R. MUTHUKRISHNAN

v.

THE REGISTRAR GENERAL OF THE
HIGH COURT OF JUDICATURE AT MADRAS

(Writ Petition (C) No. 612 of 2016)

JANUARY 28, 2019

[ARUN MISHRA AND VINEET SARAN, JJ.]

Rules of High Court of Madras, 1970:

rr. 14A, 14B, 14C and 14D (as inserted by amendment in 2016) – Empowerment of High Court to debar an advocate from practicing – Validity of – Held: High Court Rules have been framed in exercise of powers conferred u/s. 34 of Advocates Act – Section 34 does not confer power to frame rules to debar a lawyer for professional misconduct – It is apparent from the provisions and the scheme of the Advocates Act that the Act never intended to confer disciplinary powers upon the High Court or Supreme Court except to the extent dealing with an appeal u/s. 38 of Advocates Act – It is the Bar Councils of States and Bar Council of India which have the power to discipline the lawyers and maintain nobility of the profession under Advocates Act – The High Court has the power to debar the advocate under the Contempt of Courts Act – Even when the Disciplinary Committee of the Bar Council is not as effective as it should be, the very purpose of disciplinary control by Bar Council cannot be permitted to be frustrated – Such failure on the part of Bar Council can be supervised by the Court – Therefore, the impugned rules could not have been framed u/s. 34 of Advocates Act – The impugned rules clearly impinge upon the independence of the Bar – Exercise of disciplinary control by the High Court, by inserting the impugned rules would amount to usurpation of the power of Bar Council conferred under Advocates Act – Advocates Act, 1961 – s.34 – Constitution of India – Arts. 14 and 19.

Allowing the petition, the Court

HELD: 1. The Advocates Act, 1961 has been enacted to amend and consolidate the law relating to the legal practitioners

A **and to provide for the constitution of the Bar Council and an All India Bar. 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. There cannot be existence of a strong judicial system without an independent Bar. [Paras 13, 14] [604-C, D, E]**

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2. 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 that the country is governed by the rule of law. Considering the significance of the Bar in maintaining the rule of law, right to be C **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. [Para 16][604-G-H; 605-A]**

3. The Bar is an integral part of the judicial administration. D **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. It is the joint responsibility of the Bar and the Bench to ensure that equal justice is imparted to all. Independent Bar** E **and independent Bench form the backbone of the democracy. 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. [Paras 18, 19 and 21][605-D-F, H; 606-B]**

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4. For a value-driven framework, it is necessary that perspective is corrected in an ethical and morally sound perspective. The perception of ambulance chasers, money guzzlers and black sheep should not be presumptive. Such public perception about the lawyers undermines the credibility of the G **legal profession, all the evils from the system have to be totally weeded out. [Para 27][607-E-F]**

5. 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 H **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. The Bar Association must be self-governing is globally recognised. [Paras 31, 32][608-E-G]

6. A bar association is generally deemed to be independent when it is mostly free from external influence and can withstand pressure from external sources on matters such as the regulation of the profession, disbarment proceedings and the right of lawyers to join the association. Judicial independence ensures that lawyers are able to carry out their duties in a free and secure environment and an independent judiciary also acts as a check on the independence of lawyers and vice versa. [Para 36][616-B-C]

7. The Bar Council has the power to discipline lawyers and maintain nobility of profession and that power imposes great responsibility. The Court has the power of contempt and that lethal power too accompanies with greater responsibility. Contempt is a weapon like *Brahmasatra* to be used sparingly to remain effective. At the same time, a Judge has to guard the dignity of the Court and take action in contempt and in case of necessity to impose appropriate exemplary punishment too. A lawyer is supposed to be governed by professional ethics, professional etiquette and professional ethos which are a habitual mode of conduct. He has to perform himself with elegance, dignity, and decency. He has to bear himself at all times and observe himself in a manner befitting as an officer of the Court. He is a privileged member of the community and a gentleman. He has to be honest, courageous, eloquent, industrious, witty and judgmental. [Para 40][618-G-H; 619-A-B]

8. It is apparent from the provisions and scheme of the Advocates Act that the 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 of Advocates Act. Section 34 of Advocates Act clearly enables the High Courts to prescribe conditions to practice. There can be

certain conditions on right to practice and appear in a case which can be imposed by the High Court under Section 34 such as filing fresh *vakalatnama*, superseding the previous one that has to be done as per the High Court Rules, if any such provision has been made by the High Court. Section 34 contained in chapter IV of the Act intends to regulate the practice of the advocate in the High Court and subordinate courts. It does not empower it to frame the rules for disciplinary control. Within the purview of section 34 of the Act, a dress can also be prescribed for an appearance in the Court. The High Court is free to frame the rules for designation of the Senior Advocates and also the rules on similar pattern as framed by this Court for Advocates on Record. [Paras 44, 45 and 51][627-G; 622-F-H; 623-A-B]

9. 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. 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. The acts complained of are not only contemptuous but also tantamount to gross professional misconduct. In case such state of affairs continue and Bar Councils 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*. [Paras 28, 29][608-A-B, C-D, E-G]

10. The grave situation created in the High Court of Madras as well as at its Madurai Bench, which compelled the High 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 by the High Court of Madras. 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. The High Court could have taken action under Contempt of Courts Act for aforesaid misconduct. [Paras 66, 70][664-F-G; 666-F; 665-B]

11. 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. [Para 77][669-H; 670-A-C]

12. It is also true that the disciplinary committee of the Bar Councils 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. It is high time that the Bar Council, as well as 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. [Para 71][666-G-H; 667-A-B]

13. 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 bely 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. [Para 72][667-C-E]

14. 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. [Para 74][668-C-D]

15. 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. [Para 73][667-G-H; 668-A-B]

16. 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. [Para 74][668-E-G]

17. The separation of powers made by the forefathers, who framed the Constitution, ensured independent functioning. 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. 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. [Para 75][668-G-H; 669-A-C]

A **18. 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. 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. [Para 76][669-E-F, G]**

19. By amending the High Court Rules, 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 the power of the High Court. [Para 52][627-H; 628-A-D]

Supreme Court Bar Association v. Union of India & Anr **(1998) 4 SCC 409 : [1998] 2 SCR 795;** *Bar Council of Maharashtra v. M.V. Dabholkar & Ors.* **(1975) 2 SCC 702 : [1976] 1 SCR 306 – followed**

Ex-Capt. Harish Uppal v. Union of India **(2003) 2 SCC 45 : [2002] 5 Suppl. SCR 186;** *Mahipal Singh Rana v. State of U.P.* **(2016) 8 SCC 335 – distinguished.**

R.K. Anand v. Registrar, Delhi High Court **(2009) 8 SCC 106 : [2009] 11 SCR 1026 – relied on.**

Pravin C. Shah v. K. A. Mohd. Ali **(2001) 8 SCC 650 : [2001] 3 Suppl. SCR 675;** *Bar Council of India v. High Court of Kerala* **(2004) 6 SCC 311 : [2004] 1 Suppl. SCR 649;** *Mohit Chaudhary, Advocate, In re*, **(2017) 16 SCC 78 : [2017] 8 SCR 764;** *In reference: Vinay Chandra Mishra* **(1995) 2 SCC 584 : [1995] 2 SCR 638;** *Bar Council of India v. High Court of Kerala* **(2004) 6 SCC 311 : [2004] 1 Suppl. SCR 649 – referred to.**

Case Law Reference

[1998] 2 SCR 795	**followed**	**Para 4**
[2001] 3 Suppl. SCR 675	**referred to**	**Para 5**
[2002] 5 Suppl. SCR 186	**distinguished**	**Para 6**
[2004] 1 Suppl. SCR 649	**referred to**	**Para 6**
[2017] 8 SCR 764	**referred to**	**Para 8**
(2016) 8 SCC 335	**distinguished**	**Para 9**
[1995] 2 SCR 638	**referred to**	**Para 53**
[1976] 1 SCR 306	**followed**	**Para 54**
[2009) 11 SCR 1026	**relied on**	**Para 60**

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 612 of 2016.

Under Article 32 of the Constitution of India.

Petitioner-in-person.

Mohan Parasaran, Sr. Adv., Nikhil Nayyar, N. Sai Vinod, Dhananjay Baijal, Divyanshu Rai Naveen Hegde, Advs. for the Respondent.

A The Judgment of the Court was delivered by

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
B 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
C under Rule 14-B 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
D 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
E 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:

"14-A: Power to Debar:

F (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

G (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

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(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.

14-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.

14-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.

A 14-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
B 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
C 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
D 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
E 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
F 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
G 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 & Anr.* (1998) 4 SCC 409.

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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* (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* (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* (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* (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

A 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*, (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.* (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* (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

A 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 B 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 C 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 D 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 E 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 F 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 G 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

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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.

25. It is said by Alexander Cockburn that "the weapon of the advocate is the sword of a soldier, not the dagger of the assassin". It is the ethical duty of lawyers not to expect any favour from a Judge. He must rely on the precedents, read them carefully and avoid corruption and collusion of any kind, not to make false pleadings and avoid twisting of facts. In a profession, everything cannot be said to be fair even in the struggle for survival. The ethical standard is uncompromisable. Honesty, dedication and hard work is the only source towards perfection. An Advocate conduct is supposed to be exemplary. In case an Advocate causes disrepute of the Judges or his colleagues or involves himself in misconduct, that is the most sinister and damaging act which can be done to the entire legal system. Such a person is definitely deadwood and deserves to be chopped off.

26. Francis Bacon has said about the Judges that Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all thingst, integrity is their portion and proper virtue. Patience and gravity of hearing is an essential part of justice, and an overspeaking judge is no well-tuned cymbal.

27. The balancing of values, reverence between the Bar and the Bench is the edifice of the independent judicial system. Time has come to restore the glory and cherish the time-testedenduring ideals and principles. For a value-driven framework, it is necessary that perspective is corrected in an ethical and morally sound perspective. The perception of ambulance chasers, money guzzlers and black sheep should not be presumptive. Such public perception as to lawyers undermines the credibility of the legal profession, all the evils from the system have to be totally weeded out. No human institution is ever perfect. In order to drive towards more perfection, one has to just learn from the mistakes of the past and build upon the present days' good work so as to make out a better tomorrow.

28. The background as to what has happened in the High Court at Madras as projected in reply of the High Court, has prompted us to make the aforesaid observations. While deciding the case, we have pointed out the importance of the Bar just to remind it of its responsibilities and significance in a democratic setup. The atmosphere that had been created in Madras as projected in the counter affidavit filed by the High Court, would have prompted us also to take a stern view of the matter by invoking Contempt of Courts Act, but for the time gap and things

A have settled by now due to herculean effort of the High Court. It is not for this court much less for the High Court to tolerate such intemperate behavior of the lawyers as projected in the counter affidavit of the High Court. The acts complained of are not only contemptuous but also tantamount to gross professional misconduct.

B 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 C 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 D 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 E 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 F 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 G 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.

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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 García-Sayán 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 António 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

A 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"."

B (emphasis supplied)

33. In the conference of Presidents of Law Association in Asia, Law Council of Australia held 20th March, 2005 at Queensland, Australia, Justice Michael Kirby AC CMG presented his papers on 'Independence of the Legal Profession: Global and Regional Challenges' and pointed C out the importance of the independence of the bar in his papers thus:

"One of the features of the law that tends to irritate other sources of power is the demand of the law's practitioners - judges and lawyers - for independence. The irritation is often true of politicians, wealthy and powerful people, government officials and D media editors and their columnists. Those who are used to being obeyed and feared commonly find it intensely annoying that there is a source of power that they cannot control or buy the law and the courts. Yet the essence of a modern democracy is observance of the rule of law. The rule of law will not prevail without assuring E the law's principal actors - judges and practicing lawyers and also legal academics - a very high measure of independence of mind and action.

An independent legal profession also requires that lawyers be free to carry out their work without interference or fear of reprisal. F Lawyers have a duty, within the law, to advance the interests of their clients fearlessly and to assist the courts in upholding the law. To enable them to perform these duties it is necessary that lawyers enjoy professional independence. Challenges to such independence may arise where lawyers are not able to form independent professional organizations; are limited in the clients G whom they may represent; are threatened with disciplinary action, prosecution or sanctions for undertaking their professional duties; are in any other way intimidated or harassed because of their clients or the work that they undertake; or are subjected to unreasonable interference in the way they perform their duties.

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> Independence is not provided for the benefit or protection of judges or lawyers as such. Nor is it intended to shield them from being held accountable in the performance of their professional duties and to the general law. Instead, its purpose is the protection of the people, affording them an independent legal profession as "... the bulwark of a free and democratic society."
>
> (emphasis supplied)

Justice Kirby also pointed out in his papers that principle of independence of the legal profession is recognized internationally. The pursuit of the independence of the Judges and the lawyers are not, therefore, merely an aspirational principle. It is a central tenet of international human rights law of great practical importance. He has further observed thus:

> "…If all people are entitled to equal protection under the law, without exception, lawyers must be able to represent unpopular clients fearlessly and to advocate on behalf of unpopular causes, so as to uphold legal rights. To ensure the supremacy of the law over the arbitrary exercise of power a strong and independent legal profession is therefore essential.
>
> In this way, an independent legal profession is an essential guardian of human and other rights. By ensuring that no person is beyond the reach of the law, the legal profession can operate as a check upon the arbitrary or excessive exercise of power by the government and its agents or by other powerful parties."
>
> (emphasis supplied)

He also emphasized in his papers to promote access to law, reform of the law and its rules and the engagement of lawyers with ordinary people and litigants to whom, ultimately, the law clearly belongs.

34. The independence of the Bar came to be discussed in 28th Annual Convention Banquet of the National Lawyers Guild held at San Francisco, California on 13th November 1965 in which Robert F. Drinan, S.J., Dean, Boston College Law School, Brighton, Massachusetts pointed out the independence of the Bar and its facets. He has pointed out that lawyers have to be loyal to their client's interests and faithful to the maintenance of the integrity and independence of the courts. It requires a commitment to many moral and spiritual values. Lawyers boldly

A challenge the inequality in every form. He also pointed out that independence of mind and heart is necessary. The Bar cannot be a prisoner of passions and prejudices and independence of judgment need to be construed and from an unreasonable fear of the power of the judiciary is necessary and has observed that lawyer should feel free to criticize judicial decisions of every Tribunal. At the same time, he said to
B impugn the motives to Judges undermine the very essence of every civilized society. A lawyer has to be detached from financial considerations. If lawyers are appreciated and embraced with these sentiments, we would witness the full flowering of the indispensable element of a truly free society – an independent Bench and an independent
C Bar. He has observed:

> "Members of the legal profession under the Anglo-American system of justice have been entrusted with dual and conflicting loyalties. They must be simultaneously both loyal to their client's interests and faithful to the maintenance of the integrity and
D independence of the courts of which they are officers. The complex dualism inherent in being both an advocate and an officer of the Court requires that the lawyer have a unique independence, - a detachment from any excessive adherence to his client's interests as well as a freedom from being inordinately attached to the rulings and interests of the judicial system.
E
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> The independence of the bar does not mean, let us make it clear immediately, a state of non-commitment to truths or values. Indeed the independence of the bar presupposes and requires a commitment to many moral and spiritual values which must be served in whole or in part by America's legal institutions. The
F spiritual value indispensable for an independent bar to which the: National Lawyers' Guild in a particular way has lent its power and prestige is the basic injustice of permitting false accusations to be made by public bodies in the name of patriotism or loyalty to the nation.
>
G The lawyer whose mind is independent of the passions and prejudices of his own generation or his own century transcends the collective compromises of his own age and boldly challenges inequality in every form. The lawyers who formed and fashioned the American Republic had the independence of mind and heart
H unparalleled by any subsequent generation of attorneys in America;

their vision and their courage are the legacies of every lawyer in America. So few members of the bar recognize that legacy because, being the prisoners of the passions and prejudices of their own age, they have lost that independence of judgment without which a lawyer cannot really identify himself or the noble profession of which he is a member.

II. THE INDEPENDENCE OF THE BAR FROM JUDICIAL PRECEDENT AND FROM FEAR OF THE JUDICIARY

If a lawyer cannot really fulfill his self-identity or carry out his moral mission unless he is independent of the prejudices and passions of his age he is similarly impeded unless he can discover and maintain an attitude of respectful independence from the judiciary. This independence from the judiciary should prompt lawyers to feel free to criticize judicial decisions consistently and courageously. This criticism should not be confined to the higher courts but should be applicable to every tribunal whose opinions are deficient in inherent logic and a clear consistency.

Does constitutionally protected freedom of speech or freedom of the press give immunity for slander and public defamation of the nation's highest tribunal? And by what principle can an independent bar justify its inaction towards those who, by calumny and libel, impugn the motives of judges and undermine the very essence of every civilized society - the rule of law?

The bench generally speaking cannot be expected to rise above the level of the bar. A bar that is subservient and servile to the bench will tend to corrupt both the bench and the bar.

The independence of the legal profession, therefore, requires that lawyers attain such an attitude of detachment both from their duties as advocates and their role as officers of the court that they can act objectively and dispassionately, - as neither solely the servants of their clients nor as exclusively the ministers of the courts."

(emphasis supplied)

35. In an article 'the Importance of an Independent Bar' by Stephen A. Salzburg published in Scholarly Commons, GW Law Faculty Publications and other works, referring to the Shakespeare it was pointed out that when Dick the Butcher met to discuss the plan of attack and how they should go about gaining the political control of England. It is during this meeting that the sentence involving "kill all the lawyers" occurred. The exact sentence in the play was "The first thing we do, let's kill all the lawyers". Governments need fear lawyers and Judges only when they fear the truth. This is true here and it is true throughout the world. The relevant portion of the article is extracted hereunder:

> "Attack on lawyers
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> It is from this perspective that I wish to express my concern as to recent attacks on the legal profession that have occurred here in the United States and elsewhere in the world. Attacks on the private bar often are accompanied by attacks on the independence of the judiciary, and these attacks are a frontal assault on the very notion of the rule of law.
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> One law journal that views the play as I do concisely summarize it as follows:
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> > ….Before the plan was executed, Cade and his followers, among whom was Dick the Butcher, met to discuss the plan of attack and how they should go about gaining the political control of England. It is during this meeting that the sentence involving "kill all the lawyers" occurs. The exact sentence in the play was, "The first thing we do, let's kill all the lawyers." We see, then, that this sentence was uttered by a riotous anarchist whose intent was to overthrow the lawful government of England. Shakespeare knew that lawyers were the primary guardians of individual liberty in democratic England. Shakespeare also knew that an anarchical uprising from within was doomed to fail unless the country's lawyers were killed.
>
> The government has strained to keep lawyers away from Guantanamo as much as possible because it knows that their presence means challenges to unfair proceedings, to secret evidence, and to prolonged detentions. Lawyers have volunteered to represent the detainees, but their ability to do so is greatly restricted by the congressional elimination of both habeas corpus

and the right of detainees to bring actions challenging their detentions or the conditions of their detentions.

I regret deeply what has happened in Guantanamo. After all, governments need fear lawyers and judges only when they fear the truth. This is true here and it is true throughout the world.

…..These lawyers and judges remind us that preserving the rule of law is something never to be taken for granted. It often is a challenge requiring self-sacrifice and risk-taking.

The Supreme Court of Canada wrote eloquently in Canada (Attorney General) v. Law Society of British Columbia, [1982] 2 S.C.R. 307 at 335-36:

> The independence of the Bar from the state in all of its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the state must, so far as by human ingenuity it can be so designed, be free from state interference, in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law. The public interest in a free society knows no area more sensitive than the independence, impartiality, and availability to the general public of the members of the Bar and through those members, legal advice and services generally.

In another Canadian case, Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143 at pp. 187-88: Justice McIntyre wrote:

> "I would observe that in the absence of an independent legal profession, skilled and qualified to play its part in the administration of justice and the judicial process, the whole legal system would be in a parlous state. In the performance of what may be called his or her private function, that is, in advising on legal matters and in representing clients before the courts and other tribunals, the lawyer is accorded great powers not permitted to other professionals….. By any standard, these powers and duties are vital to the maintenance of order in our society and the due administration of the law in the interest of the whole community."
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> (emphasis supplied)

A 36. The International Bar Associations Presidential Task Force was constituted to examine the question of independence of the legal profession. In the report while discussing the indicators of independence, it has been pointed out that a bar association is generally deemed to be independent when it is mostly free from external influence and can withstand pressure from external sources on matters such as the regulation
B of the profession, disbarment proceedings and the right of lawyers to join the association. Judicial independence ensures that lawyers are able to carry out their duties in a free and secure environment and an independent judiciary also acts as a check on the independence of lawyers and vice versa. The relevant portion of the report of task force is extracted
C hereunder:

> "Judicial independence ensures that lawyers are able to carry out their duties in a free and secure environment, where they are able to ensure access to justice and provide their clients with intelligent, impartial and objective advice. An impartial and independent
D judiciary is more likely to be tolerant and responsive to criticism, which means that lawyers are able to freely criticize the judiciary, without fear of retaliation, whether in the form of prosecution by the government or unfavorable judicial decisions. An independent judiciary also acts as a check on the independence of lawyers and vice versa. Thus, the relationship between judicial independence
E and the independence of lawyers is one of mutual reliance and co-dependence."

There have to be clear and transparent rules on admission to the Bar, disciplinary proceedings and disbarment. In this regard, the following observation has been made by the IBA Task Force:

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> "4.2.2.2. <u>Clear and transparent rules on admission to the Bar, disciplinary proceedings and disbarment Clear and transparent rules on admission, disciplinary proceedings and disbarment refers to rules that are comprehensible and accessible</u>, so that those who are subject to the rules are able to easily access them,
G understand their meaning and appreciate the implications of violating them. The existence of comprehensible, clear and transparent rules on admission to the Bar ensures that those seeking admission are well-informed of the requirements and are assessed on the basis of objective criteria that apply equally to all candidates. <u>Clear and transparent rules reduce the risk of arbitrary</u>
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> disciplinary proceedings and disbarment and also guarantee that lawyers are held accountable and responsible for their actions. Lawyers, those they represent and the general public should have access to efficient, fair and functional mechanisms that allow for the resolution of disputes between the profession and the public, an imposition of disciplinary measures (where appropriate) and an effective appeals system. This ensures that the rights of all parties are protected in accordance with the rule of law."
>
> (emphasis supplied)

37. Complete lack of self-regulation can have a negative effect on the independence of the lawyers and lawyers have to be free from fear of prosecution in controversial or unpopular cases. Political, societal and, in some circumstances, media pressure in times of war, terror, and emergency can have a profound impact on the independence of the profession. They can be attacked by unscrupulous persons for discharging their duties in a fearless manner. That is why independence of the bar is imperative. There is a need to organize seminars, training sessions on the current development of law so as to maintain independence. It has also been observed in the report of IBA Task Force that public often associates lawyers with corruption, lying, deceit, excessive wealth and a lavish lifestyle. The report has concluded thus:

> "There is no greater issue affecting the legal profession worldwide than the manifold threats to its independence. Without independence, lawyers are left exposed to disciplinary proceedings, arbitrary disbarment, physical violence, persecution, and even death. Lawyers around the world have been targeted by governments and by private actors simply for acting in the public interest or for undertaking cases or causes that some, including the government, find objectionable."

38. The emphasis on the disciplinary control by the independent bodies so as to maintain the purity, efficacy, and intellect of the judicial system itself. The resolution of IBA standards for the independence of the legal profession with respect to disciplinary proceedings is extracted hereunder:

> "Disciplinary proceedings
>
> 21. Lawyers' associations shall adopt and enforce a code of professional conduct of lawyers.

A 22. There shall be established rules for the commencement and conduct of disciplinary proceedings that incorporate the rules of natural justice.

23. The appropriate lawyers' association will be responsible for or be entitled to participate in the conduct of disciplinary
B proceedings.

24. Disciplinary proceedings shall be conducted in the first instance before a disciplinary committee of the appropriate lawyers' association. The lawyer shall have the right to appeal from the disciplinary committee to an appropriate and independent appellate
C body."

(emphasis supplied)

The IBA resolution emphasises on the disciplinary committee of the Bar is necessary so as to maintain the independence of the Bar.

D 39. The members of the Bar are recognized as intellectual of the society. They enjoy respect in the society being the protector of law as they fight for equality. The advocate has to fearlessly uphold the interests of his clients by all fair and honourable means without regard to any unpleasant consequences to himself or any other. An advocate is supposed to find a solution to the very real problem as 'justice hurried is
E justice buried' and 'slow justice is no justice'. It has become professionally embarrassing and personally demoralizing for an advocate to give an answer to his client as to the outcome of the matter and why it is pending and when it is to come up for hearing. When a member of Bar is elevated to bench first relief which is felt is of answerability to the client on
F aforesaid aspects which is in fact too inconvenient and embarrassing but still problem subsists and is writ large, it has to be solved every day. In such circumstances too, the tool of adjournment is used to kill justice. Adjournment poses a question mark whether such kind of advocacy is acceptable?

G 40. The Bar Council has the power to discipline lawyers and maintain nobility of profession and that power imposes great responsibility. The Court has the power of contempt and that lethal power too accompanies with greater responsibility. Contempt is a weapon like *Brahmasatra* to be used sparingly to remain effective. At the same time, a Judge has to guard the dignity of the Court and take action in
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contempt and in case of necessity to impose appropriate exemplary punishment too. A lawyer is supposed to be governed by professional ethics, professional etiquette and professional ethos which are a habitual mode of conduct. He has to perform himself with elegance, dignity, and decency. He has to bear himself at all times and observe himself in a manner befitting as an officer of the Court. He is a privileged member of the community and a gentleman. He has to mainsail with honesty and sail with the oar of hard work, then his boat is bound to reach to the bank. He has to be honest, courageous, eloquent, industrious, witty and judgmental.

41. In a keynote address to the 1992 Conference of the English, Scottish and Australian Bar Association held in London on 4th July, 1992 on the 'Independence of the Bench; the Independence of the Bar and the Bar's Role in the Judicial System', Sir Anthony Mason, AC, KBE, Chief Justice of Australia has pointed out that for its independence the Court should be responsible for its own administration and the expenditure of funds appropriated to it by Parliament. He has also referred to one of the recommendations made by an economist that financial incentives should be offered to judges to expedite the disposition of cases, in that regard he has observed that incentive-based remuneration, no matter how well adapted it is to the football stadium and the production line has no place in the courtroom. Judicial independence is a privilege of and protection for the people. The appointment of the judges should be from the dedicated advocates. With respect to the independence of the Bar, he has mentioned that lawyers stand between the subject and the Crown, and between the rich and the poor, the powerful and the weak. It is necessary that while the Bar occupies an essential part in the administration of justice, the lawyer should be completely independent and work entirely as an individual, drawing on his own resources of learning, ability, and intelligence. Next, he has referred to Sir Owen Dixon when he became the Chief Justice of Australia, said:

> "Because it is the duty of the barrister to stand between the subject and the Crown, and between the rich and the poor, the powerful and the weak, it is necessary that, while the Bar occupies an essential part in the administration of justice, the barrister should be completely independent and work entirely as an individual, drawing on his own resources of learning, ability, and intelligence."
>
> (emphasis supplied)

A A lawyer has to balance between the duty to the court and interests of his clients. A lawyer has to be independent. He has observed thus:

"An important element in the relationship between the court and the barrister is the special duty which the barrister owes to the court over and above the duty which the barrister owes to the
B client. The performance of that duty contributes to the efficient disposition of litigation. In the performance of that duty the independence of the barrister, allied to his familiarity with the judicial process, gives him a particular advantage. In balancing his duty to the court and that owed to the client, the barrister is free from the allegiances and interests and the closer and continuing
C association which the solicitor has with the client. The significance of the barrister's special duty to the court and the expectation that it will be performed played a part in the recognition of the common law's immunity of the barrister from in-court liability for negligence. That immunity is founded partly on the existence of
D the duty and its performance with beneficial consequences for the curial process. So much is clear from the speeches in the House of Lords in *Rondel v Worsley* and *Saif Ali v. Sydney Mitchell & Co.* and the majority judgments in the High Court of Australia in *Gianarelli v. Wraith*.

E The Bar's best response to the new challenge which confronts it is to re-affirm its traditional professional ideals and aspire to excellence. The professional ideal is not the pursuit of wealth but public service. That is the vital difference between professionalism and commercialism.

F It is timely to repeat what O'Connor J (with whom Rehnquist CJ and Scalia J agreed) said in *Shapero v. Kentucky Bar Association* :

One distinguishing feature of any profession, unlike other occupations that may be equally respectable, is that membership
G entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market. There are sound reasons to continue pursuing the goal that is implicit in the traditional view of processional life. Both the special privileges incident to membership in the professional and

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the advantages those privileges give in the necessary task of earning a living are means to a goal that transcends the accumulation of wealth.

Unless the Bar dedicates itself to the ideal of public service, it forfeits its claim to treatment as a profession in the true sense of the term. Dedication to public service demands not only attainment of a high standard of professional skill but also faithful performance of duty to client and court and a willingness to make the professional service available to the public."

42. Before dilating further on the issue, we take note of the provisions contained in the Advocates Act. Section 9 provides for the constitution of Disciplinary Committee by the Bar Council. A Disciplinary Committee consists of three members, two of them are elected members of the Bar Council and the third member has to be co-opted by the Council amongst Advocates. Section 9 is reproduced hereunder:

"9. Disciplinary Committees.- (1) A Bar Council shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to sub-section (2) of section 3 and who are not members of the Council, and the seniormost advocate amongst the members of a disciplinary committee shall be the Chairman thereof.

(2) Notwithstanding anything contained in sub-section (1), any disciplinary committee constituted prior to the commencement of the Advocates (Amendment) Act, 1964 may dispose of the proceedings pending before it as if this section had not been amended by the said Act."

43. Section 15 confers the power on the Bar Council to make rules for carrying out the purposes of the Chapter II *inter alia* relating to disciplinary committees. Chapter III deals with the provisions regarding enrolment of advocates contained in Sections 16 to 28. Right to practice is conferred in Section 29, which provides that advocates be the only recognized class of persons entitled to practice law. Section 30 of the Advocates Act gives right of advocates to practice throughout the territory in all Courts including the Supreme Court before any Tribunal or person

A legally authorize to take evidence and before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice. Now with the enforcement of Section 30 on June 15, 2011, after five decades, right to practice is available as provided under Section 30. Section 32 contains a non-obstante clause that any Court, authority or person may permit any person, not enrolled as an B advocate to appear before it or him in any particular case. The advocate has to enroll himself with the State Bar Council in order to practice law as provided in Section 33 of the Advocates Act.

44. Section 34 empowers the High Court to frame rules and provide conditions subject to which an advocate shall be permitted to practice in C the High Court and the courts subordinate thereto. Section 34 is extracted hereunder:

"34. Power of High Courts to make rules.—

(1) The High Court may make rules laying down the conditions D subject to which an advocate shall be permitted to practice in the High Court and the courts subordinate thereto.

(1A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all E proceedings in the High Court or in any Court subordinate thereto.

(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Financial examinations for articled clerks to be passed by the persons referred to in section F 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith."

Section 34 clearly enables the High Courts to prescribe conditions to practice. The provisions contained in Section 34(1A) empowers the High Court to make rules regarding the fees payable as costs.

G 45. There can be certain conditions on right to practice and appear in a case which can be imposed by the High Court under Section 34 such as filing fresh *vakalatnama*, superseding the previous one that has to be done as per the High Court rules, if any such provision has been made by the High Court. Section 34 contained in chapter IV of the Act intends to regulate the practice of the advocate in the High Court and H

subordinate courts. It does not empower it to frame the rules for disciplinary control. Within the purview of section 34 of the Act, a dresscan also be prescribed for an appearance in the Court. The High Court is free to frame the rules for designation of the Senior Advocates and also the rules on similar pattern as framed by this Court for Advocates on Record.

46. Chapter V deals with the conduct of advocates and disciplinary control. Section 35 deals with the punishment of advocates for misconduct. Section 35 is extracted hereunder:

> "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.
>
> (1A) 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 for such period as it may deem fit;
>
> (d) remove the name of the advocate from the State roll of advocates.

A (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 practicing in any court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under
B 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
C State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.]"

47. Section 36 deals with disciplinary powers of Bar Council of India. Where a lawyer whose name is not on any State roll and a complaint is received that he is guilty of professional misconduct, the Bar Council
D of India shall refer the case for disposal to its disciplinary committee. Bar Council of India can withdraw any pending inquiry before itself and decide it. Section 36 is extracted hereunder:

"36. Disciplinary powers of Bar Council of India.—(1) Where on receipt of a complaint or otherwise the Bar Council of India has
E reason to believe that any advocate whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(2) Notwithstanding anything contained in this Chapter, the
F disciplinary committee of the Bar Council of India may, either of its own motion or on a report by any State Bar Council or on an application made to it by any person interested, withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

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(3) The disciplinary committee of the Bar Council of India, in disposing of any case under this section, shall observe, so far as may be, the procedure laid down in section 35, the references to the Advocate-General in that section being construed as references to the Attorney-General of India.

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(4) In disposing of any proceedings under this section the disciplinary committee of the Bar Council of India may make any order which the disciplinary committee of a State Bar Council can make under sub-section (3) of section 35, and where any proceedings have been withdrawn for inquiry before the disciplinary committee of the Bar Council of India the State Bar Council concerned shall give effect to any such order."

48. Section 36A provides for the procedure on the change in the constitution of disciplinary committees. In case of change, the succeeding committee may continue the proceedings from the stage at which the proceedings were so left by its predecessor committee. Section 36B of the Advocates Act deals with disposal of the disciplinary committee. A disciplinary committee of the State Bar Council has to decide the case within a period of one year from the date of the receipt of the complaint or the date of institution of proceedings failing which the proceedings shall stand transferred to the Bar Council of India. Section 37 of the Act provides that any person aggrieved by an order of the disciplinary committee of the State Bar Council may prefer an appeal to the Bar Council of India. Section 38 provides for an appeal to the Supreme Court against the order made by the disciplinary committee of the Bar Council of India.

49. Section 42 deals with powers of the disciplinary committee. The Presiding Officer of the Court can be summoned with permission of the High Court to prove misconduct against advocate and proceedings are deemed to be judicial one as provided in Section 42(2), which is extracted hereunder:

"42. Powers of disciplinary committee.— (1) The disciplinary committee of a Bar Council shall have the same powers as vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring discovery and production of any documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copies thereof from any court or office;

A (e) issuing commission for the examination of witnesses or documents;

(f) any other matter which may be prescribed:

Provided that no such disciplinary committee have the right to require the attendance of—

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(a) any presiding officer of a Court except with the previous sanction of the High Court to which such court is subordinate; (b) any officer of a revenue court except with the previous sanction of the State Government.

C (2) All proceedings before a disciplinary committee of a Bar Council shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and every such disciplinary committee shall be deemed to be a civil court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898.

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(3) For the purposes of exercising any of the powers conferred by sub-section (1), a disciplinary committee may send to any civil court in the territories to which this Act extends, any summons or other process, for the committee or any commission which it desires to issue, and the civil court shall cause such process to be

E served or such commission to be issued, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

(4) Notwithstanding the absence of the Chairman or any member of a disciplinary committee on a date fixed for the hearing of a

F case before it, the disciplinary committee may, if it so thinks fit, hold or continue the proceedings on the date so fixed and no such proceedings and no order made by the disciplinary committee in any such proceedings shall be invalid merely by reason of the absence of the Chairman or member thereof on any such date:

G Provided that no final orders of the nature referred to in sub-section (3) of section 35 shall be made in any proceeding unless the Chairman and other members of the disciplinary committee are present.

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(5) Where no final orders of the nature referred to in sub-section (3) of section 35 can be made in any proceedings in accordance with the opinion of the Chairman and the members of a disciplinary committee either for want of majority opinion amongst themselves or otherwise, the case, with their opinion thereon, shall be laid before the Chairman of the Bar Council concerned or if the Chairman of the Bar Council is acting as the Chairman or a member of the disciplinary committee, before the Vice-Chairman of the Bar Council, as the case may be, after such hearing as he thinks fit, shall deliver his opinion and the final order of the disciplinary committee shall follow such opinion."

50. The order of the cost of proceedings before the Disciplinary Committee is executable as provided in Section 43. Section 44 deals with the review of orders of the disciplinary committee. Sections 43 and 44 are extracted hereunder:

"43. Cost of proceedings before a disciplinary committee.— The disciplinary committee of a Bar Council may make such order as to the cost of any proceedings before it as it may deem fit and any such order shall be executable as if it were an order—

(a) in the case of an order of the disciplinary committee of the Bar Council of India, of the Supreme Court;

(b) in the case of an order of the disciplinary committee of a State Bar Council, of the High Court.

44. Review of orders of disciplinary committee.—The disciplinary committee of a Bar Council may of its own motion or otherwise review any order within sixty days of the date of that order passed by it under this Chapter.

Provided that no such order of review of the disciplinary committee of a State Bar Council shall have effect unless it has been approved by the Bar Council of India."

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, 1970, the High Court of Madras has inserted impugned Rules 14(A) to 14(D). The rules have

A 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 B 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 C 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.
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53. We now analyze the proposition laid down by this Court in various decisions relating to the aforesaid aspect. *In reference: Vinay Chandra Mishra, (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 E 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 trammeled in any way by any statutory provision including the provisions of the Advocates Act or the Contempt of Courts Act. This F 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 G 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 another,* (supra). Supreme Court Bar Association
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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. The question posed for consideration in *Supreme Court Bar Association v. Union of India* (supra) before this Court is extracted hereunder:

> "5. 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 advocates concerned from practice by suspending his license (sanad) for a specified period, in exercise of its power under Article 129 read with Article 142 of the Constitution of India."

The Constitution Bench of Court has observed:

> 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 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.
>
> 39. Suspending the license to practice of any professional like a lawyer, doctor, chartered accountant etc. When such a professional is found guilty of committing contempt of court, for any specified period, is not a recognized or accepted punishment which a court of record either under the common law or under the statutory law can impose, on a contemner, in addition to any of the other recognized punishments.
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> 40. 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

A 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.

C 41. When this Court is seized of a matter of contempt of court by an advocate, there is no "case, cause or matter" before the Supreme Court regarding his "professional misconduct" even though, in a given case, the contempt committed by an advocate may also amount to an abuse of the privilege granted to an advocate by virtue of the license to practice law but no issue relating to his D suspension from practice is the subject matter of the case. The powers of this Court, under Article 129 read with Article 142 of the Constitution, being supplementary powers have "to be used in exercise of its jurisdiction" in the case under consideration by this Court. Moreover, a case of contempt of court is not stricto sensu E a cause or a matter between the parties inter se. It is a matter between the court and the contemner. It is not, strictly speaking, tried as an adversarial litigation. The party, which brings the contumacious conduct of the contemner to the notice of the court, whether a private person or the subordinate court, is only an informant and does not have the status of a litigant in the contempt F of Court case.

42. 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 G 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 H 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.

43. 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 bye 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 license to practice in a summary manner, while dealing with a case of contempt of court.

44. In Re, V.C. Mishra case, while imposing the punishment of suspended simple imprisonment, the Bench, as already noticed, punished the contemner also by suspending his license to practice as an advocate for a specified period. The Bench dealing with that aspect opined: (SCC p.624, para 51)

> "It is not disputed that suspension of the advocate from practice and his removal from the State roll of advocates are both punishments. There is no restriction or limitation on the nature of punishment that this Court may award while exercising its contempt jurisdiction and the said punishments can be the punishments the Court may impose while exercising the said jurisdiction."

45. In taking this view, the Bench relied upon Articles 129 and 142 of the Constitution besides Section 38 of the Advocates Act, 1961. The Bench observed: (SCC p.624, paras 49-50)

A "Secondly, it would also mean that for any act of contempt of court, if it also happens to be an act of professional misconduct under the Bar Council of India Rules, the courts including this Court, will have no power to take action since the Advocates Act confers exclusive power for taking action for such conduct on the disciplinary committees of the State Bar Council and the Bar Council of India, as the case may be. Such a proposition of law on the face of it observes rejection for the simple reason that the disciplinary jurisdiction of the State Bar council and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the Courts to take action against the advocates for the contempt of Court. The said jurisdiction co-exist independently of each other. The action taken under one jurisdiction does not bar an action under the other jurisdiction."

The contention is also misplaced for yet another and equally, if not more, important reason. In the matter of disciplinary jurisdiction under the Advocates Act, this Court is constituted as the final Appellate authority under Section 38 of the act as pointed out earlier. In that capacity, this court can impose any of the punishments mentioned in Section 35(3) of the Act including that of removal of the name of the Advocate from the State roll and of suspending him from practice. If that be so, there is no reason why this court while exercising its contempt jurisdiction under Article 129 read with Article 142 cannot impose any of the said punishments. The punishment so imposed will not only be not against the provisions of any statute but in conformity with the substantive provisions of the advocates Act and for conduct which is both a professional misconduct as well as the contempt of Court. The argument has, therefore, to be rejected."

46. These observations, as we shall presently demonstrate and we say so with utmost respect, are too widely stated and do not bear closer scrutiny. After recognising that the disciplinary jurisdiction of the State Bar Council and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the courts to take action against the advocates for the contempt of court, how could the court invest itself with the

jurisdiction of the disciplinary committee of the Bar Council to punish the advocate concerned for "professional misconduct" in addition to imposing the punishment of suspended sentence of imprisonment for committing contempt of court.

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.

58. After the coming into force of the Advocates Act, 1961, exclusive power for punishing an advocate for "professional misconduct "has been conferred on the State Bar Council concerned and the Bar Council of India. That Act contains a detailed and complete mechanism for suspending or revoking the license of an advocate for his "professional misconduct'. Since, the suspension or revocation of license of an advocate has not only civil consequences but also penal consequences, the punishment being in the nature of penalty, the provisions have to be strictly construed. Punishment by way of suspending the license 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.

70. In *Bar Council of Maharashtra v. M.V. Dabholkar & Ors., (1975) 2 SCC 702*, a Seven Judge Bench of this Court analyzed the scheme of the Advocates Act 1961 and inter alia observed: (SCC p.709, para 24)

> "24. The scheme and the provisions of the Act indicate that the Constitution of State Bar Councils and Bar Council of India is for one of the principal purposes to see that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. The Bar Councils,

A therefore, entertain cases of misconduct against advocates. The Bar Councils are to safeguard the rights, privilege, and interests of advocates. The Bar Council 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. The Bar Councils of a State may also of its own motion if it 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. It is apparent that a state Bar Council not only receives a complaint but is required to apply its mind to find out whether there is any reason to believe that any advocate has been guilty of professional or other misconduct. The Bar Council of a State acts on that reasoned belief. The Bar Council has a very important part to play, first in the reception of complaints, second, informing reasonable belief of guilt of professional or other misconduct and finally in making reference of the case to its disciplinary committee. The initiation of the proceeding before the disciplinary committee is by the Bar Council of a State. 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.

71. Thus, after the coming into force of the Advocates Act, 1961 with effect from 19-5-1961, matters connected with the enrolment of advocates as also their punishment for professional misconduct is governed by the provisions of that Act only. Since, the jurisdiction to grant license to a law graduate to practice as an advocate vest exclusively in the Bar Councils of the State concerned, the jurisdiction to suspend his license for a specified term or to revoke it also vests in the same body.

72. The letters patent of the Chartered High Courts as well of the other High Courts earlier did vest power in those High Courts to

admit an advocate to practice. The power of suspending from practice being incidental to that of admitting to practice also vested in the High Courts. However, by virtue of Section 50 of the Advocates Act, with effect from the date when a State Bar Council is constituted under the Act, the provisions of the Letters patent of any High Court and "of any other law" in so far as they relate to the admission and enrolment of a legal practitioner or confer on the legal practitioner the right to practice in any court or before any authority or a person as also the provisions relating to the "suspension or removal" of legal practitioners, whether under the letters patent of any High Court or of any other law. have been repealed. These powers now vest exclusively, under the Advocates Act, in the Bar Council of the State concerned. Even in England, the courts of justice are now relieved from disbarring advocates from practice after the power of calling to the Bar has been delegated to the Inns of Court. The power to disbar the advocate also now vests exclusively in the Inns of Court and a detailed procedure has been laid therefor.

76. This Court is indeed the final appellate authority under Section 38 of the Act but we are not persuaded to agree with the view that this Court can in exercise of its appellate jurisdiction, under Section 38 of the Act, impose one of the punishments, prescribed under that Act, while punishing a contemner advocate in a contempt case. 'Professional misconduct' of the advocate concerned is not a matter directly in issue in the contempt of court case. While dealing with the contempt of court case, this court is obliged to examine whether the conduct complained of amounts to contempt of court and if the answer is in the affirmative, then to sentence the contemner for contempt of court by imposing any of the recognised and accepted punishments for committing contempt of court. 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 practice for a

A specified period or even removed from the rolls of the advocates or imposed any other punishment as provided under the Act. The inquiry is a detailed and elaborate one and is not of a summary nature. It is, therefore, not permissible for this court to punish an advocate for "professional misconduct" in exercise of the appellate jurisdiction by converting itself as the statutory body exercising "original jurisdiction". Indeed, if in a given case the Bar Council concerned on being apprised of the contumacious and blameworthy 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 advocate concerned. In an appropriate case, this Court may consider the exercise of appellate jurisdiction even suo moto provided there is some cause pending before the Bar Council concerned, and the Bar Council does "not act" or fails to act, by sending for the record of that cause and pass appropriate orders.

77. However, the exercise of powers under the contempt jurisdiction cannot be confused with the appellate jurisdiction under Section 38 of the Act. The two jurisdictions are separate and distinct. We are, therefore, unable to persuade ourselves to subscribe to the contrary view expressed by the Bench in V.C. Mishra case because in that case, the Bar Council had not declined to deal with the matter and take appropriate action against the advocate concerned. Since there was no cause pending before the Bar Council, this court could not exercise its appellate jurisdiction in respect of a matter which was never under consideration of the Bar Council.

78. 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 license 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

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relating to professional misconduct as such). To that extent, the law laid down in Vinay Chandra Mishra, Re is not good law and we overrule it.

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 license, 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, the 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 license or debarring him to practice 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-an-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 license to practice as an advocate in other courts or Tribunals."

(emphasis supplied)

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 & 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 debarring 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 & 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 & Anr.* (supra) and observed thus:

> 16. Rule 11 of the Rules is not a provision intended for the Disciplinary Committee of the Bar Council of the State r 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 envelopes a lot of acts to be performed by him in the discharge of his professional duties. Apart form 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 insides 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 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 behavior 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 proceeding 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 vs. Civil Judge, Bulandshahr and ors. 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."

19. In our view, the legal position has been correctly delineated in the above statements made by the Allahabad High Court. The context for making those statements was that an advocate questioned the powers of the High Court in making dress regulations for the advocates while appearing in courts.

20. Lord Denning had observed as follows in Hadkinson vs. Hadkinson 1952 (2) All ER 567: (All ER p.575B-C)

> "…I am of the opinion that the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed."

21. The observations can apply to the courts in India without any doubt and at the same time without impeding the disciplinary powers vested in the Bar Councils under the Advocate Act.

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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 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-advocates."

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(emphasis supplied)

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. Hadkindon* (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.

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57. In *Ex- Capt. Harish Uppal v. Union of India & Anr.* (supra) while holding that advocates have no right to go on 'strike', the Court observed:

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"20. Thus the law is already well settled. It is the duty of every Advocate who has accepted a brief to attend the 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

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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 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 scandalizing 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 (supra) 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, 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.

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 the 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 pretense 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.

33. The only exception to the general rule set out above appears to be the item (*III*). We accept that in such cases a strong protest must be lodged. We remain of the view that strikes are illegal and that courts must now take a very serious view of strikes and calls for boycott. However, as stated above, lawyers are part and parcel of the system of administration of justice. A protest on an issue involving dignity, integrity, and independence of the Bar and judiciary, provided it does not exceed one day, may be overlooked by courts, who may turn a blind eye for that one day.

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 practice 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 Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practice envelopes 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, 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 the exercise of their 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 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 the 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 practice 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 practicing 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 practice 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

A 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.

45. Further, appropriate rules are required to be framed by the B High Courts under Section 34 of the Advocates Act by making it clear that strike by advocate/advocates would be considered interference with the administration of justice and advocate/ advocates concerned may be barred from practicing before courts in a district or in the High Court."

C (emphasis supplied)

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 D 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 E 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 F 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 G 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 & Anr.* (supra) does not lend support to vires of Rule 14A to 14D as amended by the High Court of Madras. The decision

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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.
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> 30. In *Ashok Leyland Ltd. v. State of Tamil Nadu and Anr.* (2004) 3 SCC 1 this Court noticed:
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> > "Subject to" is an expression whereby limitation is expressed. The order is conclusive for all purposes."
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> 31. This Court further noticed the dictionary meaning of "subject to" stating (SCC p. 38, paras 92-93):
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> > "*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

A for. (Homan v. Employers Reinsurance Corp., 345 Mo. 650, 136 SW 2d 289, 302)'"

Case-law

32. A Constitution Bench of this Court in Supreme Court Bar Assn.,(1998) 4 SCC 409 no doubt overruled its earlier decision in
B Vinay Chandra Mishra, Re (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 suo motu against an advocate for his misconduct and send for the records and pass an appropriate orders against the advocate concerned.

C 33. But it is one thing to say that the court can take suo motu 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.

D 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
E 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*
F *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
G 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
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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. Shahv. K.A. Mohammed Ali, (2001) 8 SCC 650* and *Ex. Capt. Harish Uppal v. Union of India, (2003) 2 SCC 45*, the earlier Constitution Bench decision in *Supreme Court Bar Assn. v. Union of India, (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* (2004) 6 SCC 311.
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> 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

A 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 proceedee 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:

A 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 -

C 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;

D 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.

F 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 G 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 H

Court has referred to Articles and standard of processional 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*, (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

A 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."

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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
C 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
D 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."

E 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* (1976) 2 SCC 291.

F 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 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
G 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.263-77 published in the Virginia Law Review, lucidly set down what is expected from the lawyer which is best set out
H 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

A 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

A 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 B 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, C 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 D 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 E 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 F 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.

G 32. In *Pravin C. Shah v. K.A. Mohd. Ali, (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

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para 80 of the judgment of this Court in *Supreme Court Bar Assn. v. Union of India, (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

A 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*, AIR 1974 All 133 (AIR p. 136, para 9)

'[T]he 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.'

* * *

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 aforecited 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

A 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."

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33. In *Bar Council of India* v. *High Court of Kerala, (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, (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)

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"*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."

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35. In *R.K. Anand v. Delhi High Court, (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

A 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 Courtwas 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

A 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 B 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 C 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 D 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 E 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 vs. 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 F 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 G 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 H

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 bely 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/

A 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
B 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
C 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
D 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
E 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
F 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.

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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

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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

A 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.

Kalpana K. Tripathy Writ Petition allowed.