converse.

**19.** The disputes which have arisen in our country over the inviolability of property as a fundamental right have the same foundations. One side views that the chapter on Fundamental Rights reconciles, through itself, the basic and fundamental class antagonisms and the state is no longer required to play any part. The other side would give to one of the organs of the state, namely, the Legislature, a continual power of readjustment through laws and amendments of the Constitution. Both views do not accord with the Communist Manifesto and hence the distrust of the Constitution by the communists disclosed by the Appellant.

**20.** Lenin, however, thought that the State degenerated into an instrument for the exploitation of the oppressed classes and wielded special public powers to tax and maintain armies. Engels thought that this made the State stand above society and the officers of the State were specially protected as they had the protection of the laws. From this sprung his hostility to the State. Engel summed it up thus:

The State is by no means a power forced on society, from without, Neither as little is it 'the reality of the ethical idea', 'the image and reality of reason' as Hegel maintains. The State is a product of society at certain stage of development, it is the admission that this society has become entangled in an insoluble contradiction with itself, that it is cleft into irreconcilable antagonisms which it is powerless to dispel. But in order that these antagonisms, classes with conflicting economic interests, might not consume themselves and society in sterile struggle, a power seemingly standing above society becomes necessary for the purpose of moderating the conflict, of keeping it within the bounds of 'order'. And this power, arisen out of society, but placing itself above it, and increasingly alienating itself from it, is the State.

Lenin resumed this thought further thus:

This expresses with perfect clarity the basic idea of Marxism on the question of the historical role and meaning of the State. The State's the product and the manifestation of the irreconcilability of class antagonisms. The state arises when, where and to the extent that class antagonisms objectively cannot be reconciled. And, conversely, the existence of the State proves that the class antagonisms are irreconcilable.

**21.** Having viewed the state in this way these writers from Marx to Lenin viewed it as the instrument for the exploitation of the oppressed classes. The Paris Commune of 1871 had stated its conclusions how the State gets above society but it was blurred in a reactionary manner later by Kautsky in 1912. Lenin cleared the misconception in an exposition of Engel's philosophy.

...As the state arose from the need to hold class antagonisms in check, but as it arose, at the same time, in the midst of the conflict of these classes, it is, as a rule, the State of the most powerful economically dominant class, which through the medium of the state, becomes also the politically dominant class and thus acquires means of holding down and exploiting the oppressed classes...the modern representative state is an instrument of exploitation of wage labour by capital.

Engels added further:

In a democratic republic wealth exercises its power indirectly, but all the more surely first by means of the 'direct corruption of officials' and second, by means of 'an alliance' between the Government and Stock Exchange.

Lenin gave the example that "at the present time, imperialism and the domination of the banks have 'developed' both these methods of upholding and giving effect to the omnipotence of wealth in democratic republics of all descriptions into an unusually fine art". He concluded that a "democratic republic is the best possible political shell for capitalism" and that "it establishes its power so securely, so firmly, that no change whether of persons, of institutions, or of parties in the bourgeois democratic republic can shake it"

**22.** Therefore, Marx, Engels and Lenin thought in terms of 'withering away of the state'. Although Lenin thought that Engel's doctrines were an adulteration of Marxism, he was not right. Marx himself believed in this. In this poverty of Philosophy, Marx says:

...The working class, in the course, of development will substitute for the old bourgeois society an association which will exclude classes and their antagonism, and there will be no more political power properly so-called, since political power is precisely the official expression of antagonism in bourgeois society.

Marx and Engels in the Manifesto had considered the true State to be "the proletariat organised as the ruling class". It was the Kautskyites (the Dictatorship of the Proletariat) who, misunderstanding the doctrines of Marx, taught that the Proletariat needed the state which must wither away leading to the dictatorship of the proletariat.

**23.** In this fight for power the Communist Manifesto gave a purely abstract solution. It was the substitution of the commune for the bourgeois state machinery and a fuller democracy. The Army was to be replaced by armed people, the officials were to be elected and also the judges. The commune was not to be 'a talking parliament' but 'a working body'. It was to be the executive and the legislature at the same time. The principles were formulated by Engels thus:

The necessity of political action by the proletariat and of its dictatorship as the transition to the abolition of classes and with them the state....

**24.** The thesis on the withering away of the state was to be accompanied by a restatement of the functions of the law. Law made by the bourgeois rulers was castigated as involving class supremacy. The Hegelian doctrine of the apotheosis of Reason was replaced by the invocation of economic necessity as the only foundation for laws. The laws which preserved privileges were to go, laws which kept the power of the bourgeois above the people were to go, only laws creating equality and preserving society from internal decay and disruption were to be tolerated.

**25.** In all the writings there is no direct attack on the judiciary selected as the target of people's wrath. Nor are the judges condemned personally. Engels regarded the Courts as one of the means adopted by the law for effectuating itself, it was thus that he wrote:

The centralised state power, with its ubiquitous organs, standing army, police, bureaucracy , clergy and judicature organs wrought after the plan of a systematic and hierarchic division of labour--originates from the days of absolute monarchy, serving nascent middle-class society as mighty weapons in its struggles against feudalism.

**26.** This is not a castigation of the judiciary as being dishonestly ranged against the people but only a recital of a historic fact in feudal societies. He only said that the judicial functionaries must be divested of 'sham independence' which marked their subservience to succeeding governments, and, therefore, be elected. In one of his letters to the Spanish Federal Council of the International Workingmen's Association London, February 13, 1871, he talked of the power of the possessing classes--the landed aristocracy and the bourgeoisie--and said that they kept the working people in servitude not only by their wealth got by the exploitation of labour but also by the power of the State, by the army, the bureaucracy, and the courts. He was not charging the judiciary with taking sides out only as an evil adjunct of the administration of class legislation. The fault was with the state and the laws and not with the judiciary. Indeed in no writing which we have seen or which has been brought to our notice, Marx or Engels has said what the Appellant quotes them as saying.

**27.** We have summarised into a very small compass, many thousands of words in which these doctrines have been debated from Plekhanov to Lenin through the thoughts of Kautsky, Kerensky, Lesalle, Belinsky and others who attempted a middle line between the revisionism of Bernstein and the Bolshevik views of Lenin. We have done so because Mr. V.K. Krishna Menon feared that many people learn about communism through Middleton Murray:

**28.** It will be noticed that in all these writings there is not that mention of judges which the Appellant has made. Either he does not know or has deliberately distorted the writings of Marx, Engels and Lenin for his own purpose. We do not know which will be the more charitable view to take. Marx and Engels knew that the administration of justice must change with laws and changes in society. There was thus no need to castigate the judges as such beyond saying that the judicial system is the prop of the State.

**29.** The Courts in India are not *suigeneris*. They owe their existence form powers and jurisdictions to the Constitution and laws. The Constitution is the Supreme law and the other laws are made by Parliament. It is they that give the Courts their obligatory duties, one such being the settlement of disputes in which the state (by which we mean those in authority) are ranged against citizens. Again they decide disputes in which class interests are apparent. The action of the Courts when exercised against the state proves irksome to the state and equally when it is between two classes, to the class which loses. It is not easily realised that one of the main functions of Courts under Constitution is to declare actions, repugnant to the Constitution or the laws (as the case may be), to be invalid. The Courts as well as all the other organs and institutions are equally bound by the Constitution and the laws. Although the courts in such cases imply the widest powers in the other jurisdictions and also give credit where it belongs they cannot always decide either in favour of the state or any particular

class. There are innumerable cases in which the decisions have gone against what may be described in the language of communism as the exploiting classes.

**30.** For those who think that the laws are defective the path of reform is open but in a democracy such as ours to weaken the judiciary is to weaken democracy itself. Where the law is silent the courts have discretion. The existence of law containing its own guiding principles, reduces the direction of Courts to a minimum. The Courts must do their duty according to their own understanding of the Laws and the obligations of the constitution. They cannot take their cue from sentiments of politicians nor even indirectly give support to something which they consider to be wrong or against the Constitution and the laws. The good faith of the judges is the firm bed-rock on which any system of administration securely rests and an attempt to shake the people's confidence in the Courts is to strike at the very root of our system of democracy. The oft-quoted anger of the Executive in the United States at the time of the New Deal and the threat to the Supreme Court (which the United States had the good sense not to pursue) should really point the other way and it should be noted that today the security of the United States rests upon its dependence on Constitution for nearly 200 years and that is mainly due to the Supreme Court.

**31.** The question thus in this case is whether the Appellant has said anything which brings him out of the protection Article 19(1)(a) and exposes him to a charge of contempt of Court. It is obvious that the Appellant has misguided himself about the true teachings of Marx, Engels and Lenin. He has misunderstood the attack by them on states and the laws as involving an attack on the judiciary. No doubt the Courts, while upholding the laws and enforcing them, do give support to the state but they do not do so out of any impure motives. They do not range themselves on the side of the exploiting classes and indeed resist them when the law does not warrant an encroachment. To charge the judiciary as an instrument of oppression, the judges as guided and dominated by class hatred, class interests and class prejudices, instinctively favouring the rich against the poor is to draw a very distorted and poor picture of the judiciary. It is clear that it is an attack upon judges which is calculated to raise in the minds of the people a general dissatisfaction with and distrust of all judicial decisions. It weakens the authority of law and law Courts.

**32.** Mr. V.K. Krishna Menon tried to support the action of the Appellant by saying that judges are products of their environment and reflect the influences upon them of the society in which they move. He contended that these subtle influences enter into decision making and drew our attention to the writings of Prof. Laski, Justice Cordozo, Holmes and others where the subtle influences of one's upbringing are described. This is only to say that judges are as human as others. But judges do not consciously take a view against the conscience or their oaths. What the Appellant wishes to say is that they do. In this he has been guilty of a calumny. We do not find it necessary to refer to those writings because in our judgment they do not afford any justification for the contempt which has patently been committed. We agree with Justice Raman Nayar that some of them have the exaggerations of the confessional. Others come from persons like the Appellant who have no faith in institutions hallowed by age and respected by the people.

**33.** Mr. V.K. Krishna Menon exhorted us to give consideration to the purpose for which the statement was made, the position of the Appellant as the head of a State, his sacrifices, his background and his integrity. On the other hand we cannot ignore the occasion (a press conference), the belief of the people in his word as a Chief Minister and the ready ear which many in his party and outside would give to him. The mischief that this words would cause need not be assessed to find him guilty. The law punishes not only acts which do in fact interfere with the Courts and administration of justice but also these which have the tendency, that is to say, are likely to produce a particular result. Judged from the angle of Courts and administration of justice, there is not a semblance of doubt in our minds that the Appellant was guilty of contempt of Court. Whether he misunderstood the teachings of Marx and Engels or deliberately distorted them is not to much purpose. The likely effect of his words must be seen and they have clearly the effect of lowering the prestige of judges and Courts in the eyes of the people. That he did not intend any such result may be a matter for consideration in the sentence to be imposed on him but cannot serve as a justification. We uphold the conviction. As regards sentence we think that it was hardly necessary to impose a heavy sentence. The ends of justice in this case are amply served by exposing the Appellant's error about the true teachings of Marx and Engels (behind whom he shelters) and by sentencing him to a nominal fine. We accordingly reduce the sentence of fine to Rs. 50/-. In default of payment of fine he will (sic) ment for one week. With this modification the appeal will be(sic).

**Punishment for Contempt**  
***Supreme Court Bar Association v. Union of India & Anr***

AIR 1998 SC 1895

JUDGMENT: DR. ANAND, J.

In Re: Vinay Chandra Mishra, (1995) 2 SCC 584, this Court found the Contemner, an advocate, guilty of committing criminal contempt of Court for having interfered with and "obstructing the course of justice by trying to threaten, overawe and overbear the court by using insulting, disrespectful and threatening language". While awarding punishment, keeping in view the gravity of the contumacious conduct of the contemner, the Court said:

" The facts and circumstances of the Present Case justify our invoking the power under Article 129 read with Article 142 of the Constitution to award to the contemner a suspended sentence of imprisonment together with suspension of his practice as and advocate in the manner directed herein. We accordingly sentence the contemner for his conviction for the offence of the criminal contempt as under:

(a) The contemner Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks. However, in the circumstances of the case, the sentence will remain suspended for a period of four years and may be activated in case the contemner is convicted for any other offence of contempt of court within the said period; and

(b) The contemner shall stand suspended from practising as an advocate for a period of three years from today with the consequence that all held by him in his capacity as an advocate, shall stand vacated by him forthwith.

Aggrieved by the direction that the "Contemner shall stand suspended from practising as an Advocate for a period of three years" issued by this Court by invoking powers under Articles 129 and 142 of the Constitution, the Supreme Court Bar Association, through its Honorary Secretary, has filed this petition under Article 32 of the Constitution of India, seeking the following relief:

" Issue and appropriate writ, direction, or declaration, declaring that the disciplinary committees of the Bar Councils set up under the Advocates Act, 1961, alone have exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct, arising out of punishment imposed for contempt of court or otherwise and further declare that the Supreme Court of India or any High Court in exercise of its inherent jurisdiction has no such original jurisdiction, power or authority in that regard notwithstanding the contrary view held by this Hon'ble Court in Contempt Petition (Crl.) No. 3 of 1994 dated 10.3.1995."

" The question which arises is whether the Supreme Court of India can while dealing with Contempt Proceedings exercise power under Article 129 of the Constitution or under Article 129 read with Article 142 of the Constitution or under Article 142 of the Constitution can debar a practicing lawyer from carrying on his profession as a lawyer for any period whatsoever, We direct notice to issue on the Attorney General of India and on the respondents herein. Notice will also issue on the application for interim stay. Having regarding to the importance of the aforesaid question we further direct that this petition be placed before a Constitution Bench of this Court."

That is how this Writ petition has been placed before this Constitution Bench.

The only question which we are called upon to decide in this petition is whether the punishment for established contempt of Court committed by an Advocate can include punishment to debar the concerned advocate from practice by suspending his licence (sanad) for a specified period, in exercise of its powers under Article 129 read with Article 142 of the Constitution of India.

Dealing with this issue, the three judge Bench in *Vinay Chandra Mishra's case* (Supra), opined:

"The question now is what punishment should be meted out to the contemner. We have already discussed the contempt jurisdiction of this Court under Article 129 of the Constitution. That jurisdiction is independent of the statutory law of contempt enacted by Parliament under Entry 77 of List I of Seventh Schedule of the Constitution. The jurisdiction of this Court, under Article 129 is sui generis. The jurisdiction to take cognizance of the contempt as well as to award punishment for it being constitutional, it cannot be controlled by any statute. Neither, therefore, the Contempt of Courts Act, 1971 nor the Advocates Act, 1961 can be pressed into service to restrict the said jurisdiction.

What is further, the jurisdiction and powers of this Court under Article 142 which are supplementary in nature and are provided to do complete justice in any matter, are independent of the jurisdiction and powers of this Court under Article 129 which cannot be trammelled in any way by any statutory provision including the provisions of the Advocates Act or the contempt jurisdiction of the court including of this Court and the contempt of Courts Act, 1971 being a statute cannot denude, restrict or limit the powers of this Court to take action for contempt under Article 129.

Mr. Kapil Sibal, learned senior counsel appearing for the Supreme Court Bar Association, and Dr. Rajiv Dhawan, senior advocate appearing for the Bar Council of U.P. and Bar Council of India assailed the correctness of the above findings and submitted that powers conferred on this Court by Article 142, though very wide in their aptitude, can be exercised only to "do complete justice in any case or cause pending before it " and since the issue of 'professional misconduct' is not the subject matter of "any cause" pending before this court while dealing with a case of contempt of court, it could not make any order either under Article 142 or 129 to suspend the licence of an advocate contemner, for which punishment, statutory provisions otherwise exist. According to the learned counsel, a court of record under Article 129 of the Constitution does not have any power to suspend the licence of a lawyer to practice because that is not a punishment which can be imposed under its jurisdiction to punish for contempt of Court and that Article 142 of the Constitution cannot also be pressed into aid to make an order which has the effect of assuming "jurisdiction which expressly vests in another statutory body constituted under the Advocates Act, 1961. The learned Solicitor General submitted that under Article 129 read with Article 142 of the Constitution, this Court can neither create a "jurisdiction" nor created a "punishment" not otherwise permitted by law and that since the power to punish an advocate (for "professional misconduct") by suspending his licence vests exclusively in a statutory body constituted under the Advocates Act, this Court cannot assume that jurisdiction under Article 142 or 129 or even under Section 38 of the Advocates Act, 1961.



To appreciate the submissions raised at the bar, let us first notice Article 129 of the Constitution, it reads:

" 129. Supreme Court to be a court of record.-

The Supreme Court shall be a court of record and shall have all the power of such a court including the power of punish for contempt of itself".

The Article on its plain language vests this Court with all the powers of a court of record including the power to punish for contempt of itself.

" The contempt jurisdiction of courts of record forms part of their inherent jurisdiction. The power that courts of record enjoy to punish contempts is part of their inherent jurisdiction. The juridical basis of the inherent jurisdiction has been well described by Master Jacob as being:

'the authority of the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner.' Such a power is not derived from statute nor truly from the common law but instead flows from the very concept of a court of law."

Article 142 of the Constitution reads:-

" 142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc. - (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before, it, and any decree so passed or order so made shall to enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court Shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

It is, thus, seen that the power of this court in respect of investigation or punishment of any contempt including contempt of itself, is expressly made 'subject to the provisions of any law made in this behalf by the parliament' by Article 142(2). However, the power to punish for contempt being inherent in a court of record, it follows that no act of parliament can take away that inherent jurisdiction of the Court of Record to punish for contempt and the Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts, though such a legislation may serve as a guide for the determination of the nature of punishment which this court may impose in the case of established contempt. Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself. (We shall refer to Section 15 of the Contempt of Courts Act, 1971, later on) and this Court, therefore exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142(2) of the Constitution of India.

After the submission of the Sanyal Committee Reports, the contempt of Courts Act, 1952 was repealed and replaced by the contempt of Courts Act, 1971 which Act was enacted to "define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto". It would be proper to notice some of the relevant provisions of the 1971 Act at this stage.

Section 2 (a), (b) and (c) of the Contempt of Courts Act, 1971 define contempt of court as follows:-

"2. Definitions. - In this Act, unless the context otherwise requires,-

(a) 'contempt of court' means civil contempt or criminal contempt;

(b) 'Civil contempt' means willful disobedience to an judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;

(c) 'criminal contempt' means the publication whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court, or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings;

or

(iii) interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any other manner."

Section 10 provides :-

" Sec. 10. Power of High Court to punish contempts of subordinate courts. - Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code, 1860 (45 of 1860)." The punishment for committing contempt of court is provided in Section 12 of the 1971 Act which reads:-

"12. Punishment for contempt of court.-(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.- An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding any thing contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of

imprisonment is necessary, shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

A careful reading of sub-section (2) of Section 12 reveals that the Act places an embargo on the court not to impose a sentence in excess of the sentence prescribed under sub-section (1). A close scrutiny of sub-section (3) of Section 12 demonstrates that the legislature intended that in the case of civil contempt a sentence of fine alone should be imposed except where the court considers that the ends of justice make it necessary to pass a sentence of imprisonment also. Dealing with imposition of punishment under Section 12 (3) of the Act, in the case of *Smt. Pushpaben and another vs. Narandas V. Badiani and another*. (1979) 2 SCC 394, this Court opined:

" A close and careful interpretation of the extracted section (Section 12(3)) leaves no room for doubt that the legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass a sentence of imprisonment if it thinks that ends of justice so require. Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment along is called for in a particular situation. Thus, the sentence of imprisonment is an exception while sentence of fine is the rule."

Section 10 of the 1971 Act like Section 2 of the 1926 Act and Section 4 of the 1952 Act recognises the power which a High Court already possesses as a Court of Record for punishing for contempt of itself, which jurisdiction has now the sanction of the Constitution also by virtue of Article 215. The Act, however, does not deal with the powers of the Supreme Court to try or punish a contemner for committing contempt of the Supreme Court or the courts subordinate to it and the constitutional provision contained in Articles 142(2) and 129 of the Constitution alone deal with the subject.

In *S.K. Sarkar, Member, Board of Revenue vs. Vinay chandra Misra*, (1981) 1 SCC 436, this court opined:

" Articles 129 and 215 preserve all the powers of the Supreme Court and the High Court, respectively, as a Court of Record which include the power to punish the contempt of itself. As pointed out by this Court in *Mohd. Ikram Hussain v. State of U.P.* (AIR 1964 SC 1625), there are no curbs on the power of the High Court to punish for contempt of itself except those contained in the Contempt of courts Act. Articles 129 and 215 do not define as to what constitutes contempt of court. Parliament has, by virtue of the aforesaid entries in List I and List III of the Seventh Schedule, Power to define and limit the powers of the Courts in punishing contempt of court and to regulate their procedure in relation thereto. Indeed, this is what is stated in the preamble of the Act of 1971".

(Emphasis supplied) In *Sukhdev Singh v. Hon'ble C.J.S. Teja Singh & Ors.*

AIR 1954 SCR 454, while recognising that the power of the High Court to institute proceedings for contempt and punish the contemner when found necessary is a special jurisdiction which is inherent in all courts of Record, the Bench opined that "the maximum punishment is now limited to six month's simple imprisonment or a fine of Rs. 2,000/- or both" because of the provision of Contempt of Courts Act.

The nature and types of punishment which a court of record can impose, in a case of established contempt, under the common law have now been specifically incorporated in the contempt of Courts Act, 1971 in so far as the High Courts are concerned and therefore to the extent the contempt of Courts Act 1971 identifies the nature of types of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either. No new type of punishment can be created or assumed. As already noticed, the parliament by virtue of Entry 77, List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2). Since, no such law has been enacted by the parliament, the nature of punishment prescribed, under the Contempt of Courts Act, 1971, may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes procedural mode for taking cognizance of criminal contempt by the supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in Sukhdev Singh's case (supra) as regards the extent of "maximum punishment" which can be imposed upon a contemner must, therefore, be construed as dealing with the powers of the High Courts only and not of this Court in that behalf. We are, therefore, doubtful of the validity of the argument of the learned solicitor General that the extent of punishment which the supreme Court can impose in exercise of its inherent powers to punish for contempt of itself and/or of subordinate courts can also be only to the extent prescribed under the contempt of Courts Act, 1971. We, however, do not express any final opinion on that question since that issue strictly speaking, does not arise for our decision in this case. The question regarding the restriction or limitation on the extent of punishment, which this Court may award while exercising its contempt jurisdiction may be decided in a proper case, when so raised.

The suspension of an Advocate from practice and his removal from the State roll of advocates are both punishments specifically provided for under the Advocates Act, 1961, for proven 'professional misconduct' of an advocate. While exercising its contempt jurisdiction under Article 129, the only cause or matter before this Court is regarding commission of contempt of court. There is no cause of professional misconduct, properly so called, pending before the Court. This Court, therefore, in exercise of its jurisdiction under Article 129 cannot take over the jurisdiction of the disciplinary committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of 'professional misconduct' is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder.

The contempt of court is a special jurisdiction to be exercised sparingly and with caution, whenever an act adversely effects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely effects the Majesty of Law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. it is exercised in a

summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "Professional misconduct" in a summary manner, giving a go by to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act 1961 by suspending his licence to practice in a summary manner, while dealing with a case of contempt of court.

The plenary powers of this court under Article 142 of the Constitution are inherent in the court and are complementary to those powers which are specifically conferred on the court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power, exists as a separate and independent basis of jurisdiction, apart from the statutes. It stands upon the foundation, and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the court to prevent "clogging or obstruction of the stream of justice". It, however, needs to be remembered that the powers conferred on the court by Article 142 being curative in nature cannot be construed as powers which authorise the court to ignore the substantive rights of a litigant while dealing with a cause pending before it. this power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purpose of the Article viz. to do complete justice between the parties. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

142. Indeed, these constitutional powers can not, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in statute dealing expressly with the subject.

In *Delhi Judicial Service Association Tis Hazari v. State of Gujarat & Ors. etc. etc.* (1991 (3) SCR 936) the following questions fell for determination.

" (a) whether the Supreme Court has inherent jurisdiction or power to punish for contempt of subordinate or inferior courts under Article 129 of the Constitution, (b) whether the inherent jurisdiction and power of the Supreme Court is restricted by the Contempt of Courts Act, 1971, (c) whether the incident interfered with the due administration of justice and constituted contempt of court, and

(d) what punishment should be awarded to the contemnners found guilty of contempt."

The Court observed:

"Article 142(1) of the constitution provides that Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any 'cause' or 'matter' pending before it. The expression 'cause' or 'matter' would include any proceeding pending in court and it would cover almost every kind of proceeding in court including civil or criminal . The inherent power of this Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any court to do complete justice in the matter before this Court."

Mr. Nariman urged that Article 142(1) does not contemplate any order contrary to statutory provisions. He placed reliance on the Courts observations in *Prem Chand Garg Vs. Excise Commissioner, U.P. Allahabad* 91963 Supp. 1 SCR 885 at 889) and *A.R. Anthulay Vs. R.S. Nayak and Anr.* (1988 (2) SCC

602) where the Court observed that though the powers conferred on this Court under Article 142(1) are very wide, but in exercise of that power the court cannot make any order plainly inconsistent with the express statutory provisions of substantive law. It may be noticed that in *prem Chand Garg's* and *Antulay's* case (supra) observations with regard to the extent of this Court's power under Article 142(1) were made in the context of fundamental rights. Those observations have no bearing on the question in issue as there is no provision in any substantive law restricting this Court's power to quash proceedings pending before subordinate court. This Court's power under Article 142(1) to do "complete justice" is entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court has selling of a cause or matter before it, it has power to issue any order or direction to do "complete justice" in the matter. This constitutional power of the Apex Court cannot be limited or restricted by provisions contained in statutory law."

The Bench went on to say:

"No enactment made by Central or State Legislature can limit or restrict the power of this Court under Article 142 of the constitution, the court must take into consideration the statutory provisions regulating the matter in dispute. What would be the need of "complete justice" in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the court would take into consideration the express provisions of a substantive statute. Once this Court has taken seisin of a case, cause or matter, it has power to pass any order or issue direction as may be necessary to do complete justice in the matter. This has been the consistent view of this Court as would appear from the decisions of this court in *State of U.P. Vs. Poosu&Anr.* (1976 (3) SCR 1005; *Ganga Bishan &Ors.Vs. Jai Narain* (1986 (1) SCC 75; *Navnit R. Kamani&Ors.Vs. Jai Narain* (1988 (4) SCC 387); *B.N. Nagarajan &Ors.vs. State of Mysore &Ors.* (1986 (3) SCR 682): Special Reference No. 1 of 1964, (supra), and *Harbans Singh vs. State of U.P. Ors.* (supra) ."

In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct" depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an Advocate, by suspending his licence or by removal of his name from the roll of the State bar Council, for proven professional misconduct, vests exclusively in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts.

After the coming into force of the Advocates Act, 1961, exclusive power for punishing an advocate for "professional misconduct " has been conferred on the concerned state Bar Council and the Bar Council of India. That Act contains a detailed and complete mechanism for suspending or revoking the licence of an advocate for his "professional misconduct'.since, the suspension or revocation of licence of an advocate has not only civil consequence but also penal consequence, the punishment being in the nature of penalty, the provisions have to be strictly construed. Punishment by way of suspending the licence of an advocate can only be imposed by the competent statutory body after the charge is established against the Advocate in a manner prescribed by the Act and the Rules framed thereunder.

Let us now have a quick look at some of the relevant provisions of the Advocates Act, 1961.

The Act, besides laying down the essential functions of the Bar Council of India provides for the enrollment of advocates and setting up of disciplinary authorities to chastise and, if necessary, punish members of the profession for professional misconduct. The punishment may include suspension from practice for a specified period or reprimand or removal of the name from the roll of the advocates. Various provisions of the Act deal with functions of the State Bar Councils and the Bar Council of India. We need not, however, refer to all those provisions in this judgment except to the extent their reference is necessary.

According to Section 30, every advocate whose name is entered in the Stat roll of advocates shall be entitled, as of right, to practice, throughout the territories to which the Act extends, in all courts including the Supreme Court of India. Section 33 provides that no person shall, on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under the Act.

Chapter V of the Act deals with the 'conduct of Advocate'. After a complaint is received alleging professional misconduct by an advocate by the Bar Council, the Bar Council entrusts the inquiry into the case of misconduct to the Disciplinary Committee constituted under Section 9 of the Act. Section 35 lays down that if on receipt of a complaint or otherwise, a state Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. Section 36, provides that where on receipt of a complaint or otherwise, the Bar Council of India has reason to believe that any advocate whose name is entered on any State roll is guilty of professional or other misconduct, it shall refer the case to the disciplinary Committee. Section 37 provides for an appeal to the Bar Council of India against an order made by the disciplinary committee of a state Bar Council. Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India may prefer an appeal to the Supreme Court of India under Section 38 of the Act.

Section 42(1) of the Act confers on the Disciplinary Committee of the Bar Council, powers of a civil court under the code of Civil procedure and section 4292) enacts that its proceedings shall be "deemed" to be judicial proceeding for the purpose mentioned therein.

Section 49 of the Act lays down that the Bar Council of India may make rules for discharging its functions under the Act and in particular such Rules may prescribe inter-alia the standards of professional conduct to be observed by the advocates and the procedure to be followed by the Disciplinary Committees of the Bar Council while dealing with a case of professional misconduct of an advocate. The Bar Council of India has framed rules called 'The Bar Council of India Rules' (hereinafter referred to as the Rules) in exercise of its rule making power under the Advocate Act 1951.

Part VII of the Rules deals with disciplinary proceedings against the advocates. In chapter I of the part VII provisions have been made to deal with complaints of professional misconduct received against advocates as well as for the procedure to be followed by the Disciplinary committees of the State Bar Council and the Bar Council of India to deal with such complaints received under Sections 35 and 36 of the Act. Rule 1 of Chapter I of part VII of the Rules provides that a complaint against an advocate shall be in the form of a petition duly signed and verified as required under the code of Civil procedure, and shall be accompanied by the fees as prescribed by the Rules. On the complaint being found to be in order the same shall be registered and place before the Bar Council for such order as it may deem it to pass. Sub-rule (2) provides that before referring a complaint made under Section 35(1) of the Act, to one of its disciplinary committees the Bar Council may require the complainant to furnish better particulars and the Bar Council "may also call for the comments from the advocate complained against ."

Rules 3 and 4 of Chapter I and VII provide for the procedure to be followed in dealing with such complaints. These rules read:

" 3.(1) After a complaint has been referred to a Disciplinary Committee by the Bar Council, the registrar shall expeditiously send a notice to the Advocate concerned requiring him to show cause within a specified date on the complaint made against him and to submit the statement of defence, documents and affidavits in support of such defence, and further informing him that in case of his non-appearance on the date of hearing fixed, the matter shall be heard and determined in his absence. Explanation: Appearance includes, unless otherwise directed, appearance by an Advocate or through duly authorised representative.

(2) If the Disciplinary Committee requires or termite, a complainant may file a replication within such time as may be fixed by the committee.

(3) The Chairman of the Disciplinary Committee Hall fix the date, hour and place of the enquiry which shall not ordinarily be later than thirty days from the receipt of the reference. The Registrar shall give notice of such date, hour and piece to the complainant or other person aggrieved. The advocate concerned and the Attorney General or He Additional Solicitor General of India or the Advocate General as the case may be, and shall also serve on them copies of the complaint and such other documents mentioned in Rule 24 of this Chapter as the Chairman of the Committee may direct at least ten days before the date fixed for the enquiry.



Rules 5, 6 and 7 deal with the manner of service of notice, summoning of witnesses and appearance of the parties before the disciplinary committee. At any stage of the proceedings, the disciplinary committee may appoint an advocate to appear as amicus curiae and in case either of the parties absent themselves, the committee may; proceed ex parte against the absenting party and decide the case.

Sub-rule (1) of Rule 8 provides:

" This Disciplinary Committee shall hear the Attorney General or the Additional Solicitor General of India or the Advocate General, as the Case may be or their Advocate, and parties or their Advocates, if they desire to be heard, and determine the matter on documents and affidavits unless it is of the opinion that it should be in the interest of justice to permit cross examination of the deponents or to take oral evidence, in which case the procedure for the trial of civil suits shall as far as possible be followed."

Rules 9 and 10 deal with the manner of recording evidence during the enquiry into a complaint of professional misconduct and the maintenance of record by the committee.

Rule 14(1) lays down as follows:

"The finding of the majority of the numbers of the Disciplinary Committee shall be the finding of the Committee. The reason given in support of the finding may be given in the form of a judgement, and in the case of a difference of opinion, any member dissenting shall be entitled to record his dissent giving his own reason. It shall be competent for the Disciplinary Committee to award such costs as it thinks fit. "

Rule 16 provides:

" 16(1). The Secretary of a State Bar Council shall send to the Secretary of the Bar Council India quarterly sentiments complaints received and the stage of the proceedings before the state Bar Council and Disciplinary Committees in such manner as may be specified from time to time.

(2) The Secretary of the Bar Council of India may however call for such further statements and particulars as he considers necessary."

An appeal from the final order of the disciplinary committee of the Bar Council of a State is provided to the Bar Council of India under Section 37 of the Act and the procedure for filing such an appeal is detailed in Rules 19(2) to 31.

The object of referring to the various provisions of the Advocates Act, 1961 and the Rules framed thereunder is to demonstrate that an elaborate and detailed procedure, almost akin to that of a regular trial of a case by a court, has been prescribed to deal with a complaint of professional misconduct against an advocate before he can be punished by the Bar Council by revoking or suspending his licence or even for reprimanding him.

The Bar Councils therefore entertain cases of misconduct against advocates. The Bar Councils are to safeguard the rights, privilege and interests of advocates. The Bar Councils is a body corporate.

The disciplinary committees are constituted by the Bar Council. The Bar Council is not the same body as its disciplinary committee. One of the principal functions of the Bar Council in regard to standards of professional conduct and etiquette of advocates is to receive complaints against advocates and if the Bar Council has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its disciplinary committee. A most significant feature is that no litigant and no member of the public can straightway commence disciplinary proceedings against an advocate. It is the Bar Council of a State which initiates the disciplinary proceedings.

Thus, after the coming into force of the Advocates Act, 1961 with effect from 19th May 1961, matters connected with the enrollment of advocates as also their punishment for professional misconduct is governed by the provisions of that Act only. Since, the jurisdiction to grant licence to a law graduate to practice as an advocate vests exclusively in the Bar Councils of the concerned State, the jurisdiction to suspend his licence for a specified term or to revoke it also vests in the same body.

Keeping in view the elaborate procedure prescribed under the Advocates Act 1961 and the Rules framed thereunder it follows that a complaint of professional misconduct is required to be tried by the disciplinary committee of the Bar Council, like the trial of a criminal case by a court of law and an advocate may be punished on the basis of evidence led before the disciplinary committee of the Bar Council after being afforded an opportunity of hearing. The delinquent advocate may be suspended from the rolls of the advocates or imposed any other punishment as provided under the Act.

It is therefore, not permissible for this court to punish an advocate for "professional misconduct" in exercise of the appellate jurisdiction by convening itself as the statutory body exercising "original jurisdiction". Indeed, if in a given case the concerned Bar Council on being apprised of the contumacious and blame worthy conduct of the advocate by the High Court or this Court does not take any action against the said advocate, this court may well have the jurisdiction in exercise of its appellate powers under Section 38 of the Act read with Article 142 of the Constitution to proceed suo moto and send for the records from the Bar Council and pass appropriate orders against the concerned advocate. In an appropriate case, this Court may consider the exercise of appellate jurisdiction even suo moto provided there is some cause pending before the concerned Bar Council, and the Bar Council does "not act" or fails to act, by sending for the record of that cause and pass appropriate orders.

Thus, to conclude we are of the opinion that this court cannot in exercise of its jurisdiction under Article 142 read with Article 129 of the Constitution, while punishing a contemner for committing contempt of court, also impose a punishment of suspending his licence to practice, where the contemner happens to be an Advocate. Such a punishment cannot even be imposed by taking recourse to the appellate powers under Section 38 of the Act while dealing with a case of contempt of court (and not an appeal relating to professional misconduct as such). To that extent, the law laid down in *Re: Vinay Chandra Mishra*, (1995) 2 S.C.C. 584 is not good law and we overrule it.

An Advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of

India to punish that Advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case.

In V.C. Mishra's case, the Bench, relied upon its inherent powers under Article 142, to punish him by suspending his licence, without the Bar Council having been given any opportunity to deal with his case under the Act. We cannot persuade ourselves to agree with that approach. It must be remembered that wider the amplitude of its power under Article 142, the greater is the need of care for this Court to see that the power is used with restraint without pushing back the limits of the constitution so as to function within the bounds of its own jurisdiction. To the extent, this Court makes the statutory authorities and other organs of the State perform their duties in accordance with law, its role is unexceptionable but it is not permissible for the Court to "take over" the role of the statutory bodies or other organs of the State and "perform" their functions.

Upon the basis of what we have said above, we answer the question posed in the earlier part of this order, in the negative. The writ petition succeeds and is ordered accordingly.

***Pushpaben & Ors. v. Narandas V. Badiani & Anr.***

1979 AIR 1536

J. Fazalali, Syed Murtaza

**JUDGMENT:**

The Judgment of the Court was delivered by FAZAL ALI, J.-This is an appeal under S. 19 of the Contempt of Courts Act (hereinafter called the Act) against an order of the High Court of Bombay convicting the appellants for a Civil Contempt and sentencing them to one month's simple imprisonment. The facts of the case have been fully detailed by the High Court and it is not necessary for us to repeat the same all over again. It appears that Respondent No. 1 had given a loan of Rs. 50,000/- to the appellants on certain conditions. Somehow or other, the loan could not be paid by the appellants as a result of which Respondent No. 1 filed a complaint under S. 420 I.P.C. against the appellants. While the complaint was pending before the Court of the Magistrate, the parties entered into a compromise on 22-7-1971 under which the appellants undertook to pay the loan of Rs. 50,000/- with simple interest @ 12% per annum on or before 21-7-1972. An application was filed before the Court for allowing the parties to compound the case and acquit the accused. The Court after hearing the parties, passed the following order:-

"The accused given an undertaking to the court that he shall repay the sum of Rs. 50,000/- to the complainant on or before 21-7-1972 with interest as mentioned on the reverse. In view of the undertaking, I permit the compromise and acquit the accused".

It is obvious, therefore, that the Court permitted the parties to compound the case only because of the undertaking given by the appellants.

Thereafter, it appears, that the undertaking was violated and the amount of loan was not paid to the Respondent No. 1 at all. The respondent, therefore, moved the High Court for taking action for contempt of Court against the appellants as a result of which the present proceedings were taken against them. The High Court came to the conclusion that the appellants had committed a wilful disobedience of the undertaking given to the Court and were, therefore, guilty of civil contempt as defined in S. 2(b) of the Act. Hence, this appeal before us.

Mr. V. S. Desai appearing in support of the appeal has raised two short points before us. He has submitted that there is no doubt that the appellants had violated the undertaking but in the circumstances it cannot be said that the appellants had committed a wilful disobedience of the orders of the Court. So far as this point is concerned, we fully agree with the High Court. In the circumstances, the appellants undoubtedly committed wilful disobedience of the order of the court by committing a serious breach of the undertaking given to the Court on the basis of which alone, the appellants had been acquitted. For these reasons, the first contention put forward by Mr. Desai, is overruled.

It is, then, contended that under S. 12(3), normally the sentence that should be given to an offender who is found guilty of civil contempt, is fine and not imprisonment, which should be given only where the Court is satisfied that ends of justice require the imposition of such a sentence. In our

opinion, this contention of learned counsel for the appellants is well-founded and must prevail. Sub-section 3 of S. 12 reads thus :-

"Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the Court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit".

A close and careful interpretation of the extracted section leaves no room for doubt that the Legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass a sentence of imprisonment if it think that ends of justice so require. Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation Thus, the sentence of imprisonment is an exception while sentence of fine is the rule.

Having regard to the peculiar facts and circumstances of this case, we do not find any special reason why the appellants should be sent to jail by sentencing them to imprisonment. Furthermore, respondent No. 1 before us despite service, has not appeared to support the sentence given by the High Court. Having regard to these circumstances, therefore, we are satisfied that the present case, squarely falls in the first part of S. 12(3) and a sentence of fine alone should have been given by the High Court. We, therefore, allow this appeal to this extent that the sentence of imprisonment passed by the High Court is set aside and instead the appellants are sentenced to pay a fine of Rs. 1000/- each. In case of default, 15 days simple imprisonment. Four weeks time to pay the fine.

P.B.R.

Appeal allowed in part.

***Daroga Singh & Ors. v. B.K. Pandey***  
(2004) 5 SCC 26

**Bench: R.C. Lahoti, Bhan.**

**JUDGMENT:**

The instant criminal appeals arising from a common judgment relating to the same incident, depict a rare, unfortunate and condemnable act of the police officials who contrary to the duty enjoined upon them to protect and maintain law and order, indulged in the act of attacking in a pre-planned and calculated manner Shri D.N. Barai, Ist Additional District and Sessions Judge, in his court room and Chambers on 18th November, 1997 at Bhagalpur in the State of Bihar.

In Sessions trial No. 592 of 1992, the Investigating Officer (Jokhu Singh) was examined as a witness on 7th May, 1997 in the Court of Shri D.N. Barai, Ist Additional District and Sessions Judge, Bhagalpur. As the cross-examination could not be concluded the case was adjourned to 26th May, 1997. Thereafter the case was adjourned to several dates but this witness did not appear for the cross-examination. A show cause notice was issued against Jokhu Singh through Superintendent of Police, Madhepura, requiring him to appear on 11th June, 1997. In spite of that Jokhu Singh did not appear. On 14th July, 1997, a wireless message was sent to him through Superintendent of Police to appear in the court on 5th August, 1997. Once again the witness did not turn up. The Court, therefore, having no other option issued a notice to Jokhu Singh to show cause why proceedings under the Contempt of Courts Act (hereinafter referred to as 'the Act') be not initiated against him. Ultimately, on 27th August, 1997 the case was adjourned to 20th September, 1997 and to procure his presence, non-bailable warrant was issued. On this date also the witness did not turn up. He did not file reply to the show cause notice either. On 17th November, 1997, Jokhu Singh appeared in the court in the afternoon. Having regard to the previous order of non-bailable warrant of arrest, he was remanded to judicial custody. A petition for bail was filed on his behalf after the court hours. It was directed that the same be placed for hearing on the next date.

Shri K.D. Choudhary, one of the appellants who was an office bearer of the Policemen's Association at District Level and was posted as SHO of the Police Station in the evening of the same day went to the Chambers of Shri Barai for release of Shri Jokhu Singh on execution of a personal bond. Shri Barai did not agree. Thereafter he approached the District Magistrate and on the basis of his advice he met the District Judge and renewed his demand for release of Jokhu Singh, which was declined.

On 18th November, 1997, when the bail petition of Jokhu Singh was taken up, the learned counsel appearing on his behalf made a prayer seeking withdrawal of the bail application. Accordingly, the bail application was dismissed as withdrawn. Soon thereafter, a large number of police officers (without uniform), armed with lathis and other weapons and shouting slogans against Shri Barai, barged into his court room. The court peon Shri Bishundeo Sharma who tried to shut the door was brutally assaulted. Shri Barai apprehending danger to his life, rushed to his Chambers and managed to bolt the door. Unruly mob forcibly broke open the door, overpowered the bodyguard and assaulted Shri Barai. They reiterated their demand for unconditional release of Jokhu Singh. Due to the manhandling Shri Barai felt dizziness and became unconscious. It was due to timely arrival of a team of doctors that his life was saved.

On the next day, on return from Banka, District & Sessions Judge also enquired into the matter and submitted a detailed report before the High Court.

On 19th November, 1997, on the basis of the report sent by the 5th Additional District and Sessions Judge, Bhagalpur dated 18th November, 1997, Original Criminal Miscellaneous Case No. 24 of 1997 was registered and placed before a Bench of the High Court for admission. After hearing, the Court arrived at the conclusion that a prima facie case of criminal contempt was made out against the contemnners. Accordingly proceedings under the Contempt of Courts Act were initiated and a direction was issued to the Registry to issue notices to the above referred persons along with a copy of the report, containing allegations against the concerned persons, calling upon them to show cause as to why suitable action be not taken against them for the alleged misconduct.

On 25th November, 1997, all the contemnners appeared through their respective advocates.

Besides the departmental proceedings, different criminal cases were also lodged against them.

On behalf of some of the contemnners a request was made to keep the contempt matter in abeyance until the conclusion of the proceedings initiated under various provisions of the Indian Penal Code, the departmental proceedings and the report of the Commission constituted under the Commission of Inquiry Act. The request was declined by the High Court. It was held that the pendency of a criminal case or judicial inquiry could not constitute a bar to the continuation of the contempt proceedings. But before adjourning the proceedings to the next date and having noticed that all the contemnners and their advocates were present and every body was condemning the occurrence, the Court expressed the desire that some of the responsible officers like Superintendent of Police, Deputy Superintendent of Police, Inspector of Police Kotwali Shri K.D. Choudhary and Sub-Inspector of Police Ms. Shashi Lata Singh and Sergeant Major of Police Line Ranjit Pandey should disclose details of the occurrence which had taken place in the court premises on 18th November, 1997 and if possible, identify more names of such persons, who, according to them, had taken part at the time of occurrence.

On 10th December, 1997, all the contemnners appeared and filed additional or supplementary replies to show cause notice. The Superintendent of Police in his supplementary reply disclosed names of 14 more police officials and constables, who, as per his inquiry, had also taken part along with the main persons named earlier.

Appellants who were convicted under the Contempt of Courts Act and visited with the punishment of simple imprisonment have filed five different appeals.

Learned counsels appearing for the appellants in different appeals, apart from the merits in individual appeals, which we shall deal with later, have raised some common points challenging the correctness of the impugned judgment. The same are:

(i) the alleged contempt is that of a court subordinate to the High Court and the allegations made constitute an offence under Section 228 IPC, and therefore the jurisdiction of the High Court to take cognizance of such a case is expressly barred under proviso to Section 10 of the Act;

(ii) that the High Court cannot take suomotu notice of the contempt of a court subordinate to it. The procedure given in the High Court Rules and Orders for initiation of proceedings for contempt of subordinate court having not been followed the entire proceedings are vitiated and liable to be quashed;

(iii) the standard of proof required in the criminal contempt is the same as in a criminal charge and therefore the charge of criminal contempt has to be proved by holding a trial as in a criminal case. The appellants could not be convicted on the basis of evidence by way of affidavits only. The witnesses should have been examined in Court and in any case the appellants should have been given an opportunity to cross-examine the persons who had deposed against them on affidavits to verify the version of the incident as according to them there were conflicting versions of the incident;

(iv) reasonable and adequate opportunity was not afforded to the appellants either to defend themselves or put forward their case; and

(v) affidavits of independent witnesses which were on record have not been dealt with by the High Court.

Answer to the first point would depend upon the interpretation to be put on Section 10 of the Act. Section 10 which deals with the power of the High Court to punish for the contempt of subordinate courts.

According to the learned counsels appearing for the appellants the proviso to Section 10 means that if the act by which a party is alleged to have committed contempt of a subordinate court constitutes offence of any description whatsoever punishable under the Indian Penal Code, the High Court is precluded from taking cognizance of it. According to them in the present case the allegations made amounts to an offence under Section 228 of the Indian Penal Code and consequently the jurisdiction of the High Court is barred.

We do not find any force in this submission. The point raised is concluded against the appellants by a judgment of the Constitution Bench of this Court in *Bathina Ramakrishna Reddy Vs. The State of Madras*, 1952 SCR 425 wherein it was held that sub-section (3) excluded the jurisdiction of the High Court to take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it only in cases where the acts alleged to constitute contempt are punishable as contempt under specific provisions of the Indian Penal Code, but not where these acts merely amount to offences of other description for which punishment has been provided in the Indian Penal Code.

On an examination of the decisions of several High Courts in India it was laid down that the High Court had the right to protect subordinate courts against contempt but subject to this restriction, that cases of contempt which have already been provided for in the Indian Penal Code should not be taken cognizance of by the High Court. This, it was stated, was the principle underlying section 2(3) of the Contempt of Courts Act, 1926. This Court then observed that it was not necessary to determine exhaustively what were the cases of contempt which had been already provided for



in the Indian Penal Code; it was pointed out, however, that some light was thrown on the matter by the provision of section 480 of the Code of Criminal Procedure which empowers any civil, criminal or revenue court to punish summarily a person who is found guilty of committing any offence under sections 175, 178, 179, 180 or section 228 of the Indian Penal Code in the view or presence of the court. The later decision of Brahma Prakash Sharma ([1953] S.C.R. 1169) explained the true object of contempt proceedings.

Mukherjea J. who delivered the judgment of the Court said (at page 1176) :

"It would be only repeating what has been said so often by various Judges that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened."

It was also pointed out that there were innumerable ways by which attempts could be made to hinder or obstruct the due administration of justice in courts and one type of such interference was found in cases where there was an act which amounted to "scandalising the court itself" : this scandalising might manifest itself in various ways but in substance it was an attack on individual Judges or the court as a whole with or without reference to particular cases, causing unwarranted and defamatory aspersions upon the character and ability of the Judges. Such conduct is punished as contempt for the reason that it tends to create distrust in the popular mind and impair the confidence of the people in the courts which are of prime importance to the litigants in the protection of their rights and liberties."

These two judgments have been followed recently in Arun Paswan, S.I. vs. State of Bihar & Others [2003 (10) SCALE 658]. We respectfully agree with the reasoning and the conclusions arrived at in these cases.

"Criminal contempt" is defined in Section 2 (c) of the Act.

Section 228 of the Indian Penal Code provides for intentional insult or interruption to public servant sitting in judicial proceeding

What is made punishable under Section 228, IPC is the offence of intentional insult to a Judge or interruption of court proceedings but not as a contempt of Court. The definition of criminal contempt is wide enough to include any act by a person which would either scandalize the court or which would tend to interfere with the administration of justice. It would also include any act which lowers the authority of the Court or prejudices or interferes with the due course of any judicial proceedings. It is not limited to the offering of intentional insult to the Judge or interruption of the judicial proceedings. This Court observed in Delhi Judicial Service Association Vs. State of Gujarat & Ors. , 1991 (4) SCC 406:

"...The public have a vital stake in effective and orderly administration of justice. The Court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court

against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with. The power to punish for contempt is thus for the protection of public justice, whose interest requires that decency and decorum is preserved in Courts of Justice. Those who have to discharge duty in a Court of Justice are protected by the law, and shielded in the discharge of their duties. Any deliberate interference with the discharge of such duties either in court or outside the court by attacking the presiding officers of the court, would amount to criminal contempt and the courts must take serious cognizance of such conduct."

In the present case, a judicial officer of the rank of District Judge was attacked in a pre-planned and calculated manner in his court room and when he tried to protect himself from physical harm by retiring to his chambers, by chasing him there and causing injuries to him. The raising of slogans and demanding unconditional bail for Jokhu Singh further compounded the offence. The Courts cannot be compelled to give "command orders". The act committed amounts to deliberate interference with the discharge of duty of a judicial officer by intimidation apart from scandalizing and lowering the dignity of the Court and interference with the administration of justice. The effect of such an act is not confined to a particular court or a district, or the State, it has the tendency to effect the entire judiciary in the country. It is a dangerous trend. Such a trend has to be curbed. If for passing judicial orders to the annoyance of the police the presiding officers of the Courts are to be assaulted and humiliated the judicial system in the country would collapse.

The second contention raised on behalf of the appellants is that the High Court cannot on its own motion take action of a criminal contempt of a subordinate court. According to the learned counsels the High Court can take cognizance of a criminal contempt under Section 15 (2) of the Act of a subordinate court only on a reference made to it by the subordinate court or on a motion made by the Advocate General. Since the procedure as laid down in the High Court Rules and Orders had not been followed the very initiation of proceedings for contempt was vitiated and therefore liable to be quashed. We do not find any force in this submission as well. This point also stands concluded against the appellants by a decision of this Court in S.K. Sarkar, Member, Board of Revenue, U.P. Lucknow, Vs. Vinay Chandra Misra, [1981 (1) SCC 436]. In this case an advocate filed a petition before the High Court under the Contempt of Courts Act alleging that the appellant therein as a Member of Revenue Board made certain contemptuous remarks, viz., *nalayakgadhesaale ko jail bhijwadunga; kis idiot ne advocate banadiyahi* and acted in a manner which amounted to criminal contempt of the Court of Revenue Board, in which he (the advocate) was the counsel for one of the parties. The advocate requested the High Court to take suomotu action under the Contempt of Court Act against the member of the Revenue Board or pass such orders as it deemed fit. The question for determination was whether the High Court was competent to take cognizance of contempt of a subordinate court when it was moved by a private petitioner and not in accordance with either of the two motions mentioned in Section 15(2). Analyzing Section 15 (2) of the Act and in reading it in harmony with Section 10 of the Act it was held:

18. A comparison between the two sub-sections would show that whereas in sub-section (1) one of the three alternative modes for taking cognizance, mentioned is "on its own motion", no such mode is expressly provided in sub-section (2). The only two modes of taking cognizance by the High Court mentioned in sub-section (2) are : (i) on a reference made to it by a subordinate court; or (ii) on a motion made by the Advocate General, or in relation to a union territory by the notified Law Officer. Does the omission in Section 15(2) of the mode of taking suomotu cognizance indicate a

legislative intention to debar the High Court from taking cognizance in that mode of any criminal contempt of a subordinate court ? If this question is answered in the affirmative, then, such a construction of sub-section (2) will be inconsistent with Section 10 which makes the powers of the High court to punish for contempt of a subordinate court, coextensive and congruent with its power to punish for its own contempt not only in regard to quantum or prerequisites for punishment, but also in the matter of procedure and practice. Such a construction which will bring Section 15(2) in conflict with Section 10, has to be avoided, and the other interpretation which will be in harmony with Section 10 is to be accepted. Harmoniously construed, sub-section (2) of Section 15 does not deprive the High Court of the power of taking cognizance of criminal contempt of a subordinate court, on its own motion, also. If the intention of the legislature was to take away the power of the High Court to take suo motu cognizance of such contempt, there was no difficulty in saying so in unequivocal language, or by wording the sub-section in a negative form. We have, therefore, no hesitation in holding in agreement with the High Court, that sub-section (2) of Section 15, properly construed, does not restrict the power of the High Court to take cognizance of and punish contempt of a subordinate court, on its own motion." [Emphasis supplied]

We respectfully agree with the view taken in this judgment and hold that the High Court could initiate proceedings on its own motion under the Contempt of Courts Act against the appellants.

The third contention raised by the learned counsel for the appellants is that the standard of proof required in the criminal contempt is the same as in a criminal charge and therefore the charge of criminal contempt has to be proved beyond reasonable doubt. That the appellants could not be convicted on the basis of the affidavits filed. That the witnesses should have been examined in Court and in any case the appellants should have been given an opportunity to cross-examine the persons who had deposed against them on affidavits to verify the version of the incident as according to them there were conflicting versions of the incident. It was emphasized that justice must not only be done, but must be seen to be done by all concerned to establish confidence that the contemnors will receive a fair, just and impartial trial. We do not find any substance in this submission as well. High Court in its order has noted that the learned counsels appearing for both the parties have taken a stand that all possible fair and proper opportunities were extended to them. In view of the statements made by the counsels for the parties it will not be open to the counsels for the parties at this stage to take the stand that in the absence of cross-examination of the concerned persons, reliance could not be placed on the statements which were made on oath. Learned counsel who had appeared for the contemnors before the High Court did not claim the right of cross-examination. Only at the stage of arguments a submission was made that opportunity to cross-examine the concerned persons was not given which vitiated the trial. High Court rejected this contention by holding that such a stand could not be taken at that stage of the proceedings. It has been held in Arun Paswan case (supra) that a party which fails to avail of the opportunity to cross-examine at the appropriate stage is precluded from taking the plea of non-observance of principles of natural justice at a later stage. Such a plea would not be tenable.

It has repeatedly been held by this Court (Ref: 1995 (2) SCC 584) that the procedure prescribed either under the Code of Criminal Procedure or under the Evidence Act is not attracted to the proceedings initiated under Section 15 of the Contempt of Courts Act. The High Court can deal with such matters summarily and adopt its own procedure. The only caution that has to be observed by the Court in exercising this inherent power of summary procedure is that the procedure followed must be fair and the contemnors are made aware of the charges levelled against them and given a

fair and reasonable opportunity. Having regard to the fact that contempt proceedings are to be decided expeditiously in a summary manner the convictions have been recorded without extending the opportunity to the contemnors to cross examine those who had deposed against them on affidavits. Though the procedure adopted in this case was summary but adequate safeguards were taken to protect the contemnors' interest. The contemnors were issued notices apprising them of the specific allegations made against them. They were given an opportunity to counter the allegations by filing their counter affidavits and additional counter/supplementary affidavits as per their request. They were also given opportunity to file affidavits of any other persons which they did. They were given opportunities to produce any other material in their defence which they did not do. Most of the contemnors had taken the plea that at the relevant time they were on duty in their respective Police Stations though in the same town. They also attached copies of station diaries and duty chart in support of their alibi. The High Court did not accept the plea of alibi as all these papers had been prepared by the contemnors themselves and none of the superior officer had supported such a plea. The evidence produced by the respondents was rejected in the face of the reports made by the Additional District and Sessions Judge, Director General of Police coupled with affidavits of Mr. Barasi, the Additional District and Sessions Judge, two court's officials and affidavits of some of the lawyers who had witnessed the occurrence.

The contempt proceedings have to be decided in a summary manner. The Judge has to remain in full control of the hearing of the case and immediate action is required to be taken to make it effective and deterrent. Immediate steps are required to be taken to restore order as early and quickly as possible. Dragging the proceedings unnecessarily would impede the speed and efficiency with which justice has to be administered. This Court while considering all these aspects held in *In re: Vinay Chandra Mishra (the alleged contemner)*, 1995 (2) SCC 584, that the criminal contempt no doubt amounts to an offence but it is an offence sui generis and hence for such offence, the procedure adopted both under the common law and the statute law in the country has always been summary. It was observed that the need was for taking speedy action and to put the Judge in full control of the hearing. It was emphasised that immediate steps were required to be taken to restore order in the court proceedings as quickly as possible. To quote from the above-referred to case "However, the fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemner. The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegations is made clear or otherwise the contemner is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation. The consensus of opinion among the judiciary and the jurists alike is that despite the objection that the Judge deals with the contempt himself and the contemner has little opportunity to defend himself, there is a residue of cases where not only it is justifiable to punish on the spot but it is the only realistic way of dealing with certain offenders. This procedure does not offend against the principle of natural justice, viz., *nemo iudex in sua causa* since the prosecution is not aimed at protecting the Judge personally but protecting the administration of justice. The threat of immediate punishment is the most effective deterrent against misconduct. The Judge has to remain in full control of the hearing of the case and he must be able to take steps to restore order as early and quickly as possible. The time factor is crucial. Dragging out the contempt proceedings means a lengthy interruption to the main proceedings which paralyses the court for a time and indirectly impedes the speed and efficiency with which justice is administered. Instant justice can never be completely satisfactory yet it does provide the simplest, most effective and least unsatisfactory method of dealing with disruptive conduct in court. So long as the contemner's interests are adequately safeguarded by giving him an opportunity of being heard

in his defence, even summary procedure in the case of contempt in the face of the court is commended and not faulted."

In the present case the High Court had decided to proceed with the contempt proceedings in a summary manner. Due opportunity was afforded to all the contemnors and after verifying and cross checking the material available before it, coming from different reliable sources the High Court convicted only nine persons out of twenty six persons arrayed as contemnors before it. The High Court took due care to ascertain the identity of the contemnors by cross-checking with the affidavits filed by the different persons. It is also based on the independent reports submitted by the Director General of Police and Superintendent of Police. We do not find any fault in the procedure adopted by the High Court in conducting the proceedings in the present case. For the survival of the rule of law the orders of the courts have to be obeyed and continue to be obeyed unless overturned, modified or stayed by the appellate or revisional courts. The court does not have any agency of its own to enforce its orders. The executive authority of the State has to come to the aid of the party seeking implementation of the court orders. The might of the State must stand behind the Court orders for the survival of the rule of the court in the country. Incidents which undermine the dignity of the courts should be condemned and dealt with swiftly. When a judge is attacked and assaulted in his court room and chambers by persons on whose shoulders lay the obligation of maintaining law and order and protecting the citizen against any unlawful act needs to be condemned in the severest of terms. If judiciary has to perform its duties and functions in a fair and free manner, the dignity and the authority of the courts has to be respected and maintained at all stages and by all concerned failing which the very constitutional scheme and public faith in the judiciary runs the risk of being lost.

It was urged with some vehemence that principles of natural justice were not observed in as much as opportunity to cross examine the witnesses who had deposed on affidavits is concerned it may be stated that no such opportunity was asked for in the High Court at trial stage. It was for them to ask for such an opportunity to cross examine the parties who had deposed against them on affidavit. Since the contemnors did not avail of the opportunity at the trial stage the plea of non-observations of principles of natural justice is not tenable. Appellants were made aware of the procedure which was adopted by the High Court. They were given full opportunity to put forth their point of view. Each of them filed detailed affidavits along with evidence in support thereof. They had attached their duty charts showing that they could not have been present at the place of occurrence as they were on duty somewhere else. High Court has considered and discussed the entire evidence present on the record before recording the conviction. The contention that the affidavits of independent witnesses were not considered cannot be accepted. Only those were convicted against whom corroboration of the fact of their presence and participation in the incident was confirmed from more than one source.

Plea that reasonable and adequate opportunity was not afforded to the appellants is equally untenable. We find from the record that all the material (affidavits, show cause notice etc.) which were brought on record was properly served on the learned advocates appearing for the contemnors.

It is unfortunate that neither the criminal proceedings nor the disciplinary proceedings or the inquiry under the Commission of Inquiry Act have been concluded. No doubt the appellants had been suspended initially but in due course they have been reinstated. Some of them have retired as well. Inaction on the part of the authorities resulted in emboldening others to commit similar acts. In

Arun Paswan (supra), proceedings for criminal contempt were initiated against the appellant therein pursuant to the complaint lodged by the District & Sessions Judge, Sasaram addressed to the Registrar General of the High Court of Patna. What is being emphasised is that had timely action been taken by the authorities and the criminal proceedings concluded in time, incident, as referred to above, where slogans were raised "District Judge Murdabad, Bhagalpur Dohrana Hai" could have been avoided.

The incident with which we are dealing with took place on 18th November 1997. The incident which has been dealt with in the case of Arun Paswan, S.I. (supra) is dated 20th January, 2002. Both the incidents have taken place in the State of Bihar, one in Bhagalpur and the other in Sasaram. The manner in which the police personnel belonging to middle level of police administration and entrusted with such responsibilities as require theirs coming into contact with public day to day persuades us to make observation that there is something basically wrong with the police in Bihar. Misconduct amounting to gross violation of discipline committed not by a single individual but by so many collectively and that too by those who have formed an association consisting of members of a disciplined force in uniform was not promptly and sternly dealt with by the State or its senior officials so as to take care to see that such incident, even if happened, remains solitary incident. Faced with the initiation of contempt proceedings, the persons proceeded against did not have the courtesy of admitting their guilt and tendering an apology which if done could have been dealt with mercy. They decided to contest, of course the justice administration system allows them the liberty of doing so and they had every right of doing so but at the end it has been found that their pleas were false and their denial of charges was aimed at prolonging the hearing as much as they could. We are shocked to learn that the criminal courts seized of trial of the accused persons on substantive charges for offences under the penal law of the land are awaiting the decision of this appeal? Why for? Neither the High Court nor this Court has ever directed the proceedings before the criminal Courts to remain stayed. The criminal Court shall have to decide on the charges framed against the accused persons on the basis of the evidence adduced in those cases and not on the basis of this judgment.

Though we have found no merit in any of the pleas raised on behalf of the appellants and we have formed an opinion without hesitation that the appeals are to be dismissed, this is a case the facts whereof persuade us to place on record certain observations of ours.

In the constitutional scheme the judiciary is entrusted with the task of upholding the Constitution and the laws. Apart from interpreting the Constitution and the laws, the judiciary discharges the function of securing maintenance of law and order by deciding the disputes in a manner acceptable to civilised and peace loving society. In order to maintain the faith of the society in the rule of law the role of the judiciary cannot be undermined. In a number of cases this Court has observed that foundation of the judiciary is the trust and confidence of the people of the nation and when such foundation or trust is rudely shaken by means of any disrespect by the very persons who are required to enforce the orders of the court and maintain law and order the people's perception of efficacy of the systems gets eroded.

The Judges are as a jurist calls 'paper tigers'. They do not have any machinery of their own for implementing their orders. People, while approaching the Court of law which they regard as temple of justice, feel safe and secure whilst they are in the Court. The police personnel is deployed in the Court campus for the purpose of maintaining order and to see that not only the Judges can work

fearlessly in a calm, cool and serene atmosphere but also to see that anyone coming to the Court too feels safe and secure thereat. Every participant in court proceedings is either a seeker of justice or one who comes to assist in administration of justice. So is the expectation of the members of the Bar who are treated as officers of the Court. We shudder to feel what would happen if the police personnel itself, and that too in an organised manner, is found to be responsible for disturbing the peace and order in the Court campus, for causing assault on the Judges and thus sully the temple of justice apart from bringing a bad name to an indispensable organ of the executive wing of the State.

The police force is considered by the society as an organised force of civil officers under the command of the State engaged in the preservation of law and order in the society and maintaining peace by enforcement of laws and prevention and detection of crime. One who is entrusted with the task of maintaining discipline in the society must first itself be disciplined. Police is an agency to which social control belongs and therefore the police has to come up to the expectations of the society.

After all, what the learned Addl. Sessions Judge had done Jokhu Singh had appeared as a witness. His cross-examination was not concluded without which his testimony was liable to be excluded from being read in evidence. The learned Judge had exhausted practically all means for securing the presence of the witness. He would neither attend nor make any communication to the Court. Even the threat of initiation of proceedings under the Contempt of Courts Act did not deter him from abstaining. To secure his presence a non-bailable warrant had to be issued. He avoided the service of non-bailable warrant of arrest and appeared in the Court in the late hours. He was not apologetic and felt that he was above the process of the Court. It cannot be said that the higher authorities of police were not aware of the behaviour of Jokhu Singh. Either they knew about it or they should have known about it. Instead of offering the bail, Jokhu Singh was busy managing for the Judge being approached or influenced by extra legal methods. Jokhu Singh and his confederate decided to take the law in their own hands and assault the Judge and anyone who came in their way. We do not think that any of the appellants deserve any sympathy or mercy.

We trust and hope that this case would set in motion the thinking process of the persons occupying higher echelons in police administration specially in Bihar and take care to ensure that such incidents do not recur in future.

We direct the disciplinary authorities before whom the disciplinary proceedings are pending and the criminal Courts before whom the prosecutions are pending against the appellants to conclude the proceedings and the trial at the earliest. The Commission holding the enquiry under the Commissions of Enquiry Act, 1952 would also do well to conclude its proceedings at the earliest. We request Hon'ble the Chief Justice of the High Court of Patna to watch and if necessary monitor the proceedings of the Commission of Inquiry and issue directions to the criminal courts to expeditiously conclude the pending criminal cases.

The appeals are dismissed. The appellants who are on bail shall forthwith surrender to their bail bonds and taken into custody to serve out the sentences as passed by the High Court of Patna. The Director General of Police, Bihar is directed to ensure compliance with this order by securing presence of all the appellants to serve out the sentences passed on them by the High Court.

***Pravin C. Shah v. K.A. Mohd. Ali***

(2001) 8 SCC 650

**K.T. THOMAS, J.** - We thought that the question involved in this appeal would generate much interest to the legal profession and hence we issued notices to the Bar Council of India as well as the State Bar Council concerned. But the Bar Council of India did not respond to the notice. We therefore requested Mr Dushyant A. Dave, Senior Advocate, to help us as *amicus curiae*. The learned Senior Counsel did a commendable job to help us by projecting a wide screen focussing on the full profiles of the subject with his usual felicity. We are beholden to him.

2. When an advocate was punished for contempt of court can he appear thereafter as a counsel in the courts, unless he purges himself of such contempt? If he cannot, then what is the way he can purge himself of such contempt? That question has now come to be determined by the Supreme Court.

3. This matter concerns an advocate practising mostly in the courts situated within Ernakulam District of Kerala State. He was hauled up for contempt of court on two successive occasions. We wish to skip the facts in both the said cases which resulted in his being hauled up for such contempt as those facts have no direct bearing on the question sought to be decided now. [The detailed facts leading to the said proceedings have been narrated in the two decisions of the High Court of Kerala reported in *C.N. Presannan v. K.A. Mohammed Ali*, 1991 Cri LJ 2194 (Ker) & 1991 Cri LJ 2205 (Ker)]. Nonetheless, it is necessary to state that the High Court of Kerala found the respondent Advocate guilty of criminal contempt in both cases and convicted him under Section 12 of the Contempt of Courts Act, 1971, and sentenced him in one case to a fine of Rs 10,000 (to be credited, if realised, to the funds of Kerala Legal Aid Board). In the second case he was sentenced to pay a fine of Rs 2000. Though he challenged the conviction and sentence imposed on him by the High Court, he did not succeed in the Supreme Court except getting the fine of Rs 2000 in one case deleted. The apology tendered by him in this Court was not accepted, for which a two-Judge Bench made the following observation:

“We regretfully will not be able to accept his apology at this belated juncture, but would rather admonish the appellant for his conduct under our plenary powers under the Constitution, which we do hereby.”

4. The above conviction and sentence and refusal to accept the apology tendered on his behalf did not create any ripple in him, so far as his resolve to continue to appear and conduct cases in the courts was concerned. The present appellant (who represents an association “Lalan Road Residents’ Association, Cochin”) brought to the notice of the Bar Council of Kerala that the delinquent Advocate continued to conduct cases before the courts in Ernakulam District in spite of the conviction and sentence.

5. The Bar Council of Kerala thereupon initiated disciplinary proceedings against the respondent Advocate and finally imposed a punishment on him debarring him from “acting or pleading in any court till he gets himself purged of the contempt of court by an order of the appropriate court”. The respondent Advocate challenged the order of the State Bar Council in an appeal filed before the Bar Council of India. By the impugned order the Bar Council of India set aside the interdict imposed on him.

6. This appeal, in challenge of the aforesaid order of the Bar Council of India, is preferred by the same person at whose instance the State Bar Council initiated action against the respondent Advocate.



8. The above Rule shows that it was not necessary for the Disciplinary Committee of the Bar Council to impose the said interdict as a punishment for misconduct. Even if the Bar Council had not passed proceedings (which the Disciplinary Committee of the Bar Council of India has since set aside as per the impugned order) the delinquent Advocate would have been under the disability contained in Rule 11 quoted above. It is a self-operating rule for which only one stipulation need be satisfied i.e. the advocate concerned should have been found guilty of contempt of court. The terminus of the period of operation of the interdict is indicated by the next stipulation i.e. the contemnor purges himself of the contempt. The inhibition will therefore start operating when the first stipulation is satisfied, and it would continue to function until the second stipulation is fulfilled. The latter condition would remain eluded until the delinquent Advocate himself initiates steps towards that end.

9. Regarding the first condition there is no difficulty whatsoever in the present case because it is an admitted fact that the respondent Advocate has been found guilty of contempt of court by the High Court of Kerala in two cases successively. For the operation of the interdict contained in Rule 11 it is not even necessary that the Advocate should have been sentenced to any punishment after finding him guilty. The difficulty arises in respect of the second condition mentioned above.

10. The Disciplinary Committee of the Bar Council of India seems to have approached the question from a wrong angle by posing the following question:

“The fundamental question arising for consideration in this appeal is whether Rule 11 of the Rules framed by the Hon’ble High Court of Kerala under Section 34(1) of the Advocates Act, 1961, is binding on the Disciplinary Committee of the State Bar Council and if not, whether the Disciplinary Committee was justified in ordering that on account of the disqualification under Rule 11 the appellant could not be allowed to appear, act or plead till he gets himself purged of the contempt by an order of the appropriate court.”

11. There is no question of Rule 11 being binding on the Disciplinary Committee or any other organ of the Bar Council. There is nothing in the said Rule which would involve the Bar Council in any manner. But there is nothing wrong in the Bar Council informing a delinquent advocate of the existence of a bar contained in Rule 11 and remind him of his liability to abide by it. Hence the question formulated by the Disciplinary Committee of the Bar Council of India, as aforequoted, was unnecessary and fallacious.

12. In the impugned order the Disciplinary Committee rightly stated that “the exercise of the disciplinary powers over the advocates is exclusively vested with the Bar Council and this power cannot be taken away by the High Court either by a judicial order or by making a rule”. This is precisely the legal position adumbrated by the Constitution Bench of this Court in **Supreme Court Bar Assn. v. Union of India** [(1998) 4 SCC 409]. In fact the relevant portions of the said decision have been quoted in the impugned order in extenso. But having informed themselves of the correct legal position regarding the powers of the Bar Council the members of the Disciplinary Committee of the Bar Council of India embarked on a very erroneous concept when it observed the following:

“But to say that an advocate who had been found guilty of contempt of court shall not be permitted to appear, act or plead in a court unless he has purged himself of the contempt would amount to usurpation of powers of Bar Council.”

13. After examining Rule 11 of the Rules the Disciplinary Committee of the Bar Council of India held that

“there cannot be an automatic deprivation of the right of an advocate to appear, act or plead in a court, since such a course would be unfair and even violative of the fundamental rights guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution of India”.

In the end the Disciplinary Committee of the Bar Council of India made an unwarranted proposition on a misplaced apprehension as follows:

“The independence and autonomy of the Bar Council cannot be surrendered to the provisions contained in Rule 11 of the Rules made by the High Court of Kerala under Section 34(1) of the Advocates Act.”

14. By giving expression to such a proposition the Bar Council of India has obviously overlooked the legal position laid down by the Constitution Bench in ***Supreme Court Bar Assn. v. Union of India***. In para 57 of the decision the Bench said thus:

“57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing ‘professional misconduct’, depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct *vests exclusively* in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts.”

15. Thereafter in para 80, the Constitution Bench said the following:

“80. In a given case it may be possible, for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals.”

16. Rule 11 of the Rules is not a provision intended for the Disciplinary Committee of the Bar Council of the State or the Bar Council of India. It is a matter entirely concerning the dignity and the orderly functioning of the courts. The right of the advocate to practise envelops 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 etc. Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance inside the court. 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 the Bar Council in exercise of its disciplinary powers. 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. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate.

17. When the Rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm

or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court proceedings. Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former.

22. We have already pointed out that Rule 11 of the Rules is a self-operating provision. When the first postulate of it is completed (that the advocate has been found guilty of contempt of court) his authority to act or plead in any court stands snapped, though perhaps for the time being. If he does such things without the express permission of the court he would again be guilty of contempt of court besides such act being a misconduct falling within the purview of Section 34 of the Advocates Act. The interdict as against him from appearing in court as a counsel would continue until such time as he purges himself of the contempt.

23. Now we have to consider the crucial question - how can a contemnor purge himself of the contempt? According to the Disciplinary Committee of the Bar Council of India, purging oneself of contempt can be done by apologising to the court. The said opinion of the Bar Council of India can be seen from the following portion of the impugned order:

“Purging oneself of contempt can be only by regretting or apologising in the case of a completed action of criminal contempt. If it is a case of civil contempt, by subsequent compliance with the orders or directions the contempt can be purged of. There is no procedural provision in law to get purged of contempt by an order of an appropriate court.”

24. Purging is a process by which an undesirable element is expelled either from one's own self or from a society. It is a cleaning process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word “purge”, which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters. In ***Black's Law Dictionary*** the word “purge” is given the following meaning: “To cleanse; to clear. To clear or exonerate from some charge or imputation of guilt, or from a contempt.” It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed.

25. We are told that a learned Single Judge of the Allahabad High Court has expressed a view that purging process would be completed when the contemnor undergoes the penalty [vide ***Madan Gopal Gupta (Dr) v. Agra University***, AIR 1974 All 39]. This is what the learned Single Judge said about it:

“In my opinion a party in contempt purged its contempt by obeying the orders of the court or by undergoing the penalty imposed by the court.”

26. Obeying the orders of the court would be a mode by which one can make the purging process in a substantial manner when it is a civil contempt. Even for such a civil contempt the purging process would not be treated as completed merely by the contemnor undergoing the penalty imposed on him unless he has obeyed the order of the court or he has undone the wrong. If that is the position in regard to civil contempt the position regarding criminal contempt must be stronger. Section 2 of the Contempt of Courts Act categorises contempt of court into two categories. The first category is “civil contempt” which is the wilful disobedience of the order of the court including breach of an undertaking given to the court. But “criminal contempt” includes doing any act whatsoever, which tends to scandalise or lowers the authority of any court, or tends to interfere with the due course of a judicial proceeding or interferes with, or obstructs the administration of justice in any other manner.

27. We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned Single Judge in the aforesaid decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

28. The Disciplinary Committee of the Bar Council of India highlighted the absence of any mode of purging oneself of the guilt in any of the Rules as a reason for not following the interdict contained in Rule 11. Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of a criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt.

29. This Court has held in *M.Y. Shareef v. Hon'ble Judges of the Nagpur High Court* [AIR 1955 SC 19], that

“an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness”.

Ahmadi, J. (as the learned Chief Justice then was) in *M.B. Sanghi, Advocate v. High Court of Punjab and Haryana* [(1991) 3 SCC 600], while considering an apology tendered by an advocate in a contempt proceeding has stated thus:

“And here is a member of the profession who has repeated his performance presumably because he was let off lightly on the first occasion. Soft justice is not the answer - not that the High Court has been harsh with him - what I mean is he cannot be let off on an apology which is far from sincere. His apology was hollow, there was no remorse - no regret - it was only a device to escape the rigour of the law. What he said in his affidavit was that he had not uttered the words attributed to him by the learned Judge; in other words the learned Judge was lying - adding insult to injury - and yet if the court finds him guilty (he contested the matter tooth and nail) his unqualified apology may be accepted. This is no apology, it is merely a device to escape.”

30. A four-Judge Bench of this Court in *Mulk Raj v. State of Punjab* [(1972) 3 SCC 839] made the following observations which would throw considerable light on the question before us:

“9. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is shorn of penitence. If apology is offered at a time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and it becomes an act of a cringing coward. The High Court was right in not taking any notice of the appellant’s expression of apology ‘without any further word’. The High Court correctly said that acceptance of apology in the case would amount to allow the offender to go away with impunity after having committed gross contempt.”

31. Thus a mere statement made by a contemnor before court that he apologises is hardly enough to amount to purging himself of the contempt. The court must be satisfied of the genuineness of the apology. If the court is so satisfied and on its basis accepts the apology as genuine the court has to make an order holding that the contemnor has purged himself of the contempt. Till such an order is passed by the court the delinquent advocate would continue to be under the spell of the interdict contained in Rule 11 of the Rules.

32. Shri SadrulAnam, learned counsel for the respondent Advocate submitted first, that the respondent has in fact apologised before this Court through the counsel engaged by him, and second is that when this Court observed that “this course should set everything at rest” it should be treated as the acknowledgement made by this Court that the contemnor has purged himself of the guilt.

33. We are unable to accept either of the said contentions. The observation that “this course should set everything at rest” in the judgment of this Court cannot be treated as anything beyond the scope of the plea made by the respondent in that case. That apart, this Court was certainly disinclined to accept the apology so tendered in this Court which is clearly manifested from the outright repudiation of that apology when this Court said thus:

“We regretfully will not be able to accept his apology at this belated juncture, but would rather admonish the appellant for his conduct under our plenary powers under the Constitution, which we do hereby.”

34. The respondent Advocate continued to appear in all the courts where he was earlier appearing even after he was convicted by the High Court for criminal contempt without being objected by any court. This is obviously on account of the fact that presiding officers of the court were not informed of what happened. We, therefore, direct that in future, whenever an advocate is convicted by the High Court for contempt of court, the Registrar of that High Court shall intimate the fact to all the courts within the jurisdiction of that High Court so that presiding officers of all courts would get the information that the particular advocate is under the spell of the interdict contained in Rule 11 of the Rules until he purges himself of the contempt.

35. It is still open to the respondent Advocate to purge himself of the contempt in the manner indicated above. But until that process is completed the respondent Advocate cannot act or plead in any court situated within the domain of the Kerala High Court, including the subordinate courts thereunder. The Registrar of the High Court of Kerala shall intimate all the courts about this interdict as against the respondent Advocate.

\* \* \* \* \*

***R. Muthukrishnan v. The Registrar General of the High Court of  
Judicature at Madras***

AIR 2019 SC 849

**Judges/Coram:** *Arun Mishra and Vineet Saran, JJ.*

**Arun Mishra, J.:**

1. The Petitioner, who is an Advocate, has filed the petition Under Article 32 of the Constitution of India, questioning the vires of amended Rules 14-A, 14-B, 14-C and 14-D of the Rules of High Court of Madras, 1970 made by the High Court of Madras Under Section 34(1) of the Advocates' Act, 1961 (hereinafter referred to as, 'the Advocates' Act').

2. The High Court has inserted Rule 14A in the Rules of High Court of Madras, 1970 empowering the High Court to debar an Advocate from practicing. The High Court has been empowered to take action Under Rule 14B where any misconduct referred to Under Rule 14-A is committed by an Advocate before the High Court then the High Court can debar him from appearing before the High Court and all subordinate courts. Under Rule 14-B(v) the Principal District Judge has been empowered to initiate action against the Advocate concerned and debar him from appearing before any court within such District. In case misconduct is committed before any subordinate court, the concerned court shall submit a report to the Principal District Judge and in that case, the Principal District Judge shall have the power to take appropriate action. The procedure to be followed has been provided in the newly inserted Rule 14-C and pending inquiry, there is power conferred by way of Rule 14-D to pass an interim order prohibiting the Advocate concerned from appearing before the High Court or the subordinate courts. The amended provisions of Rule 14A, 14B, 14C and 14D are extracted hereunder:

-A: Power to Debar:

(vii) An Advocate who is found to have accepted money in the name of a Judge or on the pretext of influencing him; or

(viii) An Advocate who is found to have tampered with the Court record or Court order; or

(ix) An Advocate who browbeats and/or abuses a Judge or Judicial Officer; or

(x) An Advocate who is found to have sent or spread unfounded and unsubstantiated allegations/petitions against a Judicial Officer or a Judge to the Superior Court; or

(xi) An Advocate who actively participates in a procession inside the Court campus and/or involves in gherao inside the Court Hall or holds placard inside the Court Hall; or

(xii) An Advocate who appears in the Court under the influence of liquor;

shall be debarred from appearing before the High Court or Subordinate Courts permanently or for such period as the Court may think fit and the Registrar 28 General shall thereupon report the said fact to the Bar Council of Tamil Nadu.

-B: Power to take action:

(iv) Where any such misconduct referred to Under Rule 14-A is committed by an Advocate before the High Court, the High Court shall have the power to initiate action against the Advocate concerned and debar him from appearing before the High Court and all Subordinate Courts.

(v) Where any such misconduct referred to Under Rule 14-A is committed by an Advocate before the Court of Principal District Judge, the Principal District Judge shall have the power to initiate action against the Advocate concerned and debar him from appearing before any Court within such District.

(vi) Where any such misconduct referred to Under Rule 14-A is committed by an Advocate before any subordinate court, the Court concerned shall submit a report to the Principal District Court within whose jurisdiction it is situate and on receipt of such report, the Principal District Judge shall have the power to initiate action against the Advocate concerned and debar him from appearing before any Court within such District.

-C: Procedure to be followed:

The High Court or the Court of Principal District Judge, as the case may be, shall, before making an order Under Rule 14-A, issue to such Advocate a summon returnable before it, requiring the Advocate to appear and show cause against the matters alleged in the summons and the summons shall if practicable, be served personally upon him.

-D: Power to pass Interim Order:

The High Court or the Court of Principal District Judge may, before making the Final Order Under Rule 14-C, pass an interim order prohibiting the Advocate concerned from appearing before the High Court or Subordinate Courts, as the case may be, in appropriate cases, as it may deem fit, pending inquiry.

3. Rule 14-A provides that an Advocate who is found to have accepted money in the name of a Judge or on the pretext of influencing him; or who has tampered with the court record or court order; or browbeats and/or abuses a Judge or judicial officer; or is responsible for sending or spreading unfounded and unsubstantiated allegations/petitions against a judicial officer or a Judge to the superior court; or actively participates in a procession inside the court campus and/or involves in gherao inside the court hall, or holds placard inside the court hall or appears in the court under the influence of liquor, the courts have been empowered to pass an interim order of suspension pending enquiry, and ultimately to debar him from appearing in the High Court and all other subordinate courts, as the case may be.

4. The aforesaid amended Rule 14-A to 14-D came into force with effect from the date of its publication in the Gazette on 25.5.2016. Petitioner has questioned the vires of amended Rules 14A

to D on the ground of being violative of Articles 14 and 19(1)(g) of the Constitution of India, as also Sections 30, 34(1), 35 and 49(1)(c) of the Advocates' Act, as the power to debar for such misconduct has been conferred upon the Bar Council of Tamil Nadu and Puducherry and the High Court could not have framed such Rules within ken of Section 34(1) of the Advocates Act. The High Court could have framed Rules as to the 'conditions subject to which an advocate shall be permitted to practice in the High Court and the courts subordinate thereto'. Debarment by way of disciplinary measure is outside the purview of Section 34(1) of the Act. The Bar Council enrolls Advocates and the power to debar for misconduct lies with the Bar Council. The effort is to confer the unbridled power of control over the Advocates which is against the Rule of law. Misconduct has been defined Under Section 35 of the Advocates Act. Reliance has been placed on a Constitution Bench decision of this Court in Supreme Court Bar Association v. Union of India and Anr. MANU/SC/0291/1998 : (1998) 4 SCC 409.

5. The High Court of Judicature at Madras in its counter affidavit has pointed out that the Rules are kept in abeyance for the time being and the Review Committee is yet to take a decision in the matter of reviewing the rules. In the reply filed the High Court has justified the amendment made to the Rules on the ground that they have been framed in compliance with the directions issued by this Court in R.K. Anand v. Registrar, Delhi High Court MANU/SC/1310/2009 : (2009) 8 SCC 106 in which this Court has directed the High Courts to frame Rules Under Section 34 of the Advocates Act and to frame the Rules for having Advocates-on-Record based on the pattern of this Court. It has been further pointed out that the conduct and appearance of an advocate inside the court premises are within the jurisdiction of a court to regulate. The High Court has relied upon the decision in Pravin C. Shah v. K.A. Mohd. Ali MANU/SC/0622/2001 : (2001) 8 SCC 650 in which vires of similar Rule was upheld as such the Rules framed debarring the advocates for misconduct in court are thus permissible.

6. The High Court has also relied upon the decision in Ex-Capt. Harish Uppal v. Union of India MANU/SC/1141/2002 : (2003) 2 SCC 45 to contend that court has the power to debar advocates on being found guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. The High Court has referred to the decision in Bar Council of India v. High Court of Kerala MANU/SC/0421/2004 : (2004) 6 SCC 311.

7. The High Court has contended that the Rules have been framed within the framework of the directions issued by this Court and in exercise of the power conferred Under Section 34(1) of the Advocates Act. Pursuant to the directions issued in R.K. Anand's case (supra), the matter was placed before the High Court's Rule Committee on 17.3.2010. The Committee consisting of Judges, Members of the Bar Council and members of the Bar was formed, and the minutes were approved by the Full Court on 23.9.2010. Thereafter the Chief Justice of the High Court of Madras on 2.9.2014 constituted a Committee consisting of two Judges, the Chairman of Bar Council of Tamil Nadu & Puducherry, Advocate General of the High Court, President, Madras Bar Association, President, Madras High Court Advocates' Association, and the President of Women Lawyers' Association to finalise the Rules.

8. The High Court has further contended in the reply that the Director, Government of India, Ministry of Home Affairs vide communication dated 31.5.2007 enclosed a copy of the 'Guidelines' and informed the Chief Secretaries of the State Governments to review and strengthen the security arrangements for the High Courts and District/subordinate courts in the country to avoid any



untoward incident. The High Court has further contended that there have been numerous instances of abject misbehaviour by the advocates within the premises of the High Court of Madras in the year 2015. The advocates have rendered the functioning of the court utterly impossible by resorting to activities like holding protests and waving placards inside the court halls, raising slogans and marching down the corridors of the court. Some advocates had resorted to using hand-held microphones to disrupt the proceedings of the Madurai Bench and even invaded the chambers of the Judges. There were two incidents when there were bomb hoaxes where clock-like devices were smuggled into the court premises and placed in certain areas. The Judges of the High Court were feeling totally insecure. Even CISF had to be employed. Thus, there was an urgent need to maintain the safety and majesty of the court and Rule of law. After various meetings, the Rules were framed and notified. Order 4 Rule 10 of the Supreme Court Rules, 2013 is similar to Rules which have been framed. In *Mohit Chaudhary, Advocate, In re*, MANU/SC/1009/2017 : (2017) 16 SCC 78, this Court had suspended the contemnor from practicing as an Advocate on Record for a period of one month.

9. In *Mahipal Singh Rana v. State of U.P.* MANU/SC/0730/2016 : (2016) 8 SCC 335, the court has observed that the Bar Council of India might require restructuring on the lines of other regulatory professional bodies, and had requested the Law Commission to prepare a report. An Advisory Committee was constituted by the Bar Council of India. A Sub-Committee on 'Strikes, Boycotts & Abstaining from Court Works' was also constituted. Law Commission had finalized and published Report No. 266 dated 23.3.2017 and has taken note of the Rules framed by the Madras High Court. Court has a right to regulate the conduct of the advocates and the appearance inside the court. As such it is not a fit case to exercise extraordinary jurisdiction and a prayer has been made to dismiss the writ petition.

10. The Petitioner in person has urged that Rules are ultra vires and impermissible to be framed within scope of Section 34(1) of the Advocates Act. They take away the independence of the Bar and run contrary to the Constitution Bench decision of this Court in *Supreme Court Bar Association v. Union of India* (supra).

11. Shri Mohan Parasaran, learned senior Counsel appearing on behalf of the High Court, has contended that the Rules have been framed within the ambit of Section 34(1) and in tune with the directions issued by this Court in *R.K. Anand v. Registrar, Delhi High Court* (supra). He has also referred to various other decisions. It was submitted that Under Section 34 of the Advocates Act, the High Court is empowered to frame Rules to debar the advocate in case of unprofessional and/or unbecoming conduct of an advocate. Advocates have no right to go on strike or give a call of boycott, not even on a token strike, as has been observed in *Ex.-Capt. Harish Uppal* (supra). It was also observed that the court may now have to frame specific Rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Advocates appear in court subject to such conditions as are laid down by the court, and practice outside court shall be subject to the conditions laid down by the Bar Council of India. He has also relied upon *Bar Council of India v. High Court of Kerala* MANU/SC/0421/2004 : (2004) 6 SCC 311 in which the validity of Rule 11 of the Rules framed by the High Court of Kerala came up for consideration. Learned senior Counsel has also referred to the provisions contained in Order IV Rule 10 of the Supreme Court Rules, 2013 framed by this Court with respect to debarring an Advocate on Record who is guilty of misconduct or of conduct unbecoming of an Advocate-on-Record, an order may be passed to remove his name from the register of Advocates on Record

either permanently or for such period as the court may think fit. This Court has punished an advocate on record and has debarred him for a period of one month in the case of Mohit Chaudhary, Advocate (supra). The High Court has framed the Rules to preserve the dignity of the court and protect Rule of law. Considering the prevailing situation, it was necessary to bring order in the premises of the High Court. Thus framing of Rules became necessary. The Bar Council of India and the State Bar Council have failed to fulfil the duties enjoined upon them. Therefore, it became incumbent upon the High Court to act as observed in Mahipal Singh Rana (supra) by this Court.

12. This Court has issued a notice on the petition on 9.10.2017 and on 4.9.2018. The Court observed that prima facie the Rules framed by the High Court appear to be encroaching on the disciplinary power of the Bar Council. As the time was prayed by the High Court to submit the report of the Review Committee, time was granted. In spite of the same, the Review Committee has not considered the matter, considering the importance of the matter and the stand taken justifying the rules. We have heard the same on merits and have also taken into consideration the detailed written submissions filed on behalf of the High Court.

13. The Advocates Act has been enacted pursuant to the recommendations of the All India Bar Committee made in 1953 after taking into account the recommendations of the Law Commission on the subject of the reforms of judicial administration. The main features of the Bill for the enactment of the Act include the creation of autonomous Bar Council, one for the whole of India and one for each State. The Act has been enacted to amend and consolidate the law relating to the legal practitioners and to provide for the constitution of the Bar Council and an All India Bar.

14. The legal profession cannot be equated with any other traditional professions. It is not commercial in nature and is a noble one considering the nature of duties to be performed and its impact on the society. The independence of the Bar and autonomy of the Bar Council has been ensured statutorily in order to preserve the very democracy itself and to ensure that judiciary remains strong. Where Bar has not performed the duty independently and has become a sycophant that ultimately results in the denigrating of the judicial system and judiciary itself. There cannot be existence of a strong judicial system without an independent Bar.

15. It cannot be gainsaid that lawyers have contributed in the struggle for independence of the nation. They have helped in the framing of the Constitution of India and have helped the Courts in evolving jurisprudence by doing hard labor and research work. The nobility of the legal system is to be ensured at all costs so that the Constitution remains vibrant and to expand its interpretation so as to meet new challenges.

16. It is basically the lawyers who bring the cause to the Court are supposed to protect the rights of individuals of equality and freedom as constitutionally envisaged and to ensure the country is governed by the Rule of law. Considering the significance of the Bar in maintaining the Rule of law, right to be treated equally and enforcement of various other fundamental rights, and to ensure that various institutions work within their parameters, its independence becomes imperative and cannot be compromised. The lawyers are supposed to be fearless and independent in the protection of rights of litigants. What lawyers are supposed to protect, is the legal system and procedure of law of deciding the cases.

17. Role of Bar in the legal system is significant. The bar is supposed to be the spokesperson for the judiciary as Judges do not speak. People listen to the great lawyers and people are inspired by their thoughts. They are remembered and quoted with reverence. It is the duty of the Bar to protect honest judges and not to ruin their reputation and at the same time to ensure that corrupt judges are not spared. However, lawyers cannot go to the streets or go on strike except when democracy itself is in danger and the entire judicial system is at stake. In order to improve the system, they have to take recourse to the legally available methods by lodging complaint against corrupt judges to the appropriate administrative authorities and not to level such allegation in the public. The corruption is intolerable in the judiciary.

18. The Bar is an integral part of the judicial administration. In order to ensure that judiciary remains an effective tool, it is absolutely necessary that Bar and Bench maintain dignity and decorum of each other. The mutual reverence is absolutely necessary. The Judges are to be respected by the Bar, they have in-turn equally to respect the Bar, observance of mutual dignity, decorum of both is necessary and above all they have to maintain self-respect too.

19. It is the joint responsibility of the Bar and the Bench to ensure that equal justice is imparted to all and that nobody is deprived of justice due to economic reasons or social backwardness. The judgment rendered by a Judge is based upon the dint of hard work and quality of the arguments that are advanced before him by the lawyers. There is no room for arrogance either for a lawyer or for a Judge.

20. There is a fine balance between the Bar and the Bench that has to be maintained as the independence of the Judges and judiciary is supreme. The independence of the Bar is on equal footing, it cannot be ignored and compromised and if lawyers have the fear of the judiciary or from elsewhere, that is not conducive to the effectiveness of judiciary itself, that would be self-destructive.

21. Independent Bar and independent Bench form the backbone of the democracy. In order to preserve the very independence, the observance of constitutional values, mutual reverence and self-respect are absolutely necessary. Bar and Bench are complementary to each other. Without active cooperation of the Bar and the Bench, it is not possible to preserve the Rule of law and its dignity. Equal and even-handed justice is the hallmark of the judicial system. The protection of the basic structure of the Constitution and of rights is possible by the firmness of Bar and Bench and by proper discharge of their duties and responsibilities. We cannot live in a jungle raj.

22. Bar is the mother of judiciary and consists of great jurists. The Bar has produced great Judges, they have adorned the judiciary and rendered the real justice, which is essential for the society.

23. The role of Lawyer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signatures wherever asked by a Lawyer. An

advocate is supposed to protect their rights and to ensure that untainted justice delivered to his cause.

24. The high values of the noble profession have to be protected by all concerned at all costs and in all the circumstances cannot be forgotten even by the youngsters in the fight of survival in formative years. The nobility of legal profession requires an Advocate to remember that he is not over attached to any case as Advocate does not win or lose a case, real recipient of justice is behind the curtain, who is at the receiving end. As a matter of fact, we do not give to a litigant anything except recognizing his rights. A litigant has a right to be impartially advised by a lawyer. Advocates are not supposed to be money guzzlers or ambulance chasers. A Lawyer should not expect any favour from the Judge and should not involve by any means in influencing the fair decision-making process. It is his duty to master the facts and the law and submit the same precisely in the Court, his duty is not to waste the Courts' time.

...

...

29. There is no room for taking out the procession in the Court premises, slogan raising in the Courts, use of loudspeakers, use of intemperate language with the Judges or to create any kind of disturbance in the peaceful, respectful and dignified functioning of the Court. Its sanctity is not less than that of a holy place reserved for noble souls. We are shocked to note that the instances of abject misbehavior of the advocates in the premises of the High Court of Madras resulting into requisitioning of CISF to maintain safety and majesty of the Court and Rule of law. It has been observed by this Court in Mahipal Singh Rana (supra) that Bar Council has failed to discharge its duties on the disciplinary side. In our opinion, in case such state of affairs continues and Bar Council fail to discharge duties the Court shall have to supervise its functioning and to pass appropriate permissible orders. Independence of Bar and Bench both are supreme, there has to be balance inter se.

30. We now advert to main question whether disciplinary power vested in the Bar Council can be taken away by the Court and the international scenario in this regard.

31. The legislature has reposed faith in the autonomy of the Bar while enacting Advocates Act and it provides for autonomous Bar Councils at the State and Central level. The ethical standard of the legal profession and legal education has been assigned to the Bar Council. It has to maintain the dignity of the legal profession and independence of Bar. The disciplinary control has been assigned to the Disciplinary Committees of the Bar Councils of various States and Bar Council of India and an appeal lies to this Court Under Section 38 of the Act.

32. The bar association must be self-governing is globally recognised. Same is a resolution of the United Nations also. Even Special Rapporteur on the independence of Judges and lawyers finds that bar associations play a vital role in safeguarding the independence and integrity of the legal profession and its members. The UN's basic principles on the role of lawyers published in 1990 noted that such institutions must possess independence and its self-governing nature. The bar association has a crucial role to play in a democratic society to ensure the protection of human

rights in particular due process and fair-trial guarantees. Following is the extract of the report of the United Nations:

### **Mandate**

In the report, Special Rapporteur Diego Garcia-Sayan finds that associations should be independent and self-governing because they hold a general mandate to protect the independence of the legal profession and the interests of its members.

They should also be recognized under the law, the UN says. "Bar associations have a crucial role to play in a democratic society to enable the free and independent exercise of the legal profession, and to ensure access to justice and the protection of human rights, in particular, due process and fair trial guarantees," UN Secretary-General Antonio Guterres says.

### **Self-governing**

The UN's Basic Principles on the Role of Lawyers (published in 1990) recognize that lawyers, like other citizens, have the right to freedom of association and assembly, which includes the right to form and join self-governing professional associations to represent their interests. Since its publication, this universal document has been referenced in wrangles between lawyers and governments.

### **Requirements**

Existing legal standards do not provide a definition of what constitutes a professional association of lawyers. They simply focus on the necessary requirements that such institutions must possess, such as independence and a self-governing nature.

The report recommends that: "In order to ensure the integrity of the entire profession and the quality of legal services, it is preferable to establish a single professional association regulating the legal profession.

### **Elected by peers**

Another principle of the UN report is that: "In order to guarantee the independence of the legal profession, the majority of members of the executive body of the bar association should be lawyers elected by their peers."

It says that state control of bar associations or governing bodies is "incompatible with the principle of the independence of the legal profession".

(Emphasis supplied)

...

...

42. Before dilating further on the issue, we take note of the provisions contained in the Advocates Act.

...

...

51. It is apparent from the aforesaid provisions and scheme of the Act that Advocates Act has never intended to confer the disciplinary powers upon the High Court or upon this Court except to the extent dealing with an appeal Under Section 38.

52. By amending the High Court Rules in 1970, the High Court of Madras has inserted impugned Rules 14(A) to 14(D). The Rules have been framed in exercise of the power conferred Under Section 34 of the Advocates Act. Section 34 of the Act does not confer such a power to frame Rules to debar lawyer for professional misconduct. The amendment made by providing Rule 14(A)(vii) to (xii) is not authorized under the Advocate Act. The High Court has no power to exercise the disciplinary control. It would amount to usurpation of the power of Bar Council conferred under Advocates Act. However, the High Court may punish advocate for contempt and then debar him from practicing for such specified period as may be permissible in accordance with law, but without exercising contempt jurisdiction by way of disciplinary control no punishment can be imposed. As such impugned Rules could not have been framed within the purview of Section 34. Provisions clearly impinge upon the independence of the Bar and encroach upon the exclusive power conferred upon the Bar Council of the State and the Bar Council of India under the Advocates Act. The amendment made to the Rules 14(A) to 14(D) have to be held to be ultra vires of the power of the High Court.

53. We now analyze the proposition laid down by this Court in various decisions relating to the aforesaid aspect. In reference: Vinay Chandra Mishra, MANU/SC/0471/1995 : (1995) 2 SCC 584, this Court rejected the argument that the powers of suspending and removing the advocate from practice is vested exclusively in the disciplinary committee of the State Bar Council and the Bar Council of India and the Supreme Court is denuded of its power to impose such punishment both Under Articles 129 and 142. The Court observed that the power of the Supreme Court Under Article 129 cannot be trammled in any way by any statutory provision including the provisions of the Advocates Act or the Contempt of Courts Act. This Court imposed the punishment on the then Chairman of the Bar Council suspended sentence of imprisonment for a period of six weeks. The sentence was suspended for four years which may be activated in case the contemnor is convicted for any other offense of contempt of court within the said period. The contemnor was also suspended from practicing as an advocate for a period of three years with the consequence that all elective and nominated offices/posts held by him in his capacity as an advocate, shall stand vacated by him forthwith.

54. However, the decision was held not to be laying down a good law in a writ petition filed by the Supreme Court Bar Association v. Union of India and Anr., (supra). Supreme Court Bar Association filed a petition Under Article 32 of the Constitution of India aggrieved by the direction in V.C. Mishra's case that the contemnor shall stand suspended from practicing as an advocate for a period of three years issued by this Court while invoking powers Under Articles 129 and 142 of the Constitution. A prayer was made to hold that the disciplinary committee of the Bar Councils set up

under the Advocates Act alone have exclusive jurisdiction to inquire into and suspend or debar an advocate from practicing law for professional or other misconduct.

...

[Extracts from *Supreme Court Bar Association v. Union of India*]

...

The Court has observed that in a given case an Advocate found guilty of committing contempt of court may at the same time be guilty of committing "professional misconduct" but the two jurisdictions are separate, distinct and exercisable by different forums by following different procedures. Exclusive power for punishing an Advocate for professional misconduct is with Bar Councils. Punishment for suspending the license of an Advocate can only be imposed by a competent statutory body. Relying upon the Seven-Judges Bench decision in *Bar Council of Maharashtra v. M.V. Dabholkar and Ors.* (supra) that under Advocates Act the power to grant licenses is with Bar Council, the jurisdiction to suspend the licence or to debar him vests in the same body. Though appeal lies to this Court Under Section 38, it cannot convert it to statutory body exercising "original jurisdiction". This Court, in the exercise of jurisdiction Under Articles 142 and 129 while punishing in the contempt of court, cannot suspend a licence to practice. The Court further held that it is possible for this Court or the High Court to prevent contemnor Advocate to appear before it till he purges himself of contempt but that is different from suspending or revoking his licence to practice or debaring him from practice for misconduct. This Court also held in case of Advocate on Record that the Supreme Court possesses jurisdiction under its Rules to withdraw the privilege to practice as Advocate on record as that privilege is conferred by this Court. The withdrawal of that privilege does not tantamount to suspending or revoking the licence.

55. Shri Mohan Parasaran learned senior Counsel has relied on the matter of *Pravin C. Shah v. K.A. Mohd. Ali and Anr.* (supra) in which the question was whether an Advocate found guilty of contempt of court can appear in court until and unless he purges himself of contempt, the court held that an Advocate found guilty of contempt of court must purge himself before being permitted to appear. Rule 11 of the Rules framed by the High Court of Kerala Under Section 34 (1) of Advocates Act reads thus:

**11.** No advocate who has been found guilty of contempt of Court shall be permitted to appear, act or plead in any Court unless he has purged himself of the contempt.

This Court has relied upon in *Supreme Court Bar Association v. Union of India* (supra) in *Pravin C. Shah v. K.A. Mohd. Ali and Anr.* (supra) and observed thus:

...

[Extracts from *Pravin C. Shah v. K.A. Mohd. Ali and Anr.*]

...

56. The decision in Pravin C. Shah (supra) operates when an Advocate is found guilty of committing contempt of court and then he can be debarred from appearing in court until he purges himself of contempt as per guidelines laid down therein, however, the power to suspend enrolment and debarring from appearance are different from each other. In case of debarment, enrolment continues but a person cannot appear in court once he is guilty of contempt of court until he purges himself as provided in the rule. Debarment due to having been found guilty of contempt of court is not punishment of suspending the license for a specified period or permanently removing him from the roll of Advocates. While guilty of contempt his name still continuous on the roll of concerned Bar Council unless removed or suspended by Bar Council by taking appropriate disciplinary proceedings. The observations made by Lord Denning in Hadkinson v. Hadkinson (supra) was also a case of disobedience of court order and the Court may refuse to hear him until impediment is removed or good reason to remove impediment exist.

57. In Ex-Capt. Harish Uppal v. Union of India and Anr. (supra) while holding that advocates have no right to go on 'strike', the Court observed:

...

[Extracts from *Ex-Capt. Harish Uppal v. Union of India and Anr.*]

...

The question involved in the aforesaid case was as to strike and boycott of Courts by Lawyers. In that context argument was raised that such an act tantamounts to contempt of court and the court must punish the party coercing others also to desist from appearance. The Court cannot be privy to boycott or strike. The decision in Supreme Court Bar Association v. Union of India (supra) has been reiterated. The Court pointed out that let bar take notice of the fact that unless self-restraint is exercised, the court may have to frame Rules Under Section 34 of the Advocates Act debarring advocates guilty of contempt of court/unprofessional or unbecoming conduct from appearing in Courts. The Court observed that in case of Bar Council fail to act, Court may be compelled to frame appropriate Rules Under Section 34 of the Act. The Court has observed about the Rules that may be framed but not on the validity of Rules that actually have been framed and takes away disciplinary control of Bar Council. The power to debar due to contempt of court is a different aspect than suspension of enrolment or debarment by way of disciplinary measure. This Court did not observe that decision in Supreme Court Bar Association v. Union of India (supra) is bad in law for any reason at the same time Court has relied upon the same in Ex-Capt. Harish Uppal (supra), and laid down that Bar Council can exercise control on right to practice. The Court also observed that power to control proceedings within the Court cannot be affected by enforcement of Section 30.

58. In our opinion, the decision in Ex-Capt. Harish Uppal v. Union of India and Anr. (supra) does not lend support to vires of Rule 14A to 14D as amended by the High Court of Madras. The decision follows the logic of the Supreme Court Bar Association v. Union of India as contempt of court may involve professional misconduct if committed inside Court Room and takes it further with respect to the debarring appearance in Court, which power is distinct from suspending enrolment that lies with Bar Council as observed in Ex-Capt. Harish Uppal (supra) also in aforesaid para 34, the decision is of no utility to sustain the vires of impugned rules.



59. In *Bar Council of India v. High Court of Kerala*, (supra) vires of Rule 11 of the Rules framed by the High Court of Kerala Under Section 34(1) of Advocates Act came to be impinged which debarred Advocate found guilty of contempt of court from appearing, acting or pleading in court till he got purged himself of the contempt. The court considered the Contempt of Courts Act, Advocates Act, Code of Criminal Procedure, and significantly distinction between Contempt of Court and misconduct by an Advocate and observed:

**29. Punishment for commission of contempt and punishment for misconduct, professional or other misconduct, stand on different footings.** A person does not have a fundamental right to practice in any court. Such a right is conferred upon him under the provisions of the Advocates Act which necessarily would mean that the conditions laid down therein would be applicable in relation thereto. Section 30 of the Act uses the expressions "subject to", which would include Section 34 of the Act.

**30.** In *Ashok Leyland Ltd. v. State of Tamil Nadu and Anr.* MANU/SC/0020/2004 : (2004) 3 SCC 1 this Court noticed:

"Subject to" is an expression whereby limitation is expressed. The order is conclusive for all purposes.

**31.** This Court further noticed the dictionary meaning of "subject to" stating (SCC p. 38, paras 92-93):

92. Furthermore, the expression 'subject to' must be given effect to.

93. In Black's Law Dictionary, Fifth Edition at page 1278 the expression "subject to" has been defined as under:

Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided, answerable for. (*Homan v. Employers Reinsurance Corporation*, 345 Mo. 650, 136 SW 2d 289, 302)

### ***Case-law***

**32.** A Constitution Bench of this Court in *Supreme Court Bar Assn.*, MANU/SC/0291/1998 : (1998) 4 SCC 409 no doubt overruled its earlier decision in *Vinay Chandra Mishra*, Re MANU/SC/0471/1995 : (1995) 2 SCC 584 so as to hold that this Court in exercise of its jurisdiction Under Article 142 of the Constitution of India is only empowered to proceed *suomotu* against an advocate for his misconduct and send for the records and pass an appropriate orders against the advocate concerned.

**33.** But it is one thing to say that the court can take *suomotu* cognizance of professional or other misconduct and direct the Bar Council of India to proceed against the advocate but it is another thing to say that it may not allow an advocate to practice in his court unless he purges himself of contempt.

**34.** Although in a case of professional misconduct, this Court cannot punish an advocate in exercise of its jurisdiction Under Article 129 of the Constitution of India which can be imposed on a finding of professional misconduct recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder but as has been noticed in the Supreme Court Bar Assn. professional misconduct of the advocate concerned is not a matter directly in issue in the matter of contempt case.

(Emphasis supplied)

The Court referred to the observation in *Supreme Court Bar Association v. Union of India*, Ex-Capt. Harish Uppal (supra) and held that in a case of professional misconduct Court cannot punish an advocate Under Article 129 which has to be done under Advocates Act by the Bar Council. In Contempt of Court Act, misconduct is directly not in issue. After considering principles of natural justice the court observed that it cannot be stretched too far and Rule 11 cannot be said to be violative of provisions contained in Article 14 of the Constitution of India.

60. In *R.K. Anand v. Registrar, Delhi High Court* (supra) relied on by the Respondents, the witnesses were tampered with by the Appellant. A sting operation was conducted by the T.V. Channel in connection with BMW hit and run case. Advocate- R.K. Anand was found to be guilty of contempt of Court. He was debarred from appearing in Court for a certain period. The Court also dealt with a motivated application filed for recusal. The Court expressed concern and sharp deprecation of such tendencies and practices of Members of Bar and held that such prayer for recusal ordinarily should be viewed as interference in the due course of justice leading to penal consequences. The submission was raised that professional misconduct is dealt with under Advocates Act. The Delhi High Court Rules do not provide that Advocate on conviction for Contempt of Court would be barred from appearing in Court. This Court noted decisions in *Supreme Court Bar Association v. Union of India* (supra), upheld the order of the High Court and directed the High Courts to frame the Rules Under Section 34 without further delay. This Court has observed:

**237.** In both *Pravin C. Shah v. K.A. Mohammed Ali*, MANU/SC/0622/2001 : (2001) 8 SCC 650 and *Ex. Capt. Harish Uppal v. Union of India*, MANU/SC/1141/2002 : (2003) 2 SCC 45, the earlier Constitution Bench decision in *Supreme Court Bar Assn. v. Union of India*, MANU/SC/0291/1998 : (1998) 4 SCC 409 was extensively considered. The decision in *Ex. Capt. Harish Uppal* was later followed in a three-judge Bench decision in *Bar Council of India v. The High Court of Kerala* MANU/SC/0421/2004 : (2004) 6 SCC 311.

**238.** In *Supreme Court Bar Assn.* the direction prohibiting an advocate from appearing in court for a specified period was viewed as a total and complete denial of his right to practice law and the bar was considered as a punishment inflicted on him. In *Ex. Capt. Harish Uppal* it was seen not as punishment for professional misconduct but as a measure necessary to regulate the court's proceedings and to maintain the dignity and orderly functioning of the courts. We may respectfully add that in a given case a direction disallowing an advocate who is convicted of criminal contempt from appearing in court may not only be a measure to maintain the dignity and orderly functioning of the courts but may become necessary for the self-protection of the court and for preservation of the purity of court proceedings. Let us, for example, take the case where an advocate is shown to have accepted money in the name of a judge or on the pretext of influencing him; or where an

advocate is found tampering with the court's record; or where an advocate is found actively taking part in faking court orders (fake bail orders are not unknown in several High Courts!); or where an advocate has made it into a practice to browbeat and abuse judges and on that basis has earned the reputation to get a case transferred from an "inconvenient" court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against judicial officers and judges to the superior courts. Unfortunately, these examples are not from imagination. These things are happening more frequently than we care to acknowledge.

**239.** We may also add that these illustrations are not exhaustive but there may be other ways in which a malefactor's conduct and actions may pose a real and imminent threat to the purity of court proceedings, cardinal to any court's functioning, apart from constituting a substantive offense and contempt of court and professional misconduct. In such a situation the court does not only have the right but it also has the obligation cast upon it to protect itself and save the purity of its proceedings from being polluted in any way and to that end bar the malefactor from appearing before the courts for an appropriate period of time.

**240.** It is already explained in *Ex. Captain Harish Uppal* that a direction of this kind by the Court cannot be equated with punishment for professional misconduct. Further, the prohibition against appearance in courts does not affect the right of the lawyer concerned to carry on his legal practice in other ways as indicated in the decision. We respectfully submit that the decision in *Ex-Capt. Harish Uppal v. Union of India* places the issue in correct perspective and must be followed to answer the question at issue before us.

**242.** Ideally, every High Court should have Rules framed Under Section 34 of the Advocates Act in order to meet with such eventualities but even in the absence of the rules, the High Court cannot be held to be helpless against such threats. In a matter as fundamental and grave as preserving the purity of judicial proceedings, the High Court would be free to exercise the powers vested in it Under Section 34 of the Advocates Act notwithstanding the fact that Rules prescribing the manner of exercise of power have not been framed. But in the absence of statutory Rules providing for such a course an advocate facing the charge of contempt would normally think of only the punishments specified Under Section 12 of the Contempt of Courts Act. He may not even imagine that at the end of the proceeding he might end up being debarred from appearing before the court. The Rules of natural justice, therefore, demand that before passing an order debarring an advocate from appearing in courts he must be clearly told that his alleged conduct or actions are such that if found guilty he might be debarred from appearing in courts for a specific period. The warning may be given in the initial notice of contempt issued Under Section 14 or Section 17 (as the case may be) of the Contempt of Courts Act. Or such a notice may be given after the proceeded is held guilty of criminal contempt before dealing with the question of punishment.

**243.** In order to avoid any such controversies in future, all the High Courts that have so far not framed Rules Under Section 34 of the Advocates Act are directed to frame the Rules without any further delay. It is earnestly hoped that all the High Courts shall frame the Rules within four months from today. The High Courts may also consider framing Rules for having Advocates on Record on the pattern of the Supreme Court of India.

(Emphasis supplied)

61. The decision in R.K. Anand (supra) is not a departure from aforesaid other decisions but rather affirms them. It was a case of debarring advocate for a particular period from the appearance on being found guilty of contempt of court, not a case of suspension of enrolment by way of disciplinary proceedings which power lies with the Bar Council.

62. The provisions contained in Order IV Rule 10 of the Supreme Court Rules have been pressed into service so as to sustain the amended rules. Rule 10 reads as follows:

**10.** When, on the complaint of any person or otherwise, the Court is of the opinion that an advocate-on-record has been guilty of misconduct or of conduct unbecoming of an advocate-on-record, the Court may make an order removing his name from the register of Advocates on record either permanently or for such period as the Court may think fit and the Registrar shall thereupon report the said fact to the Bar Council of India and to State Bar Council concerned:

Provided that the Court shall, before making such order, issue to such advocate-on-record a summons returnable before the Court or before a Special Bench to be constituted by the Chief Justice, requiring the Advocate-on-Record to show cause against the matters alleged in the summons, and the summons shall, if practicable, be served personally upon him with copies of any affidavit or statement before the Court at the time of the issue of the summons.

Explanation: - For the purpose of these Rules, misconduct or conduct unbecoming of an Advocate on Record shall include -

a) Mere name lending by an Advocate-on-Record without any further participation in the proceedings of the case;

b) Absence of the Advocate-on-Record from the Court without any justifiable cause when the case is taken up for hearing;

and;

c) Failure to submit appearance slip duly signed by the Advocate-on-Record of actual appearances in the Court.

The aforesaid Rule has been considered in Supreme Court Bar Association v. Union of India (supra) and it is observed that as this Court enrolls Advocate on Record it has the power to remove his name from the register of Advocate on Record either permanently or for a specific period. That does not tantamount to the suspension of enrolment made by Bar Council under Advocates Act which can be ordered by Bar Council only.

63. The decision in Mohit Chowdhary, Advocate, IN RE, (supra) has also been relied upon in which this Court considered Rule 10 and debarred advocate to practice as Advocate on Record for a period of one month from the date of order. At the same time, this Court has observed that lawyer is under obligation to do nothing that shall detract from the dignity of the Court. Contempt jurisdiction is for the purpose of upholding honor or dignity of the court, to avoid sharp or unfair practices. An Advocate shall not to be immersed in a blind quest of relief for his client. "Law is not trade, briefs no merchandise". His duty is to legitimately present his side of the case to assist in the

administration of justice. The Judges are selected from Bar and purity of Bench depends on the purity of the Bar. Degraded Bar result degraded bench. The Court has referred to Articles and standard of professional conduct and etiquettes thus:

**20.** Warvelle's Legal Ethics, 2nd Edn. at p. 182 sets out the obligation of a lawyer as:

A lawyer is under obligation to do nothing that shall detract from the dignity of the court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom.

**21.** The contempt jurisdiction is not only to protect the reputation of the Judge concerned so that he can administer justice fearlessly and fairly but also to protect "the fair name of the judiciary". The protection in a manner of speaking, extends even to the Registry in the performance of its task and false and unfair allegations which seek to impede the working of the Registry and thus the administration of justice, made with oblique motives cannot be tolerated. In such a situation in order to uphold the honor and dignity of the institution, the Court has to perform the painful duties which we are faced with in the present proceedings. Not to do so in the words of P.B. Sawant, J. in Ministry of Information & Broadcasting, In re, MANU/SC/0697/1995 : (1995) 3 SCC 619 would: (SCC p. 635, para 20) -

**20.** .... The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more.

**22.** Now turning to the "Standards of Professional Conduct and Etiquette" of the Bar Council of India Rules contained in Section I of Chapter II, Part VI, the duties of an advocate towards the Court have been specified. We extract the 4th duty set out as under:

**4.** An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the court, opposing counsel or parties which the advocate himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in court.

**23.** In the aforesaid context the aforesaid principle in different words was set out by Crampton, J. in R. v. O'Connell, 7 Irish Law Reports 313 as under:

The advocate is a representative but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law, he will not willfully misstate the facts, though it be to gain the case for his client. He will ever bear in mind that if he be an advocate of an individual and retained and remunerated often inadequately, for valuable services, yet he has a prior and perpetual retainer on behalf of truth and justice and there is no Crown or other licenses which in any case or for any party or purpose can discharge him from that primary and paramount retainer.

**24.** The fundamentals of the profession thus require an advocate not to be immersed in a blind quest of relief for his client. The dignity of the institution cannot be violated in this quest as "law is no trade, briefs no merchandise" as per Krishna Iyer, J in *Bar Council of Maharashtra v. M.V. Dabholkar* MANU/SC/0670/1975 : (1976) 2 SCC 291.

**25.** It is also pertinent to note at this point, the illuminating words of Vivian Bose, J. in 'G' a Senior Advocate of the Supreme Court, *In re* MANU/SC/0027/1954 : AIR 1954 SC 557, who elucidated:

**10.** ...To use the language of the Army, an Advocate of this Court is expected at all times to comport himself in a manner befitting his status as an "officer and a gentleman.

**26.** It is as far back as in 1925 that an Article titled 'The Lawyer as an Officer of the Court' *Virginia Law Review*, Vol. 11, No. 4 (Feb 1925) pp. 26377 published in the *Virginia Law Review*, lucidly set down what is expected from the lawyer which is best set out in its own words:

The duties of the lawyer to the Court spring directly from the relation that he sustains to the Court as an officer in the administration of justice. The law is not a mere private calling but is a profession which has the distinction of being an integral part of the State's judicial system. As an officer of the Court the lawyer is, therefore, bound to uphold the dignity and integrity of the Court; to exercise at all times respect for the Court in both words and actions; to present all matters relating to his client's case openly, being careful to avoid any attempt to exert private influence upon either the judge or the jury; and to be frank and candid in all dealings with the Court, "using no deceit, imposition or evasion," as by misreciting witnesses or misquoting precedents. "It must always be understood," says Mr. Christian Doerfler, in an address before the Milwaukee County Bar Association, in December, 1911, "that the profession of law is instituted among men for the purpose of aiding the administration of justice. A proper administration of justice does not mean that a lawyer should succeed in winning a lawsuit. It means that he should properly bring to the attention of the Court everything by way of fact and law that is available and legitimate for the purpose of properly presenting his client's case.

His duty as far as his client is concerned is simply to legitimately present his side of the case. His duty as far as the public is concerned and as far as he is an officer of the Court is to aid and assist in the administration of justice.

In this connection, the timely words of Mr. Warvelle may also well be remembered:

But the lawyer is not alone a gentleman; he is a sworn minister of justice. His office imposes high moral duties and grave responsibilities, and he is held to a strict fulfillment of all that these matters imply. Interests of vast magnitude are entrusted to him; confidence is imposed in him; life, liberty, and property are committed to his care. He must be equal to the responsibilities which they create, and if he betrays his trust, neglects his duties, practices deceit, or panders to vice, then the most severe penalty should be inflicted and his name stricken from the roll.

That the lawyer owes a high duty to his profession and to his fellow members of the Bar is an obvious truth. His profession should be his pride, and to preserve its honor pure and unsullied should be among his chief concerns. "Nothing should be higher in the estimation of the advocate," declares Mr. Alexander H. Robbins, "next after those sacred relations of home and country than his

profession. She should be to him the 'fairest of ten thousand' among the institutions of the earth. He must stand for her in all places and resent any attack on her honor-as he would if the same attack were to be made against his own fair name and reputation. He should enthrone her in the sacred places of his heart, and to her, he should offer the incense of constant devotion. For she is a jealous mistress.

Again, it is to be borne in mind that the judges are selected from the ranks of lawyers. The purity of the Bench depends upon the purity of the Bar.

The very fact, then, that one of the co-ordinate departments of the Government is administered by men selected only from one profession gives to that profession a certain pre-eminence which calls for a high standard of morals as well as intellectual attainments. The integrity of the judiciary is the safeguard of the nation, but the character of the judges is practically but the character of the lawyers. Like begets like. A degraded Bar will inevitably produce a degraded Bench, and just as certainly may we expect to find the highest excellence in a judiciary drawn from the ranks of an enlightened, learned and moral Bar.

**27.** He ends his Article in the following words:

No client, corporate or individual, however powerful, nor any cause civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But, above all, a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

**28.** On examination of the legal principles, an important issue emerges: what should be the end of what the contemnor had started but has culminated in an impassioned plea of Mr. K.K. Venugopal, learned senior advocate supported by the representatives of the Bar present in Court, marking their appearance for the contemnor. We are inclined to give due consideration to such a plea but are unable to persuade ourselves to let the contemnor go scot-free, without any consequences. We are thus not inclined to proceed further in the contempt jurisdiction except to caution the contemnor that this should be the first and the last time of such a misadventure. But the matter cannot rest only at that.

**30.** We are of the view that the privilege of being an Advocate-on-Record under the Rules has clearly been abused by the contemnor. The conduct was not becoming of an advocate much less an Advocate-on-Record in the Supreme Court.

**32.** The aforesaid Rule makes it clear, that whether on the complaint of any person or otherwise, in case of misconduct or a conduct unbecoming of an Advocate-on-Record, the Court may make an order removing his name from the register of Advocate-on-Record permanently, or for a specified period. We are not referring to the right to practice as an advocate, and the name entered on the rolls of any State Bar Council, which is a necessary requirement before a person takes the examination of Advocate-on-Record. The present case is clearly one where this Court is of the opinion that the conduct of the contemnor is unbecoming of an Advocate-on-Record. The pre-requisites of the proviso are met by the reason of the Bench being constituted itself by the Chief Justice, and the contemnor being aware of the far more serious consequences, which could have flowed to him. The learned Senior Counsel representing the Petitioner has thrown him at the mercy of the Court. We have substantively accepted the request but lesser consequences have been imposed on the contemnor.

64. Reliance was placed on the decision *Mahipal Singh Rana v. State of Uttar Pradesh*, (supra) by the Respondents. This Court dealt with the question when advocate has been convicted for criminal contempt as to the sanctions/punishment that may be imposed in addition to punishments that may be imposed for criminal contempt under the Contempt of Courts Act, 1971. This Court held that Regulation of right of appearance in courts is within jurisdiction of courts and not Bar Councils, thus, Court can bar Advocate convicted for contempt from appearing/pleading before any court for an appropriate period of time, till convicted advocate purges himself of the contempt, even in absence of suspension or termination of enrolment/right to practice/licence to practice. Secondly, this Court also held that bar on appearance/pleadings in any court till contempt is purged can be imposed by the Court in terms of the High Court Rules framed Under Section 34 of the Advocates Act, if such Rules exist. However, even if there is no such Rule framed under said Section 34, unless convicted advocate purges himself of contempt or is permitted by Court, Court may debar an Advocate as conviction results in debarring such advocate from appearing/pleading in court, even in absence of suspension or termination of enrolment/right to practise/licence to practise. This Court held thus:

**4.1. (i)** Whether a case has been made out for interference with the order passed by the High Court convicting the Appellant for criminal contempt and sentencing him to simple imprisonment for two months with a fine of Rs. 2000 and further imprisonment for two weeks in default and debarring him from appearing in courts in Judgeship at Etah; and

**4.2. (ii)** Whether on conviction for criminal contempt, the Appellant can be allowed to practice.

**32.** In *Pravin C. Shah v. K.A. Mohd. Ali*, MANU/SC/0622/2001 : (2001) 8 SCC 650, this Court held that an advocate found guilty of contempt cannot be allowed to act or plead in any court until he purges himself of contempt. This direction was issued having regard to Rule 11 of the Rules framed by the High Court of Kerala Under Section 34(1) of the Advocates Act and also referring to the observations in para 80 of the judgment of this Court in *Supreme Court Bar Assn. v. Union of India*, MANU/SC/0291/1998 : (1998) 4 SCC 409. It was explained that debarring a person from appearing in court was within the purview of the jurisdiction of the Court and was different from suspending or terminating the license which could be done by the Bar Council and on the failure of the Bar Council, in exercise of appellate jurisdiction of this Court. The observations are: (*Pravin C. Shah case*, SCC pp. 658-62, paras 16-18, 24



& 27-28)

16. Rule 11 of the Rules is not a provision intended for the Disciplinary Committee of the Bar Council of the State or the Bar Council of India. It is a matter entirely concerning the dignity and the orderly functioning of the courts. The right of the advocate to practice envelops a lot of acts to be performed by him in the 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, etc. Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance inside the court. 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 the Bar Council in exercise of its disciplinary powers. The right to practice, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate.

17. When the Rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a Regulation concerning the orderly conduct of court proceedings. Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for the dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate Rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practice law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former.

18. In the above context it is useful to quote the following observations made by a Division Bench of the Allahabad High Court in *Prayag Das v. Civil Judge, Bulandshahr*, MANU/UP/0036/1974 : AIR 1974 All 133 (AIR p. 136, para 9)

The High Court has the power to regulate the appearance of advocates in courts. The right to practice and the right to appear in courts are not synonymous. An advocate may carry on chamber practice or even practice in courts in various other ways e.g. drafting and filing of pleadings and vakalatnama for performing those acts. For that purpose, his physical appearance in courts may not at all be necessary. For the purpose of regulating his appearance in courts the High Court should be the appropriate authority to make Rules and on a proper construction of Section 34(1) of the Advocates Act it must be inferred that the High Court has the power to make Rules for regulating the appearance of advocates and proceedings inside the courts. Obviously, the High Court is the only appropriate authority to be entrusted with this responsibility.

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24. Purging is a process by which an undesirable element is expelled either from one's own self or from society. It is a cleaning process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word "purge", which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters (vide *Words and Phrases*, Permanent Edn., Vol. 35-A, p. 307). In *Black's Law Dictionary* the word "purge" is given the following meaning: 'To cleanse; to clear. To clear or exonerate from some charge or imputation of guilt, or from a contempt.' It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed.

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27. We cannot, therefore, approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned Single Judge in the aforesaid decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

28. The Disciplinary Committee of the Bar Council of India highlighted the absence of any mode of purging oneself of the guilt in any of the Rules as a reason for not following the interdict contained in Rule 11. Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt.

33. In *Bar Council of India v. High Court of Kerala*, MANU/SC/0421/2004 : (2004) 6 SCC 311, constitutionality of Rule 11 of the Rules framed by the High Court of Kerala for barring a lawyer from appearing in any court till he got himself purged of contempt by an appropriate order of the court, was examined. This Court held that the Rule did not violate Articles 14 and 19(1)(g) of the Constitution nor amounted to usurpation of power of adjudication and punishment conferred on the Bar Councils and the result intended by the application of the Rule was automatic. It was further held that the Rule was not in conflict with the law laid down in *Supreme Court Bar Assn. judgment*. Referring to the Constitution Bench judgment in *Harish Uppal v. Union of India*, MANU/SC/1141/2002 : (2003) 2 SCC 45, it was held that Regulation of right of appearance in courts was within the jurisdiction of the courts. It was observed, following Pravin C. Shah, that the

court must have major supervisory power on the right to appear and conduct in the court. The observations are: (*Bar Council of India case*, SCC p. 323, para 46)

**46.** Before a contemnor is punished for contempt, the court is bound to give an opportunity of hearing to him. Even such an opportunity of hearing is necessary in a proceeding Under Section 345 of the Code of Criminal Procedure. But if a law which is otherwise valid provides for the consequences of such a finding, the same by itself would not be violative of Article 14 of the Constitution of India inasmuch as only because another opportunity of hearing to a person, where a penalty is provided for as a logical consequence thereof, has been provided for. Even under the penal laws, some offenses carry minimum sentence. The gravity of such offenses, thus, is recognized by the legislature. The courts do not have any role to play in such a matter.

**35.** In *R.K. Anand v. Delhi High Court*, MANU/SC/1310/2009 : (2009) 8 SCC 106 it was held that even if there was no Rule framed Under Section 34 of the Advocates Act disallowing an advocate who is convicted of criminal contempt, is not only a measure to maintain dignity and orderly function of courts, it may become necessary for the protection of the court and for preservation of the purity of court proceedings. Thus, the court not only has a right but also an obligation to protect itself and save the purity of its proceedings from being polluted, by barring the advocate concerned from appearing before the courts for an appropriate period of time. This Court noticed the observations about the decline of ethical and professional standards of the Bar, and the need to arrest such trend in the interests of administration of justice. It was observed that in the absence of unqualified trust and confidence of people in the Bar, the judicial system could not work satisfactorily. Further observations are that the performance of the Bar Councils in maintaining professional standards and enforcing discipline did not match its achievements in other areas. This Court expressed hope and expected that the Bar Council will take appropriate action for the restoration of high professional standards among the lawyers, working of their position in the judicial system and the society.

**42.** We may also refer to certain articles on the subject. In "*Raising the Bar for the Legal Profession*", published in The Hindu newspaper dated 15-9-2012, Dr. N.R. Madhava Menon wrote:

... Being a private monopoly, the profession is organised like a pyramid in which the top 20 per cent command 80 per cent of paying work, the middle 30 per cent managing to survive by catering to the needs of the middle class and government litigation, while the bottom 50 percent barely survive with legal aid cases and cases managed through undesirable and exploitative methods! Given the poor quality of legal education in the majority of the so-called law colleges (over a thousand of them working in small towns and panchayats without infrastructure and competent faculty), what happened with uncontrolled expansion was the overcrowding of ill-equipped lawyers in the bottom 50 per cent of the profession fighting for a piece of the cake. In the process, being too numerous, the middle and the bottom segments got elected to professional bodies which controlled the management of the entire profession. The so-called leaders of the profession who have abundant work, unlimited money, respect, and influence did not bother to look into what was happening to the profession and allowed it to go its way--of inefficiency, strikes, boycotts, and public ridicule. This is the tragedy of the Indian Bar today which had otherwise a noble tradition of being in the forefront of the freedom struggle and maintaining the Rule of law and civil liberties even in difficult times.

**54.** Further, in exercise of appellate jurisdiction Under Section 38 of the Advocates Act, we direct that the license of the Appellant will stand suspended for a further period of five years. He will also remain debarred from appearing in any court in District Etah even after five years unless he purges himself of contempt in the manner laid down by this Court in *Bar Council of India* and *R.K. Anand* and as directed by the High Court. Question (ii) stands decided accordingly.

(Emphasis supplied)

65. In *Mahipal Singh Rana* (supra) the advocate was found guilty of criminal contempt as such punishment for debarring from the Court was first passed and reliance has been placed for that purpose on the decision of Constitution Bench of this Court in *Supreme Court Bar Association* (supra). Thus, the decision has no application to sustain vires of Rules 14(A) to 14(D) as amended by the High Court of Madras.

66. Shri Mohan Parasaran, learned senior Counsel supported the Rules pointing out that grave situation has been created in the High Court of Madras as well as at its Madurai Bench, which compelled the Court to take action on the judicial side to ensure the modicum of security. The High Court had to order the security of the Court to be undertaken by CISF. In this regard, orders were passed in *Suo Moto Writ Petition No. 29197 of 2015* by the High Court of Madras on 14.9.2015, 12.10.2015 and 30.10.2015. The following incidents were noticed in the judicial orders:

- i. Holding protests and waving placards within the Court premises;
- ii. Raising slogans and marching down the corridors of the Court.
- iii. The use of hand-held microphones to disrupt Court proceedings.
- iv. Attempting to and in some cases successfully entering the Chambers of the Puisne Judges of the Madurai Bench of the High Court.
- v. Two instances of hoax bombs in the form of broken mechanical clocks being placed at areas in the Court to ensure disruptions.

The High Court, in our opinion, could have taken action under Contempt of Courts Act for aforesaid misconduct.

67. Rule 14A provides for power to debar an advocate from appearing before the High Court and the subordinate courts in case an advocate who is found to have accepted money in the name of a Judge or on the pretext of influencing him; or an advocate who is found to have tampered with the Court record or Court order; or an advocate who browbeats and/or abuses a Judge or Judicial Officer; or an advocate who is found to have sent or spread unfounded and unsubstantiated allegations/petitions against a judicial officer or a Judge to the Superior Court; or an advocate who actively participates in a procession inside the Court campus and/or involves in gherao inside the Court Hall or holds placard inside the Court Hall; or an advocate who appears in the Court under the influence of liquor may be debarred by Court. However, it is not provided that Court would do so in exercising Contempt Jurisdiction. The debarment is sought to be done by way of disciplinary control, which is not permissible.

68. Rule 14-B as amended provides for power to take action. Rule 14-B(iv) states that where any such misconduct referred to Under Rule 14-A is committed by an advocate before the High Court, the High Court shall have the power to initiate action against the advocate concerned and debar him from appearing before the High Court and all subordinate courts; or where any such misconduct is committed before the Court of Principal District Judge, the Principal District Judge shall have the power to initiate action against the advocate concerned and debar him from appearing before any Court within such district; or where any such misconduct referred to Under Rule 14-A is committed before any subordinate court, the Court concerned shall submit a report to the Principal District Court and the Principal District Judge shall have the power to initiate action against the advocate concerned and debar him from appearing before any Court within such district. Rule 14-C prescribes the procedure to be followed and Rule 14-D authorizes the High Court or Principal District Judge to pass an interim order prohibiting the advocate concerned from appearing before the High Court or subordinate Courts, as the case may be, pending inquiry.

69. The High Court is not authorized by the provisions of the Advocates Act to frame such rules. Section 34 does not confer such power of debarment by way of disciplinary methods or disciplinary inquiry as against an advocate as that has to be dealt with by the Bar Council as provided in other Sections in a different chapter of the Act. It is only when the advocate is found guilty of contempt of court, as provided in Rule 14 as existed in the Madras High Court Rules, 1970 takes care of situation until and unless an advocate who has committed contempt of court purges himself of contempt shall not be entitled to appear or act or plead in the Court.

Rule 14 is extracted hereunder:

**14.** No advocate who has been found guilty of contempt of Court shall be permitted to appear, Act or plead in any Court unless he has purged himself of contempt.

70. The debarment cannot be ordered by the High Court until and unless advocate is prosecuted under the Contempt of Courts Act. It cannot be resorted to by undertaking disciplinary proceedings as contemplated under the Rules 14-A to 14-D as amended in 2016. That is a clear usurpation of the power of the Bar Council and is wholly impermissible in view of the decision of this Court in Supreme Court Bar Association v. Union of India (supra) that has been followed in all the subsequent decisions as already discussed. There is no doubt about it that the incidents pointed out were grim and stern action was required against the erring advocates as they belied the entire nobility of the lawyer's profession.

71. It is also true that the disciplinary committee of the Bar Councils, as observed by this Court in Mahipal Singh Rana and Mohit Chowdhary (supra), has failed to deliver the good. It is seen that the disciplinary control of the Bar Council is not as effective as it should be. The cases are kept pending for a long time, then after one year they stand transferred to the Bar Council of India, as provided under the Advocates Act and thereafter again the matters are kept pending for years together. It is high time that the Bar Council, as well as the various State Bar Councils, should take stock of the situation and improve the functioning of the disciplinary side. It is absolutely necessary to maintain the independence of the Bar and if the cleaning process is not done by the Bar itself, its independence is in danger. The corrupt, unwanted, unethical element has no place in Bar. If nobility of the profession is destroyed, Bar can never remain independent. Independence is constituted by

the observance of certain ideals and if those ideals are lost, the independence would only remain on paper, not in real sense.

72. The situation is really frustrating if the repository of the faith in the Bar fails to discharge their statutory duties effectively, no doubt about it that the same can be and has to be supervised by the Courts. The obligatory duties of Bar Council have found statutory expression in Advocates Act and the Rules framed thereunder with respect to disciplinary control and cannot be permitted to become statutory mockery, such non-performance or delayed performance of such duties is impermissible. The Bar Council is duty bound to protect Bar itself by taking steps against black sheeps and cannot belly expectation of Bar in general and spoil its image. The very purpose of disciplinary control by Bar Council cannot be permitted to be frustrated. In such an exigency, in a case where the Bar Council is not taking appropriate action against the advocate, it would be open to the High Court to entertain the writ petition and to issue appropriate directions to the Bar Council to take action in accordance with the law in the discharge of duties enjoined upon it. But at the same time, the High Court and even this Court cannot take upon itself the disciplinary control as envisaged under the Advocates Act. No doubt about it that the Court has the duty to maintain its decorum within the Court premises, but that can be achieved by taking appropriate steps under Contempt of Courts Act in accordance with law as permitted under the decisions of this Court and even by Rule making power Under Section 34 of the Advocates Act. An advocate can be debarred from practicing in the Court until and unless he purges himself of contempt.

73. It has been seen from time to time that various attacks have been made on the judicial system. It has become very common to the members of the Bar to go to the press/media to criticize the judges in person and to commit sheer contempt by attributing political colours to the judgments. It is nothing less than an act of contempt of gravest form. Whenever any political matter comes to the Court and is decided, either way, political insinuations are attributed by unscrupulous persons/advocates. Such acts are nothing, but an act of denigrating the judiciary itself and destroys the faith of the common man which he reposes in the judicial system. In case of genuine grievance against any judge, the appropriate process is to lodge a complaint to the concerned higher authorities who can take care of the situation and it is impermissible to malign the system itself by attributing political motives and by making false allegations against the judicial system and its functionaries. Judges who are attacked are not supposed to go to press or media to ventilate their point of view.

74. Contempt of court is a weapon which has to be used sparingly as more is power, same requires more responsibility but it does not mean that the court has fear of taking action and its repercussions. The hallmark of the court is to provide equal and even-handed justice and to give an opportunity to each of the system to ensure that it improves upon. Unfortunately, some advocates feel that they are above the Bar Council due to its inaction and they are the only champion of the causes. The hunger for cheap publicity is increasing which is not permitted by the noble ideals cherished by the great doyens of the bar, they have set by their conduct what should be in fact the professional etiquettes and ethics which are not capable of being defined in a narrow compass. The statutory Rules prohibit advocates from advertising and in fact to cater to the press/media, distorted versions of the court proceedings is sheer misconduct and contempt of court which has become very common. It is making it more difficult to render justice in a fair, impartial and fearless manner though the situation is demoralizing that something has to be done by all concerned to revamp the image of Bar. It is not open to wash dirty linen in public and enter in accusation/debates, which

tactics are being adopted by unscrupulous elements to influence the judgments and even to deny justice with ulterior motives. It is for the Bar Council and the senior members of the Bar who have never forgotten their responsibility to rise to the occasion to maintain the independence of the Bar which is so supreme and is absolutely necessary for the welfare of this country and the vibrant democracy.

75. The separation of powers made by the forefathers, who framed the Constitution, ensured independent functioning. It is unfortunate without any rationale basis the independence of the system is being sought to be protected by those who should keep aloof from it. Independence of each system is to come from within. If things are permitted to be settled by resorting to the unscrupulous means and institution is maligned by creating pressure of any kind, the very independence of the system would be endangered. Cases cannot be decided by media trial. Bar and Bench in order to protect independence have their own inbuilt machinery for redressal of grievance if any and they are supposed to settle their grievances in accordance therewith only. No outside interference is permissible. Considering the nobility, independence, dignity which is enjoined and the faith which is reposed by the common man of the country in the judiciary, it is absolutely necessary that there is no maligning of the system. Mutual respect and reverence are the only way out. A lot of sacrifices are made to serve the judiciary for which one cannot regret as it is with a purpose and to serve judiciary is not less than call of military service. For the protection of democratic values and to ensure that the Rule of law prevails in the country, no one can be permitted to destroy the independence of the system from within or from outside. We have to watch on Bar independence. Let each of us ensure our own institution is not jeopardized by the blame game and make an endeavor to improve upon its own functioning and independence and how individually and collectively we can deliver the good to the citizen of this great country and deal with every tear in the eye of poor and down-trodden as per constitutional obligation enjoined on us.

76. Soul searching is absolutely necessary and the blame game and maligning must stop forthwith. Confidence and reverence and positive thinking is the only way. It is pious hope that the Bar Council would improve upon the function of its disciplinary committees so as to make the system more accountable, publish performance audit on the disciplinary side of various bar councils. The same should be made public. The Bar Council of India under its supervisory control can implement good ideas as always done by it and would not lag behind in cleaning process so badly required. It is to make the profession more noble and it is absolutely necessary to remove the black sheeps from the profession to preserve the rich ideals of Bar and on which it struggled for the values of freedom. It is basically not for the Court to control the Bar. It is the statutory duty of Bar to make it more noble and also to protect the Judges and the legal system, not to destroy the Bar itself by inaction and the system which is important pillar of democracy.

77. We have no hesitation to hold that the High Court has overstretched and exceeded its power even in the situation which was so grim which appears to have compelled it to take such a measure. In fact, its powers are much more in Contempt of Courts Act to deal with such situation court need not look for Bar Council to act. It can take action, punish for Contempt of Courts Act in case it involves misconduct done in Court/proceedings. Circumstances may be grim, but the autonomy of the Bar in the disciplinary matters cannot be taken over by the Courts. It has other more efficient tools to maintain the decorum of Court. In case power is given to the Court even if complaints lodged by a lawyer to the higher administrative authorities as to the behaviour of the Judges may be correct then also he may be punished by initiating disciplinary proceedings as permitted to be done

in impugned Rules 14 A to D that would be making the Bar too sycophant and fearful which would not be conducive for fair administration of justice. Fair criticism of judgment and its analysis is permissible. Lawyers' fearlessness in court, independence, uprightness, honesty, equality are the virtues which cannot be sacrificed. It is duty of the lawyer to lodge appropriate complaint to the concerned authorities as observed by this Court in Vinay Chandra Mishra (supra), which right cannot be totally curtailed, however, making such allegation publicly tantamounts to contempt of court and may also be a professional misconduct that can be taken care of either by the Bar Council under the Advocates Act and by the Court under the Contempt of Courts Act. The misconduct as specified in Rule 14-A may also in appropriate cases tantamount to contempt of court and can be taken care of by the High Court in its contempt jurisdiction.

78. Resultantly, we have no hesitation to strike down impugned Rules 14-A to 14-D as framed in May, 2016 by the High Court of Madras as they are ultra vires to Section 34 of the Advocates Act and are hereby quashed. The writ petition is allowed. No costs.



***Bal Thackrey v. Harish Pimpalkhute & Ors.***

(2005) 1 SCC 254E

Bench: Y.K. Sabharwal, D.M. Dharmadhikari, Tarun Chatterjee

**JUDGMENT:**

Action for contempt is divisible into two categories, namely, that initiated *suomotu* by the Court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of *suomotu* proceedings, it is the Court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. [PallavSheth v. Custodian and Others (2001) 7 SCC 549].

The main issue for determination in these appeals is whether contempt proceedings were initiated against the appellant *suomotu* by the court or by respondents. First we may note the background under which these matters were referred to a larger Bench.

Delhi High Court in the case of Anil Kumar Gupta v. K.Suba Rao &Anr. [ILR (1974) 1 Del.1] issued following directions :

"The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information."

In P.N. Duda v. P. Shiv Shanker & Ors. [(1988) 3 SCC 167] this Court approving the aforesaid observation of Delhi High Court directed as under:

"...the direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts."

Challenging the conviction of the appellant for offence under Section 15 of the Contempt of Courts Act, 1971 (for short 'the Act') it was, *inter alia*, contended that the directions in P.N.Duda's case (*supra*) were not followed by the High Court inasmuch as the informative papers styled as contempt petitions were not placed before the Chief Justice of the High Court for *suomotu* action and, therefore, the exercise was uncalled for and beyond legal sanctity. This aspect assumed significant importance because admittedly the contempt petitions were filed in the High Court without the consent of the Advocate-General and, therefore, not competent except when the court finds that the contempt action was taken by the court on its own motion. The two-judge bench hearing the appeals expressed the view that the aforesaid directions approved by this Court in P.N.Duda's case are of far-reaching consequences. The Bench observed that the power under Section 15 of the Act to punish contemnors for contempt rests with the court and in Duda's case, they seem to have been

denuded to rest with the Chief Justice on the administrative side. Expressing doubts about the correctness of the observations made in Duda's case, and observing that the same require reconsideration, these appeals were directed to be referred for decision by a larger Bench. Under this background, these matters have been placed before us. For determination of the main issue in these appeals including the aforesaid aspect arising out of Duda's case, it is necessary to briefly note the object of the power of the Court to punish a person for contempt. Every High Court besides powers under the Act has also the power to punish for contempt as provided in Article 215 of the Constitution of India. Repealing the Contempt of Courts Act, 1952, the Act was enacted, inter alia, providing definition of civil and criminal contempt and also providing for filtering of criminal contempt petitions. The Act lays down 'contempt of court' to mean civil contempt or criminal contempt. We are concerned with criminal contempt. 'Criminal contempt' is defined in Section 2(c) of the Act. It, inter alia, means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court. The procedure for initiating a proceeding of contempt when it is committed in the face of the Supreme Court or High Court has been prescribed in Section 14 of the Act. In the case of criminal contempt, other than a contempt referred to in Section 14 the manner of taking cognizance has been provided for in Section 15 of the Act. This section, inter alia, provides that action for contempt may be taken on court's own motion or on a motion made by

(a) the Advocate-General, or

(b) any other person, with the consent in writing of the Advocate-General.

The contempt jurisdiction enables the Court to ensure proper administration of justice and maintenance of the rule of law. It is meant to ensure that the courts are able to discharge their functions properly, unhampered and unsullied by wanton attacks on the system of administration of justice or on officials who administer it, and to prevent willful defiance of orders of the court or undertakings given to the court [Commissioner, Agra v. Rohtas Singh (1998) 1 SCC 349]. In Supreme Court Bar Association v. Union of India & Anr. [(1998) 4 SCC 409] it was held that "The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice." Dealing with the nature and character of the power of the courts to deal with contempt in the case of Pritam Pal, v. High Court of Madhya Pradesh, Jabalpur Through Registrar, [(1993) Supp. (1) SCC 529], this Court observed :

"15. Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemnor to defend himself. But the procedure has now been prescribed by Section 15 of the Act in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule of the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation by appropriate legislature under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act of 1971, the

contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be 'Courts of Record' under Articles 129 and 215 of the Constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of constitutional amendment. In fact, Section 22 of the Act lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law relating to contempt of courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the Act of 1971"

The nature and power of the Court in contempt jurisdiction is a relevant factor for determining the correctness of observations made in Duda's case (supra). Dealing with the requirement to follow the procedure prescribed by law while exercising powers under Article 215 of the Constitution to punish for contempt, it was held by this Court in *Dr. L.P. Misra v. State of U.P.* [(1998) 7 SCC 379] that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. The exercise of jurisdiction under Article 215 of the Constitution is also governed by laws and the rules subject to the limitation that if such laws/rules stultify or abrogate the constitutional power then such laws/rules would not be valid. In *L.P. Misra's case* (supra) it was observed that the procedure prescribed by the Rules has to be followed even in exercise of jurisdiction under Article 215 of the Constitution. To the same effect are the observations in *Pallav Sheth's case* (supra).

For determination of the issues involved, it would also be useful to note the observations made in the case of *S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow v. Vinay Chandra Misra*, [(1981) 1 SCC 436] to the following effect:

"Section 15 does not specify the basis or the source of information on which the High Court can act on its own motion. If the High Court acts on information derived from its own sources, such as from a perusal of the records of a subordinate court or on reading a report in a newspaper or hearing a public speech, without there being any reference from the subordinate court or the Advocate General, it can be said to have taken cognizance on its own motion. But if the High Court is directly moved by a petition by a private person feeling aggrieved, not being the Advocate General, can the High Court refuse to entertain the same on the ground that it has been made without the consent in writing of the Advocate General? It appears to us that the High Court, has, in such a situation, a discretion to refuse to entertain the petition, or to take cognizance on its own motion on the basis of the information supplied to it in that petition."

In *P.N. Duda's case* (supra), it was held that :-

"54. A conjoint perusal of the Act and rules makes it clear that, so far as this Court is concerned, action for contempt may be taken by the court on its own motion or on the motion of the Attorney General (or Solicitor General) or of any other person with his consent in writing. There is no difficulty where the Court or the Attorney General chooses to move in the matter. But when this is not done and a private person desires that such action should be taken, one of three courses is open to him. He may place the information in his possession before the court and request the court to take action (vide *C. K. Daphtary v. O. P.*

Gupta and Sarkar v. Misra); he may place the information before the Attorney General and request him to take action; or he may place the information before the Attorney General and request him to permit him to move to the court."

The direction issued and procedure laid down in Duda's case is applicable only to cases that are initiated *suomotu* by the Court when some information is placed before it for *suomotu* action for contempt of court.

A useful reference can also be made to some observations made in *J.R.Parashar, Advocate, and Others v. Prasant Bhushan, Advocate and Others* [(2001) 6 SCC 735]. In that case noticing the Rule 3 of the Rules to regulate proceedings for contempt of the Supreme Court, 1975 which like Section 15 of the Act provides that the Court may take action in cases of criminal contempt either (a) *suomotu*; or (b) on a petition made by Attorney-General or Solicitor-General, or (c) on a petition made by any person and in the case of a criminal contempt with consent in writing of the Attorney-General or the Solicitor-General as also Rule 5 which provides that only petitions under Rules 3(b) and (c) shall be posted before the Court for preliminary hearing and for orders as to issue of notice, it was observed that the matter could have been listed before the Court by the Registry as a petition for admission only if the Attorney-General or Solicitor-General had granted the consent. In that case, it was noticed that the Attorney-General had specifically declined to deal with the matter and no request had been made to the Solicitor-General to give his consent. The inference, therefore, is that the Registry should not have posted the said petition before the Court for preliminary hearing. Dealing with taking of *suomotu* cognizance in para 28 it was observed as under:-

"Of course, this Court could have taken *suomotu* cognizance had the petitioners prayed for it.

They had not. Even if they had, it is doubtful whether the Court would have acted on the statements of the petitioners had the petitioners been candid enough to have disclosed that the police had refused to take cognizance of their complaint. In any event the power to act *suomotu* in matters which otherwise require the Attorney-General to initiate proceedings or at least give his consent must be exercised rarely. Courts normally reserve this exercise to cases where it either derives information from its own sources, such as from a perusal of the records, or on reading a report in a newspaper or hearing a public speech or a document which would speak for itself. Otherwise sub-section (1) of Section 15 might be rendered otiose"

The whole object of prescribing procedural mode of taking cognizance in Section 15 is to safeguard the valuable time of the court from being wasted by frivolous contempt petition. In *J.R. Parashar's* case (*supra*) it was observed that underlying rationale of clauses (a), (b) and (c) of Section 15 appears to be that when the court is not itself directly aware of the contumacious conduct, and the actions are alleged to have taken place outside its precincts, it is necessary to have the allegations screened by the prescribed authorities so that Court is not troubled with the frivolous matters. To the similar effect is the decision in *S.R.Sarkar's* case (*supra*). In the light of the aforesaid, the procedure laid and directions issued in Duda's case are required to be appreciated also keeping in view the additional factor of the Chief Justice being the master of the roster. In *State of Rajasthan v. Prakash Chand and Others* [ (1998) 1 SCC 1 ] it was held that it is the prerogative of the Chief Justice of the High Court to distribute business of the High Court both judicial and administrative. He alone has the right and power to decide how the Benches of the High Court are to be constituted; which Judge is to sit alone and which cases he can and is required to hear as also to which Judges shall constitute

a Division Bench and what work those Benches shall do. The directions in Duda's case when seen and appreciated in the light of what we have noticed hereinbefore in respect of contempt action and the powers of the Chief Justice, it would be clear that the same prescribe the procedure to be followed by High Courts to ensure smooth working and streamlining of such contempt actions which are intended to be taken up by the court *suomotu* on its own motion. These directions have no effect of curtailing or denuding the power of the High Court. It is also to be borne in mind that the frequent use of *suomotu* power on the basis of information furnished in a contempt petition otherwise incompetent under Section 15 of the Act may render the procedural safeguards of Advocate-General's consent nugatory. We are of the view that the directions given in Duda's case are legal and valid. Now, the question is whether in these matters the High Court initiated contempt action on its own motion or on motions made by the respondents. It is not in dispute that the two contempt petitions (Contempt Petition No.12 and Contempt Petition No.13 of 1996) were filed in the High Court against the appellant under Section 15 of the Act for having committed contempt of court as postulated under Section 2(c) of the Act for having made a public speech. According to the petitions, the appellant scandalised the court or at least the offending speech had the tendency to scandalise or lower the authority of the Court. The contempt petitions were filed without obtaining the consent of the Advocate-General. In one of the petitions consent had not even been sought for and besides the prayer for holding the appellant guilty of contempt, further prayers were also made for suitable inquiry being made in the allegations made by the appellant in the speech and for issue of directions to him to appear before Court and reveal the truth and for prosecuting him. The applicant before the High Court, it seems clear from the averments made in the contempt petition was in an opposite political camp. The petition was based on utterances made by appellant in public meetings held on 21st October, 1996.

It is well settled that the requirement of obtaining consent in writing of the Advocate-General for making motion by any person is mandatory. A motion under Section 15 not in conformity with the requirements of that Section is not maintainable. [State of Kerala v. M.S.Mani and Others[(2001) 8 SCC 82].

In Contempt Petition No.12 an application dated 22nd October, 1996 was submitted to the Advocate-General along with proposed contempt petition stating that the applicant wanted to file petition by 2nd December, 1996 and, therefore, the permission may be granted before that date and further stating that if no answer is received from the Advocate-General it would be presumed that permission has been granted and the applicant will proceed with the intended contempt proceedings. Such a course is not permissible under Section 15 of the Act. There is no question of any presumption. In fact, Contempt Petition No.12 was filed on 2nd December, without the consent of the Advocate-General. It further appears that the application seeking permission of the Advocate-General was received by him on 26th November, 1996. It also appears that the Advocate-General appeared before the Court on 3rd February, 1997 and stated that he can decide the question of consent within a reasonable time. The impugned judgment holding appellant guilty of contempt and inflicting simple imprisonment for a period of one week and fine of Rs.2000/- was passed on 7th February, 1997.

A perusal of record including the notices issued to the appellant shows that the Court had not taken *suomotu* action against the appellant. In contempt petitions, there was no prayer for taking *suomotu* action for contempt against the appellant. The specific objection taken that though *suomotu* action could be taken under Section 15 of the Act on any information or newspaper but not on the basis of

those contempt petitions which were filed in regular manner by private parties, was rejected by the High Court observing that being Court of Record it can evolve its own procedure, which means that the procedure should provide just and fair opportunity to the contemner to defend effectively and that the contemner has not expressed any prejudice or canvassed any grievance that he could not understand the charge involved in the proceeding which he had been called upon to defend. It is, however, not in dispute that the charge against the appellant was not framed.

In these matters, the question is not about compliance or non-compliance of the principles of natural justice by granting adequate opportunity to the appellant but is about compliance of the mandatory requirements of Section 15 of the Act. As already noticed the procedure of Section 15 is required to be followed even when petition is filed by a party under Article 215 of the Constitution, though in these matters petitions filed were under Section 15 of the Act. From the material on record, it is not possible to accept the contention of the respondents that the Court had taken *suomotu* action. Of course, the Court had the power and jurisdiction to initiate contempt proceedings *suomotu* and for that purpose consent of the Advocate-General was not necessary. At the same time, it is also to be borne in mind that the Courts normally take *suomotu* action in rare cases. In the present case, it is evident that the proceedings before the High Court were initiated by the respondents by filing contempt petitions under Section 15. The petitions were vigorously pursued and strenuously argued as private petitions. The same were never treated as *suomotu* petitions. In absence of compliance of mandatory requirement of Section 15, the petitions were not maintainable. As a result of aforesaid view, it is unnecessary to examine in the present case, the effect of non-compliance of the directions issued in Duda's case by placing the informative papers before the Chief Justice of the High Court.

For the foregoing reasons we set aside the impugned judgment and allow the appeals. Fine, if deposited by the appellant shall be refunded to him.

Before parting, it is necessary to direct framing of necessary rule or practice direction by the High Courts in terms of Duda's case. Accordingly, we direct Registrar-General to send a copy of this judgment to the Registrar-Generals of the High Courts so that wherever rule and/or practice direction on the line suggested in Duda's case has not been framed, the High Courts may now frame the same at their earliest convenience.

PART B - PROFESSIONAL ETHICS

**PART - A : STANDARDS OF ETIQUETTE AND PROFESSIONAL ETHICS**

***An Advocate v. Bar Council of India***

1989 Supp (2) SCC 25

**M.P. THAKKAR, J.** - A host of questions of seminal significance, not only for the advocate who has been suspended from practising his profession for 3 years on the charge of having withdrawn a suit (as settled) without the instructions from his client, but also for the members of the legal profession in general have arisen in this appeal:

(1) Whether a charge apprising him specifically of the precise nature and character of the professional misconduct ascribed to him needs to be framed?

(2) Whether in the absence of an allegation or finding of dishonesty or mens rea a finding of guilt and a punishment of this nature can be inflicted on him?

(3) Whether the allegations and the finding of guilt require to be proved beyond reasonable doubt?

(4) Whether the doctrine of benefit of doubt applies?

(5) Whether an advocate acting bona fide and in good faith on the basis of oral instructions given by someone purporting to act on behalf of his client, would be guilty of professional misconduct or of an unwise or imprudent act, or negligence simpliciter, or culpable negligence punishable as professional misconduct?

2. The suit was a suit for recovery of Rs 30,098 (Suit No. 65 of 1981 on the file of Additional City Civil Judge, Bangalore). It appears that the complainant had entrusted the brief of the appellant which he in his turn had entrusted to his junior colleague (Respondent 2 herein) who was attached to his office and was practising along with him at his office at the material time. At the point of time when the suit was withdrawn, Respondent 2 was practising on his own having set up his separate office. On the docket of the brief pertaining to the suit, the appellant made an endorsement giving instructions to withdraw the suit as settled. A sketch was drawn on the back of the cover to enable the person carrying the brief to the junior colleague to locate his office in order to convey the instructions as per the endorsement made by the appellant. The allegations made by the complainant against the appellant are embodied in paras 1 and 2 of his complaint:

(1) The petitioner submits that he entrusted a matter to Respondent 2 to file a case against Shri A. Anantaraju for recovery of a sum of Rs 30,098 with court costs and current interest in Case No.OS 1965 of 1981 on the file of the City Civil Judge at Bangalore. The petitioner submits that the said suit was filed by the first respondent who was then a junior of Respondent 2. The petitioner submits that the matter in dispute in the suit was not settled at all and the first respondent without the knowledge and without the instructions of the petitioner has filed a memo stating that the matter is settled out of court and got the suit dismissed and he has also received half of the institution court fee within 10 days since the date of the disposal of the suit. The petitioner submits that he has not received either the suit amount or the refund of court fee and he is not aware of the dismissal of the suit as settled out of court.

(2) The petitioner submits that when the case was posted for filing of written statement itself the first respondent has filed such a memo stating that the suit was settled out of court. The petitioner submits that in fact, the respondents did not even inform the petitioner about the dates of hearing and when the petitioner asked the dates of hearing the respondents informed the petitioner stating that his presence is not required in the court since the case was posted for filing of written statement and therefore, the petitioner did not attend the court on that day. The petitioner submits that when he enquired about the further date of hearing the respondents did not give the date and said that they would verify the next date of hearing since they have not attended the case since the case was posted for filing written statement by the defendant. The petitioner submits that when he himself went to the court and verified he found to his great surprise that the suit is dismissed as settled out of court and later learnt that even the half of the institution court fee is also taken by the first respondent within 10 days.

3. The version of the appellant may now be unfolded:

(1) One Gautam Chand (RW 3) has been a longstanding client of the appellant. Gautam Chand had business dealings with the plaintiff Haradara and the defendant Anantaraju. Besides, Anantaraju executed an agreement dated 9-8-1980 to sell his house property to Gautam Chand. He received earnest money in the sum of Rs 35,000 from Gautam Chand. Anantaraju, however, did not execute the sale deed within the stipulated period and during the extended period. It was in these circumstances that Gautam Chand (RW 3) approached the appellant for legal advice.

(2) It is the common case of parties that Gautam Chand introduced the complainant Haradara to the appellant and his colleague advocate Respondent 2.

(3) The appellant caused the issue of notice dated 1-6-1981 (Ex. R/15) on behalf of Gautam Chand addressed to the seller Anantaraju calling upon him to execute the sale deed. On the same date, a notice was separately issued on behalf of the complainant Haradara addressed to Anantaraju demanding certain amounts due on the three 'self' bearer cheques aggregating Rs 30,098 issued by Anantaraju in course of their mutual transactions. This notice was issued by the advocate Respondent 2 acting on behalf of the complainant Haradara.

(4) Gautam Chand (RW 3) and Haradara (PW 1) were friends. Anantaraju was their common adversary. There was no conflict of interests as between Gautam Chand and Haradara. Gautam Chand instructed the appellant and his colleague Respondent 2 Ashok, that he was in possession of the said cheques issued by Anantaraju and that no amount was actually due from Anantaraju to the complainant Haradara. Gautam Chand was desirous of steps to induce Anantaraju to execute the sale deed in his favour.

(5) A suit being OS No. 1965 of 1981 was instituted on behalf of the complainant Haradara claiming an amount of Rs 30,000 and odd, from the defendant Anantaraju on the basis of the aforesaid cheques. It was instituted on 30-6-1981. An interlocutory application was moved on behalf of Haradara by Respondent 2 as his advocate seeking the attachment before judgment of the immovable property belonging to the defendant Anantaraju. The property was in fact the subject of an agreement to sell between Anantaraju and Gautam Chand (RW 3). The court initially declined to grant an order of attachment. In order to persuade the court, certain steps were taken through the said Gautam Chand. He caused the publication of a notice stating that the property in question was the subject-matter of an agreement between Anantaraju and himself and it should not be dealt with by anyone. The publication of this notice was relied upon subsequently on behalf of the complainant Haradara by his advocate (Respondent 2),



Ashok in seeking an order of attachment. The court accepted his submissions and passed the order of attachment.

(6) Subsequently the defendant Anantaraju executed the sale deed dated 27-11-1981 in favour of Gautam Chand. The object of the suit was achieved. The sale deed was in fact executed during the subsistence of the order of attachment concerning the same property. The plaintiff Haradara has not objected to it at any time. Consistently, the appellant had reasons to believe the information of settlement of dispute, conveyed by the three parties together on 9-12-1981.

(7) Gautam Chand (RW 3) and the complainant Haradara acted in mutual interest and secured the attachment of property which was the subject-matter of an agreement to sell in favour of Gautam Chand. The suit instituted in the name of the complainant Haradara was only for the benefit of Gautam Chand by reference to this interest in the property.

(8) The appellant conveyed information of the settlement of dispute by his note made on the docket. He drew a diagram of the location of residence of the Respondent 2 Ashok advocate (Ex. R-1-A at p. 14 Additional Documents). The papers were delivered to Respondent 2 Ashok advocate by Gautam Chand (RW 3).

(9) After satisfying himself, Respondent 2 Ashok advocate appeared in court on 10-12-1981 and filed a memo prepared in his handwriting recording the fact of settlement of dispute and seeking withdrawal of the suit. The court passed order dated 10-12-1981 dismissing the suit, OS No. 1965 of 1981.

(10) Even though the plaintiff Haradara gained knowledge of the disposal of suit, he did not meet the appellant nor did he address him for over 1½ years until May 1983. He did not also immediately apply for the restoration of suit. An application for restoration was filed on the last date of limitation on 11-1-1982. The application Misc. 16 of 1982 was later allowed to be dismissed for default on 30-7-1982. It was later sought to be revived by application Misc. No. 581 of 1982. Necessary orders were obtained on 16-7-1982. Thus Misc. 16 of 1982 (Application for restoration of suit) is pending in civil court.

On a survey of the legal landscape in the area of disciplinary proceedings this scenario emerges:

(1) In exercise of powers under Section 35 contained in Chapter V entitled “conduct of advocates”, on receipt of a complaint against an advocate (or suomotu) if the State Bar Council has ‘reason to believe’ that any advocate on its roll has been guilty of “professional or other misconduct”, disciplinary proceeding may be initiated against him.

(2) Neither Section 35 nor any other provision of the Act defines the expression ‘legal misconduct’ or the expression ‘misconduct’.

(3) The Disciplinary Committee of the State Bar Council is authorised to inflict punishment, including removal of his name from the rolls of the Bar Council and suspending him from practice for a period deemed fit by it, after giving the advocate concerned and the ‘Advocate General’ of the State an opportunity of hearing.

(4) While under Section 42(1) of the Act the Disciplinary Committee has been conferred powers vested in a civil court in respect of certain matters including summoning and enforcing

attendance of any person and examining him on oath, the Act which enjoins the Disciplinary Committee to 'afford an opportunity of hearing' (vide Section 35) to the advocate does not prescribe the procedure to be followed at the hearing.

(5) The procedure to be followed in an enquiry under Section 35 is outlined in Part VII of the Bar Council of India Rules<sup>2</sup> made under the authority of Section 60 of the Act.

(6) Rule 8(1) of the said Rules enjoins the Disciplinary Committee to hear the concerned parties that is to say the complainant and the concerned advocate as also the Attorney General or the Solicitor General or the Advocate General. It also enjoins that if it is considered appropriate to take oral evidence the procedure of the trial of civil suits shall as far as possible be followed.

4. At this juncture it is appropriate to articulate some basic principles which must inform the disciplinary proceedings against members of the legal profession in proceedings under Section 35 of the Advocates Act, read with the relevant Rules:

(i) essentially the proceedings are quasi-criminal in character inasmuch as a member of the profession can be visited with penal consequences which affect his right to practise the profession as also his honour; under Section 35(3)(d) of the Act, the name of the advocate found guilty of professional or other misconduct can be removed from the State Roll of Advocates. This extreme penalty is equivalent of death penalty which is in vogue in criminal jurisprudence. The advocate on whom the penalty of his name being removed from the roll of advocates is imposed would be deprived of practising the profession of his choice, would be robbed of his means of livelihood, would be stripped of the name and honour earned by him in the past and is liable to become a social apartheid. A disciplinary proceeding by a statutory body of the members of the profession which is statutorily empowered to impose a punishment including a punishment of such immense proportions is quasi-criminal in character;

(ii) as a logical corollary it follows that the Disciplinary Committee empowered to conduct the enquiry and to inflict the punishment on behalf of the body, in forming an opinion must be guided by the doctrine of benefit of doubt and is under an obligation to record a finding of guilt only upon being satisfied beyond reasonable doubt. It would be impermissible to reach a conclusion on the basis of preponderance of evidence or on the basis of surmise, conjecture or suspicion. It will also be essential to consider the dimension regarding mens rea.

This proposition is hardly open to doubt or debate particularly having regard to the view taken by this Court in **L.D. Jaisinghani v. Naraindas N. Punjabi** [(1976) 1 SCC 354], wherein Ray, C.J., speaking for the Court has observed:

"In any case, we are left in doubt whether the complainant's version, with which he had come forward with considerable delay was really truthful. *We think that in a case of this nature, involving possible disbarring of the advocate concerned, the evidence should be of a character which should leave no reasonable doubt about guilt.* The Disciplinary Committee had not only found the appellant guilty but had disbarred him permanently." *(emphasis added)*

(iii) in the event of a charge of negligence being levelled against an advocate, the question will have to be decided whether negligence simpliciter would constitute misconduct. It would also have to be considered whether the standard expected from an

advocate would have to answer the test of a reasonably equipped prudent practitioner carrying reasonable workload. A line will have to be drawn between tolerable negligence and culpable negligence in the sense of negligence which can be treated as professional misconduct exposing a member of the profession to punishment in the course of disciplinary proceedings. In forming the opinion on this question the standards of professional conduct and etiquette spelt out in Chapter 2 of Part VI of the Rules governing advocates, framed under Section 60(3) and Section 49(1)(g) of the Act, which form a part of the Bar Council of India Rules may be consulted. As indicated, in the preamble of the Rules, an advocate shall, at all times compose himself in a manner befitting his status as an officer of the court, a privileged member of the community and a gentleman bearing in mind what may be lawful and moral for one who is not a member of the Bar may still be improper for an advocate and that his conduct is required to conform to the rules relating to the duty to the court, the duty to the client, to the opponent, and the duty to the colleagues, not only in letter but also in spirit.

It is in the light of these principles the Disciplinary Committee would be required to approach the question as regards the guilt or otherwise of an advocate in the context of professional misconduct levelled against him. In doing so apart from conforming to such procedure as may have been outlined in the Act or the Rules, the Disciplinary Authority would be expected to exercise the power with full consciousness and awareness of the paramount consideration regarding principles of natural justice and fair play.

5. The State Bar Council, after calling for the comments of the appellant in the context of the complaint, straightway proceeded to record the evidence of the parties. No charge was framed specifying the nature and content of the professional misconduct attributed to the appellant. Nor were any issues framed or points for determination formulated. The Disciplinary Committee straightway proceeded to record evidence. As the case could not be concluded within the prescribed time limit the matter came to be transferred to the Bar Council of India which has heard arguments and rendered the order under appeal.

6. The questions which have surfaced are:

(1) Whether a specific charge should have been framed apprising the appellant of the true nature and content of the professional misconduct ascribed to him?

(2) Whether the doctrine of benefit of doubt and the need for establishing the basic allegations were present in the mind of the Disciplinary Authority in recording the finding of guilt or in determining the nature and extent of the punishment inflicted on him?

(3) Whether in the absence of the charge and finding of dishonesty against him the appellant could be held guilty of professional misconduct even on the assumption that he had acted on the instructions of a person not authorised to act on behalf of his client if he was acting in good faith and in a bona fide manner. Would it amount to lack of prudence or non-culpable negligence or would it constitute professional misconduct?

Now so far as the procedure followed by the State Bar Council at the enquiry against the appellant, is concerned it appears that in order to enable the concerned advocate to defend himself properly, an appropriate specific charge was required to be framed. No doubt the Act does not outline the procedure and the Rules do not prescribe the framing of a charge. But then even in a departmental proceeding in an enquiry against an employee, a charge is always framed. Surely an advocate whose honour and right to earn his livelihood are at stake can expect from his own professional brethren, what an employee expects from his employer? Even if the rules are silent, the paramount

and overshadowing considerations of fairness would demand the framing of a charge. In a disciplinary proceeding initiated at the level of this Court even though the Supreme Court Rules did not so prescribe, *in Re Shri 'M' an Advocate of the Supreme Court of India* [AIR 1957 SC 149], this Court framed a charge making these observations:

We treated the enquiry in chambers as a preliminary enquiry and heard arguments on both sides with reference to the matter of that enquiry. We came to the conclusion that this was not a case for discharge at that stage. We accordingly reframed the charges framed by our learned brother, Bhagwati, J. and added a fresh charge. No objection has been taken to this course. But it is as well to mention that, in our opinion, the terms of Order IV, Rule 30 of the Supreme Court Rules do not preclude us from adopting this course, including the reframing of, or adding to, the charges specified in the original summons, where the material at the preliminary enquiry justifies the same. The fresh enquiry before us in court has proceeded with reference to the following charges as reframed and added to by us.

It would be extremely difficult for an advocate facing a disciplinary proceeding to effectively defend himself in the absence of a charge framed as a result of application of mind to the allegations and to the question as regards what particular elements constituted a specified head of professional misconduct.

7. The point arising in the context of the non-framing of issues has also significance. As discussed earlier Rule 8(1) enjoins that “the procedure for the trial of civil suits, shall as far as possible be followed”. Framing of the issues based on the pleadings as in a civil suit would be of immense utility. The controversial matters and substantial questions would be identified and the attention focussed on the real and substantial factual and legal matters in context. The parties would then become aware of the real nature and content of the matters in issue and would come to know (1) on whom the burden rests (2) what evidence should be adduced to prove or disprove any matter (3) to what end cross-examination and evidence in rebuttal should be directed. When such a procedure is not adopted there exists inherent danger of miscarriage of justice on account of virtual denial of a fair opportunity to meet the case of the other side. We wish the State Bar Council had initially framed a charge and later on framed issues arising out of the pleadings for the sake of fairness and for the sake of bringing into forefront the real controversy.

8. In the light of the foregoing discussion the questions arising in the present appeal may now be examined. In substance the charge against the appellant was that he had withdrawn a suit as settled without the instructions from the complainant. It was not the case of the complainant that the appellant had any dishonest motive or that he had acted in the matter by reason of lack of probity or by reason of having been won over by the other side for monetary considerations or otherwise. The version of the appellant was that the suit which had been withdrawn had been instituted in a particular set of circumstances and that the complainant had been introduced to the appellant for purposes of the institution of the suit by an old client of his viz. RW 3 Gautam Chand. The appellant was already handling a case on behalf of RW 3 Gautam Chand against RW 4 Anantaraju. The decision to file a suit on behalf of the complainant against RW 4 Anantaraju was taken in the presence of RW 3 Gautam Chand. It was at the instance and inspiration of RW 3 Gautam Chand that the suit had been instituted by the complainant, but really he was the nominee of Gautam Chand and that the complainant himself had no real claim on his own. It transpires from the records that it was admitted by the complainant that he was not maintaining any account books in regard to the business and he was not an income tax assessee. In addition, the complainant (PW 1) Haradara himself has admitted in his evidence that it was Gautam Chand who had introduced him to the appellant, and that he was in fact taken to the office of the appellant for filing the said suit, by Gautam Chand. It was this suit which was withdrawn by the appellant. Of course it was withdrawn

without any written instructions from the complainant. It was also admitted by the complainant that he knew the defendant against whom he had filed the suit for recovery of Rs 30,000 and odd through Gautam Chand and that he did not know the defendant intimately or closely. He also admitted that the cheques used to be passed in favour of the party and that he was not entitled to the entire amount. He used to get only commission.

9. Even on the admission of the complainant himself he was taken to the office of the appellant for instituting the suit, by RW 3 Gautam Chand, an old client of the appellant whose dispute with the defendant against whom the complainant had filed the suit existed at the material time and was being handled by the appellant. The defence of the appellant that he had withdrawn the suit in the circumstances mentioned by him required to be considered in the light of his admissions. The defence of the appellant being the suit was withdrawn under the oral instructions of the complainant in the presence of RW 3 Gautam Chand and RW 4 Anantaraju and inasmuch as RWs 3 and 4 supported the version of the appellant on oath, the matter was required to be examined in this background. Assuming that the evidence of the appellant corroborated by RWs 3 and 4 in regard to the presence of the complainant was not considered acceptable, the question would yet arise as to whether the withdrawal on the part of the appellant as per the oral instructions of RW 3 Gautam Chand who had taken the complainant to the appellant for instituting the suit, would amount to professional misconduct. Whether the appellant had acted in a bona fide manner under the honest belief that RW 3 Gautam Chand was giving the instructions on behalf of the complainant requires to be considered. If he had done so in a bona fide and honest belief would it constitute professional misconduct, particularly having regard to the fact that no allegation regarding corrupt motive was attributed or established. Here it has to be mentioned that the appellant had acted in an open manner in the sense that he had in his own hand-made endorsement for withdrawing the suit as settled and sent the brief to his junior colleague. If the appellant had any oblique motive or dishonest intention, he would not have made the endorsement in his own hand.

10. No doubt Rule 19 contained in Section 2 captioned 'Duty to the clients' provides that an advocate shall not act on the instructions of any person other than his client or his authorised agent. If, therefore, the appellant had acted under the instructions of RW 3 Gautam Chand bona fide believing that he was the authorised agent to give instructions on behalf of the client, would it constitute professional misconduct. Even if RW 3 was not in fact an authorised agent of the complainant, but if the appellant bona fide believed him to be the authorised agent having regard to the circumstances in which the suit came to be instituted, would it constitute professional misconduct? Or would it amount to only an imprudent and unwise act or even a negligent act on the part of the appellant? These were the questions which directly arose to which the Committee never addressed itself. There is also nothing to show that the Disciplinary Committee has recorded a finding on the facts and the conclusion as regards the guilt in full awareness of the doctrine of benefit of doubt and the need to establish the facts and the guilt beyond reasonable doubt. As has been mentioned earlier, no charge has been formulated and framed, no issues have been framed. The attention of the parties was not focussed on what were the real issues. The appellant was not specifically told as to what constituted professional misconduct and what was the real content of the charge regarding the professional misconduct against him.

11. In the order under appeal the Disciplinary Committee has addressed itself to three questions viz.:

- (i) Whether the complainant was the person who entrusted the brief to the appellant and whether the brief was entrusted by the complainant to the appellant?

(ii) Whether report of settlement was made without instruction or knowledge of the complainant?

(iii) Who was responsible for reporting settlement and instructions of the complainant?

In taking the view that the appellant had done so probably with a view to clear the cloud of title of RW 3 as reflected in para 22 quoted herein, the Disciplinary Committee was not only making recourse to conjecture, surmise and presumption on the basis of suspicion but also attributing to the appellant a motive which was not even attributed by the complainant and of which the appellant was not given any notice to enable him to meet the charge:

“It is not possible to find out as to what made PW 2 to have done like that. As already pointed out the house property which was under attachment had been purchased by RW 3 during the subsistence of the attachment. Probably with a view to clear the cloud of title of RW 3, PW 2 might have done it. This is only our suspicion whatever it might be, it is clear that RW 2 had acted illegally in directing RW 1 to report settlement.”

12. In our opinion the appellant has not been afforded reasonable and fair opportunity of showing cause inasmuch as the appellant was not apprised of the exact content of the professional misconduct attributed to him and was not made aware of the precise charge he was required to rebut. The conclusion reached by the Disciplinary Committee in the impugned order further shows that in recording the finding of facts on the three questions, the applicability of the doctrine of benefit of doubt and need for establishing the facts beyond reasonable doubt were not realised. Nor did the Disciplinary Committee consider the question as to whether the facts established that the appellant was acting with bona fides or with mala fides, whether the appellant was acting with any oblique or dishonest motive, whether there was any mens rea, whether the facts constituted negligence and if so whether it constituted culpable negligence. Nor has the Disciplinary Committee considered the question as regards the quantum of punishment in the light of the aforesaid considerations and the exact nature of the professional misconduct established against the appellant. The impugned order passed by the Disciplinary Committee, therefore cannot be sustained. Since we do not consider it appropriate to examine the matter on merits on our own without the benefit of the finding recorded by the Disciplinary Committee of the apex judicial body of the legal profession, we consider it appropriate to remit the matter back to the Disciplinary Committee. As observed by this Court in *O.N. Mohindroo v. District Judge, Delhi* [(1971) 2 SCR 11], we have no doubt that the Disciplinary Committee will approach the matter with an open mind:

From this it follows that questions of professional conduct are as open as charges of cowardice against Generals or reconsideration of the conviction of persons convicted of crimes. Otherwise how could the Hebron brothers get their conviction set aside after Charles Peace confessed to the crime for which they were charged and held guilty?

We must explain why we consider it appropriate to remit the matter back to the Bar Council of India. This matter is one pertaining to the ethics of the profession which the law has entrusted to the Bar Council of India. It is their opinion of a case which must receive due weight because in the words of Hidayatullah, C.J., in *Mohindroo* case:

This matter is one of the ethics of the profession which the law has entrusted to the Bar Council of India. It is their opinion of a case which must receive due weight.

It appears to us that the Bar Council of India must have an opportunity to examine the very vexed and sensitive question which has arisen in the present matter with utmost care and consideration, the question being of great importance for the entire profession. We are not aware of any other matter where the apex body of the profession was required to consider whether the bona fide act of an

advocate who in good faith acted under the instructions of someone closely connected with his client and entertained a bona fide belief that the instructions were being given under the authority of his client, would be guilty of misconduct. It will be for the Bar Council of India to consider whether it would constitute an imprudent act, an unwise act, a negligent act or whether it constituted negligence and if so a culpable negligence, or whether it constituted a professional misconduct deserving severe punishment, even when it was not established or at least not established beyond reasonable doubt that the concerned advocate was acting with any oblique or dishonest motive or with mala fides. This question will have to be determined in the light of the evidence and the surrounding circumstances taking into account the doctrine of benefit of doubt and the need to record a finding only upon being satisfied beyond reasonable doubt. In the facts and circumstances of the present case, it will also be necessary to re-examine the version of the complainant in the light of the foregoing discussion keeping in mind the admission made by the complainant that he was not maintaining any books of accounts and he was not an income tax assessee and yet he was the real plaintiff in the suit for Rs 30,000 and odd instituted by him, and in the light of the admission that it was RW 3 Gautam Chand who had introduced him to the appellant and that he was in fact taken to the office of the appellant, for filing the suit, by RW 3 Gautam Chand. The aforesaid question would arise even if the conclusion was reached that the complainant himself was not present and had not given instructions and that the appellant had acted on the instructions of RW 3 Gautam Chand who had brought the complainant to the appellant's office for instituting the suit and who was a close associate of the complainant. Since all these aspects have not been examined at the level of the Bar Council, and since the matter raises a question of principle of considerable importance relating to the ethics of the profession which the law has entrusted to the Bar Council of India, it would not be proper for this Court to render an opinion on this matter without the benefit of the opinion of the Bar Council of India which will accord close consideration to this matter in the light of the perspective unfolded in this judgment both on law and on facts. We are reminded of the high degree of fairness with which the Bar Council of India had acted in *Mohindroocase*. The advocate concerned was suspended from practice for four years. The Bar Council had dismissed the appeal. Supreme Court had dismissed the special leave petition summarily. And yet the whole matter was reviewed at the instance of the Bar Council and this Court was persuaded to grant the review. A passage extracted from *Mohindroocase* deserves to be quoted in this connection:

We find some unusual circumstances facing us. The entire Bar of India are of the opinion that the case was not as satisfactorily proved as one should be and we are also of the same opinion. All processes of the court are intended to secure justice and one such process is the power of review. No doubt frivolous reviews are to be discouraged and technical rules have been devised to prevent persons from reopening decided cases. But as the disciplinary committee themselves observed there should not be too much technicality where professional honour is involved and if there is a manifest wrong done, it is never too late to undo the wrong. This Court possesses under the Constitution a special power of review and further may pass any order to do full and effective justice. This Court is moved to take action and the Bar Council of India and the Bar Association of the Supreme Court are unanimous that the appellant deserves to have the order debarring him from practice set aside.

13. We have therefore no doubt that upon the matter being remitted to the Bar Council of India it will be dealt with appropriately in the light of the aforesaid perspective. We accordingly allow this appeal, set aside the order of the Bar Council insofar as the appellant is concerned and remit the matter to the Bar Council of India. We, however, wish to make it clear that it will not be open to the complainant to amend the complaint or to add any further allegation. We also clarify that the evidence already recorded will continue to form part of the record and it will be open to the Bar

Council of India to hear the matter afresh on the same evidence. It is understood that an application for restoration of the suit which has been dismissed for default in the city civil court at Bangalore has been made by the complainant and is still pending before the court. It will be open to the Bar Council of India to consider whether the hearing of the matter has to be deferred till the application for restoration is disposed of. The Bar Council of India may give appropriate consideration to all these questions.

14. We further direct that in case the judgment rendered by this Court or any part thereof is reported in law journals or published elsewhere, the name of the appellant shall not be mentioned because the matter is still sub judice and fairness demands that the name should not be specified. The matter can be referred to as ***An Advocate v. Bar Council or In re an Advocate*** without naming the appellant. The appeal is disposed of accordingly.

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***Salil Dutta v. T.M. and M.C. (P) Ltd.***

(1993) 2 SCC 185

**B.P. JEEVAN REDDY, J.** - 2. The appeal is preferred by the plaintiff against the judgment and order of a Division Bench of the Calcutta High Court allowing the appeal preferred by the respondent/defendant. The appeal before the High Court was directed against an order of the city civil court, Calcutta dismissing an application filed by the defendant to set aside the ex parte decree passed against him, under Order 9 Rule 13 of the Civil Procedure Code. The relevant facts may be noticed briefly.

3. The plaintiff/appellant filed a suit for ejecting the defendant-tenant on the ground of default in paying rent and also on the ground that the such premises are required for his own use and occupation. The suit was posted for final hearing on June 9, 1988 - seven years after its institution. On an earlier occasion, the defendant had filed two interlocutory applications, one under Order 14 Rule 5 and the other under Order 6 Rule 16 CPC. On May 19, 1988 the city civil court had passed an order on the said applications observing that the said applications shall be considered at the final hearing of the suit. According to the defendant (as per his statement made in the application filed by him for setting aside the ex parte decree) his advocate advised him that he need not be present at the hearing of the suit on June 9, 1988, and thereafter till the applications filed by him under Order 14 Rule 5 and Order 6 Rule 16 CPC are disposed of. Be that as it may, on June 9, 1988, the advocate for the defendant prayed for an adjournment till the next day. It was adjourned accordingly. On June 10, neither the advocate for the defendant nor the defendant appeared, with the result the defendant was set ex parte. Hearing of the suit was commenced and concluded on June 11, 1988. The suit was posted for delivery of judgment to June 13, 1988. On June 11, 1988, an application was made on behalf of the defendant stating the circumstances in which his advocate had to retire from the case. This application, however, contained no prayer whatsoever. The suit was decreed ex parte on June 13, 1988. Thereafter the defendant filed the application to set aside the ex parte decree. In this application he referred to the fact of his filing two interlocutory applications as aforesaid, the order of the court thereon passed on May 19, 1988 and then stated “due to the advice of the learned advocate-on-record that your petitioner need not be present at the hearing of the suit on June 9, 1988 and thereafter till the disposal of the application filed under Order 6 Rule 16 and Order 14 Rule 5 read with Section 151 of the Code of Civil Procedure in the above suit,” the defendant did not appear before the Court. It was stated that Mr Ravindran the Principal Officer of the defendant-company was out of town on that date. It was submitted that because the defendant had acted on the basis of the advice given by the advocate-on-record of the defendant, there was sufficient cause to set aside the ex parte decree within the meaning of Order 9 Rule 13 CPC. The trial court dismissed the said application against which an appeal was preferred by the defendant to the Calcutta High Court. The appeal was heard by a Division Bench and judgment pronounced in open court on July 8, 1991 dismissing the appeal. However, it appears, before the judgment was signed by the learned judges constituting the Division Bench, an application was moved by the defendant for alteration or modification and/or reconsideration of the said judgment mainly on the ground that the defendants’ counsel could not bring to the notice of the Division Bench the decision of this Court in ***Rafiq v. Munshilal***[AIR 1981 SC 1400] and that the said decision clearly supports the defendants’ case. The counsel for the plaintiff opposed the said request. He submitted that once the judgment was pronounced in open court, it was final and that matter cannot be reopened just because a relevant decision was not brought to the notice of the Court. After hearing the counsel for both the parties,

the Division Bench reopened the appeal on the ground that “technicalities should not be allowed to stand in the way of doing justice to the parties”. The Bench observed that when they disposed of the appeal, their attention was not invited to the decision of this Court in *Rafiq v. Munshilal* and that in view of the said judgment they were inclined to reopen the matter. The Division Bench was of the opinion that “after a judgment is delivered by the High Court ignoring the decision of the Supreme Court or in disobedience of a clear judgment of the Supreme Court, it would be treated as non-est and absolutely without jurisdiction .... when our attention has been drawn that our judgment is per incuriam, it is our duty to apply this decision and to hold that our judgment was wrong and liable to be recalled”. (We express no opinion on the correctness of the above premise since it is not put in issue in this appeal.) Accordingly, the Division Bench heard the counsel for the parties and by its judgment and order dated March 3, 1992 allowed the appeal mainly relying upon the decision of this Court in *Rafiq*.

5. Since the judgment under appeal is exclusively based upon the decision of this Court in *Rafiq* it is necessary to ascertain what precisely does the said decision say. The appellant, Rafiq had preferred a second appeal in the Allahabad High Court through an advocate. His advocate was not present when the second appeal was taken up for hearing with the result it was dismissed for default. The appellant then moved an application to set aside the order of dismissal for default which was dismissed by the High Court. The correctness of the said order was questioned in this Court. The matter came up before a Bench comprising D.A. Desai and Baharul Islam, JJ. D.A. Desai, J. speaking for the Bench observed thus:

The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court’s procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.

6. It was then argued by the counsel for the respondent in that appeal that a practice has grown up in the High Court of Allahabad among the lawyers to remain absent when they did not like a particular Bench and that the absence of the appellant’s advocate in the High Court was in accordance with the said practice, which should not be encouraged. While expressing no opinion upon the existence or justification of such practice, the learned Judge observed that if the dismissal order is not set aside “the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented,” and then made the following further observations:

The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted.

7. The question is whether the principle of the said decision comes to the rescue of the defendant respondent herein. Firstly, in the case before us it was not an appeal preferred by an outstation litigant but a suit which was posted for final hearing seven years after the institution of the suit. The defendant is a private limited company having its registered office at Calcutta itself. The persons in charge of the defendant-company are not rustic villagers nor they are innocent illiterates unaware of court procedures. Prior to the suit coming up for final hearing on June 9, 1988 the defendant had filed two applications whereupon the court ordered that they will be considered at the time of the final hearing of the suit. The plaintiff's case no doubt is that the said applications were part of delaying tactics being adopted by the defendant-tenants with a view to protract the suit. Be that as it may, the defendant thereafter refused to appear before the court. According to the defendant, their advocate advised them that until the interlocutory applications filed by them are disposed of, the defendant need not appear before the court which means that the defendants need not appear at the final hearing of the suit. It may be remembered that the court proposed to consider the said interlocutory applications at the final hearing of the suit. It is difficult to believe that the defendants implicitly believed their advocate's advice. Being educated businessmen they would have known that non-participation at the final hearing of the suit would necessarily result in an adverse decision. Indeed we are not prepared to believe that such an advice was in fact tendered by the advocate. No advocate worth his salt would give such advice to his client. Secondly, the several contradictions in his deposition which are pointed out by the Division Bench in the impugned order go to show that the whole story is a later fabrication. The following are the observations made in the judgment of the Division Bench with respect to the conduct of the said advocate: "We found that the said learned advocate conducted the proceedings in a most improper manner and that his absence on June 10, 1988 and on subsequent date was not only discourteous but possibly a dereliction of duty to his client ... the learned advocate had forgotten his professional duty in not making inquiry to the court as to what happened on June 10, 11 and 13, 1988 ... the learned advocate acted in a most perfunctory manner in the matter and the learned advocate dealt with the matter in a most unusual manner. We have also found that the said learned advocate had made serious contradiction in the deposition before the court below. The learned advocate in his deposition stated that he did not file an application for adjournment on June 9, 1988. But from the record it was evident that it was on the basis of the application filed on June 9, 1988, the case was adjourned for cross-examination of the witnesses whose examination was called on the next date." The above facts stated in the deposition of the advocate show that he indeed made an application for adjournment on June 9, 1988 to enable him to cross-examine the witnesses on the next date. Therefore, his present stand that he advised his client not to participate in the trial from and including June 9, 1988 onwards is evidently untrue. We are, therefore, of the opinion that the story set up by the defendant in his application under Order 9 Rule 13 is an after-thought and ought not to have been accepted by the Division Bench in its order dated March 3, 1992 - more particularly when it had rejected the very case in its earlier judgment dated July 8, 1991.

8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in *Rafiq* must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for

final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. Maybe, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear - they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.

9. For the above reasons, the appeal is allowed.

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***C. Ravichandran Iyer v. Justice A.M. Bhattacharjee***

(1995) 5 SCC 457

**K. RAMASWAMY, J.** - The petitioner, a practising advocate, has initiated the public interest litigation under Article 32 of the Constitution seeking to issue an appropriate writ, order or direction restraining permanently the Bar Council of Maharashtra and Goa (BCMG), Bombay Bar Association (BBA) and the Advocates' Association of Western India (AAWI), Respondents 2 to 4 respectively, coercing Justice A.M. Bhattacharjee (the 1st respondent), Chief Justice of Bombay High Court, to resign from the office as Judge. He also sought an investigation by the Central Bureau of Investigation etc. (Respondents 8 to 10) into the allegations made against the 1st respondent and if the same are found true, to direct the 5th respondent, Speaker, Lok Sabha to initiate action for his removal under Article 124(4) and (5) read with Article 218 of the Constitution of India and Judges (Inquiry) Act, 1968 (for short, 'the Act'). This Court on 24-3-1995 issued notice to Respondents 2 to 4 only and rejected the prayer for interim direction to the President of India and the Union of India (Respondents 6 and 7 respectively) not to give effect to the resignation by the 1st respondent. We have also issued notice to the Attorney General for India and the President of the Supreme Court Bar Association (SCBA). The BBA filed a counter-affidavit through its President, Shri Iqbal Mahomedali Chagla. Though Respondents 2 and 4 are represented through counsel, they did not file any counter-affidavit. The SCBA informed the Court that its newly elected office-bearers required time to take a decision on the stand to be taken and we directed them to file their written submission. Shri F.S. Nariman, learned Senior Counsel appeared for the BBA and Shri Harish N. Salve, learned Senior Counsel, appeared for AAWI, the 4th respondent. The learned Attorney General also assisted the Court. We place on record our deep appreciation for their valuable assistance.

3. The petitioner in a well-documented petition stated and argued with commitment that the news published in various national newspapers does prove that Respondents 2 to 4 had pressurised the 1st respondent to resign from the office as Judge for his alleged misbehaviour. The Constitution provides for independence of the Judges of the higher courts, i.e., the Supreme Court and the High Courts. It also lays down in proviso (a) to clause (2) of Article 124; so too in Article 217(1) proviso (a) and Article 124(4), procedure for voluntary resignation by a Judge, as well as for compulsory removal, respectively from office in the manner prescribed therein and in accordance with the Act and the Rules made thereunder. The acts and actions of Respondents 2 to 4 are unknown to law, i.e., removal by forced resignation, which is not only unconstitutional but also deleterious to the independence of the judiciary. The accusations against the 1st respondent without proper investigation by an independent agency seriously damage the image of judiciary and efficacy of judicial adjudication and thereby undermine credibility of the judicial institution itself. Judges are not to be judged by the Bar. Allowing adoption of such demands by collective pressure rudely shakes the confidence and competence of judges of integrity, ability, moral vigour and ethical firmness, which in turn, sadly destroys the very foundation of democratic polity. Therefore, the pressure tactics by the Bar requires to be nipped in the bud. He, therefore, vehemently argued and requested the Court to adopt such procedure which would safeguard the independence of the judiciary and protect the judges from pressure through unconstitutional methods to demit the office.

4. Shri Chagla in his affidavit and Shri Nariman appearing for the BBA explained the circumstances that led the BBA to pass the resolution requesting the 1st respondent to demit his office as a Judge in the interest of the institution. It is stated in the affidavit that though initially he had in his custody the documents to show that the 1st respondent had negotiated with Mr S.S.

Musafir, Chief Executive of Roebuck Publishing, London and the acceptance by the 1st respondent for publication and sale abroad of a book authored by him, viz., *Muslim Law and the Constitution* for two years at a royalty of US \$ 80,000 (Eighty thousand US Dollars) and an inconclusive negotiation for US \$ 75,000 (Seventy-five thousand US Dollars) for overseas publishing rights of his book *Hindu Law and the Constitution* (2nd Edn.), he did not divulge the information but kept confidential. From about late 1994, there was considerable agitation amongst the members of Respondents 3 and 4 that certain persons whose names were known to all and who were seen in the court and were being openly talked about, were bringing influence over the 1st respondent and could “influence the course of judgments of the former Chief Justice of Bombay”. “The names of such persons though known are not being mentioned here since the former Chief Justice of Bombay has resigned as Chief Justice and Judge of the Bombay High Court.” It was also rumoured that “the former Chief Justice of Bombay has been paid a large sum of money in foreign exchange purportedly as royalty for a book written by him, viz. *Muslim Law and the Constitution*. The amount of royalty appeared to be totally disproportionate to what a publisher abroad would be willing to pay for foreign publication of a book which might be of academic interest within India (since the book was a dissertation of Muslim Law in relation to the Constitution of India). There was a growing suspicion at the Bar that the amount might have been paid for reasons “other than the ostensible reason”. He further stated that the 1st respondent himself had discussed with the Advocate General on 14-2-1995 impressing upon the latter that the Chief Justice “had decided to proceed on leave from the end of February and would resign in April 1995”. The Advocate General had conveyed it to Shri Chagla and other members of the Bar. By then, the financial dealings referred to above were neither known to the public nor found mention in the press reports. Suddenly on 19-2-1995 the advocates found to their surprise a press interview published in *The Times of India* said to have been given by the 1st respondent stating that “he had not seriously checked the antecedents of the publishers and it was possible that he had made a mistake in accepting the offer”. He was not contemplating to resign from judgeship at that stage and was merely going on medical leave for which he had already applied for and was granted. The BCMG passed a resolution on 19-2-1995 seeking “resignation forthwith” of the 1st respondent. On 21-2-1995 the BBA received a requisition for holding its general body meeting to discuss the financial dealings said to have been had by the 1st respondent “for a purpose other than the ostensible purpose thereby raising a serious doubt as to the integrity of the Chief Justice”. The meeting was scheduled to be held at 2.15 p.m. on 22-2-1995 as per its bye-laws. The 1st respondent appears to have rung up Shri Chagla in the evening on 21-2-1995 but he was not available. Pursuant to a contact by Shri W.Y. Yande, the President of AAWI, at the desire of Chief Justice to meet him, Shri Chagla and Shri Yande met the 1st respondent at his residence at 10.00 a.m. in the presence of two Secretaries of the 1st respondent, who stated thus to Shri Chagla as put in his affidavit:

The Bar Council of Maharashtra and Goa had already shot an arrow and that the wound was still fresh and requested me to ensure that he would not be hurt any further by a resolution of the Bombay Bar Association. The 1st respondent informed me that he had already agreed to resign and in fact called for and showed me a letter dated 17-2-1995 addressed by him to the Honourable the Chief Justice of India in which he proposed to go on medical leave for a month and that at the end of the leave or even earlier he proposed to tender his resignation.

5. They had reminded the 1st respondent of the assurance given to the Advocate General expressing his desire to resign and he conveyed his personal inconveniences to be encountered etc. The 1st respondent assured them that he would “resign within a week which resignation would be effective some 10 or 15 days thereafter and that in the meanwhile he would not do any judicial work

including delivery of any judgment”. Shri Chagla appears to have told the 1st respondent that though he would not give an assurance, he would request the members of the Association to postpone the meeting and he had seen that the meeting was adjourned to 5.00 p.m. on 1-3-1995. On enquiry being made on 1-3-1995 from the Principal Secretary to the 1st respondent whether the 1st respondent had tendered his resignation, it was replied in the negative which showed that the 1st respondent had not kept his promise. Consequently, after full discussion, for and against, an overwhelming majority of 185 out of 207 permanent members resolved in the meeting held on 1-3-1995 at 5.00 p.m. demanding the resignation of the 1st respondent.

6. Since the 1st respondent has already resigned, the question is whether a Bar Council or Bar Association is entitled to pass resolution demanding a Judge to resign, what is its effect on the independence of the judiciary and whether it is constitutionally permissible. Shri Nariman contended that the Supreme Court and the High Court are two independent constitutional institutions. A High Court is not subordinate to the Supreme Court though constitutionally the Supreme Court has the power to hear appeals from the decisions or orders or judgments of the High Courts or any Tribunal or quasi-judicial authority in the country. The Judges and the Chief Justice of a High Court are not subordinate to the Chief Justice of India. The constitutional process of removal of a Judge as provided in Article 124(4) of the Constitution is only for proved misbehaviour or incapacity. The recent impeachment proceedings against Justice V. Ramaswami and its fall out do indicate that the process of impeachment is cumbersome and the result uncertain. Unless corrective steps are taken against Judges whose conduct is perceived by the Bar to be detrimental to the independence of the judiciary, people would lose faith in the efficacy of judicial process. Bar being a collective voice of the court concerned has responsibility and owes a duty to maintain the independence of the judiciary. It is its obligation to bring it to the notice of the Judge concerned the perceived misbehaviour or incapacity and if it is not voluntarily corrected they have to take appropriate measures to have it corrected. Bar is not aware of any other procedure than the one under Article 124(4) of the Constitution and the Act. Therefore, the BBA, instead of proceeding to the press, adopted democratic process to pass the resolution, in accordance with its bye-laws, when all attempts made by it proved abortive. The conduct of the Judge betrayed their confidence in his voluntary resignation. Consequently, the BBA was constrained to pass the said resolution. Thereby it had not transgressed its limits. Its action is in consonance with its bye-laws and in the best tradition to maintain independence of the judiciary. Shri Nariman also cited the instance of non-assignment of work to four Judges of the Bombay High Court by its former Chief Justice when some allegations of misbehaviour were imputed to them by the Bar. He, however, submitted that in the present case the allegations were against the Chief Justice himself, and so, he could not have been approached. He urged that if some guidelines could be laid down by this Court in such cases, the same would be welcomed.

7. The counsel appearing for the BCMG, who stated that he is its member, submitted that when the Bar believes that the Chief Justice has committed misconduct, as an elected body it is its duty to pass a resolution after full discussion demanding the Judge to act in defence of independence of the judiciary by demitting his office.

9. The learned Attorney General contended that any resolution passed by any Bar Association tantamounts to scandalising the court entailing contempt of the court. It cannot coerce the Judge to resign. The pressure brought by the Chief Justice of India upon the Judge would be constitutional but it should be left to the Chief Justice of India to impress upon the erring Judge to correct his conduct. This procedure would yield salutary effect. The Chief Justice of India would adopt such procedure as is appropriate to the situation. He cited the advice tendered by Lord Chancellor of England to Lord Denning, when the latter was involved in the controversy over his writing on the

jury trial and the composition of the black members of the jury, to demit the office, which he did in grace.

**Rule of Law and Judicial Independence - Why need to be preserved?**

10. The diverse contentions give rise to the question whether any Bar Council or Bar Association has the right to pass resolution against the conduct of a Judge perceived to have committed misbehaviour and, if so, what is its effect on independence of the judiciary. With a view to appreciate the contentions in their proper perspective, it is necessary to have at the back of our mind the importance of the independence of the judiciary. In a democracy governed by rule of law under a written constitution, judiciary is sentinel on the *qui vive* to protect the fundamental rights and to poise even scales of justice between the citizens and the State or the States inter se. Rule of law and judicial review are basic features of the Constitution. As its integral constitutional structure, independence of the judiciary is an essential attribute of rule of law. In *S.P. Gupta v. Union of India* [1981 Supp SCC 87], this Court held that if there is one principle which runs through the entire fabric of the Constitution it is the principle of the rule of law, and under the Constitution it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective. Judicial review is one of the most potent weapons in the armoury of law. The judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive. It is, therefore, absolutely essential that the judiciary must be free from executive pressure or influence which has been secured by making elaborate provisions in the Constitution with details. The independence of judiciary is not limited only to the independence from the executive pressure or influence; it is a wider concept which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz., fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the judges belong.

**Judicial individualism - Whether needs protection?**

11. Independent judiciary is, therefore, most essential when liberty of citizen is in danger. It then becomes the duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived) undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. Judicial individualism, in the language of Justice Powell of the Supreme Court of United States in his address to the American Bar Association, Labour Law Section on 11-8-1976, is “perhaps one of the last citadels of jealously preserved individualism ....”

14. The arch of the Constitution of India pregnant from its Preamble, Chapter III (Fundamental Rights) and Chapter IV (Directive Principles) is to establish an egalitarian social order guaranteeing fundamental freedoms and to secure justice - social, economic and political - to every citizen through rule of law. Existing social inequalities need to be removed and equality in fact is accorded to all people irrespective of caste, creed, sex, religion or region subject to protective discrimination only through rule of law. The Judge cannot retain his earlier passive judicial role when he administers the law under the Constitution to give effect to the constitutional ideals. The extraordinary complexity of modern litigation requires him not merely to declare the rights to citizens but also to mould the relief warranted under given facts and circumstances and often command the executive and other agencies to enforce and give effect to the order, writ or direction or prohibit them to do unconstitutional acts. In this ongoing complex of adjudicatory process, the



role of the Judge is not merely to interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and a reality. Therefore, the Judge is required to take judicial notice of the social and economic ramification, consistent with the theory of law. Thereby, the society demands active judicial roles which formerly were considered exceptional but now a routine. The Judge must act independently, if he is to perform the functions as expected of him and he must feel secure that such action of his will not lead to his own downfall. The independence is not assured for the Judge but to the judged. Independence to the Judge, therefore, would be both essential and proper. *Considered judgment of the court would guarantee the constitutional liberties which would thrive only in an atmosphere of judicial independence.* Every endeavour should be made to preserve independent judiciary as a citadel of public justice and public security to fulfil the constitutional role assigned to the Judges.

15. The Founding Fathers of the Constitution advisedly adopted a cumbersome process of impeachment as a mode to remove a Judge from office for only proved misbehaviour or incapacity which implies that impeachment process is not available for minor abrasive behaviour of a Judge. It reinforces that independence to the Judge is of paramount importance to sustain, strengthen and elongate rule of law. Parliament sparingly resorts to the mechanism of impeachment designed under the Constitution by political process as the extreme measure only upon a finding of proved misbehaviour or incapacity recorded by a committee constituted under Section 3 of the Act by way of address to the President in the manner laid down in Article 124(4) and (5) of the Constitution, the Act and the Rules made thereunder.

16. In all common law jurisdictions, removal by way of impeachment is the accepted norm for serious acts of judicial misconduct committed by a Judge. Removal of a Judge by impeachment was designed to produce as little damage as possible to judicial independence, public confidence in the efficacy of judicial process and to maintain authority of courts for its effective operation.

17. In United States, the Judges appointed under Article III of the American Constitution could be removed only by impeachment by the Congress. The Congress enacted the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (the 1980 Act) by which Judicial Council was explicitly empowered to receive complaints about the judicial conduct “prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability”.

18. Jeffrey N. Barr and Thomas E. Willging conducted research on the administration of the 1980 Act and in their two research volumes, they concluded that “several Chief Judges view the Act as remedial legislation designed not to punish Judges but to correct aberrant behaviour and provide opportunity for corrective action as a central feature of the Act”. From 1980 to 1992, 2388 complaints were filed. 95 per cent thereof resulted in dismissal. 1.7 per cent of the complaints ended in either dismissal from service or corrective action of reprimands - two of public reprimands and one of private reprimand. Two cases were reported to judicial conference by the judicial councils certifying that the grounds might exist for impeachment.

19. Our Constitution permits removal of the Judge only when the motion was carried out with requisite majority of both the Houses of Parliament recommending to the President for removal. In other words, the Constitution does not permit any action by any agency other than the initiation of the action under Article 124(4) by Parliament. In ***Sub-Committee on Judicial Accountability v. Union of India*** [(1991) 4 SCC 699], this Court at p. 54 held that the removal of a Judge culminating in the presentation of an address by different Houses of Parliament to the President, is committed to

Parliament alone and no initiation of any investigation is possible without the initiative being taken by the Houses themselves. At p. 71 it was further held that the constitutional scheme envisages removal of a Judge on proved misbehaviour or incapacity and the conduct of the Judge was prohibited to be discussed in Parliament by Article 121. Resultantly, discussion of the conduct of a Judge or any evaluation or inferences as to its merit is not permissible elsewhere except during investigation before the Inquiry Committee constituted under the Act for this purpose.

20. Articles 124(4) and 121 would thus put the nail squarely on the projections, prosecutions or attempts by any other forum or group of individuals or Associations, statutory or otherwise, either to investigate or inquire into or discuss the conduct of a Judge or the performance of his duties and on/off court behaviour except as per the procedure provided under Articles 124(4) and (5) of the Constitution, and Act and the Rules. Thereby, equally no other agency or authority like the CBI, Ministry of Finance, the Reserve Bank of India (Respondents 8 to 10) as sought for by the petitioner, would investigate into the conduct or acts or actions of a Judge. No mandamus or direction would be issued to the Speaker of Lok Sabha or Chairman of Rajya Sabha to initiate action for impeachment. It is true, as contended by the petitioner, that in *K. Veeraswamiv. Union of India* [(1991) 3 SCC 655], majority of the Constitution Bench upheld the power of the police to investigate into the disproportionate assets alleged to be possessed by a Judge, an offence under Section 5 of the Prevention of Corruption Act, 1947 subject to prior sanction of the Chief Justice of India to maintain independence of the judiciary. By interpretive process, the Court carved out primacy to the role of the Chief Justice of India, whose efficacy in a case like one at hand would be considered at a later stage.

**Duty of the Judge to maintain high standard of conduct. Its judicial individualism — Whether protection imperative?**

21. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

22. In *Krishna Swami v. Union of India* [(1992) 4 SCC 605], one of us (K. Ramaswamy, J.) held that the holder of office of the Judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behaviour, both on and off the Bench, are normally high. There cannot, however, be any fixed or set principles, but an unwritten code of conduct of well-established traditions is the guidelines for judicial conduct. The conduct that tends to undermine the public confidence in the character, integrity or impartiality of the Judge must be eschewed. It is expected of him to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities.

23. To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or of any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office-holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.

***Scope and meaning of 'misbehaviour' in Article 124(4)***

24. Article 124(4) of the Constitution sanctions action for removal of a Judge on proved misbehaviour or incapacity. The word 'misbehaviour' was not advisedly defined. It is a vague and elastic word and embraces within its sweep different facets of conduct as opposed to good conduct. In the *Law Lexicon* by P. Ramanatha Aiyar, 1987 Edn. at p. 821, collected from several decisions, the meaning of the word 'misconduct', is stated to be vague and relative term. Literally, it means wrong conduct or improper conduct. It has to be construed with reference to the subject-matter and the context wherein the term occurs having regard to the scope of the Act or the statute under consideration. In the context of disciplinary proceedings against a solicitor, the word misconduct was construed as professional misconduct extending to conduct "which shows him to be unworthy member of the legal profession". In the context of misrepresentation made by a pleader, who obtained adjournment of a case on grounds to his knowledge to be false a Full Bench of the Madras High Court in *First Grade Pleader, Re* [AIR 1931 Mad 422], held that if a legal practitioner deliberately made, for the purpose of impeding the course of justice, a statement to the court which he believed to be untrue and thereby gained an advantage for his client, he was guilty of gross improper conduct and as such rendered himself liable to be dealt with by the High Court in the exercise of its disciplinary jurisdiction. Misconduct on the part of an arbitrator was construed to mean that misconduct does not necessarily comprehend or include misconduct of a fraudulent or improper character, but it does comprehend and include action on the part of the arbitrator which is, upon the face of it, opposed to all rational and reasonable principles that should govern the procedure of any person who is called upon to decide upon questions in difference and dispute referred to him by the parties. Misconduct in office was construed to mean unlawful behaviour or include negligence by public officer, by which the rights of the party have been affected. In *Krishna Swami* case, one of us, K. Ramaswamy, J., considered the scope of 'misbehaviour' in Article 124(4) and held in para 71 that:

Every act or conduct or even error of judgment or negligent acts by higher judiciary per se does not amount to misbehaviour. Wilful abuse of judicial office, wilful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude would be misbehaviour. Misconduct implies actuation of some degree of mens rea by the doer. Judicial finding of guilt of grave crime is misconduct. Persistent failure to perform the judicial duties of the Judge or wilful abuse of the office *dolus malus* would be misbehaviour. Misbehaviour would extend to conduct of the Judge in or beyond the execution of judicial office. Even administrative actions or omissions too need accompaniment of mens rea.

25. Guarantee of tenure and its protection by the Constitution would not, however, accord sanctuary for corruption or grave misbehaviour. Yet every action or omission by a judicial officer in

the performance of his duties which is not a good conduct necessarily, may not be misbehaviour indictable by impeachment, but its insidious effect may be pervasive and may produce deleterious effect on the integrity and impartiality of the Judge. Every misbehaviour in juxtaposition to good behaviour, as a constitutional tautology, will not support impeachment but a misbehaviour which is not a good behaviour may be improper conduct not befitting to the standard expected of a Judge. Threat of impeachment process itself may swerve a Judge to fall prey to misconduct but it serves disgrace to use impeachment process for minor offences or abrasive conduct on the part of a Judge. The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as a whole. When the edifice of judiciary is built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution.

26. Bad conduct or bad behaviour of a Judge, therefore, needs correction to prevent erosion of public confidence in the efficacy of judicial process or dignity of the institution or credibility to the judicial office held by the obstinate Judge. When the Judge cannot be removed by impeachment process for such conduct but generates widespread feeling of dissatisfaction among the general public, the question would be who would stamp out the rot and judge the Judge or who would impress upon the Judge either to desist from repetition or to demit the office in grace? Who would be the appropriate authority? Who would be the principal mover in that behalf? The hiatus between bad behaviour and impeachable misbehaviour needs to be filled in to stem erosion of public confidence in the efficacy of judicial process. Whether the Bar of that Court has any role to play either in an attempt to correct the perceived fallen standard or is entitled to make a demand by a resolution or a group action to pressurise the Judge to resign his office as a Judge? The resolution to these questions involves delicate but pragmatic approach to the questions of constitutional law.

#### ***Role of the Bar Council or Bar Associations - Whether unconstitutional?***

27. The Advocates Act, 1961 gave autonomy to a Bar Council of a State or Bar Council of India and Section 6(1) empowers them to make such action deemed necessary to set their house in order, to prevent fall in professional conduct and to punish the incorrigible as not befitting the noble profession apart from admission of the advocates on its roll. Section 6(1)(c) and rules made in that behalf, Sections 9, 35, 36, 36-B and 37 enjoin it to entertain and determine cases of misconduct against advocates on its roll. The members of the judiciary are drawn primarily and invariably from the Bar at different levels. The high moral, ethical and professional standards among the members of the Bar are preconditions even for high ethical standards of the Bench. Degeneration thereof inevitably has its eruption and tends to reflect the other side of the coin. The Bar Council, therefore, is enjoined by the Advocates Act to maintain high moral, ethical and professional standards which of late is far from satisfactory. Their power under the Act ends *thereat* and extends no further. Article 121 of the Constitution prohibits discussion by the members of Parliament of the conduct of any Judge of the Supreme Court or of High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as provided under Article 124(4) and (5) and in the manner laid down under the Act, the Rules and the rules of business of Parliament consistent therewith. By necessary implication, no other forum or fora or platform is available for discussion of the conduct of a Judge in the discharge of his duties as a Judge of the Supreme Court or the High Court, much less a Bar Council or group of practising advocates. They are prohibited to discuss the conduct of a Judge in the discharge of his duties or to pass any resolution in that behalf.

28. Section 2(c) of the Contempt of Courts Act, 1971, defines “criminal contempt” to mean publication whether by words spoken or written, signs, visible representations or otherwise of any matter or the doing of any act whatsoever which scandalises or tends to scandalise, lowers or tends to lower the authority of any court or prejudices or interferes or tends to interfere with the due

course of any judicial proceeding, or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner.

### ***Freedom of expression and duty of Advocate***

31. It is true that freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which alone would protect the life, liberty and reputation of the citizen. So the nation's interest requires that criticism of the judiciary must be measured, strictly rational, sober and proceed from the highest motives without being coloured by partisan spirit or pressure tactics or intimidatory attitude. The Court must, therefore, harmonise constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. If freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considered the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of the law by fouling its source and stream. The power to punish the contemner is, therefore, granted to the court not because Judges need the protection but because the citizens need an impartial and strong judiciary.

32. It is enough if all of us bear this in mind while expressing opinions on courts and Judges. But the question that still remains is when the Bar of the Court, in which the Judge occupies the seat of office, honestly believes that the conduct of the Judge or of the Bench fouls the fountain of justice, or undermines or tends to undermine the dignity expected of a Judge and the people are tending to disbelieve the impartiality or integrity of the Judge, who should bear the duty and responsibility to have it/them corrected so as to restore the respect for judiciary?

33. In *Brahma Prakash Sharma v. State of U.P.* [AIR 1954 SC 10], the Bar Association passed resolutions and communicated to the superior authorities that certain judicial officers were incompetent due to their conduct in the court and High Court took action for contempt of the court. The question was whether the members of the Executive Committee of the Bar Association had committed contempt of the court? This Court held that the attack on a Judge is a wrong done to the public and if it tends to create apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge and to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties, it would be scandalising the court and be dealt with accordingly.

34. The threat of action on vague grounds of dissatisfaction would create a dragnet that would inevitably sweep into its grasp the maverick, the dissenter, the innovator, the reformer - in one word the unpopular. Insidious attempts pave way for removing the inconvenient. Therefore, proper care should be taken by the Bar Association concerned. First, it should gather specific, authentic and acceptable material which would show or tend to show that conduct on the part of a Judge creating a feeling in the mind of a reasonable person doubting the honesty, integrity, impartiality or act which lowers the dignity of the office but necessarily, is not impeachable misbehaviour. In all fairness to the Judge, the responsible office-bearers should meet him in camera after securing interview and apprise the Judge of the information they had with them. If there is truth in it, there is every possibility that the Judge would mend himself. Or to avoid embarrassment to the Judge, the office-bearers can approach the Chief Justice of that High Court and apprise him of the situation with material they have in their possession and impress upon the Chief Justice to deal with the matter appropriately.

### ***Primacy of the Chief Justice of India***

35. It is true that this Court has neither administrative control over the High Court nor power on the judicial side to enquire into the misbehaviour of a Chief Justice or Judge of a High Court. When the Bar of the High Court concerned reasonably and honestly doubts the conduct of the Chief Justice of that Court, necessarily the only authority under the Constitution that could be tapped is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the country. It is of importance to emphasise here that impeachment is meant to be a drastic remedy and needs to be used in serious cases. But there must exist some other means to ensure that Judges do not abuse the trust the society has in them. It seems to us that self-regulation by the judiciary is the only method which can be tried and adopted. Chief Justice of India is the first among the Judges. Under Articles 124(2) and 217(1), the President of India always consults the Chief Justice of India for appointment of the Judges in the Supreme Court and High Courts. Under Article 222, the President transfers Judges of High Courts in consultation with the Chief Justice of India. In *Supreme Court Advocates-on-Record Assn. v. Union of India* [(1993) 4 SCC 441], it was reinforced and the Chief Justice of India was given centre stage position. The primacy and importance of the office of the Chief Justice was recognised judicially by this Court in *Veeraswami* case. This Court, while upholding power to register a case against a retired Chief Justice of the High Court, permitted to proceed with the investigation for the alleged offence under Section 5 of the Prevention of Corruption Act. The Constitution Bench per majority, however, held that the sanction and approval of the Chief Justice of India is a condition precedent to register a case and investigate into the matter and sanction for prosecution of the said Judge by the President after consultation with the Chief Justice of India.

36. In *Sub-Committee on Judicial Accountability* also the same primacy had been accorded to the Chief Justice at p. 72 thus:

“It would also be reasonable to assume that the Chief Justice of India is expected to find a desirable solution in such a situation to avoid embarrassment to the learned Judge and to the institution in a manner which is conducive to the independence of judiciary and should the Chief Justice of India be of the view that in the interests of the institution of judiciary it is desirable for the learned Judge to abstain from judicial work till the final outcome under Article 124(4), he would advise the learned Judge accordingly. It is further reasonable to assume that the concerned learned Judge would ordinarily abide by the advice of the Chief Justice of India.”

40. Bearing all the above in mind, we are of the considered view that where the complaint relates to the Judge of the High Court, the Chief Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office-bearers against the Judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him. When the Chief Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter. This is necessary because any action he may take must not only be just but must also appear to be just to all concerned, i.e., it must not even appear to have been taken under pressure from any quarter. The Chief Justice of India, on receipt of the information from the Chief Justice of the High Court, after being satisfied about the correctness and truth touching the conduct of the Judge, may tender such advice either directly or may initiate such action, as is deemed necessary or warranted under given facts and circumstances. If circumstances permit, it may be salutary to take the Judge into confidence before initiating action. On the decision being taken by the Chief Justice of India, the matter should rest at that. This procedure would not only facilitate nipping in the bud the conduct of

a Judge leading to loss of public confidence in the courts and sustain public faith in the efficacy of the rule of law and respect for the judiciary, but would also avoid needless embarrassment of contempt proceedings against the office-bearers of the Bar Association and group libel against all concerned. The independence of judiciary and the stream of public justice would remain pure and unsullied. The Bar Association could remain a useful arm of the judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of the High Court and await his response for the action taken thereunder for a reasonable period.

41. In case the allegations are against Chief Justice of a High Court, the Bar should bring them directly to the notice of the Chief Justice of India. On receipt of such complaint, the Chief Justice of India would in the same way act as stated above qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief Justice of India.

42. It would thus be seen that yawning gap between proved misbehaviour and bad conduct inconsistent with the high office on the part of a non-cooperating Judge/Chief Justice of a High Court could be disciplined by self-regulation through in-house procedure. This in-house procedure would fill in the constitutional gap and would yield salutary effect. Unfortunately, recourse to this procedure was not taken in the case at hand, may be, because of absence of legal sanction to such a procedure.

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***P.D. Gupta v. Ram Murti***

(1997) 7 SCC 147

**D.P. WADHWA, J.** - The appellant is an advocate practising in Delhi. He has filed this appeal under Section 38 of the Advocates Act, 1961 ("the Act") against order dated 4-5-1996 of the Disciplinary Committee of the Bar Council of India holding him guilty of misconduct and suspending him from practice for a period of one year. This order by the Bar Council of India was passed as the Disciplinary Committee of the Bar Council of Delhi could not dispose of the complaint received by it within a period of one year and proceedings had thus been transferred to the Bar Council of India under Section 36-B of the Act. Section 36-B enjoins upon the Disciplinary Committee of the State Bar Council to dispose of the complaint received by it under Section 35 of the Act expeditiously and in any case to conclude the proceedings within one year from the date of the receipt of the complaint or the date of initiation of the proceedings if at the instance of the State Bar Council. Under Section 35 of the Act where on the receipt of a complaint or otherwise the State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee.

2. One SrikishanDass died on 5-1-1980 leaving behind extensive properties, both moveable and immovable. One Vidya Wati claiming to be the sister and the only legal heir of SrikishanDass filed a petition under Section 276 of the Indian Succession Act in the Court of District Judge, Delhi for grant of probate/letters of administration to the estate of deceased SrikishanDass. This she filed in February 1980. It is not that there was any Will. The complainant Ram Murti (who is now respondent before us) and two other persons also laid claim to the properties of SrikishanDass claiming themselves to be his heirs and propounding three different Wills. They also filed separate proceedings under Section 276 of the Indian Succession Act before the District Judge, Delhi. Since there was dispute regarding inheritance to the properties of SrikishanDass, Vidya Wati also filed a civil suit in the Delhi High Court for declaration and injunction against various defendants numbering 23, including the complainant Ram Murti who is Defendant 21. This suit was filed on 10-2-1982. Vidya Wati had prayed for a decree of injunction against the defendants restraining them from trespassing into property bearing No. 4852 Harbans Singh Street, 24 Daryaganj, New Delhi or from interfering with or disturbing peaceful possession and enjoyment of immovable properties detailed in Schedule A to the plaint. She also sought a declaration that she was the absolute owner of the properties mentioned therein in the Schedule. It is not necessary for us to detail the properties shown in Schedule A except to note two properties at 24 Daryaganj, New Delhi bearing No. 4852 and 4852-A. It is stated that this suit is still pending in the Delhi High Court and all the proceedings under Section 276 of the Indian Succession Act filed by various persons relating to the estate of SrikishanDass have also been transferred from the Court of District Judge, Delhi to the High Court and are being tried along with the suit filed by Vidya Wati as aforesaid.

3. It would appear that Vidya Wati also filed various other proceedings respecting the properties left by deceased SrikishanDass against the occupants or otherwise. P.D. Gupta, Advocate, who is the appellant before us had been her counsel throughout in all these proceedings. The complaint alleged against him is that though he knew that there was doubt cast on the right of Vidya Wati inheriting the properties of SrikishanDass on account of pendency of various proceedings and further that the complainant and others had alleged that she was in fact an impostor and her claim to be sister of SrikishanDass was false yet P.D. Gupta purchased the ground floor of property bearing No. 4858-A, 24 Daryaganj from Vidya Wati by a sale deed dated 30-12-1982. The complainant also



alleged that Vidya Wati had been describing herself either as the real sister, stepsister or even half-blood sister of SrikishanDass which fact was well known to P.D. Gupta, her counsel.

4. It is not for us to go into the merits or demerits of the controversy raised by the parties in various proceedings pending in the courts and still awaiting adjudication, the grievance of the complainant is as to how an advocate could purchase property from his client which property is the subject-matter of dispute between the parties in a court of law. During the course of hearing of this appeal it was also brought to our notice that the second floor of the property bearing No. 4858-A, 24 Daryaganj was purchased by Suresh Kumar Gupta, son-in-law of Advocate P.D. Gupta from Vidya Wati. Then again it was brought to our notice that Advocate P.D. Gupta sold the property purchased by him in November 1987 for a consideration of Rs 3,40,000 when he himself had purchased the property for Rs 1,80,000 in December 1982. It is pointed out that the facts relating to purchase of different portions of property No. 4858-A, 24 Daryaganj and subsequent sale by P.D. Gupta were not brought on record of the said suit filed by Vidya Wati.

5. Be that as it may the Bar Council of India has commented upon the conduct of P.D. Gupta in buying the property from Vidya Wati in the circumstances aforesaid who had been describing herself sometimes as a half-blood sister and sometimes as real sister or even stepsister of SrikishanDass. The explanation given by P.D. Gupta is that though Vidya Wati was the stepsister of SrikishanDass but the latter always treated her like his real sister and that is how Vidya Wati also at times described herself as his real sister.

6. There are some more facts which could also be noted. Vidya Wati herself has died and she is stated to be survived by her only daughter Maya Devi who is also now dead. Before her death Vidya Wati allegedly executed a Will in favour of her grandson Anand Prakash Bansal who is stated to be the son of Maya Devi bequeathing all her properties to him. Vidya Wati died on 26-10-1991 and Maya Devi on 13-4-1992. It is stated that P.P. Bansal, husband of Maya Devi and father of Anand Prakash Bansal, has been acting as General Attorney of Vidya Wati and instructing P.D. Gupta.

7. In support of his case P.D. Gupta filed affidavit of Anand Prakash Bansal wherein it is claimed that sale deeds executed by Vidya Wati in favour of P.D. Gupta and his son-in-law Suresh Kumar Gupta were without any pressure from anyone and were by free will of Vidya Wati. P.D. Gupta has claimed that the complaint filed by Ram Murti is motivated and he himself had no title to the properties of SrikishanDass being no relative of his and the Will propounded by him had been found to be forged as opined by the CFSL/CBI laboratory. The fact that the Will propounded by Ram Murti is forged or not is still to be decided by the Court. In the affidavit filed by P.D. Gupta, in answer to the complaint of Ram Murti, he has stated that "Lala SrikishanDass left behind his sister Smt Vidya Wati who succeeded to the estate on the death of Lala SrikishanDass and took over the entire moveable and immovable estate. Thereafter the complainant and two other persons propounded the Will of Lala SrikishanDass". This statement of P.D. Gupta has been verified by him as true and correct to his knowledge. It does appear to us to be rather odd for a lawyer to verify such facts to his knowledge. It is claimed that when SrikishanDass died, subject immovable property was plot bearing No. 4858-A, 24 Daryaganj measuring 1500 sq. feet and the same was got mutated in the name of Vidya Wati in the records of the Municipal Corporation of Delhi and then she got plans sanctioned from the Municipal Corporation of Delhi for construction of the house on this plot and which she did construct and got completion certificate on 28-8-1981. It is peculiar, rather astounding, how Vidya Wati could get the property of SrikishanDass mutated in her name when she is yet to be granted letters of administration or declaration to her title.

8. We examined the two sale deeds transferring this property, one executed in favour of P.D. Gupta and the other in favour of his son-in-law Suresh Kumar Gupta and we have also examined the proceedings on the basis of which the Bar Council of India came to the conclusion that P.D. Gupta was guilty of misconduct and he be debarred from practising for the period of one year. When Ram Murti complained that P.D. Gupta had fraudulently purchased the property of deceased SrikishanDass being the entire ground floor property bearing No. 4858-A, 24 Daryaganj, Delhi as per sale deed executed on 30-12-1982 from Vidya Wati as also in the name of his son-in-law Suresh Kumar, son of Suraj Bhan, knowing fully well that Vidya Wati was not the owner of the property, the reply given by P.D. Gupta is as under:

“5. Para 5 as stated is false, misleading and ill-motivated, in view of the above submissions. This respondent did purchase the ground floor portion from Smt Vidya Wati by a registered sale deed and sold the same by a registered sale deed in November 1987, and has no longer any concern with any of the properties of Smt Vidya Wati. (As per) the information of the respondent, no proceedings disputing the title of Smt Vidya Wati or cancellation of sale deed in favour of any of the buyers from Smt Vidya Wati who are more than 20 in number, has been filed so far. One of such buyers is Shri P.P. Sharma, the ex-Registrar of the Delhi High Court. This respondent believed Smt Vidya Wati as the right owner according to the facts and law and sold it as aforesaid. The applicant is in no way concerned with the rights of the respondent and the matter pending for adjudication is between the complainant and the parties concerned.”

9. In the sale deed which is dated 30-12-1982 executed in favour of P.D. Gupta recitals show that the agreement for sale was entered into on 3-9-1980. The completion certificate of the building was obtained on 28-8-1981, payment of Rs 1,50,000 made before execution of the sale deed on various dates from 3-8-1980 to 20-11-1981 by means of cheques except one payment of Rs 10,000 made by cash on 3-9-1980. Balance amount of consideration of Rs 30,000 was paid at the time of registration of the sale deed. In the sale deed there is no mention of any civil suit respecting this property pending in the High Court. Rather it is stated that the vendor had constructed various floors and had assured/represented to the vendee that she had a good and marketable title to the property and the same was free from all sorts of liens, charges, encumbrances or other like burdens, and in case any defect in the title of the vendor was later on proved, the vendor undertook to compensate the vendee for all losses, damages and claims, which might be caused to him in this regard. In the other sale deed dated 2-12-1982 executed in favour of the son-in-law of P.D. Gupta, which was filed during the course of the hearing of this appeal, it is mentioned that after obtaining completion certificate on 28-8-1981 Vidya Wati let out the second floor of the property comprising five rooms, kitchen, two bathrooms on a monthly rent of rupees five hundred to Suraj Bhan Gupta. Recitals to this deed show that in order to fetch a better price Vidya Wati agreed to sell the property being on the second floor which according to her was not giving good returns for consideration of Rs 1,75,000 to Suresh Kumar Gupta. Now this Suresh Kumar Gupta, son-in-law of P.D. Gupta, is no other person than the son of Suraj Bhan Gupta, the tenant. There is no mention of any agreement to sell in this sale deed but what we find is that first payment of Rs 20,000 towards consideration was made on 5-11-1981, second payment of Rs 25,000 on 20-2-1982 and third of Rs 30,000 on 26-4-1982. Balance payment has been made at the time of execution of the sale deed on 2-12-1982.

10. The Bar Council of India has taken note of the following facts:

1. P.D. Gupta claims to know Vidya Wati since 1980 when SrikishanDass was alive. He knew Vidya Wati closely and yet contradictory stands were taken by Vidya Wati when she varyingly described herself as half-blood sister, real sister or stepsister of

SrikishanDass. These contradictory stands in fact cast doubt on the very existence of Vidya Wati herself. This also created doubt about bona fides of P.D. Gupta who seemed to be a family lawyer of Vidya Wati.

2. P.D. Gupta knew that the property purchased by him from Vidya Wati was the subject-matter of litigation and title of Vidya Wati to that property was in doubt.

3. Huge property situated in Daryaganj was purchased by P.D. Gupta for a mere sum of Rs 1,80,000 in 1982.

4. The agreement for sale of property was entered into as far back on 3-9-1980 and P.D. Gupta had been advancing money to Vidya Wati from time to time which went to show that as per the version of P.D. Gupta he knew Vidya Wati quite well. When P.D. Gupta knew Vidya Wati so closely how could Vidya Wati take contradictory stands vis-à-vis her relationship with SrikishanDass?

11. The Bar Council of India was thus of the view that the conduct of P.D. Gupta in the circumstances was unbecoming of professional ethics and conduct. The Bar Council of India also observed:

“It is an acknowledged fact that a lawyer conducting the case of his client has a commanding status and can exert influence on his client. As a member of the Bar it is in our common knowledge that lawyers have started contracting with the clients and enter into bargains that in case of success he will share the result. A number of instances have been found in the cases of Motor Accident Claims. No doubt there is no bar for a lawyer to purchase property but on account of common prudence specially a law-knowing person will never prefer to purchase the property, the title of which is under doubt.”

Finally it said:

“But for the purpose of the present complaint, having regard to all the facts and circumstances of the case, the Committee is of the opinion that the conduct of the respondent is patently unbecoming of a lawyer and against professional ethics. Consequently, we feel that as an exemplary punishment, Shri P.D. Gupta should be suspended from practice for a period of one year so that other erring lawyers should learn a lesson and refrain themselves from indulging in such practice.”

12. The question which arises for consideration is:

In view of the aforementioned facts is P.D. Gupta guilty of professional or other misconduct and if so is the punishment awarded to him disproportionate to the professional or other misconduct of which he has been found guilty?

13. Mr Y.K. Jain, learned counsel appearing for the appellant P.D. Gupta, submitted that if in a case like this it was held that a lawyer was guilty of professional misconduct particularly on a complaint filed by an interested person like Ram Murti no lawyer would be able to conduct henceforth the case of his client fearlessly. Mr Jain said that the aggrieved person, if any, in this case would have been either Vidya Wati, her daughter Maya Devi or her grandson Anand Prakash Bansal and neither of them had complained. It was also submitted that though the property was purchased by P.D. Gupta in late 1982 the complaint by Ram Murti was filed only on 16-12-1992. Mr Jain explained that as to how Vidya Wati had been varying described in various litigations

was on account of instruction from her or her attorney and it was no fault of P.D. Gupta on that account. Then it was submitted that no specific charges had been framed in the disciplinary proceedings which had caused prejudice to P.D. Gupta in the conduct of his defence. Lastly, it was contended that P.D. Gupta was no longer concerned with the property as he had sold away the same.

14. There appears to be no substance in the submissions of Mr Jain. P.D. Gupta was fully aware of the allegations he was to meet. It was not a complicated charge. He has been sufficiently long in practice. The argument that a charge had not been formulated appears to be more out of the discontentment of P.D. Gupta in being unable to meet the allegation. Now, P.D. Gupta says that he has washed his hands off the property and thus he is not guilty of any misconduct. That is not the issue. It is his conduct in buying the property, the subject-matter of litigation between the parties, from his client on which he could exercise undue influence especially when there was a doubt cast on his client's title to the property. Had P.D. Gupta sold the property back to Vidya Wati and got the sale deed in his favour cancelled something could have been said in his favour. But that is not so. He sold the property to a third person, made profit and created more complications in the pending suit. P.D. Gupta purchased the properties which were the subject-matter of the dispute for himself and also for his son-in-law at almost throw-away prices and thus he himself became a party to the litigation. The conduct of P.D. Gupta cannot be said to be above board. It is not material that Vidya Wati or anyone claiming through her has not complained against him. We are concerned with the professional conduct of P.D. Gupta as a lawyer conducting the case for his client. A lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns the Bar as well. The Bar is the principal ground for recruiting Judges. No one should be able to raise a finger about the conduct of a lawyer. While conducting the case he functions as an officer of the court. Here, P.D. Gupta in buying the property has in effect subverted the process of justice. His action has raised serious questions about his fairness in the conduct of the trial touching his professional conduct as an advocate. By his action he has brought the process of administration of justice into disrepute.

15. The Bar Council of India and the State Bar Councils are statutory bodies under the Act. These bodies perform varying functions under the Act and the rules framed thereunder. The Bar Council of India has laid standards of professional conduct for the members. The code of conduct in the circumstances can never be exhaustive. The Bar Council of India and the State Bar Councils are representative bodies of the advocates on their rolls and are charged with the responsibility of maintaining discipline amongst members and punishing those who go astray from the path of rectitude set out for them. In the present case the Bar Council of India, through its Disciplinary Committee, has considered all the relevant circumstances and has come to the conclusion that P.D. Gupta, Advocate is guilty of misconduct and we see no reason to take a different view. We also find no ground to interfere with the punishment awarded to P.D. Gupta in the circumstances of the case.

17. The appeal is dismissed.

\* \* \* \* \*

***Kaushal Kishore Awasthi v. Balwant Singh Thakur and Ors.***

AIR 2018 SC 199

**Judges/Coram:**

*A.K. Sikri and Ashok Bhushan, JJ.*

**JUDGMENT**

1. Respondent No. 1 herein (the complainant) had lodged a complaint with the Bar Council of Chhattisgarh (hereinafter referred to as the 'State Bar Council') on 19.12.2003 against the Appellant, who is an Advocate by profession, alleging that the Appellant had acted in a manner which amounts to professional misconduct. On that basis, the complainant pleaded that disciplinary action be taken against the Appellant. Taking cognizance of the said complaint, a Disciplinary Committee was constituted as the reply dated 03.02.2006 filed by the Appellant was found not to be satisfactory. After recording the evidence and hearing the parties, the Disciplinary Committee passed final orders dated 09.12.2006 holding the Appellant guilty of professional misconduct and, on that basis, imposed punishment by suspending his license of practice for a period of two years. The Appellant preferred statutory appeal against the said decision of the State Bar Council before the Bar Council of India (BCI). Vide the impugned judgment, the BCI has affirmed the finding of the State Bar Council as far as holding the Appellant guilty of misconduct is concerned. However, it has reduced the term of suspension of license from 2 years to one year along with cost of Rs. 25,000/- to be paid to the complainant. Against this order of the BCI, the present appeal is preferred by the Appellant.

2. A neat plea which is taken by the learned Counsel for the Appellant is that even if the allegations contained in the complaint are taken to be correct on its face value, these do not amount to committing any misconduct as per the provisions of the Advocates Act and Rules framed thereunder. We are, therefore, confined to this aspect in the present appeal.

3. From the complaint which was lodged by the complainant before the State Bar Council it can be discerned that his allegation was that there was a family dispute, i.e., between the complainant and his brothers, in respect of a property which was in the name of their father and was an ancestral property. It was stated that after the death of their father on 11.10.1989, the said property was divided by the three brothers equally. However, it transpired that before his death, one of the brothers of the complainant influenced his father and got registered the said property in the name of the complainant's nephew, i.e., son of that brother, without the consent of other brothers vide sale deed dated 25.07.1989. The complainant had approached the Appellant, who is an Advocate, for filing the Suit for declaration to declare that the sale deed was null and void as it was prepared fraudulently. The Appellant acted as his Advocate and filed the Suit. In the said Suit, the parties settled the matter as they agreed for declaring the sale deed as ineffective and requested the Court for division of the property. This resulted in passing of decree dated 24.10.1994 by the Court in which the complainant was declared owner of 0.03 acres along with kutchha house out of the disputed property. Till this stage, there is no quarrel and there is no allegation against the Appellant as far as his conducting the said Suit is concerned. However, the complainant further alleged that owing to family crises, the complainant suffered some financial crunch in the month of April, 2003, and he decided to sell his share of land to one Mr. Narsinghmal, son of Surajmal, for a sum of Rs. 30,000/- and for the purpose of registration of sale deed, he produced the earlier sale deed before

the office of the Deputy Registrar, Dantewada. At that stage, the Appellant produced objection letter against the proposed sale deed and objected for registration of the said sale deed on the ground that the complainant did not have full ownership of the proposed land and the market value was also shown less in the said sale deed. It was stated by the complainant that the Appellant was neither an interested party in the said sale deed or in the proposed sale of the land nor was he authorised by any. party to raise objections. This act of the Appellant in appearing before the office of the Deputy Registrar and objecting to the registration of sale deed was labelled as professional misconduct by alleging that the Appellant had paid a sum of Rs. 20,000/- to the complainant in the year 1996 and Anr. sum of Rs. 20,000/- to the son of the complainant in the year 1999 and for repayment of the said amount, the complainant had offered half share of the subject land as security. His justification for raising objection, therefore, was that since the land was being sold without clearing his debt, it could not be done.

4. Without prejudice to his defence, the learned Counsel for the Appellant submitted that even if the aforesaid contents in the complaint are accepted as correct, the act of the Appellant was not as an Advocate and, therefore, could not amount to committing misconduct. In order to appreciate this contention one may refer to Rule 22 under Chapter II of the Standards of Professional Conduct and Etiquette framed by the BCI in exercise of its power Under Section 49(1)(c) of the Advocates Act, 1961. This Rule reads as under:

**22.** An advocate shall not, directly or indirectly, bid for or purchases, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in the execution of a decree or order in any suit, appeal or other proceeding in which he was in any way professionally engaged. This prohibition, however, does not prevent an advocate from bidding for or purchasing for his client any property which his client may himself legally bid for or purchase, provided the Advocate is expressly authorised in writing in this behalf.

5. Section 35 of the Advocates Act, 1961, as per which punishment can be awarded to an Advocate for misconduct makes the following reading:

**35.** Punishment of advocates for misconduct.--

...

...

...

6. It is very clear from the provisions of Section 35 that punishment can be awarded to an Advocate if he is found guilty of professional or other misconduct. Rule 22 is the relevant Rule in the instant case which proscribes an Advocate from directly or indirectly making a bid for or purchase either in his own name or in other's name for his own benefit or for the benefit of any other person any property sold in the execution of a decree or order in any suit, appeal or other proceedings in which he was in any way professionally engaged.

7. Admittedly, in the instant case, the complainant was selling the property to the intending buyer which was an arrangement between them unconnected with any legal proceedings. The said

property was not being sold in execution of any decree, in which proceedings the Appellant was engaged, as noted above. Insofar as the filing of the Suit by the Appellant on behalf of the complainant is concerned, that had resulted into passing of decree and the proceedings had concluded. Even as per the complainant's own admission, it is much thereafter that the complainant intended to sell the property in question when he found himself in need of money. It is this sale which the Appellant tried to interdict. He was not doing so in the capacity of an Advocate. As per him, the complainant was not authorised to sell the property without repaying his debt. Whether the Appellant was right in this submission or not, is not relevant. What is relevant is that this act has nothing to do with the professional conduct of the Appellant.

8. Therefore, the very initiation of disciplinary proceedings against the Appellant by the State Bar Council was improper and without jurisdiction.

9. We, accordingly, allow this appeal and set aside the impugned orders passed by the Bar Council of India.

***T.C. Mathai v. District & Sessions Judge, Thiruvananthapuram***

(1999) 3 SCC 614

**K.T. THOMAS, J.** - 2. The appellant claims to be the power-of-attorney holder of a couple (husband and wife) now living in Kuwait. He sought permission of the Sessions Court, Trivandrum to appear and plead on behalf of the said couple who are arrayed as respondents in a criminal revision petition filed before the said Sessions Court (they will be referred to as the respondent-couple). But the Sessions Judge declined to grant permission as the request for such permission did not emanate from the respondent-couple themselves. Thereupon the appellant moved the High Court of Kerala under Article 226 of the Constitution for issuance of a direction to the Sessions Judge concerned to grant the permission sought for. A Single Judge of the High Court dismissed the original petition against which the appellant filed a writ appeal which too was dismissed by a Division Bench of the High Court.

3. Undeterred by the successive setback in securing a right of audience on behalf of the aforesaid couple the appellant travelled a long distance from the southern end of the country right up to the national capital to personally argue before the Apex Court that he is entitled to plead for the respondent-couple in the Sessions Court. We heard the appellant-in-person though we are still now unable to appreciate why he, instead of incurring so much expenses and strain, did not advise the respondent-couple to engage a counsel for pleading their cause before the Sessions Court.

4. The appellant, during the course of his arguments, referred to a commentary on criminal law to support his contention that a power-of-attorney holder has all powers to act on behalf of his principal. We would assume that the respondent-couple would have executed an instrument of power of attorney empowering the appellant to act on their behalf. Can he become a pleader for the respondent-couple on the strength of it?

5. Section 303 of the Code of Criminal Procedure (“the Code”) entitles a person to the right of being defended by a “pleader” of his choice when proceedings are initiated against him under the Code. “Pleader” is defined in Section 2(q) as thus:

“2.(q) ‘pleader’, when used with reference to any proceeding in any court, means a person authorised by or under any law for the time being in force, to practise in such court, and includes any other person appointed with the permission of the court to act in such proceeding;”

6. The definition envelopes two kinds of pleaders within its ambit. The first refers to legal practitioners who are authorised to practise law and the second refers to “any other person”. If it is the latter, its essential requisite is that such person should have been appointed with the permission of the court to act in such proceedings. This is in tune with Section 32 of the Advocates Act, 1961 which empowers a court to permit any person, who is not enrolled as an advocate to appear before it in any particular case. But if he is to plead for another person in a criminal court, such permission should be sought for by that person.

7. It is not necessary that the “pleader” so appointed should be the power-of-attorney holder of the party in the case. What seems to be a condition precedent is that his appointment should have been preceded by grant of permission of the court. It is for the court to consider whether such permission is necessary in the given case and whether the person proposed to be appointed is capable of helping the court by pleading for the party, for arriving at proper findings on the issues involved in the case.



8. The work in a court of law is a serious and responsible function. The primary duty of a criminal court is to administer criminal justice. Any lax or wayward approach, if adopted towards the issues involved in the case, can cause serious consequences for the parties concerned. It is not just somebody representing the party in the criminal court who becomes the pleader of the party. In the adversary system which is now being followed in India, both in civil and criminal litigation, it is very necessary that the court gets proper assistance from both sides.

9. Legally qualified persons who are authorised to practise in the courts by the authority prescribed under the statute concerned can appear for parties in the proceedings pending against them. No party is required to obtain prior permission of the court to appoint such persons to represent him in court. Section 30 of the Advocates Act confers a right on every advocate whose name is entered in the Roll of Advocates maintained by a State Bar Council to practise in all the courts in India including the Supreme Court. Section 33 says that no person shall be entitled to practise in any court unless he is enrolled as an advocate under that Act. Every advocate so enrolled becomes a member of the Bar. The Bar is one of the main wings of the system of justice. An advocate is the officer of the court and is hence accountable to the court. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession.

10. But if the person proposed to be appointed by the party is not such a qualified person, the court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for Parliament for fixing such a filter in the definition clause [Section 2(g) of the Code] that prior permission must be secured before a non-advocate is appointed by the party to plead his cause in the court, is to enable the court to verify the level of equipment of such a person for pleading on behalf of the party concerned.

11. V.R. Krishna Iyer, J. had occasion to deal with a similar matter while considering a plea like this in a chamber proceeding in the Supreme Court. In that case, a party sought permission to be represented by another person in a criminal case. Learned Judge then struck a note of caution in the following terms in *Harishankar Rastogi v. Girdhari Sharma* [AIR 1978 SC 1019]:

“If the man who seeks to represent has poor antecedents or irresponsible behaviour or dubious character, the court may receive counter-productive service from him. Justice may fail if a knave were to represent a party. Judges may suffer if quarrelsome, ill-informed or blackguardly or blockheadedly private representatives filing arguments at the court. Likewise, the party himself may suffer if his private representative deceives him or destroys his case by mendacious or meaningless submissions and with no responsibility or respect for the court. Other situations, settings and disqualifications may be conceived of where grant of permission for a private person to represent another may be obstructive, even destructive of justice.”

12. The appellant submitted that he is the duly appointed attorney of the respondent-couple by virtue of an instrument of power of attorney executed by them and on its strength he contended that his right to represent the respondent-couple in the court would be governed by the said authority in the instrument.

14. Under the English law, “every person who is sui juris has a right to appoint an agent for any purpose whatsoever, and he can do so when he is exercising statutory right no less than when he is exercising any other right”. But this Court has pointed out that the aforesaid common law principle does not apply where the act to be performed is personal in character, or when it is annexed to a public office or to an office involving any fiduciary obligation,

15. Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party-in-person. When the Code requires

the appearance of an accused in a court it is no compliance with it if a power-of-attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with “the personal attendance of the accused, and permit him to appear by his pleader” if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power-of-attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case.

16. In this context reference can be made to a decision rendered by a Full Bench of the Madras High Court in *M. Krishnammal v. T. Balasubramania Pillai* [AIR 1937 Mad 937], when a person, who was the power-of-attorney holder of another, claimed right of audience in the High Court on behalf of his principal. A Single Judge referred three questions to be considered by the Full Bench, of which the one which is relevant here was whether an agent with the power of attorney to appear and conduct judicial proceedings has the right of audience in court. Beasley, C.J., who delivered the judgment on behalf of the Full Bench stated the legal position thus: (AIR Headnote)

“An agent with a power of attorney to appear and conduct judicial proceedings, but who has not been so authorised by the High Court, has no right of audience on behalf of the principal, either in the appellate or original side of the High Court. ... There is no warrant whatever for putting a power of attorney given to a recognized agent to conduct proceedings in court in the same category as a vakalat given to a legal practitioner, though latter may be described as a power of attorney [which] is confined only to pleaders, i.e., those who have a right to plead in courts.”

17. The aforesaid observations, though stated sixty years ago, would represent the correct legal position even now. Be that as it may, an agent cannot become a “pleader” for the party in criminal proceedings, unless the party secures permission from the court to appoint him to act in such proceedings. The respondent-couple have not even moved for such a permission and hence no occasion has arisen so far to consider that aspect.

18. The appeal is accordingly dismissed.

## ***R.D. Saxena v. Balram Prasad Sharma***

(2000) 7 SCC 264

**K.T. THOMAS, J.** (*for himself and Sethi, J.*) The main issue posed in this appeal has sequential importance for members of the legal profession. The issue is this: has the advocate a lien for his fees on the litigation papers entrusted to him by his client? In this case the Bar Council of India, without deciding the above crucial issue, has chosen to impose punishment on a delinquent advocate debarring him from practising for a period of 18 months and a fine of Rs 1000. The advocate concerned was further directed to return all the case bundles which he got from his respondent client without any delay. This appeal is filed by the said advocate under Section 38 of the Advocates Act, 1961.

The appellant, now a septuagenarian, has been practising as an advocate mostly in the courts at Bhopal, after enrolling himself as a legal practitioner with the State Bar Council of Madhya Pradesh. According to him, he was appointed as legal advisor to Madhya Pradesh State Cooperative Bank Ltd. (“the Bank” for short) in 1990 and the Bank continued to retain him in that capacity during the succeeding years. He was also engaged by the said Bank to conduct cases in which the Bank was a party. However, the said retainership did not last long. On 17-7-1993 the Bank terminated the retainership of the appellant and requested him to return all the case files relating to the Bank. Instead of returning the files the appellant forwarded a consolidated bill to the Bank showing an amount of Rs 97,100 as the balance payable by the Bank towards the legal remuneration to which he is entitled. He informed the Bank that the files would be returned only after settling his dues.

3. Correspondence went on between the appellant and the Bank regarding the amount, if any, payable to the appellant as the balance due to him. The respondent Bank disclaimed any liability outstanding from them to the appellant. The dispute remained unresolved and the case bundles never passed from the appellant’s hands. As the cases were pending the Bank was anxious to have the files for continuing the proceedings before the courts/tribunals concerned. At the same time the Bank was not disposed to capitulate to the terms dictated by the appellant which they regarded as grossly unreasonable. A complaint was hence filed by the Managing Director of the Bank, before the State Bar Council (Madhya Pradesh) on 3-2-1994. It was alleged in the complaint that the appellant is guilty of professional misconduct by not returning the files to his client.

4. In the reply which the appellant submitted before the Bar Council he admitted that the files were not returned but claimed that he has a right to retain such files by exercising his right of lien and offered to return the files as soon as payment is made to him.

5. The complaint was then forwarded to the Disciplinary Committee of the District Bar Council. The State Bar Council failed to dispose of the complaint even after the expiry of one year. So under Section 36-B of the Advocates Act the proceedings stood transferred to the Bar Council of India. After holding inquiry the Disciplinary Committee of the Bar Council of India reached the conclusion that the appellant is guilty of professional misconduct. The Disciplinary Committee has stated the following in the impugned order:

“On the basis of the complaint as well as the documents available on record we are of the opinion that the respondent is guilty of professional misconduct and thereby he is liable for punishment. The complainant is a public institution. It was the duty of the respondent to return the briefs to the Bank and also to appear before the Committee to revert his allegations made in application dated 8-11-1995. No such attempt was made by him.”

6. In this appeal learned counsel for the appellant contended that the failure of the Bar Council of India to consider the singular defence set up by the appellant i.e. he has a lien over the files for his unpaid fees due to him, has resulted in miscarriage of justice. The Bank contended that there was no fee payable to the appellant and the amount shown by him was on account of inflating the fees. Alternatively, the respondent contended that an advocate cannot retain the files after the client terminated his engagement and that there is no lien on such files.

7. We would first examine whether an advocate has lien on the files entrusted to him by the client. Learned counsel for the appellant endeavoured to base his contention on Section 171 of the Indian Contract Act which reads thus:

“171. Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.”

8. Files containing copies of the records (perhaps some original documents also) cannot be equated with the “goods” referred to in the section. The advocate keeping the files cannot amount to “goods bailed”. The word “bailment” is defined in Section 148 of the Contract Act as the delivery of goods by one person to another for some purpose, upon a contract that they shall be returned or otherwise disposed of according to the directions of the person delivering them, when the purpose is accomplished. In the case of litigation papers in the hands of the advocate there is neither delivery of goods nor any contract that they shall be returned or otherwise disposed of. That apart, the word “goods” mentioned in Section 171 is to be understood in the sense in which that word is defined in the Sale of Goods Act.

9. Thus understood “goods” to fall within the purview of Section 171 of the Contract Act should have marketability and the person to whom they are bailed should be in a position to dispose of them in consideration of money. In other words the goods referred to in Section 171 of the Contract Act are saleable goods. There is no scope for converting the case files into money, nor can they be sold to any third party. Hence, the reliance placed on Section 171 of the Contract Act has no merit.

10. In England the solicitor had a right to retain any deed, paper or chattel which had come into his possession during the course of his employment. It was the position in common law and it was later recognized as the solicitor’s right under the Solicitors Act, 1860.

12. After independence the position would have continued until the enactment of the Advocates Act, 1961 which has repealed a host of enactments including the Indian Bar Council Act. When the new Bar Council of India came into existence it framed rules called the Bar Council of India Rules as empowered by the Advocates Act. Such Rules contain provisions specifically prohibiting an advocate from adjusting the fees payable to him by a client against his own personal liability to the client. As a rule an advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client (vide Rule 24). In this context a reference can be made to Rules 28 and 29.

13. Thus, even after providing a right for an advocate to deduct the fees out of any money of the client remaining in his hand at the termination of the proceeding for which the advocate was engaged, it is important to notice that no lien is provided on the litigation files kept with him. In the conditions prevailing in India with lots of illiterate people among the litigant public it may not be advisable also to permit the counsel to retain the case bundle for the fees claimed by him. Any such lien if permitted would become susceptible to great abuses and exploitation.

14. There is yet another reason which dissuades us from giving approval to any such lien. We are sure that nobody would dispute the proposition that the cause in a court/tribunal is far more important for all concerned than the right of the legal practitioner for his remuneration in respect of the services rendered for espousing the cause on behalf of the litigant. If a need arises for the litigant to change his counsel *pendente lite*, that which is more important should have its even course flow unimpeded. Retention of records for the unpaid remuneration of the advocate would impede such course and the cause pending judicial disposal would be badly impaired. If a medical practitioner is allowed a legal right to withhold the papers relating to the treatment of his patient which he thus far administered to him for securing the unpaid bill, that would lead to dangerous consequences for the uncured patient who is wanting to change his doctor. Perhaps the said illustration may be an overstatement as a necessary corollary for approving the lien claimed by the legal practitioner. Yet the illustration is not too far-fetched. No professional can be given the right to withhold the returnable records relating to the work done by him with his client's matter on the strength of any claim for unpaid remuneration. The alternative is that the professional concerned can resort to other legal remedies for such unpaid remuneration.

15. A litigant must have the freedom to change his advocate when he feels that the advocate engaged by him is not capable of espousing his cause efficiently or that his conduct is prejudicial to the interest involved in the *lis*, or for any other reason. For whatever reason, if a client does not want to continue the engagement of a particular advocate it would be a professional requirement consistent with the dignity of the profession that he should return the brief to the client. It is time to hold that such obligation is not only a legal duty but a moral imperative.

16. In civil cases, the appointment of an advocate by a party would be deemed to be in force until it is determined with the leave of the court [vide Order 3 Rule 4(1) of the Code of Civil Procedure]. In criminal cases, every person accused of an offence has the right to consult and be defended by a legal practitioner of his choice which is now made a fundamental right under Article 22(1) of the Constitution. The said right is absolute in itself and it does not depend on other laws. The words "of his choice" in Article 22(1) indicate that the right of the accused to change an advocate whom he once engaged in the same case, cannot be whittled down by that advocate by withholding the case bundle on the premise that he has to get the fees for the services already rendered to the client.

17. If a party terminates the engagement of an advocate before the culmination of the proceedings that party must have the entire file with him to engage another advocate. But if the advocate who is changed midway adopts the stand that he would not return the file until the fees claimed by him are paid, the situation perhaps may turn to dangerous proportions. There may be cases when a party has no resources to pay the huge amount claimed by the advocate as his remuneration. A party in a litigation may have a version that he has already paid the legitimate fee to the advocate. At any rate if the litigation is pending the party has the right to get the papers from the advocate whom he has changed so that the new counsel can be briefed by him effectively. In either case it is impermissible for the erstwhile counsel to retain the case bundle on the premise that fees were yet to be paid.

18. Even if there is no lien on the litigation papers of his client an advocate is not without remedies to realise the fee which he is legitimately entitled to. But if he has a duty to return the files to his client on being discharged the litigant too has a right to have the files returned to him, more so when the remaining part of the *lis* has to be fought in the court. This right of the litigant is to be read as the corresponding counterpart of the professional duty of the advocate.

19. Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression “misconduct, professional or otherwise”. The word “misconduct” is a relative term. It has to be considered with reference to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct.

20. *Corpus Juris Secundum* contains the following passage at p.740 (Vol. 7):

“Professional misconduct may consist in betraying the confidence of a client, in attempting by any means to practise a fraud or impose on or deceive the court or the adverse party or his counsel, and in fact in any conduct which tends to bring reproach on the legal profession or to alienate the favourable opinion which the public should entertain concerning it.”

23. We, therefore, hold that the refusal to return the files to the client when he demanded the same amounted to misconduct under Section 35 of the Act. Hence, the appellant in the present case is liable to punishment for such misconduct.

24. However, regarding the quantum of punishment we are disposed to take into account two broad aspects:

(1) This Court has not pronounced, so far, on the question whether the advocate has a lien on the files for his fees.

(2) The appellant would have bona fide believed, in the light of decisions of certain High Courts, that he did have a lien.

In such circumstances it is not necessary to inflict a harsh punishment on the appellant. A reprimand would be sufficient in the interest of justice on the special facts of this case.

25. We, therefore, alter the punishment to one of reprimanding the appellant. However, we make it clear that if any advocate commits this type of professional misconduct in future he would be liable to such quantum of punishment as the Bar Council will determine and the lesser punishment imposed now need not be counted as a precedent.

***D.P. Chadha v. Triyugi Narain Mishra***

(2001) 2 SCC 221

**R.C. LAHOTI, J.** - Shri D.P. Chadha, Advocate, the appellant, has been held guilty of professional misconduct by the Rajasthan State Bar Council and punished with suspension from practice for a period of five years. Shri Anil Sharma, Advocate was also proceeded against along with Shri D.P. Chadha, Advocate and he too having been found guilty was reprimanded. An appeal preferred by Shri D.P. Chadha, Advocate under Section 37 of the Advocates Act, 1961 has not only been dismissed but the Bar Council of India has chosen to vary the punishment of the appellant by enhancing the period of suspension from practice to ten years. The Bar Council of India has also directed notice to show cause against enhancement of punishment to be issued to Shri Anil Sharma, Advocate. The Bar Council of India has further directed proceedings for professional misconduct to be initiated against one Shri Rajesh Jain, Advocate. Shri D.P. Chadha, Advocate has preferred this appeal under Section 38 of the Advocates Act, 1961 ("the Act").

2. It is not disputed that Upasana Construction Pvt. Ltd. had filed a suit for ejectment based on landlord-tenant relationship against the complainant Shri TriyugiNarain Mishra, who was running a school in the tenanted premises wherein about 2000 students were studying. Shri D.P. Chadha was engaged by the complainant for defending him in the suit.

3. It is not necessary to set out in extenso the contents of the complaint made by Shri TriyugiNarain Mishra to the Bar Council. It would suffice to notice in brief the findings concurrently arrived at by the State Bar Council and the Bar Council of India constituting the gravamen of the charge against the appellant. While the proceedings in the ejectment suit were going on in the civil court at Jaipur, the complainant was contesting an election in the State of U.P. Polling was held on 18-11-1993 and again on 22-11-1993 on which dates as also on the days intervening, Shri TriyugiNarain Mishra was in Chilpur in the State of U.P. looking after the election and was certainly not available at Jaipur. Shri D.P. Chadha was in possession of a blank vakalatnama and a blank paper, both signed by the complainant, given to him in the first week of October 1993. These documents were used for fabricating a compromise petition whereby the complainant has been made to suffer a decree for eviction. The blank vakalatnama was used for engaging Shri Anil Sharma, Advocate, on behalf of the complainant, who got the compromise verified. Though the compromise was detrimental to the interest of the complainant yet the factum of compromise and its verification was never brought to the notice of the complainant in spite of ample time and opportunity being available for the purpose. The proceedings of the court show a deliberate attempt having been made by three erring advocates to avoid the appearance of the complainant before the court, to prevent the complainant from gathering knowledge of the compromise filed in court and creating a situation whereby the court was virtually compelled to pass a decree though the court was feeling suspicious of the compromise and wanted presence of the complainant to be secured before it before the decree was passed.

4. The proceedings of the court and the several documents relating thereto, go to show that earlier the plaintiff Company was being represented by Shri Vidya Bhushan Sharma, Advocate. An application was moved on behalf of the plaintiff discharging Shri Vidya Bhushan Sharma from the case and instead engaging Shri Rajesh Jain, Advocate on behalf of the plaintiff and in place of Shri Vidya Bhushan Sharma, Advocate. On 17-11-1993 Shri D.P. Chadha was present in the court though the defendant was not present when an adjournment was taken from the court stating that there was possibility of an amicable settlement between the parties whereupon hearing was adjourned to 14-2-1994 for reporting compromise or framing of issues. On 20-11-1993, which was

not a date fixed for hearing, Shri Rajesh Jain and Shri Anil Sharma, Advocates appeared in the court on behalf of the plaintiff and the defendant respectively and filed a compromise petition. Shri Anil Sharma filed Vakalatnama purportedly on behalf of the complainant.

5. The compromise petition purports to have been signed by the parties as also by Shri Rajesh Jain, Advocate on behalf of the plaintiff and Shri Anil Sharma, Advocate on behalf of the defendant. The compromise petition is accompanied by another document purporting to be a receipt executed by the complainant acknowledging receipt of an amount of Rs. 5 lakhs by way of damages for the loss of school building standing on the premises. The receipt is typed but the date 20-11-1993 is written in hand. A revenue stamp of 20 p is fixed on the receipt in a side of the paper and at a place where ordinarily the ticket is not affixed. The factum of the defendant having received an amount of Rs 5 lakhs as consideration amount for the compromise does not find a mention in the compromise petition.

6. The Learned Additional Civil Judge before whom the compromise petition was filed directed the parties to remain personally present before the court on 17-12-1993 so as to verify the compromise. Instead of complying with the orders, Shri Rajesh Jain, Advocate filed a miscellaneous civil appeal raising a plea that the trial court was not justified in directing personal appearance of the parties and should have recorded the compromise on verification by the advocates. The complainant Shri TriyugiNarain Mishra was impleaded as respondent "through advocate Shri Anil Sharma" - as stated in the cause title of memo of appeal. The appeal was filed on 20-12-1993. Notice of appeal was not issued to the complainant; the same was issued in the name of Shri Anil Sharma, Advocate, who accepted the same. Shri Anil Sharma, Advocate did not file any vakalatnama on behalf of the complainant in the appeal and instead made his appearance by filing a memo of appearance reciting his authority to appear in appeal on the basis of his being a counsel for the complainant in the trial court. This appeal was dismissed by the Learned Additional District Judge on 24-1-1994 holding the appeal to be not maintainable.

7. On 30-1-1994, the trial court's record was returned to it by the appellate court. On 17-12-1993 also the trial court had directed personal appearance of the parties. On 16-2-1994 the counsel appearing for the parties (the names of the counsel not mentioned in the order-sheet dated 16-2-1994) took time for submitting case-law for the perusal of the court. Similar prayer was made on 21-2-1994 and 18-3-1994. On 8-4-1994, the plaintiff was present with his counsel. The defendant/complainant was not present. Shri D.P. Chadha, Advocate appeared on behalf of the defendant and argued that personal presence of Shri TriyugiNarain Mishra was not required for verification of compromise and the presence of the advocate was enough for the court to verify the compromise and take the same on record. The court was requested to recall its earlier order directing personal appearance of the parties. A few decided cases were cited by Shri D.P. Chadha, Advocate before the court for its consideration. The trial court suspected the conduct of the counsel and passed a detailed order directing personal presence of the defendant to be secured before the court. The trial court also directed a notice to be issued to the defendant for his personal appearance on the next date of hearing before passing any order on the compromise petition.

8. Shri Rajesh Jain, Advocate again filed an appeal against the order dated 8-4-1994. Again the complainant was arrayed as a respondent in the cause title "through Shri Anil Sharma, Advocate". An application was moved before the appellate court seeking a shorter date of hearing as the defendant was likely to go out. On 21-8-1994 the appellate court directed the record of the trial court to be requisitioned. Shri Anil Sharma, Advocate appeared in the appellate court without filing any vakalatnama from the complainant. He conceded to the appeal being allowed and personal appearance of the defendant not being insisted upon for the purpose of recording the compromise.



The appellate court was apparently oblivious of the legal position that such a miscellaneous appeal was not maintainable under any provision of law.

9. Certified copy of the order of the appellate court was obtained in hot haste. Unfortunately, the Presiding Officer of the trial court who was dealing with the matter, had stood transferred in the meanwhile. An application was filed before the successor trial Judge by Shri Rajesh Jain, Advocate requesting compliance with the order of the appellate court and to record the compromise and pass a decree in terms thereof, dispensing with the necessity of personal presence of the parties. On 23-7-1994, the trial Judge, left with no other option, passed a decree in terms of compromise in the presence of Shri Rajesh Jain and Shri Anil Sharma, Advocates. The decree directed the suit premises to be vacated by 30-11-1993 (the date stated in the compromise petition).

10. Shri TriyugiNarain Mishra, the complainant, moved the State Bar Council complaining of the professional misconduct of the three advocates who had colluded to bring the false compromise in existence without his knowledge and also made all efforts to prevent the complainant gathering knowledge of the alleged compromise.

11. In response of the notice issued by the State Bar Council, Shri Anil Sharma, Advocate submitted that he did not know Shri TriyugiNarain Mishra personally. The vakalatnama and the compromise petition were handed over to him by Shri D.P. Chadha, Advocate for the purpose of being filed in the court. Shri Anil Sharma was told by Shri D.P. Chadha, Advocate that he was not well and if there was any difficulty in securing the decree then he was available to assist Shri Anil Sharma. In the two miscellaneous civil appeals preferred by Shri Rajesh Jain, Advocate, Shri Anil Sharma accepted the notices of the appeals on the advice of Shri D.P. Chadha, Advocate.

12. Shri D.P. Chadha, Advocate took the plea that he was not aware of the compromise petition and the various proceedings relating thereto, leading to verification of the compromise and passing of the decree. He submitted that he never obtained blank paper or blank vakalatnama signed by anyone at any time and not even Shri TriyugiNarain Mishra, the complainant. He also submitted that on 8-4-1994 his presence had been wrongly recorded in the proceedings and he had not appeared before the court to argue that the personal presence of the parties was not required for verification of compromise petition filed in the court and that the counsel was competent to sign and verify the compromise whereon the court should act.

13. Amongst other witnesses the complainant and the three counsel have all been examined by the State Bar Council and cross-examined by the parties to the disciplinary proceedings. The defence raised by the appellant has been discarded by the State Bar Council as well as by the Bar Council of India in their orders. Both the authorities have dealt extensively with the improbabilities of the defence and assigned detailed reasons in support of the findings arrived at by them. Both the authorities have found the charge against the appellant proved to the hilt. The statement of the complainant has been believed that he had never entered into any compromise and he did not even have knowledge of it. His statement that Shri D.P. Chadha, the appellant, had obtained blank paper and blank vakalatnama signed by him and the same have been utilised for the purpose of fabricating the compromise and appointing Shri Anil Sharma, Advocate, has also been believed. Here it may be noted that Shri D.P. Chadha had denied on oath having obtained any blank paper or vakalatnama from Shri TriyugiNarain Mishra. However, while cross-examining the complainant first he was pinned down in stating that only one paper and one vakalatnama (both blank) were signed by him and then Shri D.P. Chadha produced from his possession one blank vakalatnama and one blank paper signed by the complainant.

The Bar Council has found that the blank paper, so produced by the appellant, bore the signature of the complainant almost at the same place of the blank space at which the signature

appears on the disputed compromise. Production of signed blank vakalatnama and blank paper from the custody of the complainant before the Bar Council belied the appellant's defence emphatically raised in his written statement. On 8-4-1994 the presence of the appellant is recorded by the trial court at least at two places in the order-sheet of that date. It is specifically recorded in the context of his making submissions before the court relying on several rulings to submit that personal appearance of the party was not necessary to have the compromise verified and taken on record. The appellant had not moved the court at any time for correcting the record of the proceedings and deleting his appearance only if the order-sheet did not correctly record the proceedings of the court. On and around the filing of the compromise petition before the trial court the appellant was keeping a watch on the proceedings and noting the appointed dates of hearing though he was not actually appearing in the court on the dates other than 8-4-1994. In short, it has been found both by the State Bar Council and the Bar Council of India that the complainant had not entered into any compromise and that he was not even aware of it. Blank vakalatnama and blank paper entrusted by him in confidence to his counsel, i.e. the appellant, were used for the purpose of bringing a false compromise into existence and appointing Shri Anil Sharma, Advocate for the defendant, without his knowledge, to have compromise verified and brought on record followed by a decree. Shri Vidya Bhushan Sharma, the counsel originally appointed by the plaintiff might not have agreed to a decree being secured in favour of the plaintiff on the basis of a false compromise and that is why he was excluded from the proceedings and instead Shri Rajesh Jain was brought to replace him. The decree resulted into closure of the school, demolition of school building and about 2000 students studying in the school being thrown on the road.

14. We have heard the learned counsel for the parties at length. We have also gone through the evidence and the relevant documents available on record of the Bar Council. We are of the opinion that the State Bar Council as well as the Bar Council of India have correctly arrived at the findings of the fact and we too find ourselves entirely in agreement with the findings so arrived at.

15. In the very nature of things there was nothing like emergency, not even an urgency for securing verification of compromise and passing of a decree in terms thereof. Heavens were not going to fall if the recording of the compromise was delayed a little and the defendant was personally produced in the court who was certainly not available in Jaipur being away in the State of U.P. contesting an election. The counsel for the parties were replaced apparently for no reason. The trial court entertained doubts about the genuineness of the compromise and therefore directed personal appearance of the parties for verification of the compromise. The counsel appearing in the case made all possible efforts at avoiding compliance with the direction of the trial court and to see that the compromise was verified and taken on record culminating into a decree without the knowledge of the defendant/complainant. Instead of securing presence of the defendant before the court, the counsel preferred miscellaneous appeals twice and ultimately succeeded in securing an appellate order, which too is collusive, directing the trial court to verify and take on record the compromise without insisting on personal appearance of the defendant. Such miscellaneous appeal, as was preferred, was not maintainable under Section 104 or Order 43 Rule 1 CPC or any other provision of law. In an earlier round the appellate court had expressed that view. The proceedings in the appellate court as also before the trial court show an effort on the part of the counsel appearing thereat to have the matter as to compromise disposed of hurriedly, obviously with a view to exclude the possibility of the defendant-complainant gathering any knowledge of what was transpiring.

17. *Byram PestonjiGariwala v. Union of India* [AIR 1991 SC 2234] is an authority for the proposition that in spite of the 1976 Amendment in Order 23 Rule 3 CPC which requires agreement or compromise between the parties to be in writing and signed by the parties, the implied authority of counsel engaged in the thick of the proceedings in court, to compromise or agree on matters

relating to the parties, was not taken away. Neither the decision in *Byram Pestonji Gariwala* nor any other authority cited on 8-4-1994 before the trial court dispenses with the need of the agreement or compromise being proved to the satisfaction of the court. In order to be satisfied whether the compromise was genuine and voluntarily entered into by the defendant, the trial court had felt the need of parties appearing in person before the court and verifying the compromise. In the facts and circumstances of the case the move of the counsel resisting compliance with the direction of the court was nothing short of being sinister. The learned Additional District Judge who allowed the appeal preferred by Shri Rajesh Jain unwittingly fell into trap. It was expected of the learned Additional District Judge, who must have been a senior judicial officer, to have seen that he was allowing an appeal which was not even maintainable. But for his order the learned Judge of the trial court would not have taken on record the compromise and passed decree in terms thereof unless the parties had personally appeared before him.

In our opinion the appellant Shri D.P. Chadha was not right in resisting the order of the trial court requiring personal appearance of the defendant for verifying the compromise. The resistance speaks volumes of sinister design working in the minds of the guilty advocates. Even during the course of these proceedings and also during the course of hearing of the appeal before us there is not the slightest indication of any justification behind resistance offered by the counsel to the appearance of the defendant in the trial court. The correctness of the proceedings dated 8-4-1994 as recorded by the court cannot be doubted. The order-sheet of the trial court dated 8-4-1994 records as under:

“8-4-1994

(Cutting). Plaintiff with counsel present. *Defendant's counsel Shri D.P. Chadha present.* Arguments heard. Judicial precedents *Tashi Dorji v. Birendra Kumar Roy* [AIR 1980 Cal 51], *Vishnu Kumar v. State Bank of Bikaner and Jaipur* [AIR 1976 Raj 195], *Byram Pestonji* cited by *Shri D.P. Chadha* perused. In the matter under consideration, compromise was filed on 20-11-1993 and the same day the counsel were directed to keep the parties present in court but parties were not produced. On behalf of the plaintiff-appellant, an appeal was also preferred against the order dated 20-11-1993 before the Hon'ble District and Sessions Judge but the order of trial court being not appealable, appeal has been dismissed.

Para 40 of the decision *Byram Pestonji* is as under:

‘Accordingly, we are of the view that the words ‘in writing and signed by the parties’ inserted by the CPC (Amendment) Act, 1976, must necessarily mean, to borrow the language of Order III Rule 1 CPC:

“any appearance, ...or by a pleader, appearing, applying or acting as the case may be, on his behalf:

Provided that any such appearance shall, if the court so directs, be made by the party in person.”

Thus in my view the court can direct any party to be present in court under Order III Rule 1 in compliance with the said decision of the Hon'ble Supreme Court. The counsel for the defendant has not produced the defendant in court. Therefore, notice be issued to the defendant to appear personally in court. For service of notice, the case be put up on 5-5-1994. Before (cutting) preparing the decree on the basis of compromise, I deem it proper in the interest of justice to direct the opposite party to personally appear in the court.

Sd/- Illegible Seal of Additional Civil Judge and Additional

Chief Judicial Magistrate No. 6, Jaipur City.”

18. The record of the proceedings made by the court is sacrosanct. The correctness thereof cannot be doubted merely for asking. In *State of Maharashtra v. Ramdas Shrinivas Nayak* [AIR 1982 SC 1249], this Court has held:

“(T)he Judges’ record was conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else. The court could not launch into inquiry as to what transpired in the High Court.

The Court is bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. It cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of facts as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there.”

20. The explanation given by the appellant for not moving the trial court for rectification in the record of proceedings is that the presiding Judge of the court had stood transferred and therefore it would have been futile to move for rectification. Such an explanation is a ruse merely. The application for rectification should have been moved as the only course permissible and, if necessary, the record could have been sent to that very Judge for dealing with the prayer of rectification wherever he was posted. In the absence of steps for rectification having been taken a challenge to the correctness of the facts recorded in the order-sheet of the court cannot be entertained, much less upheld. We agree with the finding recorded in the order under appeal that the proceedings dated 8-4-1994 correctly state the appellant having appeared in the court and argued the matter in the manner recited therein.

21. The term “misconduct” has not been defined in the Act. However, it is an expression with a sufficiently wide meaning. In view of the prime position which the advocates occupy in the process of administration of justice and justice delivery system, the courts justifiably expect from the lawyers a high standard of professional and moral obligation in the discharge of their duties. Any act or omission on the part of a lawyer which interrupts or misdirects the sacred flow of justice or which renders a professional unworthy of right to exercise the privilege of the profession would amount to misconduct attracting the wrath of disciplinary jurisdiction.

22. A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to the subject-matter and the context wherein the term is called upon to be employed. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of

righteous stand, more so, when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent. Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practising deception or fraud on the court. The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.

24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that while the Judge holds the reins, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reins, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the court, as they are called - and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but overzealousness and misguided enthusiasm have no place in the personality of a professional.

25. An advocate while discharging duty to his client, has a right to do everything fearlessly and boldly that would advance the cause of his client. After all he has been engaged by his client to secure justice for him. A counsel need not make a concession merely because it would please the Judge. Yet a counsel, in his zeal to earn success for a client, need not step over the well-defined limits of propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms.

26. A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party.

28. We are aware that a charge of misconduct is a serious matter for a practising advocate. A verdict of guilt of professional or other misconduct may result in reprimanding the advocate, suspending the advocate from practice for such period as may be deemed fit or even removing the name of the advocate from the roll of advocates which would cost the counsel his career. Therefore, an allegation of misconduct has to be proved to the hilt. The evidence adduced should enable a finding being recorded without any element of reasonable doubt. In the present case, both the State Bar Council and the Bar Council of India have arrived at, on proper appreciation of evidence, a

finding of professional misconduct having been committed by the appellant. No misreading or non-reading of the evidence has been pointed out. The involvement of the appellant in creating a situation resulting into recording of a false and fabricated compromise, apparently detrimental to the interest of his client, is clearly spelled out by the findings concurrently arrived at with which we have found no reason to interfere. The appellant canvassed a proposition of law before the court by pressing into service such rulings which did not support the interpretation which he was frantically persuading the court to accept. The provisions of Rule 3 of Order 23 are clear. The crucial issue in the case was not the authority of a counsel to enter into a compromise, settlement or adjustment on behalf of the client. The real issue was of the satisfaction of the court whether the defendant had really, and as a matter of fact, entered into settlement. The trial Judge entertained a doubt about it and therefore insisted on the personal appearance of the party to satisfy himself as to the correctness of the factum of compromise and genuineness of the statement that the defendant had in fact compromised the suit in the manner set out in the petition of compromise.

29. The power of the court to direct personal presence of any party is inherent and implicit in jurisdiction vesting in the court to take decision. This power is a necessary concomitant of court's obligation to arrive at a satisfaction and record the same as spelt out from the phraseology of Order 23 Rule 3 CPC. It is explicit in Order 3 Rule 1. This position of law admits of no doubt. Strong resistance was offered to an innocuous and cautious order of the court by canvassing an utterly misconceived proposition, even by invoking a wrong appellate forum and with an ulterior motive. The counsel appearing for the defendant, including the appellant, did their best to see that their own client did not appear in the court and thereby, gather knowledge of such proceedings. At no stage, including the hearing before this Court, the appellant has been able to explain how and in what manner he was serving the interest of his client, i.e. the defendant in the suit by raising the plea which he did. What was the urgency of having the compromise recorded without producing the defendant in person before the court when the court was insisting on such appearance? The compromise was filed in the court. The defendant was away electioneering in his constituency. At best or at the worst, the recording of the compromise would have been delayed by a few days. In the facts and circumstances of the case we find no reason to dislodge the finding of professional misconduct as arrived at by the State Bar Council and the Bar Council of India.

30. It has been lastly contended by the learned counsel for the appellant that the Bar Council of India was not justified in enhancing the punishment by increasing the period of suspension from practice from 5 years to 10 years. It is submitted that the order enhancing the punishment to the prejudice of the appellant is vitiated by non-compliance with principles of natural justice and also for having been passed without affording the appellant a reasonable opportunity of being heard.

32. Very wide jurisdiction has been conferred on the Bar Council of India by sub-section (2) of Section 37. The Bar Council of India may confirm, vary or reverse the order of the State Bar Council and may remit or remand the matter for further hearing or rehearing subject to such terms and directions as it deems fit. The Bar Council of India may set aside an order dismissing the complaint passed by the State Bar Council and convert it into an order holding the advocate proceeded against guilty of professional or other misconduct. In such a case, obviously, the Bar Council of India may pass an order of punishment which the State Bar Council could have passed. While confirming the finding of guilt the Bar Council of India may vary the punishment awarded by the Disciplinary Committee of the State Bar Council which power to vary would include the power to enhance the punishment. An order enhancing the punishment, being an order prejudicially affecting the advocate, the proviso mandates the exercise of such power to be performed only after giving the advocate reasonable opportunity of being heard. The proviso embodies the rule of fair hearing. Accordingly, and consistently with the well-settled principles of natural justice, if the Bar

Council of India proposes to enhance the punishment it must put the guilty advocate specifically on notice that the punishment imposed on him is proposed to be enhanced. The advocate should be given a reasonable opportunity of showing cause against such proposed enhancement and then he should be heard.

33. In the case at hand we have perused the proceedings of the Bar Council of India. The complainant did not file any appeal or application before the Bar Council of India praying for enhancement of punishment. The appeal filed by the appellant was being heard and during the course of such hearing it appears that the Disciplinary Committee of the Bar Council of India indicated to the appellant's counsel that it was inclined to enhance the punishment. This is reflected by the following passage occurring in the order under appeal:

“While hearing the matter finally parties were also heard as to the enhancement of sentence.”

34. The appellant himself was not present on the date of hearing. He had prayed for an adjournment on the ground of his sickness which was refused. The counsel for the appellant was heard in appeal. It would have been better if the Bar Council of India having heard the appeal would have first placed its opinion on record that the findings arrived at by the State Bar Council against the appellant were being upheld by it. Then the appellant should have been issued a reasonable notice calling upon him to show cause why the punishment imposed by the State Bar Council be not enhanced. After giving him an opportunity of filing a reply and then hearing him the Bar Council could have for reasons to be placed on record, enhanced the punishment. No such thing was done. The exercise by the Bar Council of India of power to vary the sentence to the prejudice of the appellant is vitiated in the present case for not giving the appellant reasonable opportunity of being heard. The appellant is about 60 years of age. The misconduct alleged relates to the year 1993. The order of the State Bar Council was passed in December 1995. In the facts and circumstances of the case we are not inclined to remit the matter now to the Bar Council of India for compliance with the requirements of proviso to sub-section (2) of Section 37 of the Act as it would entail further delay and as we are also of the opinion that the punishment awarded by the State Bar Council meets the ends of justice.

35. For the foregoing reasons the appeal is partly allowed. The finding that the appellant is guilty of professional misconduct is upheld but the sentence awarded by the Rajasthan State Bar Council suspending the appellant from practice for a period of five years is upheld and restored. Accordingly, the order of the Bar Council of India, only to the extent of enhancing the punishment, is set aside.

## ***Shambhu Ram Yadav v. Hanuman Das Khattry***

(2001) 6 SCC 1

**Y.K. SABHARWAL, J.** - Legal profession is not a trade or business. It is a noble profession. Members belonging to this profession have not to encourage dishonesty and corruption but have to strive to secure justice to their clients, if it is legally possible. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. There is a heavy responsibility on those on whom duty has been vested under the Advocates Act, 1961 to take disciplinary action when the credibility and reputation of the profession comes under a clout (*sic* cloud) on account of acts of omission and commission by any member of the profession.

A complaint filed by the appellant against the respondent Advocate before the Bar Council of Rajasthan was referred to the Disciplinary Committee constituted by the State Bar Council. In substance, the complaint was that the respondent while appearing as a counsel in a suit pending in a civil court wrote a letter to Mahant Rajgiri, his client *inter alia* stating that another client of his has told him that the Judge concerned accepts bribe and he has obtained several favourable orders from him in his favour; if he can influence the Judge through some other gentleman, then it is a different thing, otherwise he should send to him a sum of Rs 10,000 so that through the said client the suit is got decided in his (Mahant Rajgiri's) favour. The letter further stated that if Mahant can personally win over the Judge on his side then there is no need to spend money. This letter is not disputed. In reply to the complaint, the respondent pleaded that the services of the Presiding Judge were terminated on account of illegal gratification and he had followed the norms of professional ethics and brought these facts to the knowledge of his client to protect his interest and the money was not sent by his client to him. Under these circumstances it was urged that the respondent had not committed any professional misconduct.

3. The State Bar Council noticing that the respondent had admitted the contents of the letter came to the conclusion that it constitutes misconduct. In the order the State Bar Council stated that keeping in view the interest of the litigating public and the legal profession such a practice whenever found has to be dealt with in an appropriate manner. Holding the respondent guilty of misconduct under Section 35 of the Advocates Act, the State Bar Council suspended him from practice for a period of two years with effect from 15-6-1997.

4. The respondent challenged the aforesaid order before the Disciplinary Committee of the Bar Council of India. By order dated 31-7-1999 the Disciplinary Committee of the Bar Council of India comprising of three members enhanced the punishment and directed that the name of the respondent be struck off from the roll of advocates, thus debarring him permanently from the practice. The concluding paragraph of the order dated 31-7-1999 reads thus:

In the facts and circumstances of the case, we also heard the appellant as to the punishment since the advocate has considerable standing in the profession. He has served as an advocate for 50 years and it was not expected of him to indulge in such a practice of corrupting the judiciary or offering bribe to the Judge and he admittedly demanded Rs 10,000 from his client and he orally stated that subsequently order was passed in his client's favour. This is enough to make him totally unfit to be a lawyer by writing the letter in question. We cannot impose any lesser punishment than debarring him permanently from the practice. His name should be struck off from the roll of advocates maintained by the Bar Council of Rajasthan. Hereafter the appellant will not have any right to appear in any court of law, tribunal or before any authority. We also impose a cost of Rs 5000 on the



appellant which should be paid by the appellant to the Bar Council of India which has to be paid within two months.

5. The respondent filed a review petition under Section 44 of the Advocates Act against the order dated 31-7-1999. The review petition was allowed and the earlier order modified by substituting the punishment already awarded permanently debarring him with one of reprimanding him. The impugned order was passed by the Disciplinary Committee comprising of three members of which two were not members of the earlier Committee which had passed the order dated 31-7-1999.

6. The review petition was allowed by the Disciplinary Committee for the reasons, which, in the words of the Committee, are these:

“(1) The Committee was under the impression as if it was the petitioner who had written a letter to his client calling him to bribe the Judge. But a perusal of the letter shows that the petitioner has simply given a reply to the query put by his client regarding the conduct of the Judge and as such it remained a fact that it was not an offer on the side of the delinquent advocate to bribe a Judge. This vital point which touches the root of the controversy seems to have been ignored at the time of the passing of the impugned order.

(2) The petitioner is an old man of 80 years. He had joined the profession in the year 1951 and during such a long innings of his profession, it was for the first time that he conducted himself in such an irresponsible manner although he had no intention to bribe.

(3) The Committee does not approve the writing of such a letter on the part of the lawyer to his client but keeping in view the age and the past clean record of the petitioner in the legal profession the Committee is of the view that it would not be appropriate to remove the advocate permanently from the roll of advocates.... The Committee is of the considered view that ends of justice would be met in case the petitioner is reprimanded for the omission he had committed. He is warned by the Committee that he should not encourage such activities in life and he should be careful while corresponding with his client.

In view of the aforesaid observations, the review petition is accepted and the earlier judgment of the Committee dated 31-7-1999 is modified to the extent and his suspension for life is revoked and he is only reprimanded.”

7. We have perused the record. The original order has been reviewed on non-existent grounds. All the factors taken into consideration in the impugned order were already on record and were considered by the Committee when it passed the order dated 31-7-1999. The power of review has not been exercised by applying well-settled principles governing the exercise of such power. It is evident that the reasons and facts on the basis whereof the order was reviewed had all been taken into consideration by the earlier Committee. The relevant portion of the letter written by the advocate had been reproduced in the earlier order. From that quotation it was evident that the said Committee noticed that the advocate was replying to a letter received from his client. It is not in dispute that the respondent had not produced the letter received by him from his client to which the admitted letter was sent requiring his client to send Rs 10,000 for payment as bribe to the Judge concerned. We are unable to understand as to how the Committee came to the conclusion that any vital point in regard to the letter had been ignored at the time of the passing of the order dated 31-7-1999. The age and the number of years the advocate had put in had also been noticed in the order dated 31-7-1999. We do not know how the Committee has come to the conclusion that the

respondent “had no intention to bribe the Judge”. There is nothing on the record to suggest it. The earlier order had taken into consideration all relevant factors for coming to the conclusion that the advocate was totally unfit to be a lawyer having written such a letter and punishment lesser than debaring him permanently cannot be imposed. The exercise of power of review does not empower a Disciplinary Committee to modify the earlier order passed by another Disciplinary Committee taking a different view of the same set of facts.

8. The respondent was indeed guilty of a serious misconduct by writing to his client the letter as aforesaid. Members of the legal profession are officers of the court. Besides courts, they also owe a duty to the society which has a vital public interest in the due administration of justice. The said public interest is required to be protected by those on whom the power has been entrusted to take disciplinary action. The disciplinary bodies are guardians of the due administration of justice. They have requisite power and rather a duty while supervising the conduct of the members of the legal profession, to inflict appropriate penalty when members are found to be guilty of misconduct. Considering the nature of the misconduct, the penalty of permanent debarment had been imposed on the respondent which without any valid ground has been modified in exercise of power of review. It is the duty of the Bar Councils to ensure that lawyers adhere to the required standards and on failure, to take appropriate action against them. The credibility of a Council including its disciplinary body in respect of any profession whether it is law, medicine, accountancy or any other vocation depends upon how they deal with cases of delinquency involving serious misconduct which has a tendency to erode the credibility and reputation of the said profession. The punishment, of course, has to be commensurate with the gravity of the misconduct.

9. In the present case, the earlier order considering all relevant aspects directed expulsion of the respondent from the profession which order could not be lightly modified while deciding a review petition. It is evident that the earlier Committee, on consideration of all relevant facts, came to the conclusion that the advocate was not worthy of remaining in the profession. The age factor and the factor of number of years put in by the respondent were taken into consideration by the Committee when removal from the roll of the State Council was directed. It is evident that the Bar Council considered that a high standard of morality is required from lawyers, more so from a person who has put in 50 years in the profession. One expects from such a person a very high standard of morality and unimpeachable sense of legal and ethical propriety. Since the Bar Councils under the Advocates Act have been entrusted with the duty of guarding the professional ethics, they have to be more sensitive to the potential disrepute on account of action of a few black sheep which may shake the credibility of the profession and thereby put at stake other members of the Bar. Considering these factors, the Bar Council had inflicted in its earlier order the condign penalty. Under these circumstances, we have no hesitation in setting aside the impugned order dated 4-6-2000 and restoring the original order of the Bar Council of India dated 31-7-1999.

10. The appeal is thus allowed in the above terms with costs quantified at Rs 10,000.\* \* \* \* \*

***Ex-Capt. Harish Uppal v. Union of India***

(2003) 2 SCC 45

**S.N. VARIAVA, J** - All these petitions raise the question whether lawyers have a right to strike and/or give a call for boycott of court/s. In all these petitions a declaration is sought that such strikes and/or calls for boycott are illegal. As the questions vitally concerned the legal profession, public notices were issued to Bar Associations and Bar Councils all over the country. Pursuant to those notices some Bar Associations and Bar Councils have filed their responses and have appeared and made submissions before us.

2. In Writ Petition (C) No. 821 of 1990, an interim order came to be passed. This order is reported in ***Common Cause, A Regd. Society v. Union of India*** [(1995) 1 SCALE 6]. The circumstances under which it is passed and the nature of the interim order are set out in the order. The relevant portion reads as under:

“2. The Officiating Secretary, Bar Council of India, Mr C.R. Balaram filed an affidavit on behalf of the Bar Council of India wherein he states that a ‘National Conference’ of members of the Bar Council of India and State Bar Councils was held on 10-9-1994 and 11-9-1994 and a working paper was circulated on behalf of the Bar Council of India by Mr V.C. Misra, Chairman, Bar Council of India, inter alia on the question of strike by lawyers. In that working paper a note was taken that the Bar Associations had proceeded on strike on several occasions in the past, at times, State-wide or nationwide, and ‘while the profession does not like it as members of the profession are themselves the losers in the process’ and while it is not necessary to sit in judgment over the wider question whether members of the profession can at all go on strike or boycott of courts, it was felt that even if it is assumed that such a right enures to the members of the profession, the circumstances in which such a step should be resorted to should be clearly indicated. Referring to an earlier case before the Delhi High Court, it was stated that the Bar Council of India had made its position clear to the effect

‘(a) the Bar Council of India is against resorting to strike excepting in *rarest of rare* cases involving the dignity and independence of the judiciary as well as of the Bar; and (b) whenever strikes become inevitable, efforts shall be made to keep it short and *peaceful* to avoid causing hardship to the litigant public.’

It was in response to the above that a consensus emerged at the Bar at the hearing of the matter that instead of the court going into the wider question whether or not the members of the legal profession can resort to strike or abstain from appearing in cases in court in which they are engaged, the court may see the working of the interim arrangement and if that is found to be satisfactory it may perhaps not be required to go into the wider question at this stage. Pursuant to the discussion that took place at the last hearing on 30-11-1994, the following suggestions have emerged as an interim measure consistent with the Bar Council of India’s thinking that except in the rarest of rare cases strike should not be resorted to and instead peaceful demonstration may be resorted to avoid causing hardship to the litigant public. The learned counsel suggested that to begin with, the following interim measures may be sufficient for the present:

(1) In the rare instance where any association of lawyers including statutory Bar Councils considers it imperative to call upon and/or advise members of the legal profession to abstain from appearing in courts on any occasion, it must be left open to

any individual member/members of that association to be free to appear without let, fear or hindrance or any other coercive steps.

(2) No such member who appears in court or otherwise practises his legal profession, shall be visited with any adverse or penal consequences whatever, by any association of lawyers, and shall not suffer any expulsion or threat of expulsion therefrom.

(3) The above will not preclude other forms of protest by practising lawyers in court such as, for instance, wearing of armbands and other forms of protest which in no way interrupt or disrupt the court proceedings or adversely affect the interest of the litigant. Any such form of protest shall not however be derogatory to the court or to the profession.

(4) Office-bearers of a Bar Association (including Bar Council) responsible for taking decisions mentioned in clause (1) above shall ensure that such decisions are implemented in the spirit of what is stated in clauses (1), (2) and (3) above.

3. Mr P.N. Duda, Senior Advocate representing the Bar Council of India was good enough to state that he will suggest to the Bar Council of India to incorporate clauses (1), (2), (3) and (4) in the Bar Council of India (Conduct and Disciplinary) Rules, so that it can have statutory support should there be any violation or contravention of the aforementioned four clauses. The suggestion that we defer the hearing and decision on the larger question whether or not members of the profession can abstain from work commends to us. We also agree with the suggestion that we see the working of the suggestions in clauses (1) to (4) above for a period of at least six months by making the said clauses the rule of the court. Accordingly we make clauses (1) to (4) mentioned above the order of this Court and direct further course of action in terms thereof. The same will operate prospectively. We also suggest to the Bar Councils and Bar Associations that in order to clear the pitch and to uphold the high traditions of the profession as well as to maintain the unity and integrity of the Bar they consider dropping action already initiated against their members who had appeared in court notwithstanding strike calls given by the Bar Council or Bar Association. Besides, members of the legal profession should be alive to the possibility of Judges of different courts refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with cases.”

The above interim order was passed in the hope that better sense could prevail and lawyers would exercise self-restraint. In spite of the above interim directions and the statement of Mr P.N. Duda, the Bar Council of India has not incorporated clauses (1) to (4) in the Bar Council of India (Conduct and Disciplinary) Rules. The phenomenon of going on strike at the slightest provocation is on the increase. Strikes and calls for boycott have paralysed the functioning of courts for a number of days. It is now necessary to decide whether lawyers have a right to strike and/or give a call for boycott of court/s.

4. Mr Dipankar Gupta referred to various authorities of this Court and submitted that the reasons why strikes have been called by the Bar Associations and/or Bar Councils are:

- (a) confrontation with the police and/or the legal administration;
- (b) grievances against the Presiding Officer;

- (c) grievances against judgments of courts;
- (d) clash of interest between groups of lawyers; and
- (e) grievances against the legislature or a legislation.

Mr Gupta submitted that the law was well established. He pointed out that this Court has declared that strikes are illegal. He submitted that even a call for strike is bad. He submitted that it is time that the Bar Council of India as well as various State Bar Councils monitor strikes within their jurisdiction and ensure that there are no call for strikes and/or boycotts. He submitted that in all cases where redressal can be obtained by going to a court of law there should be no strike.

9. The learned Attorney-General submitted that strike by lawyers cannot be equated with strikes resorted to by other sections of the society. He submitted that the basic difference is that members of the legal profession are officers of the court. He submitted that they are obliged by the very nature of their calling to aid and assist in the dispensation of justice. He submitted that strike or abstention from work impaired the administration of justice and that the same was thus inconsistent with the calling and position of lawyers. He submitted that abstention from work, by lawyers, may be resorted to in the rarest of rare cases, namely, where the action protested against is detrimental to free and fair administration of justice such as there being a direct assault on the independence of the judiciary or a provision is enacted nullifying a judgment of a court by an executive order or in case of supersession of judges by departure from the settled policy and convention of seniority. He submitted that even in cases where the action eroded the autonomy of the legal profession e.g. dissolution of Bar Councils and recognized Bar Associations or packing them with government nominees, a token strike of one day may be resorted to. He submitted, even in the above situations the duration of abstention from work should be limited to a couple of hours or at the maximum one day. He submitted that the purpose should be to register a protest and not to paralyse the system. He suggested that alternative forms of protest can be explored e.g. giving press statements, TV interviews, carrying banners and/or placards, wearing black armbands, peaceful protest marches outside court premises etc. He submitted that abstention from work for the redressal of a grievance should never be resorted to where other remedies for seeking redressal are available. He submitted that all attempts should be made to seek redressal from the authorities concerned. He submitted that where such redressal is not available or not forthcoming, the direction of the protest can be against that authority and should not be misdirected e.g. in cases of alleged police brutalities, courts and litigants should not be targeted in respect of actions for which they are in no way responsible. He agreed that no force or coercion should be employed against lawyers who are not in agreement with the “strike call” and want to discharge their professional duties.

11. Before considering the question raised it is necessary to keep in mind the role of lawyers in the administration of justice and also their duties and obligations as officers of this Court. In the case of *Lt. Col. S.J. Chaudhary v. State (Delhi Admn.)* [(1984) 1 SCC 722], the High Court had directed that a criminal trial goes on from day to day. Before this Court it was urged that the advocates were not willing to attend day to day as the trial was likely to be prolonged. It was held that it is the duty of every advocate who accepts a brief in a criminal case to attend the trial day to day. It was held that a lawyer would be committing breach of professional duties if he fails to so attend.

12. In the case of *K. John Koshy v. Dr Tarakeshwar Prasad Shaw* [(1998) 8 SCC 624], one of the questions was whether the court should refuse to hear a matter and pass an order when counsel for both the sides were absent because of a strike call by the Bar Association. This Court

held that the court could not refuse to hear the matter as otherwise it would tantamount to the court becoming a privy to the strike.

20. Thus the law is already well settled. It is the duty of every advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. It is also settled law that a lawyer who has accepted a brief cannot refuse to attend court because a boycott call is given by the Bar Association. It is settled law that it is unprofessional as well as unbecoming for a lawyer who has accepted a brief to refuse to attend court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers, it would amount to scandalising the courts to undermine its authority and thereby the advocates will have committed contempt of court. Lawyers have known, at least since *Mahabir Singh* case that if they participate in a boycott or a strike, their action is ex facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of court/s. Lawyers have also known, at least since *Ramon Services* case [(2001) 1 SCC 118], that the advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

21. It must also be remembered that an advocate is an officer of the court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the court. They owe a duty to their clients. Strikes interfere with administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy. In the words of Mr H.M. Seervai, a distinguished jurist:

“Lawyers ought to know that at least as long as lawful redress is available to aggrieved lawyers, there is no justification for lawyers to join in an illegal conspiracy to commit a gross, criminal contempt of court, thereby striking at the heart of the liberty conferred on every person by our Constitution. Strike is an attempt to interfere with the administration of justice. The principle is that those who have duties to discharge in a court of justice are protected by the law and are shielded by the law to discharge those duties, the advocates in return have duty to protect the courts. For, once conceded that lawyers are above the law and the law courts, there can be no limit to lawyers taking the law into their hands to paralyse the working of the courts. ‘*In my submission*’, he said that ‘it is high time that the Supreme Court and the High Courts make it clear beyond doubt that they will not tolerate any interference from any body or authority in the daily administration of justice. For in no other way can the Supreme Court and the High Courts maintain the high position and exercise the great powers conferred by the Constitution and the law to do justice without fear or favour, affection or ill will.’”

22. It was expected that having known the well-settled law and having seen that repeated strikes and boycotts have shaken the confidence of the public in the legal profession and affected administration of justice, there would be self-regulation. The abovementioned interim order was passed in the hope that with self-restraint and self-regulation the lawyers would retrieve their profession from lost social respect. The hope has not fructified. Unfortunately strikes and boycott calls are becoming a frequent spectacle. Strikes, boycott calls and even unruly and unbecoming conduct are becoming a frequent spectacle. On the slightest pretence strikes and/or boycott calls are

resorted to. The judicial system is being held to ransom. Administration of law and justice is threatened. The rule of law is undermined.

23. It is held that submissions made on behalf of the Bar Council of U.P. merely need to be stated to be rejected. The submissions based on the Advocates Act are also without merit. Section 7 of the Advocates Act provides for the functions of the Bar Council of India. None of the functions mentioned therein authorise paralysing of the working of courts in any manner. On the contrary, the Bar Council of India is enjoined with the duty of laying down standards of professional conduct and etiquette for advocates. This would mean that the Bar Council of India ensures that advocates do not behave in an unprofessional and unbecoming manner. Section 48-A gives a right to the Bar Council of India to give directions to the State Bar Councils. The Bar Associations may be separate bodies but all advocates who are members of such Associations are under disciplinary jurisdiction of the Bar Councils and thus the Bar Councils can always control their conduct. Further, even in respect of disciplinary jurisdiction the final appellate authority is, by virtue of Section 38, the Supreme Court.

25. In the case of *Supreme Court Bar Assn. v. Union of India* [(1998) 4 SCC 409], it has been held that professional misconduct may also amount to contempt of court (para 21). It has further been held as follows:

“79. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor-General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for ‘professional misconduct’, on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution ‘all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court’. The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act ‘in aid of the Supreme Court’. It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemner advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemner advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should

be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving 'reference' from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals."

Thus a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of courts and majesty of law and to prevent interference in administration of justice. In our view it is the duty of the Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct. This being their duty no Bar Council can even consider giving a call for strike or a call for boycott. It follows that the Bar Councils and even Bar Associations can never consider or take seriously any requisition calling for a meeting to consider a call for a strike or a call for boycott. Such requisitions should be consigned to the place where they belong viz. the waste-paper basket. In case any Association calls for a strike or a call for boycott the State Bar Council concerned and on their failure the Bar Council of India must immediately take disciplinary action against the advocates who give a call for strike and if the Committee members permit calling of a meeting for such purpose, against the Committee members. Further, it is the duty of every advocate to boldly ignore a call for strike or boycott.

26. It must also be noted that courts are not powerless or helpless. Section 38 of the Advocates Act provides that even in disciplinary matters the final appellate authority is the Supreme Court. Thus even if the Bar Councils do not rise to the occasion and perform their duties by taking disciplinary action on a complaint from a client against an advocate for non-appearance by reason of a call for strike or boycott, on an appeal the Supreme Court can and will. Apart from this, as set out in **Ramon Services** case every court now should and must mulct advocates who hold *vakalats* but still refrain from attending courts in pursuance of a strike call with costs. Such costs would be in addition to the damages which the advocate may have to pay for the loss suffered by his client by reason of his non-appearance.

28. The Bar Council of India has since filed an affidavit wherein extracts of a joint meeting of the Chairmen of various State Bar Councils and members of the Bar Council of India, held on 28-9-2002 and 29-9-2002, have been annexed. The minutes set out that some of the causes which result in lawyers abstaining from work are:

(I) *Local issues*



1. Disputes between lawyer/lawyers and the police and other authorities.
2. Issues regarding corruption/misbehaviour of judicial officers and other authorities.
3. Non-filling of vacancies arising in courts or non-appointment of judicial officers for a long period.

4. Absence of infrastructure in courts.

*(II) Issues relating to one section of the Bar and another section*

1. Withdrawal of jurisdiction and conferring it to other courts (both pecuniary and territorial).

2. Constitution of Benches of High Courts. Disputes between the competing District and other Bar Associations.

*(III) Issues involving dignity, integrity, independence of the Bar and judiciary*

*(IV) Legislation without consultation with the Bar Councils*

*(V) National issues and regional issues affecting the public at large/the insensitivity of all concerned.*

29. At the meeting, it is then resolved as follows:

“RESOLVED to constitute Grievance Redressal Committees at the taluk/sub-division or tehsil level, at the district level, High Court and Supreme Court levels as follows:

*(I)(a)* A committee consisting of the Hon’ble Chief Justice of India or his nominee, Chairman, Bar Council of India, President, Supreme Court Bar Association, Attorney-General of India.

*(b)* At the High Court level a committee consisting of the Hon’ble Chief Justice of the State High Court or his nominee, Chairman, Bar Council of the State, President or Presidents of the High Court Bar Association, Advocate-General, Member, Bar Council of India from the State.

*(c)* At the district level, District Judge, President or Presidents of the District Bar Association, District Government Pleader, member of the Bar Council from the district, if any, and if there are more than one, then senior out of the two.

*(d)* At taluk/tehsil/sub-division, seniormost Judge, President or Presidents of the Bar Association, Government Pleader, representative of the State Bar Council, if any.

*(II)* Another reason for abstention at the district and taluk level is arrest of an advocate or advocates by the police in matters in which the arrest is not justified. Practice may be adopted that before arrest of an advocate or advocates, President, Bar Association, the District Judge or the seniormost Judge at the place be consulted. This will avoid many instances or abstentions from court.

*(III)* IT IS FURTHER RESOLVED that in the past abstention of work by advocates for more than a day was due to inaction of the authorities to solve the problems that the advocates placed.

*(IV)* IT IS FURTHER RESOLVED that in all cases of legislation affecting the legal profession which includes enactment of new laws or amendments of existing

laws, matters relating to jurisdiction and creation of tribunal, the Government both Central and State should initiate the consultative process with the representatives of the profession and take into consideration the views of the Bar and give utmost weight to the same and the State Government should instruct their officers to react positively to the issues involving the profession when they are raised and take all steps to avoid confrontation and inaction and in such an event of indifference, confrontation etc. to initiate appropriate disciplinary action against the erring officials and including but not limited to transfer.

(V) The Councils are of the view that abstentions of work in courts should not be resorted to except in exceptional circumstances. Even in exceptional circumstances, the abstention should not be resorted to normally for more than one day in the first instance. The decision for going on abstention will be taken by the General Body of the Bar Association by a majority of two-third members present.

(VI) It is further resolved that in all issues as far as possible legal and constitutional methods should be pursued such as representation to authorities, holding demonstrations and mobilising public opinion etc.

(VII) It is resolved further that in case the Bar Associations deviate from the above resolutions and proceed on cessation of work in spite or without the decision of the Grievance Redressal Committee concerned except in the case of emergency the Bar Council of the State will take such action as it may deem fit and proper, the discretion being left to the Bar Council of the State concerned as to enforcement of such decisions and in the case of an emergency the Bar Association concerned will inform the State Bar Council.

The Bar Council of India resolves that this resolution will be implemented strictly and the Bar Associations and the individual members of the Bar Associations should take all steps to comply with the same and avoid cessation of the work except in the manner and to the extent indicated above.”

30. Whilst we appreciate the efforts made, in view of the endemic situation prevailing in the country, in our view, the above resolutions are not enough. It was expected that the Bar Council of India would have incorporated clauses as those suggested in the interim order of this Court in their disciplinary rules. This they have failed to do even now. What is at stake is the administration of justice and the reputation of the legal profession. It is the duty and obligation of the Bar Council of India to now incorporate clauses as suggested in the interim order. No body or authority, statutory or not, vested with powers can abstain from exercising the powers when an occasion warranting such exercise arises. Every power vested in a public authority is coupled with a duty to exercise it, when a situation calls for such exercise. The authority cannot refuse to act at its will or pleasure. It must be remembered that if such omission continues, particularly when there is an apparent threat to the administration of justice and fundamental rights of citizens i.e. the litigating public, courts will always have authority to compel or enforce the exercise of the power by the statutory authority. The courts would then be compelled to issue directions as are necessary to compel the authority to do what it should have done on its own.

31. It must immediately be mentioned that one understands and sympathises with the Bar wanting to vent their grievances. But as has been pointed out there are other methods e.g. giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing

black or white or any colour armbands, peaceful protest marches outside and away from court premises, going on *dharnas* or relay fasts etc. More importantly in many instances legal remedies are always available. A lawyer being part and parcel of the legal system is instrumental in upholding the rule of law. A person cast with the legal and moral obligation of upholding law can hardly be heard to say that he will take the law in his own hands. It is therefore time that self-restraint be exercised.

34. One last thing which must be mentioned is that the right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The 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. 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. 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. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However,

Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. 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. Thus even then 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. 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.

35. In conclusion, it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour armbands, peaceful protest marches outside and away from court premises, going on *dharnas* or relay fasts etc. It is held that lawyers holding *vakalats* on behalf of their clients cannot refuse to attend courts in pursuance of a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. It is being clarified that it will be for the court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before advocates decide to absent themselves from court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all courts to go on with matters on their boards even in the absence of lawyers. In other words, courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a *vakalat* of a client, abstains from attending court due to a strike call, he shall be personally liable to pay costs which shall be in addition to damages which he might have to pay his client for loss suffered by him.

36. It is now hoped that with the above clarifications, there will be no strikes and/or calls for boycott. It is hoped that better sense will prevail and self-restraint will be exercised. The petitions stand disposed of accordingly.

37. Hence, it is directed that (a) all the Bar Associations in the country shall implement the resolution dated 29-9-2002 passed by the Bar Council of India, and (b) under Section 34 of the Advocates Act, the High Courts would frame necessary rules so that appropriate action can be taken against defaulting advocate/advocates.

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## ***Mahipal Singh Rana v. State of U.P.***

MANU/SC/0730/2016

**Bench: Anil R. Dave, Kurian Joseph, Adarsh Kumar Goel**

**ANIL R. DAVE, J.**

1. The present appeal is preferred under Section 19 of the Contempt of Courts Act, 1971 (hereinafter referred to as “the Act”) against the judgment and order dated 02.12.2005 delivered by the High Court of Judicature at Allahabad in Criminal Contempt Petition No. 16 of 2004, whereby the High Court found the appellant guilty of Criminal Contempt for intimidating and threatening a Civil Judge (Senior Division), Etah in his Court on 16.4.2003 and 13.5.2003 and sentenced him to simple imprisonment of two months with a fine of Rs. 2,000/- and in default of payment of the fine, the appellant to undergo further imprisonment of 2 weeks. The High Court further directed the Bar Council of Uttar Pradesh to consider the facts contained in the complaint of the Civil Judge (Senior Division) Etah, and earlier contempt referred to in the judgement and to initiate appropriate proceedings against the appellant for professional misconduct.

Reference to larger Bench and the Issue

2. On 27th January, 2006, this appeal was admitted by this Court and that part of the impugned judgment, which imposed the sentence, was stayed and the appellant was directed not to enter the Court premises at Etah (U.P.). Keeping in view the importance of the question involved while admitting the appeal on 27th January, 2006, notice was directed to be issued to the Supreme Court Bar Association as well as to the Bar Council of India. The matter was referred to the larger Bench. Learned Solicitor General of India was requested to assist the Court in the matter.

3. On 6th March, 2013 restriction on entry of the appellant into the court premises as per order dated 27th January, 2006 was withdrawn. Thereby, the appellant was permitted to enter the court premises. The said restriction was, however, restored later. On 20th August, 2015, notice was issued to the Attorney General on the larger question whether on conviction under the Contempt of Courts Act or any other offence involving moral turpitude an advocate could be permitted to practise.

4. Thus following questions arise for consideration: Whether a case has been made out for interference with the order passed by the High Court convicting the appellant for criminal contempt and sentencing him to simple imprisonment for two months with a fine of Rs.2,000/- and further imprisonment for two weeks in default and debarring him from appearing in courts in judgeship at Etah; and Whether on conviction for criminal contempt, the appellant can be allowed to practise.

The facts and the finding of the High Court

5. The facts of the present appeal discloses that the Civil Judge (Senior Division), Etah made a reference under Section 15 (2) of the Act to the High Court through the learned District Judge, Etah (U.P.) on 7.6.2003 recording two separate incidents dated 16.4.2003 and 13.5.2003, which had taken place in his Court in which the appellant had appeared before him and conducted himself in a manner which constituted “Criminal Contempt” under Section 2 (c) of the Act.

6. The said letter was received by the High Court along with a forwarding letter of the District Judge dated 7.6.2003 and the letters were placed before the Administrative Judge on 7.7.2003, who forwarded the matter to the Registrar General vide order dated 18.6.2004 for placing the same before the Hon'ble Chief Justice of the High Court and on 11.7.2004, the Hon'ble Chief Justice of the High Court referred the matter to the Court concerned dealing with contempt cases and notice was also issued to the appellant.

7. Facts denoting behaviour of the appellant, as recorded by the Civil Judge (Senior Division), Etah, can be seen from the contents of his letter addressed to the learned District Judge, Etah. The letter reads as under:-

“Sir, It is humbly submitted that on 16.4.2003, while I was hearing the 6-Ga-2 in Original Suit No.114/2003 titled as “Yaduveer Singh Chauhan vs. The Uttar Pradesh Power Corporation”, Shri Mahipal Singh Rana, Advocate appeared in the Court, and, while using intemperate language, spoke in a loud voice:

“How did you pass an order against my client in the case titled as “Kanchan Singh vs. Ratan Singh”? How did you dare pass such an order against my client?

I tried to console him, but he started shouting in a state of highly agitated mind:

“Kanchan Singh is my relative and how was this order passed against my relative? No Judicial Officer has, ever, dared pass an order against me. Then, how did you dare do so? When any Judicial officer passes an order on my file against my client, I set him right. I shall make a complaint against you to Hon'ble High Court”, and he threatened me: “I will not let you remain in Etah in future, I can do anything against you. I have relations with highly notorious persons and I can get you harmed by such notorious persons to the extent I want to do, and I myself am capable of doing any deed (misdeed) as I wish, and I am not afraid of any one. In the Court compound, even my shoes are worshipped and I was prosecuted in two murder cases. And I have made murderous assaults on people and about 15 to 20 cases are going on against me. If you, in future, dare pass an order on the file against my client in which I am a counsel, it will not be good for you”.

Due to the above mentioned behaviour of Shri Mahipal Singh Rana, Advocate, the judicial work was hindered and aforesaid act of Shri Mahipal Singh falls within the ambit of committing the contempt of Court.

In this very succession, on 13.5.2003, while I was hearing 6-Ga-2 in the O.S. No. No. 48/2003 titled as “Roshanlal v Nauvat Ram”, Shri Mahipal Singh Rana Advocate appeared in the Court and spoke in a loud voice: “Why did you not get the OS No. 298/2001 title as ‘Jag Mohan vs. Smt. Suman’ called out so far, whereas the aforesaid case is very important, in as much as I am the plaintiff therein”. I said to Shri Mahipal Singh Rana, Advocate: “Hearing of a case is going on. Thereafter, your case will be called out for hearing”, thereupon he got enraged and spoke: “That- case will be heard first which I desire to be heard first. Nothing is done as per your desire. Even an advocate does not dare create a hindrance in my case. I shall get the case decided which I want and that case will never be decided, which I do not want. You cannot decide any case against my wishes”. Meanwhile when the counsel for Smt. Suman in O.S. No. 298/2001 titled as “Jag Mohan vs. Smt. Suman” handed some papers over to Shri Mahipal Singh Rana, Advocate for receiving the same, he

threw those papers away and misbehaved with the counsel for Smt. Suman. Due to this act of Shri Mahipal Singh Rana, the judicial work was hindered and his act falls within the ambit of committing the contempt of Court.

Your good self is therefore requested that in order to initiate proceedings relating to committing the contempt of Court against Shri Mahipal Singh Rana, Advocate, my report may kindly be sent to the Hon'ble High Court by way of REFERENCE”.

With regards,”

8. On the same day, the learned Civil Judge (Senior Division) also wrote another letter to the Registrar-General of the High Court, giving some more facts regarding contemptuous behaviour of the appellant with a request to place the facts before the Hon'ble Chief Justice of the High Court so that appropriate action under the Act may be taken against the appellant. As the aforestated letters refer to the facts regarding behaviour of the appellant, we do not think it necessary to reiterate the same here.

9. Ultimately, in pursuance of the information given to the High Court, proceedings under the Act had been initiated against the appellant.

10. Before the High Court, it was contended on behalf of the appellant that it was not open to the Court to proceed against the appellant under the provisions of the Act because if the behaviour of the appellant was not proper or he had committed any professional misconduct, the proper course was to take action against the appellant under the provisions of the Advocates Act, 1961. It was also contended that summary procedure under the Act could not have been followed by the Court for the purpose of punishing the appellant. Moreover, it was also submitted that the appellant was not at all present before the learned Civil Judge (Senior Division), Etah on 16.4.2003 and 13.5.2003.

11. Ultimately, after hearing the parties concerned, the High Court did not accept the defence of the appellant and after considering the facts of the case, it delivered the impugned judgment whereby punishment has been imposed upon the appellant. The High Court observed:

“22. Extraordinary situations demand extraordinary remedies. The subordinate courts in Uttar Pradesh are witnessing disturbing period. In most of the subordinate courts, the Advocates or their groups and Bar Associations have been virtually taken over the administration of justice to ransom. These Advocates even threaten and intimidate the Judges to obtain favourable orders. The Judicial Officers often belonging to different districts are not able to resist the pressure and fall prey to these Advocates. This disturbs the equilibrium between Bar and the Bench giving undue advantage and premium to the Bar. In these extraordinary situations the High Court can not abdicate its constitutional duties to protect the judicial officers.

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24. ....The criminal history of the contemnor, the acceptance of facts in which his actions were found contumacious and he was discharged on submitting apologies on two previous occasions, and the allegations against him in which he was found to continue with intimidating the judicial officers compelled us to issue interim orders restraining his entry of the contemnor in the

judgeship at Etah. The Bar Council of Uttar Pradesh, is fully aware of his activities but has chosen not to take any action in the matter. In fact the Bar Council hardly takes cognizance of such matters at all. The Court did not interfere with the statutory powers of the Bar Council of Uttar Pradesh to take appropriate proceedings against the contemnor with regard to his right of practice, and did not take away right of practice vested in him by virtue of his registration with the Bar Council. He was not debarred from practice but was only restrained to appear in the judgeship at Etah in the cases he was engaged as an Advocate. The repeated contumacious conduct, without any respect to the Court committed by him repeatedly by intimidating and brow beating the judicial officers, called for maintaining discipline, protecting the judicial officers and for maintaining peace in the premises of judgeship at Etah.

25. Should the High Court allow such advocate to continue to terrorise, brow beat and bully the judicial officers? It is submitted that he has a large practice. We are not concerned here whether the contemnor or such advocates are acquiring large practice by intimidating judicial officers. These are questions to be raised before the Bar Council. We, however, must perform our constitutional duty to protect our judicial officers. This is one such case illustrated in para 78, of the Supreme Court Bar Association's case (supra), in which the occasion had arisen to prevent the contemnor to appear before courts at Etah. The withdrawal of such privilege did not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunal, drafting the petitions and advising his clients. It only prevented him from intimidating the judicial officers and from vitiating the atmosphere conducive for administration of justice in the judgeship at Etah.

31. The Supreme Court held that Section 20 of the Contempt of Courts Act, has to be construed in a manner which would avoid anomaly and hardships both as regards the litigant as also by placing a pointless fetter on the part of the court to punish for its contempt. In Pallav Seth the custodian received information of the appellant having committed contempt of taking over benami concerns, transferring funds to these concerns and operating their accounts, from a letter dated 5.5.1998, received from the Income Tax Authorities. Soon thereafter on 18.6.1998 a petition was filed for initiating action in contempt and notices were issued by the Court on 9.4.1999. The Supreme Court found that on becoming aware of the forged applications the contempt proceedings were filed on 18.6.1998 well within the period of limitation prescribed by Section 20 of the Act. The action taken by the special court by its order dated 9.4.1999 directing the applications to be treated as show cause notice, was thus valid and that the contempt action was not barred by Section 20 of the Act.

32. In the present case the alleged contempt was committed in the court of Shri Onkar Singh Yadav, Civil Judge (Senior Division) Etah on 16.4.2003 and 13.5.2003. The officer initiated the proceedings by making reference to the High Court through the District Judge vide his letters dated 7.6.2003, separately in respect of the incidents. These letters were received by the Court with the forwarding letter of the District Judge dated 1.6.2003 and were placed before Administrative Judge on 7.7.2003, who returned the matter to the Registrar General with his order dated 18.6.2004 to be placed before Hon'ble the Chief Justice and that by his order dated 11.7.2004, Hon'ble the Chief Justice referred the matter to court having contempt determination. Show cause notices were issued by the court to the contemnor on 28.10.2004. In view of the law as explained in Pallav Seth (supra) the contempt proceedings would be taken to be initiated on 7.6.2003 by the Civil Judge (Senior Division) Etah, which was well within the period of one year from the date of the incidents prescribed under Section 20 of the Act.



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36. We do not find that the contemnor Shri Mahipal Singh Rana is suffering from any mental imbalance. He is fully conscious of his actions and take responsibility of the same. He suffers from an inflated ego, and has a tremendous superiority complex and claims himself to be a champion for the cause of justice, and would not spare any effort, and would go to the extent of intimidating the judges if he feels the injustice has been done to his client. We found ourselves unable to convince him that the law is above every one, and that even if he is an able lawyer belonging to superior caste, he could still abide by the dignity of court and the decency required from an advocate appearing in any court of law.

37. The due administration of law is of vastly greater importance than the success or failure of any individual, and for that reason public policy as well as good morals require that every Advocate should keep attention to his conduct. An Advocate is an officer of the Court apart of machinery employed for administration of justice, for meeting out to the litigants the exact measure of their legal rights. He is guilty of a crime if he knowingly sinks his official duty, in what may seem to be his own or his clients temporary advantage.

38. We find that the denial of incidents and allegations of malafides against Shri Onkar Singh Yadav, the then Civil Judge (Senior Division) Etah have been made only to save himself from the contumacious conduct.

39. Shri Mahipal Singh Rana, the contemnor has refused to tender apologies for his conduct. His affidavit in support of stay vacation/modification and supplementary affidavit do not show any remorse. He has justified himself again and again, in a loud and thundering voice.

40. We find that Shri Mahipal Rana the contemnor is guilty of criminal contempt in intimidation and threatening Shri Onkar Singh Yadav the then Civil Judge (Senior Division) Etah in his court on 16.4.2003 and 13.5.2003 and of using loud and indecent language both in court and in his pleadings in suit No. 515/2002. He was discharged from proceeding of contempt in Criminal Contempt Petition No. 21/1998 and Criminal Contempt No. 60 of 1998 on his tendering unconditionally apology on 3.8.1999 and 11.11.2002 respectively. He however did not mend himself and has rather become more aggressive and disrespectful to the court. He has virtually become nuisance and obstruction to the administration of justice at the Judgeship at Etah. We are satisfied that the repeated acts of criminal contempt committed by him are of such nature that these substantially interfere with the due course of justice. We thus punish him under Section 12 of the Contempt of Courts Act 1971, with two months imprisonment and also impose fine of Rs. 2000/- on him. In case non-payment of fine he will undergo further a period of imprisonment of two weeks. However, the punishment so imposed shall be kept in abeyance for a period of sixty days to enable the contemner Shri Rana to approach the Hon'ble Supreme Court, if so advised.

41. We also direct the Bar Council of Uttar Pradesh to take the facts constituted in the complaints of Shri Onkar Singh Yadav, the then Civil Judge (Senior Division) Etah, the two earlier contempts referred in this judgment, and to draw proceedings against him for professional misconduct.

42. Under the Rules of this Court, the contemnor shall not be permitted to appear in courts in the Judgeship at Etah, until he purges the contempt.

43. The Registrar General shall draw the order and communicate it to the Bar Council of Uttar Pradesh and Bar Council of India within a week. The contemnor shall be taken into custody to serve the sentence immediately of the sixty days if no restrain order is passed by the appellate court.”  
Rival Contentions:

12. The learned counsel appearing for the appellant before this Court specifically denied the instances dated 16.4.2003 and 13.5.2003 and further submitted that the appellant had not even gone to the Court of the learned Civil Judge (Senior Division), Etah on the aforesaid two days and therefore, the entire case made out against the appellant was false and frivolous. The learned counsel, therefore, submitted that the High Court had committed an error by not going into the fact as to whether the appellant had, in fact, attended the Court of the learned Civil Judge (Senior Division), Etah on 16.4.2003 and 13.5.2003. The learned counsel further submitted that the High Court ought to have considered the fact that the appellant had filed several complaints against the learned Judge who was the complainant and therefore, with an oblique motive the entire contempt proceedings were initiated against the appellant. The said complaints ought to have been considered by the High Court. It was further submitted that contempt proceedings were barred by limitation. The incidents in question are dated 16th April, 2003 and 13th May, 2003 while notice was ordered to be issued on 28th April, 2004.

13. The learned counsel, thus, submitted that the action initiated against the appellant was not just and proper and the impugned judgment awarding punishment to the appellant under the Act is bad in law and therefore, deserved to be set aside. In the alternative, it is submitted that the appellant was 84 years of age and keeping that in mind, the sentence for imprisonment may be set aside and instead, the fine may be increased.

14. On the other hand, the learned counsel appearing for the State of Uttar Pradesh submitted that the impugned judgment was just, legal and proper and the same was delivered after due deliberation and careful consideration of the relevant facts. He submitted that looking at the facts of the case, the High Court rightly came to the conclusion that the appellant was not only present in the Court on those two days i.e. on 16.4.2003 and 13.5.2003, but the appellant had also misbehaved and misconducted in such a manner that his conduct was contemptuous and therefore, the proceedings under the Act had to be initiated against him. The learned counsel also drew attention of the Court to the nature of the allegations made by the appellant against the learned Judge and about the contemptuous behaviour of the appellant. The learned counsel also relied upon the report submitted to the learned District Judge and submitted that the impugned judgment is just, legal and proper. He also submitted that the misbehaviour and contemptuous act of the appellant was unpardonable and therefore, the High Court had rightly imposed punishment upon the appellant.

15. In response to the notice issued by this Court on 20th August, 2015 in respect of the question framed, the learned counsel appearing for the Bar Council of India submitted that Section 24A of the Advocates Act, 1961 provides for a bar against admission of a person as an advocate if he is convicted of an offence involving moral turpitude, apart from other situations in which such bar operates. The proviso however, provides for the bar being lifted after two years of release. However, the provision did not expressly provide for removal of an advocate from the roll of the advocates if conviction takes place after enrollment of a person as an advocate. Only other relevant provision under which action could be taken is Section 35 for proved misconduct. It is further stated that though the High Court directed the Bar Council of Uttar Pradesh to initiate proceedings for

professional misconduct on 2.12.2005, the consequential action taken by the Bar Council of the State of Uttar Pradesh was not known. It is further stated that the term moral turpitude has to be understood having regard to the nature of the noble profession of law which requires a person to possess higher level of integrity. Even a minor offence could be termed as an offence involving moral turpitude in the context of an advocate who is expected to be aware of the legal position and the conduct expected from him as a citizen is higher than others. It was further submitted that only the State Bar Council or Bar Council of India possesses the power to punish an advocate for “professional misconduct” as per the provisions of Section 35 of the Advocates Act, 1961 and reiterated the law laid down by this Court in *Supreme Court Bar Association versus Union of India*[1]. In addition, the counsel submitted that a general direction to all the Courts be given to communicate about conviction of an advocate for an offence involving moral turpitude to the concerned State Bar Council or the Bar Council of India immediately upon delivering the judgment of conviction so that proceedings against such advocates can be initiated under the Advocates Act, 1961.

16. The Learned Additional Solicitor General of India appearing on behalf of Union of India, submitted that normally in case of all professions, the apex body of the professionals takes action against the erring professional and in case of legal profession, the Bar Council of India takes disciplinary action and punishes the concerned advocate if he is guilty of any misconduct etc. Reference was made to Architects Act, 1972, Chartered Accountants Act, 1949, Company Secretaries Act, 1980, Pharmacy Practice Regulations, 2015, Indian Medical Council (Professional Conduct Etiquettes and Ethics) Regulations, 2002, National Council for Teacher Education Act, 1993, Cost and Works Accountants Act, 1959, Actuaries Act, 2006, Gujarat Professional Civil Engineers Act, 2006, Representation of Peoples Act, 1951, containing provisions for disqualifying a person from continuing in a regulated profession upon conviction for an offence involving moral turpitude. Reference was also made to Section 24A of the Advocates Act which provides for a bar on enrolment as an advocate of a person who has committed any offence involving moral turpitude. It was further submitted that if a person is disqualified from enrolment, it could not be the intention of the legislature to permit a person already enrolled as an advocate to continue him in practice if he is convicted of an offence involving moral turpitude. Bar against enrolment should also be deemed to be bar against continuation. It was further submitted that Article 145 of the Constitution empowers the Supreme Court to make rules for regulating practice and procedure including the persons practicing before this Court. Section 34 of the Advocates Act empowers the High Courts to frame rules laying down the conditions on which an advocate shall be permitted to practice in courts. Thus, there is no absolute right of an advocate to appear in court. Appearance before Court is subject to such conditions as are laid down by this Court or the High Court. An Advocate could be debarred from appearing before the Court even if the disciplinary jurisdiction for misconduct was vested with the Bar Council as laid down in *Supreme Court Bar Association (supra)* and as further clarified in *Pravin C. Shah versus K.A. Mohd. Ali*[2], *Ex-Captain Harish Uppal versus Union of India*[3], *Bar Council of India versus High Court of Kerala*[4] and *R.K. Anand versus Registrar, Delhi High Court*[5]. Thus, according to the counsel, apart from the Bar Council taking appropriate action against the appellant, this Court could debar him from appearance before any court.

17. Shri Dushyant Dave, learned senior counsel and President of the Supreme Court Bar Association supported the interpretation canvassed by the learned Additional Solicitor General. He submitted that image of the profession ought to be kept clean by taking strict action against persons failing to maintain ethical standards.

18. We have heard the learned counsel appearing for the parties and have perused the judgments cited by them.

Consideration of the questions We may now consider the questions posed for consideration:

Re: (i)

19. Upon going through the impugned judgment, we are of the view that no error has been committed by the High Court while coming to the conclusion that the appellant had committed contempt of Court under the provisions of the Act.

20. We do not agree with the submissions of the learned counsel for the appellant that the appellant did not appear on those two days before the Court. Upon perusal of the facts found by the High Court and looking at the contents of the letters written by the concerned judicial officers, we have no doubt about the fact that the appellant did appear before the Court and used the language which was contemptuous in nature.

21. So far as the allegations made by the appellant with regard to the complaints made by him against the complainant judge, after having held that the appellant had appeared before the Court and had made contemptuous statements, we are of the opinion that those averments regarding the complaints are irrelevant. The averments regarding the complaints cannot be a defence for the appellant. Even if we assume those averments about the complaints to be correct, then also, the appellant cannot use such contemptuous language in the Court against the presiding Judge.

22. There is no merit in the contention of the appellant that there was delay on the part of the complainant Judge in sending the reference and he could have tried the appellant under Section 228 of the Indian Penal Code and the procedure prescribed under Code of Criminal Procedure. It is for the learned judge to decide as to whether action should be taken under the Act or under any other law.

23. The High Court has rightly convicted the appellant under the Act after having come to a conclusion that denial of the incidents and allegations of malafides against the complainant Judge had been made by the appellant to save himself from the consequences of contempt proceedings. The appellant had refused to tender apology for his conduct. His affidavit in support of stay vacation/modification and supplementary affidavit did not show any remorse and he had justified himself again and again, which also shows that he had no regards for the majesty of law.

24. It is a well settled proposition of law that in deciding whether contempt is serious enough to merit imprisonment, the Court will take into account the likelihood of interference with the administration of justice and the culpability of the offender. The intention with which the act complained of is done is a material factor in determining what punishment, in a given case, would be appropriate. In the case at hand, the High Court has rightly held that the appellant was guilty of criminal contempt. We are however, inclined to set aside the sentence for imprisonment in view of advance age of the appellant and also in the light of our further direction as a result of findings of question No. (ii) Re: (ii) Court's jurisdiction vis a vis statutory powers of the Bar Councils

25. This Court, while examining its powers under Article 129 read with Article 142 of the Constitution with regard to awarding sentence of imprisonment together with suspension of his practice as an Advocate, in *Supreme Court Bar Association (supra)*, the Constitution Bench held that while in exercise of contempt jurisdiction, this Court cannot take over jurisdiction of disciplinary committee of the Bar Council[6] and it is for the Bar Council to punish the advocate by debaring him from practice or suspending his licence as may be warranted on the basis of his having been found guilty of contempt, if the Bar Council fails to take action, this Court could invoke its appellate power under Section 38 of the Advocates Act[7]. In a given case, this court or the High Court can prevent the contemnor advocate from appearing before it or other courts till he purges himself of the contempt which is different from suspending or revoking the licence or debaring him to practise[8].

26. Reference may be made to the following observations in SCBA case (*supra*):

“79. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debaring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for “professional misconduct”, on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution “all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court”. The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act “in aid of the Supreme Court”. It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemner advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemner advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving “reference” from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders.

Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practice as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunals.

81. We are conscious of the fact that the conduct of the contemner in V.C. Mishra case [(1995) 2 SCC 584] was highly contumacious and even atrocious. It was unpardonable. The contemner therein had abused his professional privileges while practising as an advocate. He was holding a very senior position in the Bar Council of India and was expected to act in a more reasonable way. He did not. These factors appear to have influenced the Bench in that case to itself punish him by suspending his licence to practice also while imposing a suspended sentence of imprisonment for committing contempt of court but while doing so this Court vested itself with a jurisdiction where none exists. The position would have been different had a reference been made to the Bar Council and the Bar Council did not take any action against the advocate concerned. In that event, as already observed, this Court in exercise of its appellate jurisdiction under Section 38 of the Act read with Article 142 of the Constitution of India, might have exercised *suomotu* powers and sent for the proceedings from the Bar Council and passed appropriate orders for punishing the contemner advocate for professional misconduct after putting him on notice as required by the proviso to Section 38 which reads thus:

“Provided that no order of the Disciplinary Committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.” But it could not have done so in the first instance.”

27. In Pravin C. Shah (*supra*) this Court held that an advocate found guilty of contempt cannot be allowed to act or plead in any court till he purges himself of contempt. This direction was issued having regard to Rule 11 of the Rules framed by the High Court of Kerala under Section 34 (1) of the Advocates Act and also referring to observations in para 80 of the judgment of this Court in Supreme Court Bar Association (*supra*). It was explained that debarring a person from appearing in Court was within the purview of the jurisdiction of the Court and was different from suspending or terminating the licence which could be done by the Bar Council and on failure of the Bar Council, in exercise of appellate jurisdiction of this Court. The observations are:

16. Rule 11 of the Rules is not a provision intended for the Disciplinary Committee of the Bar Council of the State or the Bar Council of India. It is a matter entirely concerning the dignity and the orderly functioning of the courts. The right of the advocate to practise envelops 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 etc. Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance inside the court. 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 the Bar Council in exercise of its disciplinary powers. 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. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate.

17. When the Rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court proceedings. Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former.

18. In the above context it is useful to quote the following observations made by a Division Bench of the Allahabad High Court in *Prayag Das v. Civil Judge, Bulandshahr* [AIR 1974 All 133] : (AIR p. 136, para 9) “The High Court has a power to regulate the appearance of advocates in courts. 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 courts in various other ways, e.g., drafting and filing of pleadings and vakalatnama for performing those acts. For that purpose his physical appearance in courts may not at all be necessary. For the purpose of regulating his appearance in courts the High Court should be the appropriate authority to make rules and on a proper construction of Section 34(1) of the Advocates Act it must be inferred that the High Court has the power to make rules for regulating the appearance of advocates and proceedings inside the courts. Obviously the High Court is the only appropriate authority to be entrusted with this responsibility.” xxxxx

24. Purging is a process by which an undesirable element is expelled either from one’s own self or from a society. It is a cleaning process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word “purge”, which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters (vide Words and Phrases, Permanent Edn., Vol. 35-A, p. 307). In Black’s Law Dictionary the word “purge” is given the following meaning: “To cleanse; to clear. To clear or exonerate from some charge or imputation

of guilt, or from a contempt.” It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed.

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27. We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned Single Judge in the aforesaid decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

28. The Disciplinary Committee of the Bar Council of India highlighted the absence of any mode of purging oneself of the guilt in any of the Rules as a reason for not following the interdict contained in Rule 11. Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of a criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt.”

28. In *Bar Council of India versus High Court of Kerala*[9], constitutionality of Rule 11 of the Rules framed by the High Court of Kerala for barring a lawyer from appearing in any court till he got himself purged of contempt by an appropriate order of the court was examined. This Court held that the rule did not violate Articles 14 and 19 (1) (g) of the Constitution nor amounted to usurpation of power of adjudication and punishment conferred on the Bar Councils and the result intended by the application of the rule was automatic. It was further held that the rule was not in conflict with the law laid down in the *SCBA* judgment (supra). Referring to the Constitution Bench judgment in *Harish Uppal* (supra), it was held that regulation of right of appearance in courts was within the jurisdiction of the courts. It was observed, following *Pravin C. Shah* (supra), that the court must have major supervisory power on the right to appear and conduct in the court. The observations are: “46. Before a contemner is punished for contempt, the court is bound to give an opportunity of hearing to him. Even such an opportunity of hearing is necessary in a proceeding under Section 345 of the Code of Criminal Procedure. But if a law which is otherwise valid provides for the consequences of such a finding, the same by itself would not be violative of Article 14 of the Constitution of India inasmuch as only because another opportunity of hearing to a person, where a penalty is provided for as a logical consequence thereof, has been provided for. Even under the penal laws some offences carry minimum sentence. The gravity of such offences, thus, is recognised by the legislature. The courts do not have any role to play in such a matter.”

29. Reference was also made to the following observations in *Harish Uppal* (supra):



“34.....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. 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. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. 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. Thus even then 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. 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.”

30. In *R.K. Anand (supra)* it was held that even if there was no rule framed under Section 34 of the Advocates Act disallowing an advocate who is convicted of criminal contempt is not only a measure to maintain dignity and orderly function of courts, it may become necessary for the protection of the court and for preservation of the purity of court proceedings. Thus, the court not only has a right but also an obligation to protect itself and save the purity of its proceedings from being polluted, by barring the advocate concerned from appearing before the courts for an appropriate period of time[10]. This court noticed the observations about the decline of ethical and professional standards of the Bar, and need to arrest such trend in the interests of administration of justice. It was observed that in absence of unqualified trust and confidence of people in the bar, the judicial system could not work satisfactorily. Further observations are that the performance of the Bar Councils in maintaining professional standards and enforcing discipline did not match its achievements in other areas. This Court expressed hope and expected that the Bar Council will take appropriate action for the restoration of high professional standards among the lawyers, working of

their position in the judicial system and the society. It was further observed: “331. The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of court and the other found guilty of misconduct as Special Public Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation. The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers we find that even some highly successful lawyers seem to live by their own rules of conduct.

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333. We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for the administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a Bar that enjoys the unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.

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335. Here we must also observe that the Bar Council of India and the Bar Councils of the different States cannot escape their responsibility in this regard. Indeed the Bar Council(s) have very positively taken up a number of important issues concerning the administration of justice in the country. It has consistently fought to safeguard the interests of lawyers and it has done a lot of good work for their welfare. But on the issue of maintaining high professional standards and enforcing discipline among lawyers its performance hardly matches its achievements in other areas. It has not shown much concern even to see that lawyers should observe the statutory norms prescribed by the Council itself. We hope and trust that the Council will at least now sit up and pay proper attention to the restoration of the high professional standards among lawyers worthy of their position in the judicial system and in the society.”

31. In Re: Sanjiv Dutta & Ors.[11], it was observed that the members of legal profession are required to maintain exemplary conduct in and outside of the Court. The respect for the legal system was due to role played by the stalwarts of the legal profession and if there was any deviation in the said role, not only the profession but also the administration of justice as a whole would suffer. In this regard, relevant observations are : “20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by the its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligential of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to

expect of him such ideal behavior. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more.”

32. In *Bar Council of Maharashtra versus M.V. Dabholkar*[12] following observations have been made about the vital role of the lawyer in administration of justice.

“15. Now to the legal issue bearing on canons of professional conduct. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon (his probity and professional life style. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice-social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallised into rigid rules but felt by the collective conscience of the practitioners as right:

It must be a conscience alive to the proprieties and the improprieties incident to the discharge of a sacred public trust. It must be a conscience governed by the rejection of self-interest and selfish ambition. It must be a conscience propelled by a consuming desire to play a leading role in the fair and impartial administration of justice. to the end that public confidence may be kept undiminished at all times in the belief that we shall always seek truth and justice in the preservation of the rule of law. It must be a conscience, not shaped by rigid rules of doubtful validity, but answerable only to a moral code which would drive irresponsible judges from the profession. Without such a conscience, there should be no judge. and, we may add, no lawyer.

Such is the high standard set for professional conduct as expounded by courts in this country and elsewhere.”

33. In *Jaswant Singh versus Virender Singh*[13], it was observed : “36. .... An advocate has no wider protection than a layman when he commits an act which amounts to contempt of court. It is most unbecoming for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favorable orders. Only because a lawyer appears as a party in

person, he does not get a license thereby to commit contempt of the Court by intimidating the Judges or scandalising the courts. He cannot use language, either in the pleadings or during arguments, which is either intemperate or unparliamentary. These safeguards are not for the protection of any Judge individually but are essential for maintaining the dignity and decorum of the Courts and for upholding the majesty of law. Judges and courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, out-spoken, but made without any malice or attempting to impair the administration of justice and made in good faith in proper language do not attract any punishment for contempt of court. However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bistrust themselves to uphold their dignity and the majesty of law. The appellant, has, undoubtedly committed contempt of the Court by the use of the objectionable and intemperate language. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising a Court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions as it amounts to an interference with the due course of administration of justice.”

34. In *Subrata Roy Sahara v. Union of India*[14], it was observed : “188. The number of similar litigants, as the parties in this group of cases, is on the increase. They derive their strength from abuse of the legal process. Counsel are available, if the litigant is willing to pay their fee. Their percentage is slightly higher at the lower levels of the judicial hierarchy, and almost non-existent at the level of the Supreme Court. One wonders what is it that a Judge should be made of, to deal with such litigants who have nothing to lose. What is the level of merit, grit and composure required to stand up to the pressures of today’s litigants? What is it that is needed to bear the affront, scorn and ridicule hurled at officers presiding over courts? Surely one would need superhumans to handle the emerging pressures on the judicial system. The resultant duress is gruelling. One would hope for support for officers presiding over courts from the legal fraternity, as also, from the superior judiciary up to the highest level. Then and only then, will it be possible to maintain equilibrium essential to deal with complicated disputes which arise for determination all the time irrespective of the level and the stature of the court concerned. And also, to deal with such litigants.”

35. In *Amit Chanchal Jha versus Registrar, High Court of Delhi* this Court again upheld the order of debarring the advocate from appearing in court on account of his conviction for criminal contempt.

36. We may also refer to certain articles on the subject. In “Raising the Bar for the Legal Profession” published in the Hindu newspaper dated 15th September, 2012, Dr. N.R.Madhava Menon wrote:

“.....Being a private monopoly, the profession is organised like a pyramid in which the top 20 per cent command 80 per cent of paying work, the middle 30 per cent managing to survive by catering to the needs of the middle class and government litigation, while the bottom 50 per cent barely survive with legal aid cases and cases managed through undesirable and exploitative methods! Given the poor quality of legal education in the majority of the so-called law colleges (over a thousand of them working in small towns and panchayats without infrastructure and competent faculty), what happened with uncontrolled expansion was the overcrowding of ill- equipped lawyers

in the bottom 50 per cent of the profession fighting for a piece of the cake. In the process, being too numerous, the middle and the bottom segments got elected to professional bodies which controlled the management of the entire profession. The so-called leaders of the profession who have abundant work, unlimited money, respect and influence did not bother to look into what was happening to the profession and allowed it to go its way — of inefficiency, strikes, boycotts and public ridicule. This is the tragedy of the Indian Bar today which had otherwise a noble tradition of being in the forefront of the freedom struggle and maintaining the rule of law and civil liberties even in difficult times.

37. In “Browbeating, prerogative of lawyers”, published in the Hindu newspaper dated 7th June, 2016, Shri S. Prabhakaran, Co-Chairman of Bar Council of India and Senior Advocate, in response to another Article “Do not browbeat lawyers”, published in the said newspaper on June 03, 2016, writes :

“.....The next argument advanced against the rules is that the threat of action for browbeating the judges is intended to silence the lawyers. But the authors have forgotten very conveniently that (i) when rallies and processions were taken out inside court halls obstructing the proceedings,

(ii) when courts were boycotted for all and sundry reasons in violation of the law laid down by the Supreme Court in Ex-Capt. Harish Uppal, (iii) when two instances of murder of very notorious lawyers inside the Egmore court complex took place on the eve of elections to the Bar Associations, (iv) when a lady litigant who came to the Family Court in Chennai was physically assaulted by a group of lawyers who also coerced the police to register a complaint against the victim, (v) when a group of lawyers barged into the chamber of a magistrate in Puducherry and wrongfully confined him till he released a lawyer on his own bond in a criminal complaint of sexual assault filed by a lady, (vi) when a group of lawyers gheraoed a magistrate for not granting bail and one of them spat on his face, leading to strong protests by the Association of Judicial Officers, and (vii) when very recently, a lady litigant was physically assaulted by a group of lawyers for sitting in the chair intended for lawyers inside the court hall, lawyers such as the authors of the article under response maintained a stoic silence.

Even lawyers who claim to be human rights activists choose to be silent when the human rights of millions of litigants are affected by boycott of courts. It shows that some lawyers, like the authors of the article under response, have always maintained silence and do not mind being silenced by a few unruly members of the Bar who go on the rampage at times. But they do not want to be silenced by any rule prescribing a decent code of conduct in court halls. The *raison d'être* appears to be that browbeating is the prerogative of the lawyers and it shall be allowed with impunity.” Undesirability of convicted person to perform important public functions:

38. It may also be appropriate to refer to the legal position about undesirability of a convicted person being allowed to perform important public functions. In *Union of India versus TulsiramPatel*[16] it was observed that it was not advisable to retain a person in civil service after conviction.[17]. In *Rama Narang versus Ramesh Narang*[18] reference was made to Section 267 of the Companies Act barring a convicted person from holding the post of a Managing Director in a company. This Court observed that having regard to the said wholesome provision, stay of conviction ought to be granted only in rare cases. In *Lily Thomas versus UOI*[19], this Court held that an elected representative could not continue to hold the office after conviction[20]. In *Manoj Narula versus UOI*[21] similar observation was made. In *Election Commission versus Venkata*

Rao[22] the disqualification against eligibility for contesting election was held to operate for continuing on the elected post.

Interpretation of Section 24-A: Need to amend the provision

39. Section 24A of the Advocates Act is as follows:

...

...

40. Dealing with the above provision, the Division Bench of the Gujarat High Court in *C. versus Bar Council*[23] observed:

“2. ... .... We, however, wish to avail of this opportunity to place on record our feeling of distress and dismay at the fact that a public servant who is found guilty of an offence of taking an illegal gratification in the discharge of his official duties by a competent Court can be enrolled as a member of the Bar even after a lapse of two years from the date of his release from imprisonment. It is for the authorities who are concerned with this question to reflect on the question as to whether such a provision is in keeping with the high stature which the profession (which we so often describe as the noble profession) enjoys and from which even the members of highest judiciary are drawn. It is not a crime of passion committed in a moment of loss of equilibrium. Corruption is an offence which is committed after deliberation and it becomes a way of life for him.

3. A corrupt apple cannot become a good apple with passage of time. It is for the legal profession to consider whether it would like such a provision to continue to remain on the Statute Book and would like to continue to admit persons who have been convicted for offences involving moral turpitude and persons who have been found guilty of acceptance of illegal gratification, rape, dacoits, forgery, misappropriation of public funds, relating to counter felt currency and coins and other offences of like nature to be enrolled as members merely because two years have elapsed after the date of their release from imprisonment. Does passage of 2 years cleanse such a person of the corrupt character trait, purify his mind and transform him into a person fit for being enrolled as a member of this noble profession? Enrolled so that widows can go to him, matters pertaining to properties of minors and matters on behalf of workers pitted against rich and influential persons can be entrusted to him without qualms. Court records can be placed at his disposal, his word at the Bar should be accepted? Should a character certificate in the form of a Black Gown be given to him so that a promise of probity and trustworthiness is held out to the unwary litigants seeking justice? A copy of this order may, therefore, be sent to the appropriate authorities concerned with the administration of the Bar Council of India and the State Bar Council, Ministry of Law of the Government of India and Law Commission in order that the matter maybe examined fully and closely with the end in view to preserve the image of the profession and protect the seekers for justice from dangers inherent in admitting such persons on the rolls of the Bar Council.”

41. In spite of the above observations no action appears to have been taken at any level. The result is that a person convicted of even a most heinous offence is eligible to be enrolled as an advocate after expiry of two years from expiry of his sentence. This aspect needs urgent attention of all concerned.

42. Apart from the above, we do not find any reason to hold that the bar applicable at the entry level is wiped out after the enrollment. Having regard to the object of the provision, the said bar certainly operates post enrollment also. However, till a suitable amendment is made, the bar is operative only for two years in terms of the statutory provision.

43. In these circumstances, Section 24A which debars a convicted person from being enrolled applies to an advocate on the rolls of the Bar Council for a period of two years, if convicted for contempt.

44. In addition to the said disqualification, in view judgment of this Court in R.K. Anand (supra), unless a person purges himself of contempt or is permitted by the Court, conviction results in debarring an advocate from appearing in court even in absence of suspension or termination of the licence to practice. We therefore, uphold the directions of the High Court in para 42 of the impugned order quoted above to the effect that the appellant shall not be permitted to appear in courts of District Etah until he purges himself of contempt.

#### Inaction of the Bar Councils – Nature of directions required

45. We may now come to the direction to be issued to the Bar Council of Uttar Pradesh or to the Bar Council of India. In the present case, inspite of direction of the High Court as long back as more than ten years, no action is shown to have been taken by the Bar Council. Notice was issued by this Court to the Bar Council of India on 27th January, 2006 and after all the facts having been brought to the notice of the Bar Council of India, the said Bar Council has also failed to take any action. In view of such failure of the statutory obligation of the Bar Council of the State of Uttar Pradesh as well as the Bar Council of India, this Court has to exercise appellate jurisdiction under the Advocates Act in view of proved misconduct calling for disciplinary action. As already observed, in SCBA case (supra), this Court observed that where the Bar Council fails to take action inspite of reference made to it, this Court can exercise *suomotu* powers for punishing the contemnor for professional misconduct. The appellant has already been given sufficient opportunity in this regard.

46. We may add that what is permissible for this Court by virtue of statutory appellate power under Section 38 of the Advocates Act is also permissible to a High Court under Article 226 of the Constitution in appropriate cases on failure of the Bar Council to take action after its attention is invited to the misconduct.

47. Thus, apart from upholding the conviction and sentence awarded by the High Court to the appellant, except for the imprisonment, the appellant will suffer automatic consequence of his conviction under Section 24A of the Advocates Act which is applicable at the post enrollment stage also as already observed.

48. Further, in exercise of appellate jurisdiction under Section 38 of the Advocates Act, we direct that the licence of the appellant will stand suspended for a further period of five years. He will also remain debarred from appearing in any court in District Etah even after five years unless he purges himself of contempt in the manner laid down by this Court in Bar Council of India (supra) and R.K. Anand (supra) and as directed by the High Court. Question (ii) stands decided accordingly.

49. We thus, conclude:

Conviction of the appellant is justified and is upheld; Sentence of imprisonment awarded to the appellant is set aside in view of his advanced age but sentence of fine and default sentence are upheld. Further direction that the appellant shall not be permitted to appear in courts in District Etah until he purges himself of contempt is also upheld; Under Section 24A of the Advocates Act, the enrollment of the appellant will stand suspended for two years from the date of this order; As a disciplinary measure for proved misconduct, the licence of the appellant will remain suspended for further five years. An Epilogue

50. While this appeal will stand disposed of in the manner indicated above, we do feel it necessary to say something further in continuation of repeated observations earlier made by this Court referred to above. Legal profession being the most important component of justice delivery system, it must continue to perform its significant role and regulatory mechanism and should not be seen to be wanting in taking prompt action against any malpractice. We have noticed the inaction of the Bar Council of Uttar Pradesh as well as the Bar Council of India inspite of direction in the impugned order of the High Court and inspite of notice to the Bar Council of India by this Court. We have also noticed the failure of all concerned to advert to the observations made by the Gujarat High Court 33 years ago. Thus there appears to be urgent need to review the provisions of the Advocates Act dealing with regulatory mechanism for the legal profession and other incidental issues, in consultation with all concerned.

51. In a recent judgment of this Court in *Modern Dental College and Research Centre versus State of M.P.* in Civil Appeal No.4060 of 2009 dated 2nd May, 2016, while directing review of regulatory mechanism for the medical profession, this court observed that there is need to review of the regulatory mechanism of the other professions as well. The relevant observations are:

“There is perhaps urgent need to review the regulatory mechanism for other service oriented professions also. We do hope this issue will receive attention of concerned authorities, including the Law Commission, in due course.”

52. In view of above, we request the Law Commission of India to go into all relevant aspects relating to regulation of legal profession in consultation with all concerned at an early date. We hope the Government of India will consider taking further appropriate steps in the light of report of the Law Commission within six months thereafter. The Central Government may file an appropriate affidavit in this regard within one month after expiry of one year.

53. To consider any further direction in the light of developments that may take place, put up the matter for further consideration one month after expiry of the period of one year.



## **ADVOCATES RIGHT TO TAKE UP LAW TEACHING**

### ***The Advocates Right to take up Law Teaching Rules, 1979***

*[Rules made by the Bar Council of India under Section 49A of the Advocates Act, 1961]*

**“3. Right of practicing advocates to take up law teaching.-** (1) Notwithstanding anything to the contrary contained in any rule under this Act, an advocate may, while practising, take up teaching of law in any educational institution which is affiliated to a University within the meaning of the University Grants Commission Act, 1956 (3 of 1956), so long as the hours during which he is so engaged in the teaching of law do not exceed three hours a day.”

\* \* \* \* \*

### ***Anees Ahmed v. University of Delhi***

AIR 2002 Del 440

**CW. 3412/97** :This writ petition was filed by the petitioners by way of public interest litigation for a direction to respondent No. 1/Delhi University to take disciplinary action against all Full Time Law Teachers of the Delhi University, who were practicing in the courts and also praying for a direction to prohibit all Full Time Law Teachers of the Faculty of Law of the University of Delhi from carrying on legal practice/profession and also from appearing in the courts of law any manner. The petitioner had also sought for a direction to the Delhi State Bar Council, respondent No. 3 to cancel the enrolment/licence to practice given to Full Time Law Teachers. The petitioner No. 1 was an Advocate practicing in the High Court of Delhi and had filed the writ petition as he was interested in the advancement of legal education in India. The petitioner No. 2, at the time of filing of the writ petition, was a Law Graduate, who passed out and obtained Degree of law at the relevant time when the writ petition was being filed.

**C.W. 3519/97** :This writ petition was filed by the petitioner, who was a Professor of Law the Faculty of Law, of the University of Delhi. The petitioner was initially appointed as a Lecturer in Law and posted at Law Centre-II of the Faculty of Law of the University of Delhi in August, 1971. Thereafter the petitioner got his promotion and in due course of time, became a Professor in Law in the Faculty of Law of the University of Delhi. The petitioner filed the present petition challenging the order passed by the Bar Council of India on 9-8-1997 cancelling and removing the name of the petitioner from the roll of Advocates of the Bar Council with a further direction that it would be open to the petitioner to make a fresh application for enrolment as an Advocate on his ceasing to be in employment.

The common question that arose for consideration was whether a faculty member in the Faculty of Law, University of Delhi could subsequently enroll himself as an advocate and appear in a court of law and simultaneously carry on the duties of a full-time faculty member of the Faculty of Law, University of Delhi.

The private respondents in the writ petition filed by way of public interest litigation were all full time faculty members of the University of Delhi, who employed as full time faculty members in the

University of Delhi and subsequently got themselves enrolled as Advocates with Delhi State Bar Council.

**DR. MUKUNDAKAM SHARMA, J.**-7. The petitioners No. 1 in the writ petition filed by way of public interest litigation, appeared in person and during the course of his arguments referred to various statutes and ordinances of the University of Delhi as also the provisions of The Advocates Act, 1961 and the rules framed by the Bar Council of India and in the light thereof submitted that the aforesaid provisions prohibit Full Time Law Teachers from practicing in the law courts and, therefore, the Full Time Law Teachers, who are taking up law practice in law courts subsequently, after enrolling themselves as advocates are liable to be prohibited/restrained from pursuing the aforesaid two avocations simultaneously. He submitted that in view of the fact that most of the full time law teachers are also practicing as advocates, the students community pursuing the law course in the University of Delhi has been neglecting their obligation to their students and number of complaints to their students and number of complaints on that count have been lodged. In support of his contention, the petitioner No. 1 relied upon the report submitted by a committee comprising of Prof. Andre Beteille of Delhi School of Economics and Prof. K.R. Sharma of the Faculty of Law, University of Delhi. He also relied upon various decisions of the Supreme Court of India in support of his contention and also to the Keynotes address in American Bar association Meeting in August, 2000 by John Sexton of the new York Universities Law School.

8. The Bar Council of India was also represented by their counsel at the time of arguments, who had drawn our attention to the various provisions of the Advocates Act, 1961 read with rules framed by the Bar Council of Delhi, particularly to Rule 103 of the Rules as also the rules framed by the Central Government called Advocates (Right to take up Law Teaching) Rules, 1979, hereinafter referred to in short the 1979 Rules. Referring to the said provisions, it was submitted by the counsel that under rule 103 of the Rules framed by the State Bar Council any person, who is either in part time or full time service cannot be enrolled as an Advocate, whereas a part-time teacher of law could be admitted as an Advocate under the proviso to the aforesaid rule 103 of the Delhi Bar Council Rules. He further submitted that Full Time Law Teachers could not have been enrolled as Advocates as provided for under rule 103 of the Delhi Bar Council Rules and that the 1979 Rule is a rule that operates post-enrolment and has no application to a person, who is not an Advocate. He also referred to the provisions of Rules 49 of Chapter - II (Standards of Professional Conduct and Etiquette). Section VII (Restrictions on other employment) of the Bar Council of India rules laying down that an Advocate shall not be a full time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to practice, and shall, on taking up any such employment, intimate the fact to the Bar Council, on whose roll his name appears and shall thereupon cease to practice as an Advocate so long as he continues in such employment.

9. He also referred to Resolution No. 108 of 1996, which was passed by the Bar Council of India giving stress to the need of improving the standards of legal education in India. The said resolution states that the Bar Council of India disapproves the practice of enrolling full time salaried teachers in law, who were not enrolled as advocates at the time of their whole time appointment as teachers by misinterpreting the Rules made by the Central Government under S. 49-A of the Advocates Act, 1961 viz. Advocates (Right to take up Law Teaching) Rules, 1979 and direct all the State Bar Councils to take immediate steps to initiate removal proceedings under the provisions of the Advocates Act and the Rules framed thereunder against such full time salaried law teachers, who have been enrolled as advocates. He submitted that Theban on legal practice by Full Time Law Teachers has salutary objective to achieve, namely, to maintain high standards of legal standards. He further submitted that so far the right of the practicing Advocates to take up the law teaching is

concerned, the same is a right, which has been conferred on the practicing Advocates to take up teaching of law under the Rules made by the Central Government under S. 49-A of the Advocates Act, 1961 and , therefore, the members of the Bar would have a right to take up teaching of law. He also submitted that the Full Time Teachers of Law were never entitled to be enrolled as Advocates and were wrongly enrolled by the Bar Council of Delhi by misinterpreting the Rules made by the Central Government under S. 49-A of the Advocates Act, 1961 and as such the Bar Council of India has initiated action against such persons, who have been wrongly enrolled as advocates.

10. He also relied upon various statutes and ordinances of the University of Delhi and, particularly referred to Clause 5 of Ordinance XI, which provides that a teacher shall devote his/her whole time to the service of the University and shall not, without the permission of the University, engage directly or indirectly, in any trade or business whatsoever, or in any private tuition or other work to which and emolument or honorarium is attached.

11. Counsel appearing for the University of Delhi also relied upon various ordinances and statutes of the University of Delhi, in support of his contention that the service conditions of Full Time Teachers of the University of Delhi incorporated in the contract of service, are statutory in nature and that they are binding on the teachers and that a Full Time Teacher of the University of Delhi is required to devote his/her time only to teaching and research in the University and that a Full time Teacher can not undertake any other professional activity such as practicing law as an Advocate, without the express permission of the University authorities and that the University has not granted any permission to Full Time Teachers either in the Faculty of Law or any other Faculty to practice as a Lawyer and only Sh. N.S. Bawa was granted a very limited permission to appear in the case of riot victims of 1984. Counsel reiterated the stand taken in the counter affidavit filed by University of Delhi that no Full Time Teacher of the University of Delhi, be it a teacher in the Law Faculty or any other Faculty of the University, is entitled to practice as a Lawyer so long as he is a Full time Teacher in the University.

12. In support of his contention, he referred to various clauses of the University ordinances and the resolutions of the University as also of the University Grants Commission, Referring to the same he submitted that it is imperative that the Full time Teachers devote their time and energy to teach the students in the Faculty of Law and to do research and publication and that the said teachers are not simultaneously entitled to also practice law, as a lawyer.

40. The Petitioner Nos. 1 and 2 were students in the Law Faculty of the Delhi University. During their tenure as students they had first hand knowledge about the manner and mode in which legal education is imparted in the Delhi University. After being enrolled as Advocates the petitioner No.1 filed the present petition in the Court with the intention for betterment and advancement of legal education in Delhi. The other two writ petitions are directed against the impugned orders passed by the Bar Council of India removing two of the full time Law teachers from the roll of Advocates. The teachers from the roll of Advocates. The aforesaid orders are also challenged before this Court on the ground that the Bar Council of India has no such jurisdiction.

41. In view of the aforesaid position, the issues that are raised in the Public Interest Litigation shall have to be dealt with and decided even in order to answer the issues raised by Shri Vats and Shri Srivastav in their writ petitions. Besides if a writ petition is filed by a person driven by public interest and such a writ petitioner comes with clean heart, clean mind and clean objectives and is filed bona fide for the purpose of only serving a public interest, such a petition cannot be dismissed. This was what was held by the Supreme Court in the decision in **K. R. Srinivas v. R. M. Premchand** [(1994) 6 SCC 620], wherein the Supreme Court held that the writ petitioner who

comes to the Court for relief in public interest petition must come not only with clean hands, like any other writ petitioner but must further come with a clean heart, clean mind and clean objective.

42. In a Public Interest Litigation the Court in order to check and prevent misuse of the remedy ought to examine the motive, if any, of the petitioner and ask itself the question, “Is there anything more than what meets the eyes”? That was exactly what was laid down by the Supreme Court in *Sachidanand Pandey v. State of West Bengal* [AIR 1987 SC 1109].

43. The motive for filing a Public Interest writ petition must be examined by the Court with care and caution. In case the High Court finds the filing of the Public Interest Litigation to be motivated by self interest of the petitioner for wreaking vengeance it will not entertain the same. In *Dr. Ambedkar Basti Vikassabhav, Delhi Vidyut Board* [AIR 2001 Del. 223] it was held by the Division Bench of this Court that the Court has to be satisfied about, (a) the correctness of the credentials of the applicant; (b) the prime facie correctness of nature of information given by him; (c) the information being not vague and indefinite. It was also held by this Court that the Court has to strike balance between two conflicting interest namely, (i) no body should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitioner seeking to assail, for oblique motives, justifiable executive actions.

44. The allegations of the full time Law teachers against the petitioners are based on surmises and conjecture. The petitioner No. 1, who has filed the present public interest litigation is an Advocate of this Court and is a responsible officer of the Court. No clear evidence is led by the Respondents - Full time Law teachers to prove and establish that filing of the writ petition is in any manner motivated or instigated by the aforesaid two Professors of the Law Faculty of Delhi, who according to the said respondents were inimical towards them. The cause which is sought to be espoused through the present writ petition is of public importance. The same is also required to be looked into as the Bar Council of India which is the primary body for maintaining discipline amongst the enrolled Advocates has also proceeded to take action against some of the full time Law teachers and against the rest it is dependent on the outcome of these petitions. Therefore, in our considered opinion this writ petition cannot be dismissed on the ground of maintainability. This writ petition filed under the category of Public Interest Litigation by the writ petitioner, who is an Officer of the Court is maintainable and the issues raised being important and having wide ramifications are required to be dealt with and answered.

45. Having held thus, we may now proceed to examine the issues that arise for consideration on merits of the case. Reference is made to the provision of Section 2 (1) (a) of the Advocates Act, 1961 which defines the term “advocate” meaning an Advocate entered in any roll under the provisions of the said Act. Rule 103 of the Rules framed by the Bar Council of Delhi has been extracted above. In the aforesaid rule it is provided that any person either in part-time or full time employment cannot be enrolled as an advocate but under the proviso is provided that a part-time teacher of Law could be admitted as an advocate. Therefore, under the aforesaid provision a part-time Law teacher could be enrolled as an advocate but no such privilege or benefit is available to a full time Law teacher.

46. Strong reliance was placed by the respondent-Full time Law teachers on the provisions of Advocates rights to take up Law Teaching Rules, 1979 (“the 1979 Rules”). The said provisions are also extracted hereinabove. A bare reading of the said Rules indicate that the said rule uses the terminology “advocates” and deals with the right of practicing advocate to take up law teaching. By virtue of the aforesaid provision an advocate is empowered to take up law teaching provided the same does not exceed three hours a day. Therefore, the said rules clearly establish that the same are

applicable and come into operation post enrollment and have no application to a person prior to his enrollment as an advocate. It was sought to be contended by all the law teachers that a person can combine law teaching and law practice simultaneously provided law teaching does not exceed three hours a day. It was submitted by them that after adaptation of the aforesaid rules, a lawyer could take up full time law teaching in regular scale of pay and, therefore, the converse is also possible and, therefore, a Law teacher could also be enrolled as an Advocate. However, on proper reading of the said provision would make it crystal clear that such an interpretation is not only fallacious but also absurd. It is settled law that an interpretation which leads to absurdity should always be avoided.

47. It is also settled law that when the provisions of a statute is plain, clear and unambiguous, no word could be added to such a plain wordings of the statute nor it is permissible to add words into it which are not there. In this connection reference may be made to the decision of the Supreme Court in *Union of India v. Deoki Nandan Aggarwal* [AIR 1992 SC 96] wherein it is held as follows at page 101:

“It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the Legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the Legislature the Court could not go its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be.”

51. When in the context of the aforesaid decisions the wordings used in the Notification issued by the Central Government is read it would make it explicit that under the said notification a right is given to practicing advocate to take up law teaching but no such parallel right is given to teachers of law to be enrolled as advocates. The wordings used in the aforesaid provisions is plain and unambiguous and requires no addition of words to the said statute. The intention of the legislature is also clear and apparent and, therefore, the Court would not proceed to reframe the legislation by giving a meaning which the respondent teachers seek to give.

52. It is true that the course of law particularly the LL.B. course being a professional course, there is a necessity of association of and guidance of the Advocates to the law students so as to enable such students to gain practical experience and to acquire Court craft and professional skills. But at the same time the obligation of the teaching faculty to the students cannot be ignored. There are several facts of teaching namely, delivering lectures, taking tutorials and seminars. Over and above the teaching Faculty also has an obligation of doing research which includes one's own research as well as supervision of research required to be done by the students. Besides there are other responsibilities to be discharged by a teacher like, administrative responsibilities etc. In order to give an exposure to the students undergoing the law course to acquire some practical experience, permission is granted to lawyers practicing in the Courts to undertake such law teaching provided such teaching does not take up more than three hours a day.

53. It was argued by the law teachers that they are in fact not required to teach for more than three hours in a day and that they are, therefore, eligible to practice in the Courts and to retain their membership of the Bar Council. When the statute does not by itself permit such a situation and when Rule 103 has specifically prohibited full time law teachers from enrolling as advocate, no such permission could be granted to a full time law teacher to be enrolled as an advocate. The aforesaid interpretation is also in consonance with Statutes, Ordinance and the Resolutions adopted

by the Delhi University and the University Grants Commission. Since both Rule 103 of the Delhi State Bar Council Rules and Rule 3 of the Rules framed by the Central Government operate in two distinct and different fields and relate to different set of persons, there is no repugnancy as sought to be submitted by the full time law teachers and, therefore, the said contention is rejected. It is also worthwhile to mention at this stage that the validity of the 1979 Rules is not under challenge before us. Therefore, we are to decide this matter proceeding on the basis that the said Rules are valid and are applicable to the set of persons who are specifically mentioned in the said Rules. No deviation or addition is permissible to the clean and the plain intention and meaning. Therefore, we also hold that reliance by the full time law teachers on the said Rules to advance their cause is misplaced.

54. The service conditions of full time teachers of the Delhi University are incorporated in the Contract of Service and, therefore, they are statutory in nature and they are binding on the teachers. Reference is already made to Clause 5 of the Ordinance which provides that a full time teacher of the Delhi University is required to devote his time only to teaching and research in the University and, therefore, a full time teacher cannot undertake any other professional activity, such as practicing law as an advocate. The University which is arrayed as one of the respondents in the present cases has specifically stated in the counter affidavit filed by it that the University has not granted any permission to full time teachers either in the Law Faculty or in any other Faculty to practice as a Lawyer and that one Mr. N. S. Bawa was granted a very limited permission to appear in the case of Riot Victims of 1984. The averments in the Public Interest writ petition disclose that request made by the members of the Law Faculty of Delhi that in legal aid cases teachers of the Law Faculty may be permitted to appear in Court was considered by the Executive Council of the Delhi University and it was rejected by the Executive Council, which is the final administrative Body of the University. The same position was again reiterated by the University in a communication to all the teachers dated 3-11-1995. It is, therefore, the specific stand of the Delhi University that no full time teacher of the Delhi be he or she is in the Law Faculty or in any other Faculty of the University is not entitled to practice as a lawyer as long as he is a full time teacher in the University. If such a privilege is granted to the law teacher to be enrolled as an advocate, there could be no reasonable ground to deny the same privilege to other Faculty Members of other departments of the University. The aforesaid stand of the Delhi University is found to be valid and reasonable. Under the 1979 Rules and Advocate is permitted to take up law teaching based on the number of hours of teaching being undertaken. The Committee constituted by the University upon enquiry has held that the obligation of a teacher, though somewhat diffuse but is extensive in nature which include not only class from teaching but also research and administration. It was held that such obligations even though cannot be put down to departmental time table the same, however, exists and such time should be included and read into their daily routine. The directions of the University Grants Commission are based on the aforesaid analogy when it conveyed the decision that in order to promote quality education full time law teachers would not be permitted to enroll as members of the Bar entitling them to full time practice in law. Even the permission granted to such teacher to appear and represent in social action/public interest litigation is in the nature of legal aid and social activity and not as a lawyer.

55. In our considered opinion, the same would not by itself empower or enable a full time teacher of the Delhi University to practice as a Lawyer. Even in a case where enrolment is granted by the Bar Council and thereafter the advocate seeks to take up law teaching, the same could be permitted only within the parameter of the 1979 Rules read with the University Statutes and Ordinance.

56. The University Grants Commission also by its letter dated 7-12-1995 informed the Registrar of the Delhi University that full time law teachers in University Departments and

affiliated Law Colleges would not be permitted to enroll as members of the Bar entitling them to be a full time lawyer but they should be allowed and permitted to appear in Courts for social action or public interest litigation matters as well as legal aid/public interest litigation connected therewith. The aforesaid permission is restricted and limited to the aforesaid extent only and was allowed to give impetus to the concept of legal aid and making the students of law also aware of the aforesaid concept. The Report of the Committee which was adopted by the Executive Council of the Delhi University on 19-4-1998, the extract of which is quoted hereinbefore would also support the same position.

57. In that view of the matter we hold that the interpretation sought to be given by the respondent-Faculty Members to Rule 103 and to the 1979 Rules cannot be accepted. We also hold that the said teachers are bound by the provisions of Rule 103 of the Bar Council of Delhi Rules and the Rules of 1979 are neither applicable to their cases nor they can seek assistance from the said Rules unless the rules framed by the Competent Authority allow the privilege specifically. No such privilege could be claimed by way of implication or on the basis of surmises or conjectures. Therefore, no such right or privilege could be claimed by the full time law teachers of the Delhi University which is not permitted under the rules.

58. Reference could also be made to Rule 49 of Chapter II, (Standards of Professional Conduct and Etiquette) Section VII (Restrictions on other employments) of the Bar Council of India Rules which provides that an advocate shall not be a full time salaried employee of any person, government, firm corporation or concern, so long as he continues to practice, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment.

59. We are also of the considered opinion that the Resolution adopted by the Bar Council of India in 1996 under Resolution No. 108 correctly lays down the law and the practice and we hold that no objection could be taken as against the said Resolution. The said decision is in consonance with the observations of the Supreme Court in the decision of *Dr. Haniraj L. Chulani*. Therefore, if the interpretation sought to be given by the full time law teachers are accepted the same would not only run counter to the statutory legal position but the same would also be contrary to the law of the land.

60. In terms of the said Resolution the Bar Council of India has proceeded to take suomotu action and has directed all the State Bar Councils to take necessary steps to implement the aforesaid Resolution. The Bar Council of India proceeded to take suomotu action initiating removal proceedings against such full time salaried teachers of law who were subsequently enrolled as advocates by an erroneous interpretation of 1979 Rules. It was held by the Bar Council of India that full time law teachers were enrolled as advocates by misinterpreting the rules made by the Central Government under Section 49A of the Advocates Act, 1961. By adopting the aforesaid Resolution No. 108 of 1996 the Bar Council of India has tried to rectify the mistake by removing the names of such persons who are full time salaried law teachers and who were enrolled as Advocates overlooking the specific provisions of Rule 103 of Bar Council of Delhi Rules and by misinterpreting the provisions of the 1979 Rules.

61. It was contended that no such power could be exercised by the Bar Council of India and that also after expiry of about 20 years from the date of enrolment. Counsel appearing for the Bar Council of India, however, submitted that such a power could be exercised by the Bar Council of India under the provisions of Section 48A of the Advocates Act, 1961.

62. In the foregoing discussions it is held that no full time law teacher drawing regular salary from the University could enroll himself as an advocate. Such full time teachers were allowed to take enrolment by the State Bar Council misinterpreting the provisions of the 1979 Rules. The said full time law teachers were not eligible to be enrolled as an advocate and, therefore, enrolment itself was clearly contrary to Rule 103 of the Rules. When such persons who suffered a bar at the threshold are given enrolment in violation of and contrary to rules, they cannot take up a plea of estoppel. In this connection reference may be made to the decision of the Supreme Court in **Satish Kumar Sharma v. Bar Council of Himachal Pradesh** [AIR 2001 SC 509], wherein it was held as follows at page 517, of AIR:-

“The contention that the respondent could not have cancelled enrolment of the appellant almost after a decade and half and that the respondent was estopped from doing so on the principle of promissory estoppel, did not impress us for the simple reason that the appellant suffered threshold bar and was not eligible to be enrolled as an Advocate and his enrolment itself as clearly contrary to Rule 49 of the Rules in the light of the facts stated above. Hence neither the principles of equity nor promissory estoppel will come to the aid of the appellant.”

63. It is also a settled law that there cannot be any estoppel as against statute to defeat the provisions of law. That is exactly what was laid down by the Supreme Court in **Indira Bai v. Nand Kishore** [AIR 1991 SC 1055] wherein it was held as follows:-

“There can be no estoppel against statute. Equity, usually, follows law. Therefore that which is statutorily illegal and void cannot be enforced by resorting to the rule of estoppel.”

64. As the full time law teachers suffered a threshold bar to get themselves enrolled as advocate the enrolment given to them by the State Bar Council was per se void and illegal and contrary to Rule 103 of the State Bar Council Rules and, therefore, the Bar Council of India acted within its jurisdiction in canceling such enrolment which was done in violation of the extent rules.

65. A power of revision is vested in the Bar Council of India which is a power of general superintendence over the powers exercised by the State Bar Council. As and when the Bar Council of India is of the opinion that a particular action is taken by such a State Bar Council without any proper sanction of law the same can always be corrected and rectified by exercising the powers of Revision by the Bar Council. A similar plea raised by the aggrieved person in the case of Satish Kumar Sharma (supra) was rejected by the Supreme Court holding that such a contention that the respondent could not have cancelled enrolment after a decade and half is not acceptable, Section 26 of the Advocates Act may not be strictly applicable to the facts of the present cases but if such action could be taken by the Bar Council of India in exercise of its other statutory powers the same would be held to be valid.

66. In terms of the aforesaid observations and directions all the writ petitions stand disposed of holding that the full time law teachers of the Law Faculty of the Delhi University could not have enrolled themselves as advocates and, therefore, enrolment given to the said teachers by the State Bar Council was per se void and illegal and any action taken by the Bar Council of India to rectify the said mistake in exercise of its powers cannot be said to be bad or illegal. We also hold that a part time teacher of law could be enrolled as an advocate and also that an advocate after being enrolled could take up part time law teaching. We find no fetter put to the aforesaid position. Interim order stands vacated.

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## **PART C- PROFESSIONAL ACCOUNTING**

### **Section II- Duties to the Client**

25. An advocate should keep accounts of the client's money entrusted to him, and the accounts should show the amounts received from the client or on his behalf, the expenses incurred for him and the debits made on account of fees with respective dates and all other necessary particulars.

26. Where moneys are received from or on account of a client, the entries in the accounts should contain a reference as to whether the amounts have been received for fees or expenses, and during the course of the proceedings, no advocate shall, except with the consent in writing of the client concerned, be at liberty to divert any portion of the expenses towards fees.

27. Where any amount is received or given to him on behalf of his client, the fact of such receipt must be intimated to the client, as early as possible.

28. After the termination of the proceedings, the advocate shall be at liberty to appropriate towards the settled fee due to him, any sum remaining unexpended out of the amount paid or sent to him for expenses, or any amount that has come into his hands in that proceeding.

29. Where the fee has been left unsettled, the advocate shall be entitled to deduct, out of any moneys of the client remaining in his hands, at the termination of the proceeding for which he had been engaged, the fee payable under the rules of the Court, in force for the time being, or by then settled and the balance, if any, shall be refunded to the client.

30. A copy of the client's account shall be furnished to him on demand provided the necessary copying charge is paid.

31. An advocate shall not enter into arrangements whereby funds in his hands are concerned into loans.

32. An advocate shall not lend money to his client for the purpose or any action or legal proceedings in which he engaged by such client.

*Explanation* – An advocate shall not be held guilty for a breach of this rule, if in the course a pending suit or proceeding, and without any arrangement with the client in respect of the same, the advocate feels compelled by reason of the rule of the court to make a payment to the court on account of the client for the progress of the suit or proceeding.

Rules for Advocate on Record:

1. Every advocate-on-record shall keep such books of account as may be necessary to show and distinguish in connection with his practice as an advocate-on-record-
  - (i) moneys received from or on account of and the moneys paid to or on account of each of his clients; and
  - (ii) the moneys received and the moneys paid on his own account.
2. Every advocate-on-record shall, before taxation of the Bill of Costs, file with the Taxing Officer a Certificate showing the amount of fee paid to him or agreed to be paid to him by his client.