THE TAMIL NADU
Dr. AMBEDKAR LAW UNIVERSITY
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MATERIALS AND CASES ON PROFESSIONAL ETHICS, ACCOUNTANCY FOR LAWYERS AND BAR BENCH RELATIONS

(For the B.A.LL.B, B.Com.LL.B, B.C.A.LL.B., B.B.A.LL.B & LL.B (Hons.) Degree Courses)

STUDY MATERIAL

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MESSAGE

Knowledge is power. Legal Knowledge is a potential power. It can be exercised effectively everywhere. Of all the domains of reality, it is Legal Knowledge, which deals with rights and liabilities, commissions and omissions, etc., empower the holder of such knowledge to have prominence over the rest. Law Schools and Law Colleges that offer Legal Education vary in their stature on the basis of their ability in imparting the quality Legal Education to the students. Of all the Law Schools and Colleges, only those that educate their students to understand the nuances of law effectively and to facilitate them to think originally, excel. School of Excellence in Law aims to be in top of such institutions.

The revolution in Information and Communication Technology dump lot of information in the virtual world. Some of the information are mischievous and dangerous. Some others are spoiling the young minds and eating away their time. Students are in puzzle and in dilemma to find out the right information and data. They do not know how to select the right from the wrong, so as to understand, internalise and assimilate into knowledge. Hence in the present scenario, the role of teachers gains much more importance in guiding the students to select the reliable, valid, relevant and suitable information from the most complicated, perplexed and unreliable data.

The teachers of the School of Excellence in Law have made a maiden attempt select, compile and present a comprehensive course material to guide the students in various subjects of law. The students can use such materials as guidance and travel further in their pursuit of legal knowledge. Guidance cannot be a complete source of information. It is a source that facilitates the students to search further source of information and enrich their knowledge. Read the materials, refer relevant text books and case laws and widen the knowledge.

Dr. P. Vanangamudi
Vice-Chancellor

PREFACE

The course material for the discipline "Professional Ethics", is associated with the discipline, dignity, principles of every person those who are skilled professionally. Legal professional ethics draws attention now days due to various reasons. The relation between the client and the advocate, advocate and the judge determines the ultimate goal of the judiciary. This paper aims to educate the budding lawyers to understand the importance of professional ethics, duty of the advocate, bar bench relationship, etc. This material includes the history and development of legal profession in India, freedom movement and legal profession, role of Law Commission of India etc.

I hope that the compiled work of this material will be helpful in understanding the glory of legal profession and to adhere in their practise by the budding advocates in their future goals. I would like to register my heartfelt gratitude to our Prof. Dr. P.Vanangamudi, Hon'ble Vice-Chancellor, The Tamil Nadu Dr. Ambedkar Law University, Chennai and our beloved Prof. Dr. S.Narayanaperumal, Director, U.G. Studies, School of Excellence in Law, for providing me this opportunity and for their valuable guidance and ideas to shape up this material.

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PROFESSIONAL ETHICS, ACCOUNTANCY FOR LAWYERS AND BAR BENCH RELATIONS

Objective of the Course:

The term "Ethics" is associated with the discipline, dignity, principles of every person those who are skilled professionally. Legal professional ethics draws attention now days due to various reasons. The relation between the client and the advocate, advocate and the judge determines the ultimate goal of the judiciary. This paper aims to educate the budding lawyers to understand the importance of professional ethics, duty of the advocate, bar bench relationship, etc. This material includes the history and development of legal profession in India, freedom movement and legal profession, role of Law Commission of India etc. The source of the material is mainly based on the extracts drawn from the authenticated website of Bar Council of India, Advocates Act, Bar Council Rules and other scholarly works of the leaned advocates.

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MATERIALS AND CASES ON PROFESSIONAL ETHICS, ACCOUNTANCY FOR LAWYERS AND BAR BENCH RELATIONS

I: INTRODUCTION

All members of the legal profession have a paramount duty to the Court and to the administration of justice. This duty prevails over all other duties, especially in circumstances where there may be a conflict of duties, for example, following a client's instructions if those instructions are inconsistent with the practitioner's duties to the Court.

Whilst this duty affects professional conduct within the lawyer client relationship, it is a broad duty, and each member of the legal profession is entrusted to maintain the independent and impartial administration of justice. It is important that legal practitioners conduct themselves with integrity, provide competent assistance to the courts, and promote public confidence in the court system. In carrying out their duties, legal practitioners are required and expected to deal with other members of the legal profession with courtesy and integrity.

The standard of conduct for legal practitioners is set out in the applicable laws in India. A practitioner must not engage in conduct which is dishonest or disreputable or which would demonstrate that a practitioner is a fit and proper person to practise law, would diminish the public confidence in the administration of justice or bring the profession into disrepute. A practitioner must also avoid any compromise of their integrity and professional independence.

II : DEVELOPMENT OF LEGAL PROFESSION

In England:

The development of legal profession in India is the outcome of the work undertaken by the academicians. In 13th centuries the regulation of enrolling of advocates emerged in England. The development of the legal profession has received a lot of attention from scholars. This can be seen in Paul Brand's The Origins of the English Legal Profession (1992), and J.H. Baker's The Legal Profession and The Common Law – Historical Essays (1986). The eminent jurist Roscoe Pound also wrote The Lawyer from Antiquity to Modern Times (1953). Law and its practice is a professional responsibility. The regulation of the legal profession is supported by considerable academic research. In England, the admission of lawyers has been regulated since the middle of the 13th century. In the late 13th century, three critical regulations were adopted. During the medieval period, further regulations were enacted In addition, judges have always used their inherent power to control the admission of lawyers and check their misconduct.

Legal profession during Edward I's period (1272-1307)

The legal profession first seems to have emerged in the reign of Edward I (1272-1307). At that point of time, it included two types of lawyers – the sergeants and attorneys. Sergeants were pleaders who spoke for the clients while attorneys handled procedural matters. Later, attorneys also appeared on behalf of litigants. Initially, both the pleaders and attorneys assisting the litigants were amateurs. However, over time, these individuals began to appear repeatedly to assist litigants. Thus these individuals developed expertise as a result of their experience and were sought out by litigants and they charged for their services.

In the middle of the 12th century, and particularly through the 13th century, famous legal figures such as Ranulf Glanvill and Ralph de Hengham emerged. Thus, identifiable precursors or predecessors of professional lawyers emerged in the early 13th century. The appointment of an attorney was called "responsalis". The writ for an attorney to act in Court, in place of his principal was called "ad lucrandum vel perdendum". Individual attorneys could appear in Court either as a special attorney, or as a general attorney on behalf of a client for numerous matters over a period of time. However, by the end of the 13th century, restrictions limiting the use of the sergeants were removed and litigants commonly used professional sergeants to plead their cases. Now statutes granted litigants the right to appoint and use attorneys. In 1268, a Charter of the city of London recognized a similar right for its citizens. Thus professional lawyers practising on a full time basis created a budding English legal profession.

There were major changes in the Court system. New Royal Courts and expert Judges came into being. Thus, a legal environment was created for the existence of a professional lawyer. Since sergeants were the aristocrats of medieval lawyers, appointment as a sergeant was a significant honour. Sergeants were the sole determining authority in case of judicial appointments. Hence, Chaucer called a serjeant a "man of law". The term itself was derived from a French expression serviens, meaning "one who serves". By the last quarter of the 13th century, the number of sergeants increased. They then became primary pleaders in the Court of Common Pleas and to a lesser extent in the other Royal Courts. In the 1280s, a group called Apprentices of the Common Bench emerged. Initially, apprentices were individuals studying to become sergeants. They functioned under the supervision of sergeants or senior apprentices. By the end of the 13th century, the apprentices were also representing clients and practising l aw. However, they were essentially practising as attorneys and not pleaders.

Legal profession after Edward I

In the early 17th century, the influence of sergeants as a professional group declined. As a result of this, apprentices became the more important group of pleaders and were the predecessors of today's barristers.

By the middle of the 14th century, they created the Inns of Court. Although an attorney was a lawyer who represented the client in Court on the client's behalf, he was not allowed to plead. An attorney appeared on behalf of his client. This would be clear from the French verb attorner, which means 'to assign or depute for a particular purpose'. The attorneys' primary function was to appear in Court to manage the litigation of the clients. The formal division of the English legal profession into solicitors and barristers can be traced back to the separation between the attorneys and the sergeants. Attorneys were the predecessors of the sergeants.

It may be pointed out that canon and ecclesiastical lawyers (dealing with laws with regard to the Church) existed both in England and in Continental Europe. Canon lawyers appeared in the English ecclesiastical Courts. The canon lawyers were also divided like common law lawyers. The pleader was called the ecclesiastical advocatus while the attorney was called the ecclesiastical procurator. According to Pollock and Maitland, professional canons for advocates served to set an example for professional common law pleaders. In England, the ancient universities of Oxford and Cambridge imparted legal education based on canon and Roman law. They did not include any instruction in English common law.

The instruction in English common law appeared only in the 18th century with Blackstone's famous Vinerian lectures. However, in Continental Europe, legal instruction was much older. The oldest were the lectures at the celebrated law school of the University of Bologna in which Roman and civil law was taught. The education of pleaders through apprentices who were studying to become sergeants was the backbone of legal education. They were taught to regularly attend Court and judicially encouraged to observe the working pattern of the Courts as well as sergeants. That is how the Inns of Court were established.

The regulation of the legal profession incorporated principles of discipline, definition of malpractice and other civil liability to injured clients, judicial and institutional controls, and legislative approaches. In England, solely the Judges imposed discipline. Hence, there did not exist any separate disciplinary authorities and regulatory agencies. Moreover, judicial sanctions were commonly imposed. These sanctions were imposed to give effect to statutes and ordinances, as well as inherent judicial power

Between the end of the reign of Edwards I and the end of 15th century, there was less regulatory activity. The assault on Champerty and maintenance continued. Statutes imposing additional prohibitions and remedies were passed in 1327, 1331, 1347, 1377 and 1383. By the end of 14th century, sergeants had a monopoly on pleading in the Common Bench. Thus, the sergeants were considered to be a guild. With the development of petitions to Parliament in the early 14th century, petitions became a vehicle for complaints about lawyers.

In 1729, Parliament enacted an Act for the better regulation of attorneys and solicitors, providing for strict admission procedures. The 1729 Act required lawyers to swear to a shorter oath. The new oath provided that "That I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability".

In England, the position of Sergeant-at-Law was discontinued and was replaced by the King's Counsel (or Queen's Counsel, as the case may be). They were appointed by Royal patent, were admitted only upon taking an oath, and had a monopoly of all practices. They were directly answerable to the King as parts of his judicial system.

Professional Conduct and the Law Society

The attorneys were expelled from the principal Inns of Court in the 16th century and in 1739 they formed a professional group called "Society of Gentleman-Practicers in the Courts of Law and Equity". Thus the Law Society was born, though it was not until 1986 that the Law Society formed a committee to collect and draft principles of professional conduct. Now there exists the Guide to Professional Conduct of

Solicitors reflecting the ideals of modern solicitors as well. Both branches of the English legal profession had the same core duties over the centuries of litigation: fairness, competence, loyalty, confidentiality, reasonable fees and service to the poor.

Legal profession in America

In the United States as well, a lawyer is regarded as an officer of the Court and is admitted to the Bar only upon taking of an official oath. In America, until 1875, there were no formal academic requirements to be a lawyer, because there was neither required schooling nor tests.

The first regulatory code was written in 1836 by Judge Hoffman of Baltimore. The Code touches on most of the problem areas confronting even modern lawyers. Hoffman's resolution suggests that justice should be the only motivation of lawyers, including the resolution that 'lawyers must have humility regarding their own knowledge of the law'. The Hoffman Code states that lawyers must quote the law objectively with 'honour'. Their reasoning should be objective and creative. This was followed by Alabama's Legal Ethics Code of 1887. The Code stated that morality was the only safeguard to having a good professional Bar.

The canons of professional ethics was approved by the American Bar Association in 1908 and continued till 1960s. The preamble stated that public must have confidence in the "integrity and impartiality of the legal profession". This was replaced by the 1969 American Bar Association ("ABA") Code of Professional Responsibility. In a project called Ethics 2000, the American Bar Association reorganized its model rules of professional conduct.

The six traditional core duties now identified by ABA are – a) litigation fairness, b) competence, c) loyalty, d) confidentiality, e) reasonable fees, and f) public service. The Colonies and early States used oaths, statutes, judicial oversight and procedural rules to govern behaviour of attorneys. The oath was the most expansive single listing of ethical standards for early American lawyers. Many of the States enacted laws to regulate attorneys' fees. The Bar Association later reflected the broader range of substantive concerns and dealt primarily with admission standards and procedures.

David Dudley Field was the drafter of the highly influential New York Code, popularly called the Field Code. This Code introduced a new set of uniform standards of conduct for lawyers. One of the duties of a lawyer was to maintain the respect due to the Courts of Justice as well as judicial offices. In fact, after the Field Code was drafted, Hoffman and Sharswood were able to use legal education to develop the standards of conduct for lawyers in the mid 19th century. (Hoffman was a Professor of Law at the University of Maryland and Sharswood was a Professor at the University of Pennsylvania. Most academicians believe that the works of Hoffman and Sharswood are significant in the field of American legal ethics.)

Of course, by the end of the 19th century, a new form of ethical standards began to guide lawyers in their practice, called the American Bar Association Code of Legal Ethics. It may be pointed out that although the ABA's works are merely models and are themselves not binding on any lawyer, most States have adopted the ABA models with slight local variations. As mentioned above, the ABA again brought about comprehensive changes to the Model Rules in a project known as Ethics 2000. There were further amendments in August 2002 and August 2003. As of 2003, 44 States and the District of Columbia had adopted some version of the Model Rules.

A lawyer being an officer of the Court enjoys a license to certain special privileges, which otherwise he would not be entitled to. The advocate is therefore an officer sui generis of the Court and subject to the rules imposed by the Court in regulation to the practice therein. He is a quasi officer of the State. The power and responsibility for the administration of justice rests on him. The fundamental idea underlying the lawyers' profession has been expressed in a North Carolina case (In Re Application of Delingham).

In a book called The Lawyer's Oath and Office, it was noted that:- "Why is any oath required for admission to the practice of the law? No oath is required by law for admission to practice in any other profession, even where qualifications to practice are prescribed or ascertained by examinations required by law, as in the case of physicians. But an official oath has always been required for admission to the practice of the law. Why is it required? What is its significance, and what obligation does it impose?

The significance of the lawyer's oath is that it stamps the lawyer as an officer of the State, with rights, powers and duties as important as those of the Judges themselves. ..... A lawyer is not the servant of his client. He is not the servant of the Court. He is an officer of the Court, with all the rights and responsibilities which the character of the office gives the imposes." In America. Courts authorized to admit attorneys to the Bar have inherent jurisdiction to suspend or disbar them for sufficient cause. Such jurisdiction is not dependent upon constitutional provision or a State enactment.

Sharswood in Legal Ethics notes that: "The duties of a lawyer to the Court arise from the relationship which he has with the Court as an officer in the administration of justice. Law is not a mere private profession but is a profession which is an integral part of the judicial system of the State. As an officer of the Court, the lawyer should uphold the dignity and integrity of the Court. The lawyer must exercise at all times respect for the Court, in both words and actions. He must present all matters relating to his client's case openly. He should being careful to avoid any attempt to exert private influence upon either the judge or the jury. He should be frank and candid in all dealings with the Court, 'using no deceit, imposition evasion as by imprecating witnesses or misquoting precedents'.

Legal Profession in India

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

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

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

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

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

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

In 1862, the High Court started by the Crown were established at Calcutta, Bombay and Madras. The High Court Bench was designed to combine Supreme Court and Shudder Court traditions. This was done to unite the legal learning and judicial experience of the English barristers with the intimate experience of civil servants in matters of Indian customs, usages and laws possessed by the civil servants. Each of the High Court was given the power to make rules for the qualifications of proper persons, advocates, vakils and attorneys at Bar. The admission of vakils to practice before the High Court ended the monopoly that the barristers had enjoyed in the Supreme Courts. It greatly extended the practice and prestige of the Indian laws by giving them opportunities and privileges equal to those enjoyed for many years by the English lawyers.

The learning of the best British traditions of Indian vakils began in a guru-shishya tradition: "Men like Sir V. Bashyam Ayyangar, Sir T. Muthuswamy Ayyar and Sir S. Subramania Ayyar were quick to learn and absorb the traditions of the English Bar from their English friends and colleagues in the Madras Bar and they in turn as the originators of a long line of disciples in the Bar passed on those traditions tot the disciples who continued to do the good work." Additional High Courts were established in Allahabad (1886), Patna (1916), and Lahore (1919).

There were six grades of legal practice in India after the founding of the High Courts – a) Advocates, b) Attorneys (Solicitors), c) Vakils of High Courts, d) Pleaders, e) Mukhtars, f) Revenue Agents. The Legal Practitioners Act of 1879 in fact brought all the six grades of the profession into one system under the jurisdiction of the High Courts. The Legal Practitioners Act and the Letters Patent of the High Courts formed the chief legislative governance of legal practitioners in the subordinate Courts in the country until the Advocates Act, 1961 was enacted.

In order to be a vakil, the candidate had to study at a college or university, master the use of English and pass a vakil's examination. By 1940, a vakil was required to be a graduate with an LL.B. from a university in India in addition to three other certified requirements. The certificate should be proof that a. he had passed in the examination b. read in the chamber of a qualified lawyer and was of a good character. In fact, Sir Sunder Lal, Jogendra Nath Chaudhary, Ram Prasad and Moti Lal Nehru were all vakils who were raised to the rank of an Advocate.

ORIGINAL AND APPELLATE JURISDICTION OF THE HIGH COURT

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

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

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

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

LAWYERS IN THE INDIAN FREEDOM MOVEMENT

With the selfless guidance and statesmanship of the legal profession, the Indian national movement gained participation and its impact reached far beyond immediate political consequences.

The movement that began in 1857 as a sepoy mutiny took the shape of a nationwide struggle for Independence from the British Raj. It incorporated various national and regional campaigns, agitations and efforts of both non-violent and militant philosophies.

Role of Indian National Congress

After the First war of Independence in 1857 and its aftermath, the formation of Indian National Congress in 1885 marked the beginning of a new era in the national movement. The era was of moderates like Dadabhai Naoroji and Sundernath Bannerjee while Madan Mohan Malviya and Motilal Nehru, amongst others, were important moderate leaders who were lawyers by profession. The moderates believed in the system of constitutionalism. They functioned more as a debating society that met annually to express its loyalty to the British Raj and passed numerous resolutions on less controversial issues such as civil rights or opportunities in government which were submitted to the Viceroy's government and occasionally to the British Parliament. But none of this made any substantive impact.

Lawyers like Bal Gangadhar Tilak, who was an extremist, gave a new direction to the INC. Tilak began a new phase of more radical thought within the organization. He put forth new ideas and methods of opposing the imperialist rule and advocated stronger actions like the boycott of foreign goods and the policy of swadeshi (self reliance). He did not believe that the British rule was beneficial and instead felt that their rule was extremely harmful. He introduced the idea of Swaraj (complete independence) way back in 1897 with his famous statement,"Swaraj is my birthright and I shall have it".

Other eminent lawyers who supported the extremist ideology were C. Rajagopalachari and Lala Lajpat Rai.Lala Lajpat Rai was popularly known as the Punjab Kesari and Sher-e-Punjab and was also the founder of Punjab National Bank and Lakshmi Insurance Company. He formed the extremist faction of the congress along with Tilak and Bipin Chndra Pal, the trio was popularly called ,ÄúLal, Bal, Pal,Äù. Later, Lajpat Rai presided over the first session of the All India Trade Union Congress in 1920. He also went to Geneva to attend the eighth International Labour Conference in 1926 as a representative of Indian labour. His journals Bande Mataram and People, contained his inspiring speeches to end oppression by the foreign rulers.

Fighting the British in court

A cycle of violence and repression had ensued in some parts of the country as a result of the partition of Bengal, and Alipore Bomb Case was a famous controversy which arose at that time. Aurobindo Ghosh and 37 other revolutionaries were suspected to have been engaged in illegal activities and sedition and were arrested. However, the eminent lawyer CR Das came to the rescue, who through his brilliant handling of the case got Aurobindo and many others was acquitted. This case brought Das to the forefront professionally and politically. Also called Deshbandhu, CR Das, used his legal knowledge to save many other nationalists and revolutionaries from the clutches of the British. He was the defence counsel in the Dacca Conspiracy Case (1910-11) as well and was famed for his handling of both civil and criminal law.

Meanwhile, in 1909, the British Government announced certain reforms in the structure of Government in India, known as Morley-Minto Reforms. But these reforms came as a disappointment as they did not mark any advance towards the establishment of a representative Government. The provision of special representation of the Muslims was seen as a threat to the Hindu-Muslim unity on which the strength of the National Movement rested. Thus these reforms were vehemently opposed by all the nationalists. Lawyer cum nationalist, Saifuddin Kitchlew was one of the leaders who protested against this legislation. Kithclew was also a founding leader of the Naujawan Bharat Sabha (Indian Youth Congress), which rallied hundreds of thousands of students and young Indians to nationalist causes. He was also among the principal founder of Jamia Millia Islamia.

MAHATMA GANDHI

This also marked the entrance of Mahatma Gandhi in the mainstream Indian politics. Gandhi, also a lawyer by profession, had just returned from South Africa, where he had carried out a successful Satyagraha against the racial discrimination and for civil liberties of the people. Meanwhile, Gandhi had made his mark in India already by his success in Champaran and Kheda Satyagraha. Gandhi led organized protests and strikes against the landlords who, with the guidance of the British government, signed an agreement granting the poor farmers of the region more compensation and control over farming, and cancellation of revenue hikes and its collection until the famine ended. In Kheda, Sardar Patel, a lawyer by profession, represented the farmers in negotiations with the British, who suspended revenue collection and released all the prisoners.

Rajendra Prasad, an eminent lawyer and the first President of India, was also involved with Gandhi in the Champaran movement. Bhulabhai Desai, another lawyer and a politician, represented the farmers of Gujarat in the inquiry by the British Government following the Bardoli Satyagraha in 1928. Bhulabhai formidably represented the farmers' case, and was important to the eventual success of the struggle.

Most lawyers gave their time freely, at the cost of their own legal practice, to the defence of scores of helpless victims of Martial Law implemented by the British, who had been condemned to the gallows or sentenced to long terms of imprisonment. There was a shift in ideology as well, from moderate to a more radical one.

LANDMARK CASES DURING BRITISH ERA
(Extracted from www.indiakanoon.org)
In Re: V.O. Chidambaram Pillai vs Unknown on 4 November, 1908
Equivalent citations: 1 Ind Cas 36
Bench: C A White, Miller

JUDGMENT

The appellant V.O. Chidambaram Pillai is the second accused in Calendar Case No. 1 of 1908 on the file of the Additional Sessions Judge of Tinnevelly. The appeal of the 1st accused (Criminal Appeal No. 503 of 1908) has been dealt with by us and in disposing of it we have decided, after hearing Counsel for both, the appellants, certain questions common to the cases of both. We apply those decisions to the present appeal where they are applicable, but do not think it necessary to recapitulate them.

The offences of which the present appellant has been, convicted are three offences of abetment of the uttering by the 1st prisoner of seditious words. The occasions are the speeches made on the 23rd and 25th of February 1908 and the 5th of March following. The appellant was not present on the last occasion, but was present on the other two, and has accordingly been convicted on one charge of an offence under Sections 109 and 124A of the Indian Penal Code and on two charges of offences under Sections 124A and 114 of the Indian Penal Code. He has been sentenced to transportation for life. There is no doubt that the speeches were made in the course of a series of meetings in the holding of which the 1st and 2nd prisoners were associated and we think that the order of Government was intended to cover all offences punishable under the stated sections, and committed in connection with the delivery of those speeches. The order is wide enough to bear this construction and we are not inclined to restrict its scope. What we have to see is, "was the complaint authorised?" It was undoubtedly made by the authorised person under colour of his authority, and we think that authority is wide enough to cover it if the offences complained of are offences punishable under the stated sections of the Indian Penal Code. The question then is whether they are so punishable.

The charges relating to the 23rd and 25th of February 1908 are, as we have said, under Sections 124A and 114 of the Indian Penal Code. Now, Section 114 enacts that if a person, who would, if absent, be punishable as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed he shall be deemed to have committed such act or offence.

The first question then is, was there a conspiracy?

The evidence is circumstantial, and is dealt with in paragraphs 29 to 33 of the judgment of the Additional Sessions Judge. He finds it proved that Subramania Siva lived while at Tuticorin in the house of the appellant Chidambaram Pillai (paragraphs 30 and 31), that Chidambaram Pillai was an influential man while Subramania Siva was a stranger to Tuticorin and without influence there, that Chidambaram Pillai usually closed the meetings and announced the time and place of the next meeting, and that both men constantly spoke upon the same platform and usually came and left together (paragraphs 32 and 33). He also refers to certain incidents some of them proved by the defence evidence to show that Chidambaram Pillai was regarded as the principal organiser of the series of meetings.

There is no doubt, and it is not denied, that a series of open air meetings was held at Tuticorin commencing early in February and continuing over the first half of March, at which, the 1st accused was the principal speaker, and it is proved beyond doubt that the 2nd accused also spoke at the meetings of the 19th, 22nd, 23rd, 24th and 26th of February and of the 4th of March, 1908. Meetings were held privately

on the 27th and 28th of February 1908 in a place which according to the prosecution 11th witness belonged, . › the 2nd accused though the notice calling the meetings (Exhibit M1) was issued by a man who was the 2nd accused's clerk, and the building is therein called 'my building.'

On the 25th of February 1908 the appellant was present at the meeting and announced the next meeting but did not otherwise speak. He was also present on the 1st of March and then announced a meeting for the 3rd, and on the 5th of March 1908 he was not present. The speeches of which we have record to show the commencement on the 19th February 1908, but the evidence shows that even before that, there were meetings of some of which were attended and addressed by the appellant.

The prosecution evidence that Chidambaram Pillai usually came to the meetings with Subramania Siva is not of much importance. There is evidence on the other side that he usually came late after his office closed, but that is not very well established. The witnesses have at best to trust to their memories for an incident some months old which, as the defence 36th witness says, was not a striking incident at the time. There is some improbability in supposing that several persons on the 23rd of February 1908 marked down in their memories the fact that Chidambaram Pillai was not present from the beginning of the meeting. The general evidence that his office did not close till 6 p. M. and he did not come as a rule till later, is more likely to be accurate: but even here there is room for much doubt. Chidambaram Pillai was not a clerk in the office: it is not suggested, that he was bound to certain hours and if on some days in February or March 1908 he left office early to push his Company's interests in open air meetings, there would be nothing strange in his conduct.

So far, the evidence relates to the conduct of the appellant himself and it is not necessary to have recourse to Section 10 of the Indian Evidence Act to admit it. Another incident on which the Additional Sessions Judge relies is a statement of Subramania Siva on the 9th of March 1908, at Tinnevelly which is set out at the end of paragraph 32 of his judgment. If this statement is otherwise admissible under Section 10 of the Indian Evidence Act, there can be no doubt that it cannot be rejected on the ground suggested by Mr. Sadagopachariar that there is no reasonable ground to believe in the existence of a conspiracy. The other evidence gives sufficient reason for this belief to warrant the application of the section. The statement has reference to a common design to make speeches, and is evidence, though not of itself very strong evidence, of the existence of a conspiracy. We think it is admissible. It cannot be explained away by the suggestion that the speaker referred to himself and his audience, for his audience at Tinnevelly had not been associated with him, so far as the evidence shows on any previous occasion; it obviously referred to himself and Chidambaram Pillai who were then under trial before the District Magistrate along with the third man to whom reference is made. The evidence then proves, beyond any reasonable doubt, the existence of a common design, in pursuance of which speeches were made by Subramania Siva, and it remains to be seen whether that design included the commission of offences under Section 124A of the Indian Penal Code.

Now it was strongly urged by Mr. Sadagopachariar that however admissible may be the speeches of the 1st accused to prove his 'animus', intention, or meaning, the speeches of Chidambaram Pillai cannot be admitted to prove abetment. But we think that these speeches are admissible to prove the object of the conspiracy. It is found that an agreement existed in pursuance of which speeches were made by two parties to the agreement, and the remaining question being, what was the object of that agreement, what was the 'thing' for the doing of which that agreement was made, there is no better evidence short of a reasonable and credible statement of objects and reasons by the parties or witnesses on their behalf, than that afforded by their sayings and doings in pursuance of the agreement. For this purpose we confine ourselves to the series of speeches delivered at Tuticorin between the 19th of February and the 5th of March 1908. As to them there is no doubt that they formed a regular course of discourses made in pursuance of the agreement;

the speeches made at Tinnevelly on the 9th and 11th of March 1908 probably did not form a part of that course and it may be doubted therefore whether they can be admitted to prove the object of the agreement though statements made in them may be admissible for other purposes—as for instance, under Section 10 of the Indian Evidence Act.

Now, whatever may have happened before the 19th of February it is clear that on that day Subramania Siva made a speech in which in plain language he put before his audience the goal to which they should aspire, the overthrowing of the British supremacy and the liberation of India from a foreign yoke.

The evidence leaves no room for any real doubt that the political speeches of Subramania Siva were a part of the programme, and the delivery of those speeches involved, as we have found in Criminal Appeal No. 503 of 1908, the excitement of disaffection against the Government. This was one of the things to be done in pursuance of the conspiracy, and as soon as it was done, the appellant was guilty.

The charges are in respect of the speeches of Subramania Siva delivered on the 23rd and 25th of February and the 5th of March 1908 and we have found, on a consideration of all the evidence and after hearing counsel for both the appellants, that those speeches constituted offences punishable under Section 124A of the Indian Penal Code. The appellant V.O. Chidambaram Pillai was therefore rightly convicted.

As regards the question of punishment, we think that in this case as in Criminal Appeal No. 503 of 1908 the law will be vindicated by a sentence of 6 (six) years' transportation. Subject to this modification of the sentence, the appeal of V.O. Chidambaram Pillai is dismissed.

THE TRIAL OF BHAGAT SINGH

Bhagat Singh is one of India's greatest freedom fighters. The youth of India were inspired by Bhagat Singh's call to arms and enthused by the defiance of the army wing of the Hindustan Socialist Republican Association to which he Sukhdev and Rajguru, belonged. His call, *Inquilab Zindabad!* became the war-cry of the fight for freedom. Bhagat Singh was executed by the British after a sham trial for his involvement in the Lahore Conspiracy Case at the age of twenty-three on 23 March, 1931.

On April 8, 1929, Bhagat Singh and B.K. Dutt threw a bomb in the Central Legislative Assembly "to make the deaf hear" as their leaflet described the reason for their act. As intended, nobody was hurt by the explosion as Bhagat Singh had aimed the bomb carefully, to land away from the seated members, on the floor. The bomb, deliberately of low intensity, was thrown to protest the repressive Public Safety Bill and Trades Dispute Bill and the arrest of 31 labour leaders in March 1929. Then a shower of leaflets came fluttering down from the gallery like a shower of leaves and the members of the Assembly heard the sound of, 'Inquilab Zindabad!' and 'Long live Proletariat!' rent the air.

Bhagat Singh and B.K.Dutt let themselves be arrested, even when they could have escaped, to use their court appearances as a forum for revolutionary propaganda to advocate the revolutionaries' point of view and, in the process, rekindle patriotic sentiments in the hearts of the people. Bhagat Singh surrendered his automatic pistol, the same one he had used to pump bullets into Saunder's body, knowing fully well that the pistol would be the highest proof of his involvement in the Saunders' case.

The authorities believed that in Bhagat Singh they had caught a big fish and that he was the mastermind behind all revolutionary activity in India. The government was, however, intrigued by the two revolutionaries giving themselves up so easily. The British did not want to take any chances, so even the summons to two of the revolutionaries was delivered to them in jail.

Trial

The style and format of the writing in the handbills struck British intelligence as suspiciously familiar. The format and style in these handbills was similar to the style and format of the handwritten posters that announced the murder of Saunders and which had been plastered on the city's walls. The British began to suspect that Bhagat Singh was one of Saunder's killers. He was singled out as the author of the text on the leaflets as well as on the posters. Bhagat Singh was charged with attempt to murder under section 307 of the Indian Penal Code. Asaf Ali, a member of the Congress Party was his lawyer.

The Trial started on 7 May, 1929. The Crown was represented by the public prosecutor Rai Bahadur Suryanarayan and the trial magistrate was a British Judge, P.B Pool. The manner in which the prosecution presented its case left Bhagat Singh in no doubt that the British were out to nail him. The prosecution's star witness was Sergeant Terry who said that a pistol had been found on Bhagat Singh's person when he was arrested in the Assembly. This was not factually correct because Bhagat Singh had himself surrendered the pistol while asking the police to arrest him. Even the eleven witnesses who said that they had seen the two throwing the bombs seemed to have been tutored.

Some of the questions asked in court were:

Judge: 'Were you present in the Assembly on the 8th of April, 1929?"

Bhagat Singh: 'As far as this case is concerned, I feel no necessity to make a statement at this stage. When I do, I will make the statement."

Judge: 'When you arrived in the court, you shouted, "Long Live Revolution!". What do you mean by it?'

As if it had already made up its mind, the court framed charges under Section 307 of the Indian Penal Code and Section 3 of the Exposive Substances Act. Bhagat Singh and Dutt were accused of throwing bombs 'to kill or cause injuries to the King Majesty's subjects'. The magistrate committed both of the revolutionaries' to the sessions court, which was presided over by Judge Leonard Middleton. The trial started in the first week of June, 1929. Here also, Bhagat Singh and Dutt were irked by the allegation that they had fired shots from a gun. It was apparent that the government was not limiting the case to the bombs thrown in the Assembly. It was introducing extraneous elements to ferret out more information about the revolutionary party and its agenda.

However, Judge Leonard Middleton too swallowed the prosecution story. He accepted as proof of the verbal testimony that the two had thrown the bombs into the Assembly Chamber and even said that Bhagat Singh fired from his pistol while scattering the leaflets there. The court held that both Bhagat Singh and Dutt were guilty under Section 3 of the Explosive Substances Act, 1988 and were sentenced to life imprisonment. Judge Middleton rules that he had no doubt that the defendant's acts were 'deliberate' and rejected the plea that the bombs were deliberately low-intensity bombs since the impact of the explosion had shattered the wood of one and a half inch thickness in the Assembly.

The two were persuaded to file an appeal which was rejected and they were sent for fourteen years. The judge was in a hurry to close the case and claimed that the police had gathered 'substantial evidence' against Bhagat Singh and that he was charged with involvement in the killings of Saunders and Head Constable Chanan Singh and that the authorities had collected nearly 600 witnesses to establish their charges against him which included his colleagues, Jai Gopal and Hans Raj Vohra turning government approvers.

Bhagat Singh was sent to Mianwali Jail and Dutt to Borstal Jail in Lahore and were put on the same train though in different compartments on 12th March, 1930 but after requesting the officer on duty to

allow them to sit together for some distance of the journey, Bhagat Singh conveyed to Dutt that he should go on a hunger strike on 15th June and that he would do the same in Mianwali Jail. When the Government realized that this fast had riveted the attention of the people throughout the country, it decided to hurry up the trial, which came to known as the Lahore Conspiracy Case. This trial started in Borstal Jial, Lahore, on 10 July, 1929. Rai Sahib Pandit Sri Kishen, a first class magistrate, was the judge for this trial. He earned the title of Rai Sahib for loyal service to the British. Bhagat Singh and twenty-seven others were charged with murder, conspiracy and wagering war against the King.

The revolutionaries' strategy was to boycott the proceedings. They showed no interest in the trial and adopted an attitude of total indifference. They did not have any faith in the court and realized that the court had already made up its mind. A handcuffed Bhagat Singh was still on hunger strike and had been brought to the court in a stretcher and his weight had fallen by 14 pounds, from 133 to 119. The Jail Committee requested him to give up their hunger strike and finally it was his father who had his way and it was on the 116th day of his fast, on October 5, 1929 that he gave up his strike surpassing the 97 day world record for hunger strikes which set by an Irish revolutionary.

Bhagat Singh started refocusing on his trial. The crown was represented by the government advocate C.H.Carden-Noad and was assisted by Kalandar Ali Khan, Gopal Lal, and Bakshi Dina Nath who was the prosecuting inspector. The accused were defended by 8 different lawyers. The court recorded an order prohibiting slogans in the courtroom. The government advocate filed orders by the government sanctioning the prosecution under the Explosive Substances Act and Sections 121, 121 A, 122 and 123 of the Penal Code relating to sedition.

When Jai Gopal turned approver, Verma, the youngest of the accused, hurled a slipper at him. After this incident, the accused were subjected to untold slavery. The case built by the prosecution was that a revolutionary conspiracy had been hatched as far as back as September, 1928, two years before the murder of Saunders. The government alleged that various revolutionary parties had joined together to forge one organization in 1928 itself to operate in the north and the north-east of India, from Lahore to Calcutta.

The case proceeded at a snails pace and hence the government got so exasperated that it approached the Lahore High Court for directions to the magistrate. A division bench of the Lahore High Court dismissed the application of Carden-Noad. Through March, 1930, the proceedings were relatively smooth. The magistrate could not make any headway without the cooperation of the under trials. On1 May, 1930, the viceroy, Lord Irwin, promulgated an Ordinance to set up a tribunal to try this case. The Ordinance, LCC Ordinance No.3 of 1930, was to put an end to the proceedings pending in the magistrate's court. The case was transferred to a tribunal of three high court judges without any right to appeal, except to the Privy Council.

The case opened on 5 May 1930 in the stately Poonch House. Rajguru challenged the very constitution of the tribunal and said that it was illegal ultra vires. According to him, the Viceroy did not have the power to cut short the normal legal procedure. The Government of India Act, 1915, authorized the Viceroy to promulgate an Ordinance to set up a tribunal but only when the situation demanded whereas now there was no breakdown in the law and order situation. The tribunal however, ruled that the petition was 'premature'. Carden-Noad, the government advocate elaborated on the charges which included dacoities, robbing money from banks and the collection of arms and ammunition. The evidence of G.T. Hamilton Harding, senior superintendent of police, took the court by surprise as he said that he had filed the FIR against the accused under the instructions of the chief secretary to the government of Punjab and he did not know the facts of the case. Then one of the accused J.N Sanyal said that they were not the accused but the defenders of India's honour and dignity.

There were five approvers in total put of which Jai Gopal, Hans Raj Vohra and P.N.Ghosh had been associated with the HRSA for a long time. It was on their stories that the prosecution relied. The tribunal depended on Section 9 (1) of the Ordinance and on 10th July 1930, issued an order, and copies of the framed charges were served on the fifteen accused in jail, together with copies of an order intimating them that their pleas would be taken on the charges the following day. This trial was a long and protracted one, beginning on 5 May, 1930, and ending on 10 September, 1930. It was a one-sided affair which threw all rules and regulations out of the window. Finally the tribunal framed charges against fifteen out of the eighteen accused. The case against B.K.Dutt was withdrawn as he had already been sentenced to transportation for life in the Assembly Bomb Case.

On 7 October 1930, about three weeks before the expiry of its term, the tribunal delivered its judgement, sentencing Bhagat Singh, Sukhdev and Rajguru to death by hanging. Others were sentenced to transportation for life and rigorous imprisonment. This judgement was a 300-page one which went into the details of the evidence and said that Bhagat Singh's participation in the Saunders' murder was the most serious and important fact proved against him and it was fully established by evidence. The warrants for the three were marked with a black border.

The under trials of the Chittagong Armoury Raid Case sent an appeal to Gandhiji to intervene. A defence committee was constituted in Punjab to file an appeal to the Privy Council against the sentence. Bhagat Singh did not favour the appeal but his only satisfaction was that the appeal would draw the attention of people in England to the existence of the HSRA. In the case of **Bhagat Singh v. The King Emperor**, the points raised by the appellant was that the ordinance promulgated to constitute a special tribunal for the trial was invalid. The government argued that Section 72 of the Government of India Act, 1915 gave the governor-general unlimited powers to set up a tribunal. Judge Viscount Dunedin who read the judgment dismissed the appeal. Thus from the lower court to the tribunal to the Privy Council, it was a preordained judgement in flagrant violation of all tends of natural justice and a fair and free trial.

III : APPLICABLE LAWS

(Extracted from www.barcouncilofindia.org)

ADVOCATES ACT, 1961.

History of Bar Council of India

1950

After the Constitution of India came into force on January 26, 1950, the Inter University Board at its annual meeting held in Madras, passed a resolution stressing the need for an all-India bar and emphasising the desirability of having uniformly high standards for law examinations in different Universities of the country in view of the fact that a Supreme Court of India had been established.

In May 1950, the Madras Provincial Lawyers Conference held under the presidency of Shri S. Varadachariar resolved that the Government of India should appoint a committee for the purpose of evolving a scheme for an all-India Bar and amending the Indian Bar Councils Act to bring it in conformity with the new Constitution. At its meeting held on October 1, 1950, the Bar Council of Madras adopted that resolution.

1951

Shri Syed Mohammed Ahmad Kazmi, a Member of Parliament, introduced on April 12, 1951, a comprehensive bill to amend the India Bar Councils Act.

The Government of India took the view that in the changed circumstances of independence, a comprehensive Bill sponsored by the Government was necessary. In August 1951, the then Minister of Law announced on the floor of the House that the Government of India was considering a proposal to set up a Committee of Inquiry to go into the problem in detail. The Committee was constituted and asked to examine and report on:

1. The desirability and feasibility of a completely unified Bar for the whole of India,
2. The continuance or abolition of the dual system of counsel and solicitor (or agent) which obtains in the Supreme Court and in the Bombay and Calcutta High Courts,
3. The continuance or abolition of different classes of legal practitioners, such as advocates of the Supreme Court, advocates of the various High Courts, district court pleaders, mukhtars (entitled to practice in criminal courts only), revenue agents, and income-tax practitioners,
4. The desirability and feasibility of establishing a single Bar Council for (1) the whole of India and (2) for each State,
5. The establishment of a separate Bar Council for the Supreme Court,
6. The consolidation and revision of the various enactments (Central as well as State) relating to legal practitioners, and
7. All other connected matters.

This All India Bar Committee was headed by the Hon'ble Shri S. R. Das, Judge, Supreme Court of India. The Committee consisted of the following members:

1. Shri M. C. Setalvad, Attorney General of India,
2. Dr. Bakshi Tek Chand, retired High Court Judge,

3. Shri V. K. T. Chari, Advocate-General of Madras,
4. Shri V. Rajaram Aiyar, Advocate-General of Hyderabad,
5. Shri Syed A, Kazmi, M.P., Advocate, Allahabad,
6. Shri C. C. Shah, M.P., Solicitor, Bombay, and
7. Shri D. M. Bhandari, M.P., Advocate, Rajasthan High Court.

1953

The All India Bar Committee submitted its detailed report on March 30, 1953. The report contained the proposals for constituting a Bar Council for each state and an All-India Bar Council at the national level as the apex body for regulating the legal profession as well as to supervise the standard of legal education in India.

Meanwhile, the Law Commission of India had been assigned the job of preparing a report on the reforms of judicial administration.

1961

To implement the recommendations of the All-India Bar Committee and taking into account the Law Commission's recommendations relating to the legal profession, a comprehensive Advocates Bill was introduced in the Parliament which resulted in the Advocates Act, 1961.

Advocates Act, 1961 consists of VII chapters and 60 sections, which deals about,

Chapter I: Preliminary and the Definition part,

Chapter II: About the Bar Councils,

Chapter III: Admission and Enrolment of Advocates,

Chapter IV: Right to Practise,

Chapter V: Conduct of Advocates,

Chapter VI: Miscellaneous.

Under Chapter I and sec 2:, the important definitions for some terms are as follows;

Sec 2:

(a) "ADVOCATE", means an advocate entered in any roll under the provisions of this Act;

(d) "BAR COUNCIL" means a Bar Council constituted under this Act;

(e) "BAR COUNCIL OF INDIA" means the Bar Council constituted under section 4 for the territories to which this Act extends;

(h) "LAW GRADUATE" means a person who has obtained a bachelor's degree in law from any University established by law in India;

(i) "Legal PRACTITIONER" means an advocate [or vakil] or any High Court, a pleader, mukhtar or revenue agent;

Important substances under Chapter II are as follows;

4. Bar Council of India.—(1) There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members,namely:—

(a) the Attorney-General of India, *ex officio*;

(b) the Solicitor-General of India, *ex officio*;

(c) one member elected by each State Bar Council from amongst its members.

(1A) No person shall be eligible for being elected as a member of the Bar Council of India unless he possesses the qualification specified in the proviso to sub-section (2) of section 3.

[(2) There shall be a Chairman and a Vice-Chairman of the Bar Council of India elected by the Council in such manner as may be prescribed.

(2A) A person holding office as Chairman or as Vice-Chairman of the Bar Council of India immediately before the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977), shall, on such commencement, cease to hold office as Chairman or Vice- Chairman, as the case may be:

Provided that such person shall continue to carry on the duties of his office until the Chairman or the Vice-Chairman, as the case may be, of the Council, elected after the commencement of the Advocates (Amendments) Act, 1977 (38 of 1977), assumes charge of the office.] [(3) The term of office of a member of the Bar Council of India elected by the State Bar Council shall—

(i) in the case of a member of a State Bar Council who holds office *ex-officio*, be two years from the date of his election 2[or till he ceases to be a member of the State Bar Council, whichever is earlier]; and

(ii) in any other case, be for the period for which he holds office as a member of the State Bar Council: Provided that every such member shall continue to hold office as a member of the Bar Council of India until his successor is elected.

6. Functions of State Bar Councils. — (1) The functions of a State Bar Council shall be—

(a) to admit persons as advocates on its roll;

(b) to prepare and maintain such roll;

(c) to entertain and determine cases of misconduct against advocates on its roll;

(d) to safeguard the rights, privileges and interests of advocates on its roll;

(dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section clause (a) of sub-section (2) of section 7;] (e) to promote and support law reform;

(ee) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and paper of legal interest; (eee) to organise legal aid to the poor in the prescribed manner;]

(f) to manage and invest the funds of the Bar Council; (g) to provide for the election of its members; (gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section (1) of section 7;] (h) to perform all other functions conferred on it by or under this Act; (i) to do all other things necessary for discharging the aforesaid functions. (2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of—

(a) giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;]

[(c) establishing law libraries.]

[(3) A State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in subsection

(2) which shall be credited to the appropriate fund or funds constituted under that sub-section.

7. Functions of Bar Council of India.

[(1)] The functions of the Bar Council of India shall be—

(b) to lay down standards of professional conduct and etiquette for advocates;

(c) to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council;

(d) to safeguard the rights, privileges and interests of advocates;

(e) to promote and support law reform;

(f) to deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council;

(g) to exercise general supervision and control over State Bar Councils;

(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities 3[or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf];

[(ia) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest;

(ib) to organise legal aid to the poor in the prescribed manner;

(ic) to recognise on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this Act;]

(j) to manage and invest the funds of the Bar Council;

(k) to provide for the election of its members;

(l) to perform all other functions conferred on it by or under this Act.

(m) to do all other things necessary for discharging the aforesaid functions;

[(2) The Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of—

(a) giving financial assistance to organise welfare schemes for indegent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;]

(c) establishing law libraries.]

[(3) The Bar Council of India may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.

8. Term of office of Members of State Bar Council.—The term of office of an elected member of a State Bar Council (other than an elected member thereof referred to in section 54) shall be five years from the date of publication of the result of his election: Provided that where a State Bar Council fails to provide for the election of its member before the expiry of the said term, the Bar Council of India may, by order for reasons to be recorded in writing, extend the said term, the Bar Council of India may, by order, extend the said term for a period not exceeding six months.

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 a 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 senior-most 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, (21 of 1964) may dispose of the proceedings pending before it as if this section had not been amended by the said Act.

9A. Constitution of legal aid Committees.—(1) A Bar Council may constitute one or more legal aid committees each of which shall consist of such number of members, not exceeding nine but not less then five, as may be prescribed.

(2) The qualifications, the method of selection and the term of office of the members of legal aid committee shall be such as may be prescribed.

10. Constitution of committees other than disciplinary committees.—

(1) A State Bar Council shall constitute the following standing committees, namely:—

  (a) an executive committee consisting of five members elected by the Council from amongst its members;

  (b) an enrolment committee consisting of three members elected by the Council from amongst its members.

(2) The Bar Council of India shall constitute the following standing committees, namely:—

  (a) an executive committee consisting of nine members elected by the Council from amongst its members;

  (b) a legal education committee consisting of ten members, of whom five shall be persons elected by the Council from amongst its members and five shall be persons co-opted by the Council who are not members thereof.

(3) A State Bar Council and the Bar Council of India may constitute from amongst its members such other committees as it may deem necessary for the purpose of carrying out the provisions of this Act.

10B. Disqualification of members of Bar Council.—An elected member of a Bar Council shall be deemed to have vacated his office if he is declared by the Bar Council of which he is a member to have been absent without sufficient excuse from three consecutive meetings of such Council, or if his name is, for any cause, removed from the roll of advocates or if he is otherwise disqualified under any rule made by the Bar Council of India.

Admission and Enrolment process of advocates has been enumerated in Chapter III;

16. Senior and other advocates.—(1) There shall be two classes of advocates, namely, senior advocates and other advocates. (2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability 1[standing at the Bar or special knowledge or experience in law] he is deserving of such distinction. (3) Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

(4) An advocate of the Supreme Court who was a senior advocate of that Court immediately before the appointed day shall, for the purposes of this section, be deemed to be a senior advocate: [Provided that where any such senior advocate makes an application before the 31st December, 1965 to the Bar Council maintaining the roll in which his name has been entered that he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly.]

20. Special provision for enrolment of certain Supreme Court advocates. —(1) Notwithstanding anything contained in this Chapter, every advocate who was entitled as of right to practise in the Supreme Court immediately before the appointment day and whose name is not entered in any State roll may, within the prescribed time, express his intention in the prescribed form to the Bar Council of India for the entry of his name in the roll of a State Bar Council and on receipt thereof the Bar Council of India shall direct that the name of such advocate shall, without payment of any fee, be entered in the roll of that State Bar Council, and the State Bar Council concerned shall comply with such direction. (2) Any entry in the State roll made in compliance with the direction of the Bar Council of India under sub-section (1) shall be made in the order of seniority determined in accordance with the provisions of sub-section (3) of section 17. (3) Where an advocate referred to in sub-section (1) omits or fails to express his intention within the prescribed time, his name shall be entered in the roll of the State Bar Council of Delhi.

21. Disputes regarding seniority.—(1) Where the date of seniority of two or more persons is the same, the one senior in age shall be reckoned as senior to the other. [(2) Subject as aforesaid, if any dispute arise with respect to the seniority of any person, it shall be referred to the State Bar Council concerned for decision.

22. Certificate of enrolment.—(1) There shall be issued a certificate of enrolment in the prescribed form by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act. (2) Every person whose name is so entered in the State roll shall notify any change in the place of his permanent residence to the State Bar Council concerned within ninety days of such change.

24. Persons who may be admitted as advocates on a State roll.— (1) Subject to the provisions of this Act, and the rules made there under, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the following conditions, namely:—

(a) he is a citizen of India:

Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted a an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;

(b) he has completed the age of twenty-one years;

(c) he has obtained a degree in law—

(i) before the 3[12th day of March, 1967], from any University in the territory of India; or

(ii) before the 15th August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or

(iii) after the 12th day of March, 1967, save as provided in sub-clause (iiia), after undergoing a three year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iiia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or]

(iv) in any other case, from any University outside the territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India] or;

he is barrister and is called to the Bar on or before the 31st day of December, 1976 4[or has passed the article clerks examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court;] or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act;

(e) he fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;

(f) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 (2 of 1899), and an enrolment fee payable to the State Bar Council of 7[six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council:

Provided that where such person is a member of the Schedule Castes or the Schedule Tribes and produces a certificate to that effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be 1[one hundred rupees and to the Bar Council of India, twenty-five rupees.

Explanation.—For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India on that date on which the results of the examination for that degree are published by the University on its notice board or otherwise declaring him to have passed that examination.

(2) Notwithstanding anything contained in sub-section (1), a vakil or a pleader who is a law graduate] may be admitted as an advocate on a State roll, if he—

(a) makes an application for such enrolment in accordance with the provisions of this Act, not later than two years from the appointed day, and

(b) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section(1).

(3) Notwithstanding anything contained in sub-section (1) a person who—

(a) has, for at least three years, been a vakil or pleader or a mukhtar, or, was entitled at any time to be enrolled under any law, 6 as an advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union territory; or (aa) before the Ist day of December, 1961, was entitled otherwise than as an advocate practise the profession of law (whether by of pleading or acting or both) by virtue of the provision of any law, or who would have been so entitled had he not been in public service on the said date; or]

(c) before the 1st day of April, 1937, has been an advocate of any High Court in any area which was comprised within Burma as defined in the Government of India Act, 1935; or

(d) is entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf, may be admitted as an advocate on a State roll if he—

(i) makes an application for such enrolment in accordance with the provisions of this Act; and

(ii) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1).

24A. Disqualification for enrolment.—(1) No person shall be admitted as an advocate on a State roll—

(a) if he is convicted of an offence involving moral turpitude;

(b) if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955);

(c) if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude.

Explanation.—In this clause, the expression "State" shall have the meaning assigned to it under Article 12 of the Constitution:

Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his release or dismissal or, as the case may be, removal.

(2) Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958 (20 of 1958).

Chapter IV deals about exclusively on the rights of the practitioners, and they are ;

29. Advocates to be the only recognised class of persons entitled to practise law. —Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.

30. Right of advocates to practise.—Subject to provisions of this Act, every advocate whose name is entered in the 1[State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,—

(i) in all courts including the Supreme Court;

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

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

32. Power of Court to permit appearances in particular cases.—Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.

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

34. Power of High Courts to make rules. —(1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise 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 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 Final examinations for articled clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therew ith.

Chapter V speaks about the conduct of the advocates and its consequences .

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.

(4) Where an advocate is suspended from practice under clause

(c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

Explanation.—In this section, section 37 and section 38], the expressions "Advocate-General" and Advocate-General of the State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.

36. Disciplinary powers of Bar Council of India.—(1) Where on receipt of a complaint or otherwise the Bar Council of India has 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 disciplinary committee of the Bar Council of India may, either of its own motion or on a report by a 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.

(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.

(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.

36B. Disposal of disciplinary proceedings.—(1) The disciplinary committee of a State Bar Council shall dispose of the complaint received by it under section 35 expeditiously and in each case the proceedings shall be concluded within a period of one year from the date of the receipt of the complaint or the date of initiation of the proceedings at the instance of the State Bar Council, as the case may be, failing which such proceedings shall stand transferred to the Bar Council of India which may dispose of the same as if it were a proceeding withdrawn for inquiry under sub-section (2) of section 36.

(2) Notwithstanding anything contained in sub-section (1), where on the commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), any proceedings in the respect of any disciplinary matter against an advocate is pending before the disciplinary committee of a State Bar Council, that disciplinary committee of the State Bar Council shall dispose of the same within a period of six months from the date of such commencement or within a period of one year from the date of the receipt of the complaint or, as the case may be the date of initiation of the proceedings at the instance of the State Bar Council, whichever is later, failing which such other proceedings shall stand transferred to the Bar Council of India for disposal under sub-section (1).

37. Appeal to the Bar Council of India.—(1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made [under section 35] [or the Advocate General of the State] may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.

(2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order (including an order varying the punishment awarded by the disciplinary committee of the State Bar Council) thereon as it deems fit: Provided that no order of the disciplinary committee of the State Bar Council shall be varied by the disciplinary committee of the Bar Council of India so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.

38. Appeal to the Supreme Court. —Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under section 36 or section 37 2[or the Attorney-General of India or the Advocate-General of the State concerned, as the case may be,] may within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order 1[(including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India)] thereon as it deems fit:

Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.

42. Powers of disciplinary committee.—(1) The disciplinary committee of a Bar Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 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.

(e) issuing commissions for the examination of witness or documents;

(f) any other matter which may be prescribed:

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

(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.

(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, 1860 (45 of 1860), 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 (5 of 1898).

(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 attendance of a witness or the production of a document required by the committee or any commission which it desires to issue, and the civil court shall cause such process to be 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 date fixed for the hearing of a 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:

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

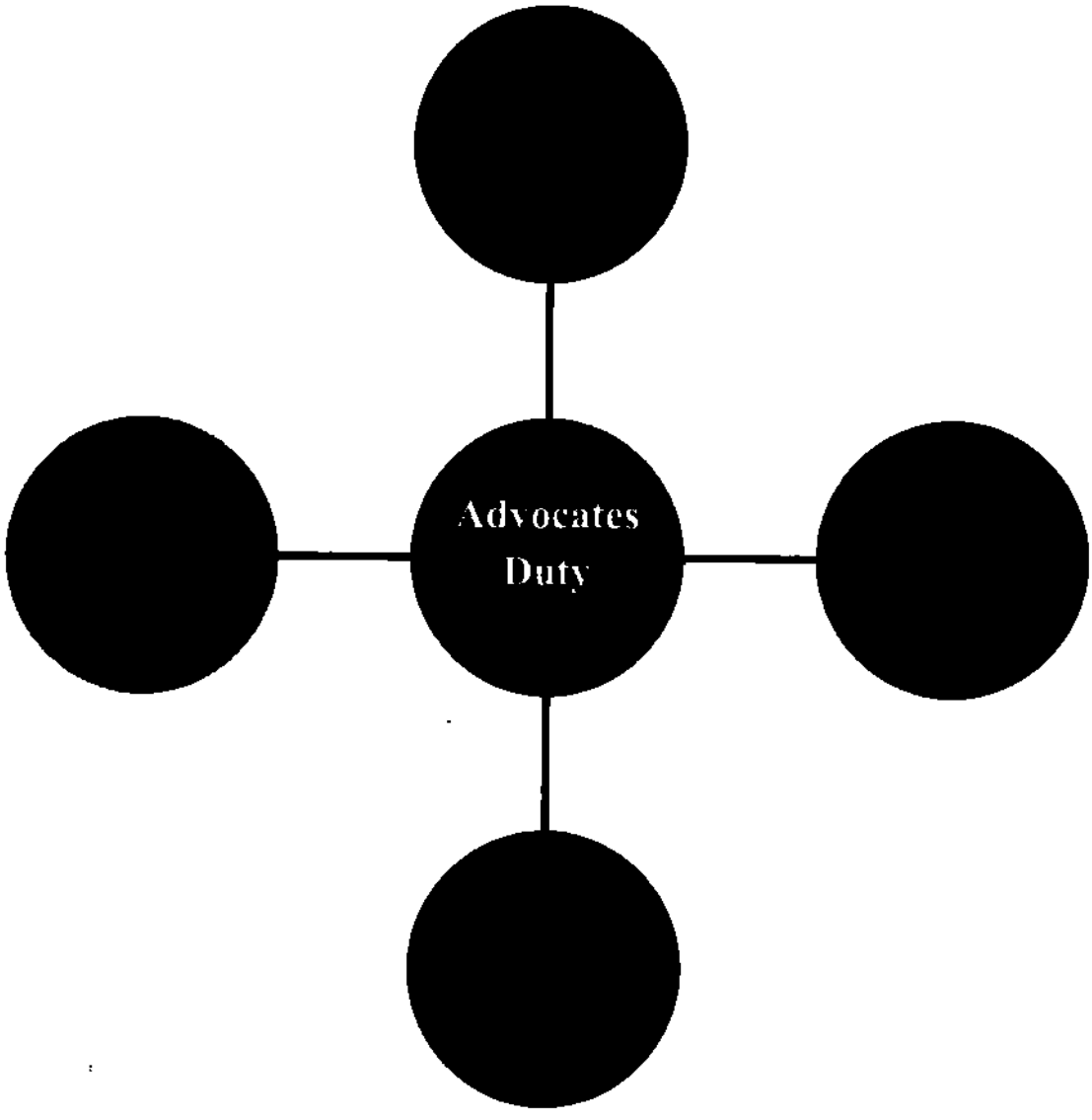
(5) Where no final order of the nature referred to in sub-section (3) of section 35 can be made in any proceedings in accordance with the opinion of the Chairman and the members of a disciplinary committee either for want of majority opinion amongst themselves or otherwise, the case, with their opinion 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, and the said Chairman or 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.

Chapter VI deals with miscellaneous provisions;

45. Penalty for persons illegally practising in courts and before other authorities.—Any person who practises in any court or before any authority or person, in or before whom he is not entitled to practise under the provisions of this Act, shall be punishable with imprisonment for a term which may extend to six months.

The next applicable law which is enacted to govern the conduct and the practise of Advocates is Bar Council of India Rules, Part IV which speaks about the rules for legal education. It is as follows;

IV : DUTIES OF ADVOCATES
(Extracted from www.barcouncilofindia.org)



Duty of an advocate towards the Court:

- Act in a dignified manner:

  An advocate should act in a dignified manner during his presentation and inside the court.

- Respect the court:

  An advocate should always respect the court and bear in his mind that respectable in the court is essential for the survival of a free community.

- Not to Communicate in Private:

  An advocate should not communicate in private to a judge with regard to any pending matter and also should not influence the decision of a court in any matter using illegal or improper means.

- Refuse to act in an illegal manner towards the opposition:

  An advocate should use his best effort to restrain and prevent his client from acting in any illegal, improper manner.

- Refuse to represent clients who insists on unfair means:

  An advocate should refuse to represent any client who insists on using unfair or improper means. An advocate shall exercise his own judgement and should not blindly follow the instruction of the client. He should be very careful in usage of language during the arguments and should not scandalously damage the reputation of the parties on false grounds during pleadings.

- Appear in proper dress code:

  An advocate should appear in court at all times only in dress prescribed under the Bar Council of India Rules and he should not wear the bands and gowns in public places other than in courts, except on such ceremonial occasions and at such places as the BCI.

- Refuse to appear before known or relative:

  An advocate should not enter appearance, act, plead or practise in any way before a judicial authority if the sole member of the bench is related to the advocate in any manner.

- Not to represent an establishment of which he is a member and for pecuniary interest:

  An advocate should not appear in or before any judicial authority, for or against any establishment with the restriction that if such advocate appears as "*amicus curiae*" on behalf of the BCI. And an advocate should not appear in any matter in which he has financial interest.

- An advocate should not stand as a surety for his client:

  An advocate should not stand as a surety or certify the soundness of a surety that his client requires for the purpose of any legal proceedings.

Duty towards the Client

- Bound to accept briefs:

  An advocate is bound to accept any brief in the courts or tribunals or before any other authority in or before which he proposes to practise. He should levy fees which is at par with the fees collected by fellow advocates of his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

- No withdrawal from service:

  An advocate should not ordinarily withdraw from serving a client once he has agreed to serve them. He can withdraw only if he has a sufficient cause and by giving reasonable and sufficient notice to the client. Upon withdrawal, he shall refund such part of the fee that has not accrued to the client.

- Not appear in matters where he himself is a witness:

  An advocate should not accept a brief or appear in a case in which he himself is a witness. If he has a reason to believe that in due course of events he will be a witness, then he should not continue to appear for the client. He should retire from the case without jeopardising his client's interests.

- Full and frank disclosure to client:

  An advocate should, at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosure to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgement in either engaging him or continuing the engagement

- Uphold interest of the client:

  It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means. An advocate shall do so without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused. An advocate should always remember that his loyalty is to the law, which requires that no man should be punished without adequate evidence.

- Not suppress material or evidence:

  An advocate appearing for the prosecution of a criminal trial should conduct the proceedings in a manner that it does not lead to conviction of the innocent. An advocate shall by no means suppress any material or evidence, which shall prove the innocence of the accused.

- Not disclose the communications between client and himself:

  An advocate should not by any means, directly or indirectly, disclose the communications made by his client to him. He also shall not disclose the advice given by him in the proceedings. However, he is liable to disclose if it violates Section 126 of the Indian Evidence Act, 1872.

- An advocate should not be a party to stir up or instigate litigation. An advocate should not act on the instructions of any person other than his client or the client's authorised agent.

- Not charge depending on success of matters:

  An advocate should not charge for his services depending on the success of the matter undertaken. He also shall not charge for his services as a percentage of the amount or property received after the success of the matter.

- Not receive interest in actionable claim:

  An advocate should not trade or agree to receive any share or interest in any actionable claim. Nothing in this rule shall apply to stock, shares and debentures of government securities, or to any instruments, which are, for the time being, by law or custom, negotiable or to any mercantile document of title to goods.

- Not bid or purchase property arising of legal proceeding:

  An advocate should not by any means bid for, or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in any legal proceeding in which he was in any way professionally engaged. However, it does not prevent an advocate from bidding for or purchasing for his client any property on behalf of the client provided the Advocate is expressly authorised in writing in this behalf.

- Not bid or transfer property arising of legal proceeding:

An advocate should not by any means bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer (either in his own name or in any other name for his own benefit or for the benefit of any other person), any property which is the subject matter of any suit, appeal or other proceedings in which he is in any way professionally engaged.

- Not adjust fees against personal liability:

An advocate should not adjust fee payable to him by his client against his own personal liability to the client, which does not arise in the course of his employment as an advocate. An advocate should not misuse or takes advantage of the confidence reposed in him by his client.

- Keep proper accounts:

An advocate should always keep accounts of the clients' money entrusted to him. The accounts should show the amounts received from the client or on his behalf. The account should show along with the expenses incurred for him and the deductions made on account of fees with respective dates and all other necessary particulars.

- Divert money from accounts:

An advocate should mention in his accounts whether any monies received by him from the client are on account of fees or expenses during the course of any proceeding or opinion. He shall not divert any part of the amounts received for expenses as fees without written instruction from the client.

- Intimate the client on amounts:

Where any amount is received or given to him on behalf of his client, the advocate must without any delay intimate the client of the fact of such receipt.

- Adjust fees after termination of proceedings:

An advocate shall after the termination of proceedings, be at liberty to adjust the fees due to him from the account of the client. The balance in the account can be the amount paid by the client or an amount that has come in that proceeding. Any amount left after the deduction of the fees and expenses from the account must be returned to the client.

- Provide copy of accounts:

An advocate must provide the client with the copy of the client's account maintained by him on demand; provide the necessary copies if charge is paid. An advocate shall not enter into arrangements whereby funds in his hands are converted into loans.

- Not lend money to his client:

An advocate shall not lend money to his client for the purpose of any action or legal proceedings in which he is engaged by such client. An advocate cannot be held guilty for a breach of this rule, if in the course of a pending suit or proceeding, and without any arrangement with the client in respect of the same, the advocate feels compelled by reason of the rule of the Court to make a payment to the Court on account of the client for the progress of the suit or proceeding.

- Not appear for opposite parties:

  An advocate who has advised a party in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party in the same matter.

Rules on advocate's duty to opponents

- Not to negotiate directly with opposing party:

  An advocate shall not in any way communicate or negotiate or call for settlement upon the subject matter of controversy with any party represented by an advocate except through the advocate representing the parties.

- Carry out legitimate promises made:

  An advocate shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing or enforceable under the rules of the Court.

Rules on an advocate's duty towards fellow advocates

- Not advertise or solicit work:

  An advocate shall not solicit work or advertise in any manner. He shall not promote himself by circulars, advertisements, touts, personal communications, and interviews other than through personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned.

- Sign-board and Name-plate:

  An advocate's sign-board or name-plate should be of a reasonable size. The sign-board or name-plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been associated with any person or organisation or with any particular cause or matter or that he specialises in any particular type of work or that he has been a Judge or an Advocate General. An advocate shall not permit his professional services or his name to be used for promoting or starting any unauthorised practice of law.

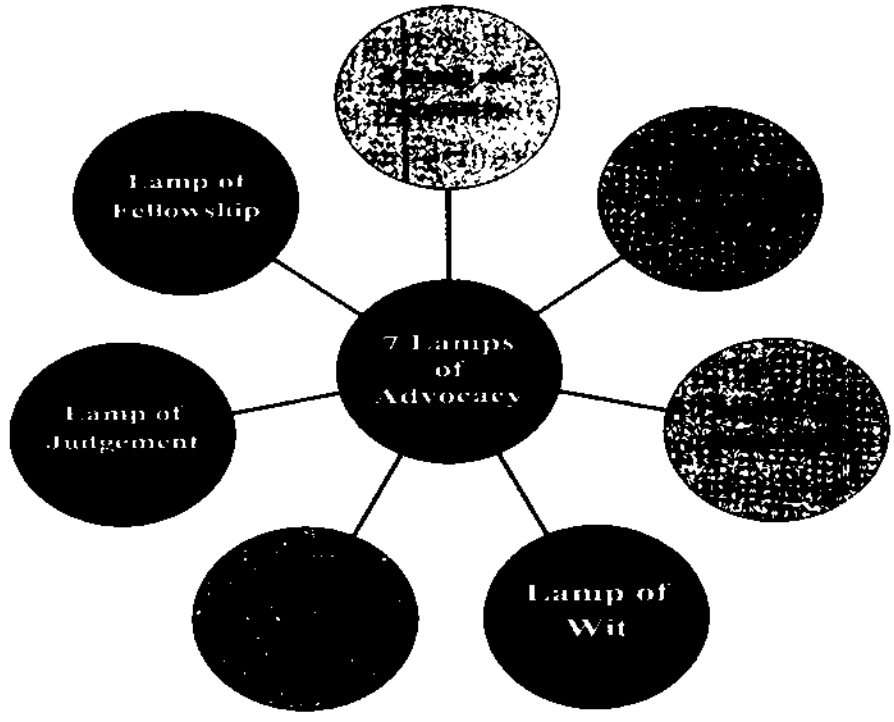
- An advocate shall not accept a fee less than the fee, which can be taxed under rules when the client is able to pay more.

- Consent of fellow advocate to appear:

  An advocate should not appear in any matter where another advocate has filed a vakalt or memo for the same party. However, the advocate can take the consent of the other advocate for appearing.

  In case, an advocate is not able to present the consent of the advocate who has filed the matter for the same party, then he should apply to the court for appearance. He shall in such application mention the reason as to why he could not obtain such consent. He shall appear only after obtaining the permission of the Court.

V : SEVEN LAMPS OF ADVOCACY



Sir Edward abbot Parry in his "Lawyers Legal Ethics", speaks about the professional skills of advocacy through Seven Lamps of Advocacy.[1] Justice Rajkishore Prasad, former judge of High Court of Patna calls this profession of law great calling and speaks about the Seven Lamps of advocacy mentioned by learned Sir Edward Abbot Parry. Along with the above Seven Lamps, justice Rajkishore adds another Lamp as "Lamp of Tact".

- Lamp of Honesty (honest and be of integrity and character): An advocate should be straightforward, free from deceit, stealing, cheating and telling lies. The best advocates of all generation have been the devotees of honesty.
- Lamp of Courage (many faces): Courage is a quality that enables a person to control fear in the face of danger, misfortune, and an advocate should face the pressure from outside with courage.
- Lamp of Industry: (read; read; think and think) Advocacy is needed a life of industry. Success in advocacy is not arrived at by intuition but through industry. Industry is the quality of being hard-working; being always employed usefully.
- Lamp of Wit (to lighten the darkness): an advocate should be clever and humorous in expressing his ideas.
- Lamp of Eloquence (eloquence of manner is real eloquence): The success of an advocate depends upon his eloquence and eloquence means fluent speaking and skilful use of language to persuade or to appeal to the feelings of others. Fluent speaking impresses the listener.
- Lamp of Judgement (intellectual capacity to study the judge): The inspiration which enables a man to translate good sense into right action is judgement. In judgment one has to estimate, consider and form an opinion about the issues with good sense and ability.

Lamp of Fellowship (encourage each other): Fellowship means the membership in friendly association or companionship. Though the advocates are opponent parties before the bench, but they should not act like enemies with each other.

[1] Dr. A.E. Chelliah, and Mrs. C. Vasanthakumari Chelliah, 2006, "*Legal Ethics-The Role of the Bench and the Bar in the Temple of Justice- A text Book for the students of Law and a Zest Book for all*", Deccan Publications, Chennai.

VI : JUDICIAL PERSPECTIVES

This unit will focus on important judgements on The Advocates Act, 1961, Contempt proceedings, misconduct and professional misconduct etc. Sources available at;

(i) www.indiakanoon.org

(ii) www.manupatra.org

(iii) www.legalserviceindia.com

(iv) www.barcounclofindia.org

(v) www.legalperspectivesblogspot.com

Supreme Court of India

Bar Council Of Maharashtra vs M. V. Dabholkar Etc. Etc on 3 October, 1975

Equivalent citations: 1976 AIR 242, 1976 SCR (2) 48

Author: V Krishnaiyer

Bench: Krishnaiyer, V.R.

ACT:

Professional conduct-Soliciting work-If amount to misconduct-Disciplinary Committee of State Bar Council- Defects in its working.

HEADNOTE:

The rule of law cannot be built on the ruins of democracy for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional life style. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice-social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallized into rigid rules but felt by the collective conscience of the practitioners as right. Justice cannot be attained without the stream being pellucid throughout its course and that is of great public concern, not merely professional care. The respondents, who were lawyers practising in criminal courts, were charged with professional misconduct under s. 35(1) of the Advocates Act, 1961, in that they positioned themselves at the entrance to the Magistrates' Courts, watchful of the arrival of potential litigants and at sight, rushed towards the clients in an ugly scrimmage to snatch the briefs. to lay claim to the engagements even by physical fight to undercut fees, and by this unedifying exhibition sometimes carried even into the Bar Library, solicited and secured work for themselves. The Bar Council of Maharashtra considered the complaint received from the High Court against the lawyers and referred the matter to its Disciplinary Committee for further probe. The Disciplinary Committee of the State Bar Council held the respondents guilty of professional misconduct and suspended them from practising as advocates for a period of three years. On appeal, the Disciplinary Committee of the Bar Council of India held that under r. 36 of the rules framed under s. 49(c) of the Advocates Act in order to be amenable to the disciplinary jurisdiction the advocates must have (i) solicited work (ii) from a particular person and (iii) with respect to a case. It held that unless the three elements

were satisfied it could not be said that an advocate had acted beyond the standard of professional conduct and etiquette. It therefore, absolved all the respondents of the charge of professional misconduct. The State Bar Council has come in appeal to this Court.

HELD: Rule 36 of the rules framed under s. 49(c) of the Advocates Act, fairly construed, sets out wholesome rules of professional conduct and the dissection of the said rule, the way it has been done by the Disciplinary Tribunal, disfigure it. (1) The canons of ethics and propriety far the legal profession totally taboo conduct by way of soliciting, advertising, scrambling and other obnoxious practices, subtle or clumsy for betterment of legal business. Law is no trade, briefs no merchandise and so the leaven of commercial competition or procurement should not vulgarise the legal profession.

(2)(a) The procedure adopted by the State Bar Council in referring the cases to its Disciplinary Committee is in due compliance with s. 35(1) of the Advocates Act.(b) The contention that the resolution of the Bar Council did not ex facie disclose that it had reason to believe that the advocates were guilty of professional misconduct had no merit. The requirement of "reason to believe" cannot be converted into a formalised procedural road block, it being essentially a barrier against frivolous enquiries. It is implicit in the resolution Of the Bar Council, when it says that it has considered the complaint and decided to refer the matter to the Disciplinary Committee, that it had reason to believe as prescribed by the statute.

(3) The State Tribunal has, from a processual angle, fallen far short of norms like proper numbering of witnesses and exhibits, indexing and avoidance of mixing up of all cases together, default in examination of the respondents, consideration separately of the circumstances of each delinquent for convicting and sentencing purposes. More attention to the specificity in recording evidence against each deviant instead of testimonial clubbing together on all the respondents, could have made the proceedings clearer, fairer and in keeping with court methodology without over judicialised formalities. The consolidation of all cases and trying them all jointly, although the charges there different episodes, obviously violative of fair trial.

(4) (a) The profound regret of these cases lies not only in the appellate Disciplinary Tribunal's subversive view of the law of professional conduct that attempted solicitation by snatching briefs and catching clients is of no ethical moment, or contravention of the relevant provisions, but also in the naive innocence of fair and speedy procedure displayed by the State Disciplinary Tribunal in clubbing together various charges levelled against the advocates in one common trial, mixing up the evidence against many, recording omnibus testimony slipshod, not maintaining a record of each day's proceedings, examining witnesses in the absence of some respondents taking eight years to finish in trial involving depositions of four witnesses and omission to consider the evidence against each alleged delinquent individually in the semi-penal proceeding. True, a statutory Tribunal may ordinarily regulate its procedure without too much rigidity, subject to the rules of natural justice, but large scale disregard of well-known norms of fair process makes one wonder whether some at least of the respondents had not been handicapped and whether justice may not be a casualty if the Tribunal is not alerted about its processual responsibilities. The Appellate Tribunal was wholly wrong in applying. 36 which was promulgated only in 1965 while the alleged misconduct took place earlier. What this Tribunal forgot was that the legal profession in India has been with us even before the British and coming to decades of this century, the provisions of. 35 of the Advocates Act, s. 10 of the Bar Councils Act and other enactments regulating the conduct of legal practitioners have not turned on the splitting up of the text of any rule but on the broad canons of ethics and high tone of behaviour well-established by case law and long accepted by the soul of the bar. Professional ethics were bourn with the organised bar, even as moral norms arose with civilised society. The exercise in discovering the three elements of r. 36 was as unserviceable as it was supererogatory.

(c) It is a misfortune that a disciplinary body of a dimensionally get and growing public utility profession has lost its vision, blinkered by, r. 36 (as misconstrued and trisected by it.)

Supreme Court of India

Ex-Capt. Harish Uppal vs Union Of India & Anr on 17 December, 2002

Bench: Cji, Doraiswamy Raju, S. N. Variava, D. M. Dharmadhikari

CASE NO.: Writ Petition (civil) 132 of 1988

J U D G M E N T (WITH W. P. (C) No. 394/93, W. P. (C) No. 821/90, W. P. (C) No. 320/93 and W.P. (C) 406/2000)

S. N. VARIAVA, J.

1) All these Petitions raise the question whether lawyers have a right to strike and/or give a call for boycotts of Court/s. In all these Petitions a declaration is sought that such strikes and/or calls for boycott are illegal. As the questions vitally concerned the legal profession, public notices were issued to Bar Associations and Bar Councils all over the country. Pursuant to those notices some Bar Associations and Bar Councils have filed their responses and have appeared and made submissions before us.

2) In Writ Petition (C) No. 821 of 1990, an interim order came to be passed. This Order is reported in (1995) 1 Scale p.6. The circumstances under which it is passed and the nature of the interim order are set out in the Order. The relevant portion reads as under: "2. The Officiating Secretary, Bar Council of India, Mr. C. R. Balaram filed an affidavit on behalf of the Bar Council of India wherein he states that a 'National Conference' of members of the Bar Council of India and State Bar Councils was held on 10th and 11th September, 1994 and a working paper was circulated on behalf of the Bar Council of India by Mr. V. C. Misra, Chairman, Bar Council of India, inter alia on the question of strike by lawyers. In that working paper a note was taken that Bar Association had proceeded on strike on several occasions in the past, at times, State-wide or Nationwide, and 'while the profession does not like it as members of the profession are themselves the losers in the process' and while it is not necessary to sit in judgment over the wider question whether members of the profession can at all go on strike or boycott of courts, it was felt that even if it is assumed that such a right ensures to the members of the profession, the circumstances in which such a steps should be restored should be clearly indicated. Referring to an earlier case before the Delhi High Court it was stated that the Bar Council of India had made its position clear to the effect "(a) Bar Council of India is against resorting to strike excepting in rarest of rare cases involving the dignity and independence of the judiciary as well as of the Bar; and

(b) whenever strikes becomes inevitable, efforts shall be made to keep it short and peaceful to avoid causing hardship to the litigant public." (emphasis supplied). It was in response to the above that a consensus emerged at the Bar at the hearing of the matter that instead of the Court going into the wider question whether or not the members of the legal profession can resort to strike or abstain from appearing in cases in Court in which they are engaged, the Court may see the working of the interim arrangement and if that is found to be satisfactory it may perhaps not be required to go into the wider question at this stage. Pursuant to the discussion that took place at the last hearing on 30th November, 1994, the following suggestions have emerged as an interim measure consistent with the Bar Council of India's thinking that except in the rarest of rare cases strike should not be resorted to and instead peaceful demonstration may be resorted to avoid causing hardship to the litigant public. The learned counsel suggested that to begin with the following interim measures may be sufficient for the present:-

"(1) In the rare instance where any association of lawyers including statutory Bar Councils considers it imperative to call upon and/or advise members of the legal profession to abstain from appearing in courts

on any occasion, it must be left open to any individual member/members of that association to be free to appear without let, fear or hindrance or any other coercive steps.

(2) No such member who appears in court or otherwise practices his legal profession, shall be visited with any adverse or penal consequences whatever, by any association of lawyers, and shall not suffer any expulsion or threat of expulsion there from.

(3) The above will not preclude other forms of protest by practising lawyers in court such as, for instance, wearing of arm bands and other forms of protest which in no way interrupt or disrupt the court proceedings or adversely affect the interest of the litigant. Any such form of protest shall not however be derogatory to the court or to the profession.

(4) Office-bearers of a Bar Association (including Bar Council) responsible for taking decisions mentioned in clause (1) above shall ensure that such decisions are implemented in the spirit of what is stated in clauses (1) and (2) and (3) above."

3: Mr. P. N. Duda, Sr. Advocate representing the Bar Council of India was good enough to state that he will suggest to the Bar Council of India to incorporate Clauses (1), (2) and (3) and (4) in the Bar Council of India (Conduct & Disciplinary) Rules, so that it can have statutory support should there be any violation or contravention of the aforementioned four clauses. The suggestion that we defer the hearing and decision on the larger question whether or not members of the profession can abstain from work commends to us. We also agree with the suggestion that we see the working of the suggestions in clauses (1) to (4) above for a period of at least six months by making the said clauses the rule of the Court. Accordingly we make clauses (1) to (4) mentioned above the order of this Court and direct further course of action in terms thereof. The same will operate prospectively. Uphold the high traditions of the profession as well as to maintain the unity and integrity of the Bar they consider dropping action already initiated against their members who had appeared in Court notwithstanding strike calls given by the Bar Council or Bar Association. Besides, members of the legal profession should be alive to the possibility of Judge of different Courts refusing adjournments merely on the ground of their being a strike call and insisting on proceeding with cases." The above interim Order was passed in the hope that better sense could prevail and lawyers would exercise self restraint. In spite of the above interim directions and the statement of Mr. P. N. Duda the Bar Council of India has not incorporated clauses (1) to (4) in the Bar Council of India (Conduct & Disciplinary) Rules. The phenomenon of going on strike at the slightest provocation is on the increase. Strikes and calls for boycott have paralysed the functioning of Courts for a number of days. It is now necessary to decide whether lawyers have a right to strike and/or give a call for boycott of Court.

We also suggest to the Bar Councils and Bar Associations that in order to clear the pitch and to uphold the high traditions of the profession as well as to maintain the unity and integrity of the Bar they consider dropping action already initiated against their members who had appeared in Court notwithstanding strike calls given by the Bar Council or Bar Association. Besides, members of the legal profession should be alive to the possibility of Judge of different Courts refusing adjournments merely on the ground of their being a strike call and insisting on proceeding with cases."

The above interim Order was passed in the hope that better sense could prevail and lawyers would exercise self restraint. In spite of the above interim directions and the statement of Mr. P. N. Duda the Bar Council of India has not incorporated clauses (1) to (4) in the Bar Council of India (Conduct & Disciplinary) Rules. The phenomenon of going on strike at the slightest provocation is on the increase. Strikes and calls for boycott have paralysed the functioning of Courts for a number of days. It is now necessary to decide whether lawyers have a right to strike and/or give a call for boycott o Court/s.

The other important judgements of the Supreme Court of India with regards to the professional ethics are as follows;

1. *Narain Pandey v. Panulal Pandey*, dated 10 December 2012;

2. Interpretation of the term "*Person Aggreived*", *Adi Pharozshah Gandhi v. H.M. Seervai, Advocate General*, dated 21 August 1970 (1971 AIR 385);

3. Lawyers right to lien over clients paper was negatively decided in *R.D. Saxena v. Balram Prasad,* AIR 2000 SC 3039;

4. Concept of Misconduct was answered in *Samburam Yadhav v. Hanuman Das Khatry;*

5. Concept of Professional misconduct, *Noratamun Courasia v. M.R. Murali.*

6. Adjournment also amount to misconduct, *N.G.Dastave v. Shrikant S. Shinde;*

7. Contempt of Court, *Emperor v. Balakrishna Govinda Kulkarni;*

8. *Supreme Court Bar Association UOI;*

9. In *Re: Vinay Chandra Mishra.*

VII : CONTEMPT OF COURT ACT, 1971

1. Power of High Court to punish contempt's of subordinate courts.

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself: Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

2. Power of High Court to try offences committed or offenders found outside jurisdiction:

A High Court shall have jurisdiction to inquire into or try contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.

12. Punishment for contempt of court:

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both: Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation: An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person: Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Nothwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation: For the purpose of sub-sections (4) and (5)(a) company means anybody corporate and includes a firm or other association of individuals; and (b) director, in relation to a firm, means a partner in the firm.

13. Contempts not punishable in certain cases :

Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.

14. Procedure where contempt is in the face of the Supreme Court or a High Court :

(1) When it is alleged, or appears to the Supreme Court or the High Court upon it own view, that a person has been guilty of contempt committed in its presence or hearing, the court may cause such person to be detained in custody, and, at any time before the rising of the court, on the same day, or as early as possible thereafter, shall;

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge; (c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharged of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify: Provided further that the court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

15. Cognizance of criminal contempt in other cases:

(1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by (a) the Advocate-General, or (b) any other person, with the consent in writing of the Advocate-General,

[2] [or] iii [3] [(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.]

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation:

In this section, the expression Advocate-General means

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General.

(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established.

(c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

16. Contempt by judge, magistrate or other person acting judicially:

(1) Subject to the provisions of any law for the time being in force, a judge, magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.

(2) Nothing in this section shall apply to any observations or remarks made by a judge, magistrate or other person acting judicially, regarding a subordinate court in an appeal or revision pending before such judge, magistrate or the person against the order or judgment of the subordinate court.

17. Procedure after cognizance:

(1) Notice of every proceeding under Section 15 shall be served personally on the person charged, unless the court for reasons to be recorded directs otherwise.

(2) The notice shall be accompanied (a) in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded; and (b) in case of proceedings commenced on a reference by a subordinate court, by a copy of the reference.

(3) The Court may, if it is satisfied that a person charged under Section 15 is likely to abscond or keep out of the way avoiding service of the notice, order the attachment of his property of such value or amount as it may deem reasonable.

(4) Every attachment under sub-section (3) shall be effected in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and shows to the satisfaction of the court that he did not abscond or keep out of the way to avoid service of the notice, the court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

(5) Any person charged with contempt under Section 15 may file an affidavit in support of his defence, and the court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires.

18. Hearing of cases of criminal contempt to be by Benches:

(1) Every case of criminal contempt under Section 15 shall be heard and determined by a Bench of not less than two Judges.

(2) Sub-section (1) shall not apply to the Court of a Judicial Commissioner.

19 Appeals:

(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt (a) where the order or decision is that of a single judge, to a Bench of not less than two Judge of the court; (b) where the order or decision is that of a Bench, to the Supreme Court. Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate court may order that (a) the execution of the punishment or order appealed against be suspended; (b) if the appellant is in confinement, he be released on bail; and (c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed (a) in the case of an appeal to a Bench of the High Court, within thirty days; (b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

20. Limitation for actions for contempt:

No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

VIII : OPINION OF DISCIPLINARY COMMITTEES OF BAR

BAR COUNCIL OF INDIA RULES

Part –IV

Rules of Legal Education

Rules on standards of legal education and recognition of degrees in law for the purpose of enrolment as advocate and inspection of Universities for recognizing its degree in law under Sections 7(1)(h) and (i), 24(1)(c)(iii), and (iiia), 49(1)(af),(ag),and (d) of the Advocates Act, 1961 made by the Bar Council of India in consultation with Universities and State Bar Councils.

CHAPTER I

Preliminaries and Definitions

1. Title and Commencement:

(*a*) These Rules including the Schedules may be known as Rules of Legal Education - 2008

(*b*) These Rules shall come into force in whole of India as soon as notified.

(*c*) These Rules shall replace all previous Rules, Directives, notifications and resolutions relating to matters covered under these rules.

2. Definitions:

(*i*) "Act" means The Advocates Act, 1961.

(*ii*) "Approved" means approved by the Bar Council of India.

(*iii*) "Bar Council of India or Council or BCI" shall mean Bar Council of

India constituted under the Act.

(*iv*) "Centres of Legal Education" means

(*a*) All approved Departments of Law of Universities, Colleges of Law, Constituent Colleges under recognized Universities and affiliated Colleges or Schools of law of recognized Universities so approved.

Provided that a Department or College or Institution conducting correspondence courses through distance education shall not be included.

(*b*) National Law Universities constituted and established by statutes of the Union or States and mandated to start and run Law courses.

(*v*) "Compulsory subjects" means and include subjects prescribed by the Bar Council of India as such.

(*vi*) "Bachelor degree in law" means and includes a degree in law conferred by the University recognized by the Bar Council of India for the purpose of the Act and includes a bachelor degree in law after any bachelor degree in science, arts, commerce, engineering, medicine, or any other discipline of a University for a period of study not less than three years or an integrated bachelor degree combining the course of a first bachelor degree in any subject and also the law running together in concert and compression for not less than a period of five years after 10+2 or 11+1 courses as the case may be.

(*vii*) "**Enrolment**" means enrolment on the Rolls of the Advocates maintained by the State Bar Councils as per the procedure laid down for the purpose by State Bar Councils/BCI as per Advocates Act, 1961.

(*viii*) "**First Degree**" means Bachelor Degree in any branch of knowledge such as Arts, Fine Arts, Science, Commerce, Management, Medicine, Engineering, Pharmacy, Technology etc. conferred by Universities or any other qualifications awarded by an institution/authority recognized by the Bar Council of India, from time to time.

(*ix*) "**Foreign citizen or Foreigner**" used in these Rules means a natural person having citizenship and /or resident of any other country.

(*x*) "**Foreign University**" means and includes any University not constituted under any Act of Parliament of India or any State Legislature in India and which is incorporated outside India under the law of that country and function as University for organizing, running and managing courses of study and confer degree on successful completion of the course.

(*xi*) "**Indian or Indian national**" used in these Rules means a natural person having citizenship of India and includes Non Resident Indian or Person of Indian Origin enjoying double citizenship in India.

(*xii*) "**Inspection of the University**" means inspection by the Bar Council of India for recognizing its degree in law for the purpose of enrolment in the rolls of advocates and includes

(A) calling for all relevant records, documents, and correspondence to evaluate the competence of the University to run professional courses,

(B) visiting places of the Centres of Legal Education including building housing classes, library of the Institution, halls of residence and all other places as may be required by the inspection team inspecting the University and its affiliated Centres of Legal Education where the courses of degrees in law are conducted or proposed to be conducted.

Provided that as and when the Bar Council India communicates to the University for the purpose of inspection, the University shall also direct the concerned officer in charge of Inspection of Centre of Legal Education to instruct all persons concerned for facilitating the Inspection by the inspection team of the Bar Council of India.

(*xiii*) "**Integrated Degree course in law**" means double degree course comprising the bachelor degree in any branch of knowledge prosecuted simultaneously with the Degree course in law in such an integrated manner as may be designed by the University concerned for a continuous period of not less than five years.

(*xiv*) "**Lateral Entry**" is an admission given to graduate applicants at the beginning of third year in an integrated Five Year Course.

(*xv*) "**Lateral Exit**" means opting out at the end of three year after successfully completing the courses up to the third year, from an Integrated Five year course on being awarded a Bachelor degree.

(*xvi*) "**Legal Education Committee or LEC**" means the Legal Education Committee constituted by the Bar Council of India under the Act, composed of five members of the Bar Council of India nominated by the Bar Council of India and five co-opted members comprising the Chairman who has to be a former Judge of the Supreme Court of India, a sitting Hon'ble Chief Justice of a High Court, distinguished Professor of Law, the Law Secretary and the UGC Chairman. The Committee may also have some permanent invitees proposed by the Bar Council of India.

(*xvii*) "**Master degree**" means a degree, which is undertaken after the graduate degree in any discipline obtained from any University.

(*xviii*) "National Assessment and Accreditation Council" is the body constituted as an autonomous body for conducting accreditation of Universities and Centre of Legal Education, by the University Grants Commission.

(*xix*) "Notify and Notification" means notifying in the website of the Bar Council of India.

(*xx*) "Practice of law" means and includes (a) practising before the Court, Tribunal, Authority, Regulator, Administrative Body or Officer and any Quasi Judicial and Administrative Body, (b) giving legal advice either individually or from a law firm either orally or in writing, (c) giving legal advice to any government, international body or representing any international dispute resolution bodies including International Court of Justice, (d) engaged in Legal Drafting and participating in any Legal Proceedings and (e) representing in Arbitration Proceedings or any other ADR approved by law.

(*xxi*) "Prescribed" means prescribed under these Rules.

(*xxii*) "Recognized University" means a University whose degree in law is recognized by the Bar Council of India under these Rules.

(*xxiii*) "Regular Course of Study" means and includes a course which runs for at least five hours a day continuously with an additional half an hour recess every day and running not less than thirty hours of working schedule per week.

(*xxiv*) "Regular Approval" means approval for not more than five years and includes permanent approval earlier granted to any Centre of Legal Education before these Rules come into force.

(*xxv*) "Rules" means on 'Rules of Legal Education'.

(*xxvi*) "Second degree" means a course of study leading to degree, which can be prosecuted only after obtaining a bachelor degree.

(*xxvii*) "Secretary" means Secretary of the Bar Council of India.

(*xxviii*) "Temporary approval" means approval for not more than a period of three years.

(*xxix*) "Sponsors" means and includes a natural or artificial person, University, a body of persons incorporated or otherwise, a public trust, or society registered under the Union or any State Act for the purpose of sponsoring, establishing, organizing, managing and running any Centre of Legal Education.

(*xxx*) "State Bar Council" means the State Bar Council constituted in the State under the Act.

(*xxxi*) "Unitary Degree course in law" means three years degree course in law prosecuted by a student after completing a bachelor degree course in any discipline.

(*xxxii*) "University" means as defined under the University Grants Commission Act, 1956 including National Law Universities and other Universities established by Acts of Central or State and also institutions declared as Deemed to be University under Section 3 of the University Grants Commission Act.

CHAPTER II

Standards of Professional Legal Education

3. Recognized Universities

The State Bar Council shall enroll as Advocate only such candidates, who have passed from University, approved affiliated Centre of Legal Education / Departments of the recognized University as approved by the Bar Council of India. The Bar Council of India shall notify a list of such Universities and the Centres of Legal Education prior to the commencement of each academic year in the prescribed manner and also put in website of Bar Council of India a list of universities and Centres of Legal Education as amended from time to time. Each State Bar Council shall ensure that applicants passing out from such a recognized Universities and of its approved affiliated law Centre of Legal Education are enrolled.

4. Law courses

There shall be two courses of law leading to Bachelors Degree in Law as hereunder,

(*a*) A three year degree course in law undertaken after obtaining a Bachelors' Degree in any discipline of studies from a University or any other qualification considered equivalent by the Bar Council of India.

Provided that admission to such a course of study for a degree in law is obtained from a University whose degree in law is recognized by the Bar Council of India for the purpose of enrolment.

(*b*) A double degree integrated course combining Bachelors' Degree course as designed by the University concerned in any discipline of study together with the Bachelors' degree course in law, which shall be of not less than five years' duration leading to the integrated degree in the respective discipline of knowledge and Law together, provided that such an integrated degree program in law of the University is recognized by the Bar Council of India for the purpose of enrolment. Provided further that in the case of integrated double degree course the entire double degree course can be completed in one year less than the total time for regularly completing the two courses one after the other in regular and immediate succession, meaning thereby, that if the degree course in the basic discipline, such as in Arts, Science, Social Science, Commerce, Management, Fine Arts, Engineering, Technology or medicine etc. is of three years' duration of studies, integrated course in law with the basic degree in the discipline could be completed in five years' time but where the degree course in basic discipline takes four or five years, the integrated degree in law with such degree course in the discipline would take one year less for completing in regular time than the total time taken for the two degrees taken separately if completed back to back.

Explanation 1: Double degree integrated course such as BA., LL.B. can be completed within (3+3 –1) i.e. 5 years. But if one intends to do B.Tech., LL.B. it can be done in (4+3-1) i.e., 6 years.

Explanation 2: Suppose in a University one can have a two years' graduation in any social science leading to BA degree, in that case also the composite double degree integrated course leading to BA, LL.B. would be of five years duration because double degree integrated course cannot be of less than five years' duration.

5. Eligibility for admission:

(*a*) **Three Year Law Degree Course**: An applicant who has graduated in any discipline of knowledge from a University established by an Act of Parliament or by a State legislature or an equivalent national institution recognized as a Deemed to be University or foreign University recognized as equivalent to the status of an Indian University by an authority competent to declare equivalence, may apply for a three years' degree program in law leading to conferment of LL.B. degree on successful completion of the regular program conducted by a University whose degree in law is recognized by the Bar Council of India for the purpose of enrolment.

(*b*) **Integrated Degree Program:** An applicant who has successfully completed Senior Secondary School course ('+2') or equivalent (such as 11+1, 'A' level in Senior School Leaving certificate course) from a recognized University of India or outside or from a Senior Secondary Board or equivalent, constituted or recognized by the Union or by a State Government or from any equivalent institution from a foreign country recognized by the government of that country for the purpose of issue of qualifying certificate on successful completion of the course, may apply for and be admitted into the program of the Centres of Legal Education to obtain the integrated degree in law with a degree in any other subject as the first degree from the University whose such a degree in law is recognized by the Bar Council of India for the purpose of enrolment. Provided that applicants who have obtained + 2 Higher Secondary Pass Certificate or First Degree Certificate after prosecuting studies in distance or correspondence method shall also be considered as eligible for admission in the Integrated Five Years course or three years' LL.B. course, as the case may be.

Explanation: The applicants who have obtained 10 + 2 or graduation / post graduation through open Universities system directly without having any basic qualification for prosecuting such studies are not eligible for admission in the law courses.

6. Prohibition to register for two regular courses of study No student shall be allowed to simultaneously register for a law degree program with any other graduate or postgraduate or certificate course run by the same or any other University or an Institute for academic or professional learning excepting in the integrated degree program of the same institution.

Provided that any short period part time certificate course on language, computer science or computer application of an Institute or any course run by a Centre for Distance Learning of a University however, shall be excepted.

7. Minimum marks in qualifying examination for admission Bar Council of India may from time to time, stipulate the minimum percentage of marks not below 45% of the total marks in case of general category applicants and 40% of the total marks in case of SC and ST applicants, to be obtained for the qualifying examination, such as +2 Examination in case of Integrated Five Years' course or Degree course in any discipline for Three years' LL.B. course, for the purpose of applying for and getting admitted into a Law Degree Program of any recognized University in either of the streams. Provided that such a minimum qualifying marks shall not automatically entitle a person to get admission into an institution but only shall entitle the person concerned to fulfil other institutional criteria notified by the institution concerned or by the government concerned from time to time to apply for admission.

8. Standard of courses Whereas all Universities and its constituent and affiliated Centres of Legal Education conducting either the three year law degree program or the integrated double degree program for not less than five years of study or both would follow the outline of the minimum number of law courses both theoretical and practical, compulsory and optional, as the case may be, prescribed by the Bar Council of India and specified in the Schedule II and ensuring that:-

(*a*) the minimum number of law courses are effectively conducted in the Centres of Legal Education with adequate infrastructural facilities as may be prescribed and in the manner stipulated by the University Regulations and Rules and that of the Bar Council of India Rules,

(*b*) the minimum standard of first degree course as designed and run by the University for the purpose of running integrated course in accordance with the standard prescribed by the University in view of the academic and other standards laid down, if any, taking into consideration by the standard-setting institutions like University Grants Commission or All India Council for Technical Education or any such body, as the case may be, and the program is effectively run with adequate number of faculty in respective subjects, with infrastructural facilities as may be prescribed by the University as well as the Bar Council of India, and

(*c*) there is a regular and proper evaluation system for the purpose of certification of the students graduating in law after completing the course as a regular student.

Provided that the University for the said purpose shall submit to the Bar Council of India, copies of the curriculum designed and developed in each course of study, rules of academic discipline and of examination and evaluation and also the amendments to those as and when so amended.

9. Process and manner of running integrated course The University concerned shall ensure that -

(*a*) Faculties for running the entire course shall design the purpose, manner and the process of running the integrated courses semester-wise with clear objective criteria of integration.

(*b*) There are all infrastructural facilities available for the courses, such as faculty for teaching the subjects concerned, laboratories needed, and other class room fixtures and fittings including the computer support.

(*c*) The double degree courses may be planned by the University in order to suitably integrate the program meaningfully.

(*d*) The University shall cause documentary evidences and records of the above requirements in (a), (b) and (c) to be submitted to the Bar Council of India, whose inspection committee would review the program from time to time and provide suggestions to the University concerned, if any.

10. Semester system The course leading to either degree in law, unitary or on integrated double degree, shall be conducted in semester system in not less than 15 weeks for unitary degree course or not less than 18 weeks in double degree integrated course with not less than 30 class-hours per week including tutorials, moot room exercise and seminars provided there shall be at least 24 lecture hours per week. Provided further that in case of specialized and/or honours law courses there shall be not less than 36 class-hours per week including seminar, moot court and tutorial classes and 30 minimum lecture hours per week. Provided further that, Universities are free to adopt trimester system with appropriate division of courses per trimester, with each of the trimester not less than 12 weeks.

11. Minimum infrastructure Any institution conducting legal education by running either of the law degree courses or both leading to conferment of graduate degree in law on successful completion of the course shall have minimum standard infrastructure facility stipulated by the Bar Council of India specified in Schedule III of these Rules. The University shall ensure that all its Centres of Legal Education under the University maintain the standard infrastructure and other facilities for the students to suitably impart professional legal studies.

12. End Semester Test No student of any of the degree program shall be allowed to take the end semester test in a subject if the student concerned has not attended minimum of 70% of the classes held in the subject concerned as also the moot court room exercises, tutorials and practical training conducted in the subject taken together. Provided that if a student for any exceptional reasons fail to attend 70% of the classes held in any subject, the Dean of the University or the Principal of the Centre of Legal Education, as the case may be, may allow the student to take the test if the student concerned attended at least 65% of the classes held in the subject concerned and attended 70% of classes in all the subjects taken together.

The similar power shall rest with the Vice Chancellor or Director of a National Law University, or his authorized representative in the absence of the Dean of Law, provided further that a list of such students allowed to take the test with reasons recorded be forwarded to the Bar Council of India.

13. Prohibition against lateral entry and exit There shall be no lateral entry on the plea of graduation in any subject or exit by way of awarding a degree splitting the integrated double degree course, at any

intermediary stage of integrated double degree course. However, a University may permit any person to audit any subject or number of subjects by attending classes regularly and taking the test for obtaining a Certificate of participation from the University/ Faculty according to the rules prescribed by the University from time to time and give a Certificate therefore.

CHAPTER III

Inspection, Recognition and Accreditation

14. Centres for Legal Education not to impart education without approval of Bar Council of India

(1) No Centres of Legal Education shall admit any student and impart instruction in a course of study in law for enrolment as an advocate unless the recognition of the degree of the University or the affiliation of the Centres of Legal Education, as the case may be, has been approved by the Bar Council of India after inspection of the University or Centres of Legal Education institution concerned as the case may be.

(2) An existing Centre of Legal Education shall not be competent to impart instruction in a course of study in law for enrolment as an advocate if the continuance of its affiliation is disapproved or revoked by the Bar Council of India.

(3) Bar Council of India may suspend a Centre of Legal Education for such violation for a period of not more than two academic years which shall be notified.

15. Annual Notification for application to be filed by newly proposed

institutions: (*a*) At the direction of the Legal Education Committee, the Secretary shall notify each year prescribing the last date for submission of new application for proposing new law courses in a University or a new affiliated Centre of Legal Education under an existing recognized University but not later than December 31 of the previous academic year to which the new proposal is applied for. No application received after that date can be considered for the academic year under notification but can be considered for the subsequent year.

(*b*) On receipt of each application the Secretary shall submit his note after ascertaining all relevant facts to the Chairman of the Bar Council of India who may then instruct to refer the application to the inspection committee for inspection and report. After receiving the report from the Inspection Committee, the Secretary shall place the file before the Legal Education Committee for its recommendation to the Bar Council of India for approval of the affiliated Centres of Legal Education or recognition of the degree in law of the University as the case may be.

(c) The Legal Education Committee may call for additional information from the applicants as the Legal Education Committee may deem necessary.

16. Conditions for a University to affiliate a Centre of Legal Education (1) When a University receives an application for affiliation of a Centre of Legal Education to provide legal education by running professional degree program in law under either or both the streams, the University may before deciding whether it is fit case for seeking inspection from the Bar Council of India, shall ensure that (*i*) the applicant organization proposing to run the institution is either already a non-profit organization of trust or registered society or a non profit company or any other such legal entity or has taken all legal formalities to be as such, (*ii*) the institution has in its name either in freehold or leasehold, adequate land and buildings, to provide for Centre of Legal Education building, library, halls of residences separately for male and female

and sports complex both indoor and outdoor, so that it can effectively run professional law courses provided that in case of leasehold the lease is not less than ten years, provided that sufficient and adequate floor space area specially and completely devoted for a Centre of Legal Education, based on the size of its student population, faculty requirement, adequate space required for infrastructure facilities can be considered sufficient accommodation for the purpose in a multi-faculty building on land possessed by the Management of a Society/ Trust running multi-faculty institutions. (*iii*) recruited or taken steps to recruit adequate number of full time and visiting faculty members to teach each subjects of studies, each faculty having at least a Master Degree in the respective subject as required under the UGC Rules,

(*iv*) there is the separate Centres of Legal Education for the study of law under a separate Principal who should be qualified in Law to be a Professor of Law as stipulated under UGC and Bar Council of India rules,

(*v*) there is adequate space for reading in the library and there are required number of books and journals and adequate number of computers and computer terminals under a qualified librarian,

(*vi*) if the prior permission of the State Government is necessary, a no objection certificate is obtained to apply for affiliation,

(*vii*) a minimum Capital Fund as may be required under Schedule III from time to time by the Bar Council of India, and put into a Bank Account in the name of the proposed Centre of Legal Education sponsored by any private sponsor or sponsors, and

(*viii*) all other conditions of affiliation under the University rules as well as the Bar Council of India Rules are complied with.

(2) After affiliation order is received from the University the Centres of Legal Education may only then apply for inspection by the Bar Council of India.

17. When can University apply for inspection for constituent College or

University Department or Faculty When a University proposes to run a professional degree course in law of either or both streams in its Faculty or Department or in any of its constituent College it shall ensure the minimum standards of requirement as prescribed and then shall in each proposal seek inspection by the team of inspection of the Bar Council of India by submission of application with all necessary information within the stipulated date notified by the Bar Council of India every year, in appropriate Form.

18. Inspection of a University (1) A University seeking recognition of its degree in law for the purpose of enrolment in the Bar, shall provide the inspecting committee of the Bar Council of India all necessary facilities to examine the syllabus of the course designed, teaching and learning process, evaluation system, infrastructure layout and other necessary conditions in general and shall ensure in particular that all University Departmental Centres, Faculty, Constituent and affiliated Centres of Legal Education proposing to offer law courses under either or both the streams, possess:

(*i*) Required infrastructural facilities outlined under the Bar Council of India Rules;

(*ii*) Required number of teaching faculties as prescribed by the Bar Council of India and the University Grants Commission;

(*iii*) Facilities for imparting practical legal education specified in the curriculum under the Rules and Legal Aid Clinic, Court Training and Moot Court exercises;

(*iv*) Adequate library, computer and technical facilities including on-line library facility and

(*v*) In case of a Centre of Legal Education sponsored by private initiative of a person there is a Capital Fund as required in the Schedule III by the Bar Council of India from time to time, deposited in the Bank Account in the name of the Centre of Legal Education concerned.

(2) For the above purpose the Inspection Committee of the Bar Council of India shall have power to call for and examine all relevant documents, enquire into all necessary information and physically visit and enquire at the location of the Department, Faculty, Constituent and affiliated Centres of Legal Education as the case may be, provided that an application for a new proposal for affiliation and the related University inspection therefore by the Inspection Committee of the Bar Council of India, including the local enquiry at the site of the proposed College may be formally made directly by the authority of the proposed College (Faculty, University Department, Constituent or Centres of Legal Education as the case may be) in proper Form with required information and requisite fees provided that an advance copy of the application must be submitted to the University concerned, within the stipulated date as notified by the Bar Council of India.

19. Types of Inspection: Inspection shall mean inspection by the Inspection Committee of the Bar Council of India as any one of the following:

(*i*) Initial inspection: Initial inspection shall mean inspection of the University and inspection of the Bar Council of India for permitting a new Centre of Legal Education; provided that if a Law University is established by an Act passed by the Central or any State Legislature to run Law courses as specified and mandated in the statute, such a University may commence and run courses in the stipulated streams before any Initial Inspection. However such a University would require regular inspection and the first inspection shall be conducted within the first year of commencement of the courses.

(*ii*) Regular Inspection: Regular Inspection means an inspection of a University including all or any of its affiliated Centre of Legal Education by the Bar Council of India conducted after the initial inspection at the end of temporary approval, excepting a Law University established by a Central or State Act, for granting a regular approval and thereafter at least once in every five years unless the University / Centre of Legal Education concerned has sought/inspected for accreditation.

(*iii*) Surprise inspection: Surprise inspection means inspection conducted by University/Bar Council of India anytime without giving notice to the Centre of Legal Education.

(*iv*) Inspection for accreditation: Inspection applied for by a Centre of Legal Education possessing approval for the purpose of accreditation and certification.

20. Inspection and Monitoring Committee

The Bar Council of India shall constitute one or more inspection and monitoring Committee/s comprising at least two members of the Bar Council of India to conduct inspection of newly established or existing Universities.

21 Inspection fees

The Bar Council of India may prescribe inspection fees to be charged from time to time from each institutional applicant's for the purpose of conducting inspection. There may also be fees prescribed for inspection for providing accreditation of an institution. Such fees are provided in the Schedule IV of these rules and may be amended by Bar Council of India from time to time.

22. Inspection Report The Committee shall inspect the University, examine the documents and reports, visit the institution to assess the infrastructure, curriculum design, teaching and learning process, library and technical facilities and the feasibility of standard clinical education. The Committee shall then submit its report in the prescribed Form together with all relevant documents. Members of the Committee shall

physically inspect of the institution. The report has to be signed by the members of the committee inspecting, appreciating the findings, documentary, and physical, in a meeting of the committee, provided that the member not physically inspecting the institution may not sign the inspection report but may appreciate the findings and put his/her opinion. The Secretary shall place the Inspection Report immediately before the meeting of the Legal Education Committee for its decision.

23. Specific recommendation needed (1) The Inspection committee while recommending approval of affiliation to a new Centre of Legal Education should, *inter alias*, make a specific recommendation as to why such a Centre of Legal Education required at the same place/area where the Centre of Legal Education is proposed to be started keeping in view the total number of existing Centres of Legal Education in the place/area in particular and the State in general. (2) The inspection committee will also keep in view the approximate population of the area where the Centre of Legal Education is proposed to be started, number of Centre of Legal Education along with the total number of students therein, number of degree colleges as well as junior colleges in the area in particular and the State in general.

24. Adverse report (*a*) In case of an adverse report received by the Secretary from the Inspection Committee he shall forthwith inform the Chairman of the Bar Council of India and on his instruction seek further clarification, if necessary. (*b*)The Secretary shall cause a copy of the report to be sent to the Registrar of the University concerned and also to the Head of the Institution for further comments and explanations, if any. Such comments and explanations on the report shall be sent by the Registrar of the University within a period of six weeks from the date of the receipt of the communication.

(*c*) The Secretary shall cause the report and the comments/explanation of Registrar of the University and the head of the institution concerned to be placed before the next meeting of the Legal Education Committee of the Bar Council of India for its consideration.

25. Recommendation of the Legal Education Committee The Legal Education Committee after reviewing the report and all other explanation, documents and representation, in person or in writing and in the interest of maintaining the standard of legal education in view under the rules recommend appropriate action to be taken on each such report to the Bar Council of India. In case of withdrawal or revocation of approval of an institution it shall be effective from the commencement of the next academic year following the date on which the communication is received by the Registrar of the University.

26. Approval

The Bar Council of India on the recommendation of the Legal Education Committee shall instruct the Secretary to send a letter of approval of any one of the following type to the Head of the Institution as well as to the Registrar of the University:

(*a*) **Temporary approval:** On the Initial inspection report or Regular Inspection report the Legal Education Committee may recommend a temporary approval for not more than a period of three years to a newly proposed institution in the event the institution has facilities enough to commence the teaching program on such conditions as the Legal Education Committee may prescribe.

(*b*) **Regular approval:** A regular approval may be recommended for not more than a period of five years when an institution fulfills all standard set norms and has the capability of maintaining such standard continuously. Such regular approval shall entitle such institution to seek accreditation from the Bar Council of India who can do the same either of its own according to rules of accreditation or may cause it done by the National Assessment and Accreditation Council.

27. Revocation of approval The Bar Council of India may revoke the grant of a temporary or regular approval if the conditions on which the permission was granted are not substantially fulfilled. A regular permission may be cancelled on an adverse report of inspection, provided that in case of revocation of a temporary or regular approval, the Centre of Legal Education authority and the respective University shall be provided with an opportunity of hearing and rectifying the shortcomings within such time as the Legal Education Committee may prescribe. In the event of failure to rectify the shortcomings in the opinion of the Legal Education Committee within the stipulated time, the Legal Education Committee shall recommend revocation of approval to the Bar Council of India, provided further that in case of revocation or cancellation of approval, as the case may be, proper provisions have to be made for the students who are already enrolled for a law course during the time when the approval was valid either by allowing the Centre to complete the course with those who are already enrolled or direct the University concerned, if such continuance is not in the interest of professional legal education, to make alternative arrangement for those students in nearby Centres of Legal Education under the University.

28. Accreditation system There shall be an accreditation and performance rating system for any institution having regular approval, based on State and/or National level gradation. Such performance grade may be used in all letter head, sign board, literature and publications, including prospectus and franchise materials of the institution. The accreditation of performance once obtained shall remain valid for a period of five years.

29. Accreditation Committee

The Legal Education Committee shall form an Accreditation Committee with at least one member, Bar Council of India and one academician who shall provide credit rating of the Universities and the law teaching institutions subjecting to this voluntary accreditation, which would also be published and put into the website of the Bar Council of India for public information. The Legal Education Committee determines the norms of accreditation from time to time. The period of Accreditation Committee will be two years.

30. Application for accreditation An application in hard and soft copy may be made to the Bar Council of India in the specification specified in Schedule IX depositing the fee by a bank draft as prescribed from time to time, in the name of the Bar Council of India within the notified date but not later than 31st July of each year.

31. Rules for accreditation

The Legal Education Committee may determine the norms of accreditation from time to time in addition to or in supplementation of the following:

(*i*) The accreditation and certification shall be made either directly by the Accreditation Committee of the Bar Council of India based on the analytical tools of credit rating system as far as adaptable or the Bar Council of India may cause it done through National Assessment and Accreditation Council based on the analysis made by NAAC.

(*ii*) Once the accreditation is done it shall remain valid for a period of five years from the date the certification is communicated to the institution concerned.

(*iii*) The performance analysis shall have three components, academic, administration and financial.

(*iv*) The study for determining performance rate shall be based on previous five years' data, current contents of the program and the future projection made on the basis of data analysis.

(*v*) The Accreditation Committee shall require complete disclosure of performance records, accounting and financial records and procedures of human and other asset managemcnt of the institution.

(*vi*) In so far as the academic part is concerned the following data would form basis of study:

(*a*) faculty student ratio (*b*) system of detail curriculum development and teaching practice sessions (*c*) number of working days annually (*d*) number of working days lost with reasons (*e*) qualification of the faculty (*f*) class performances of the students and class records (*g*) system of clinical program and internship (*h*) evaluation system and record keeping (*ix*) student-computer ratio (*i*) on line library facility (*j*) capital investment of the institution per student (*k*) library investment per student (*l*) residential facility (*m*) outside the class hour of the faculty advice and interaction per student (*n*) career counselling opportunities (*o*) quality of the body of alumni (p) publication by faculty and students in journals (*q*) laboratory and moot court room exercise facilities (*r*) per student procurement of books and journals (*s*) class room environment

(*t*) status of Free Legal Aid centre and legal literacy program run by the Centre of Legal Education and (*u*) any other information needed by the committee.

(*vii*) The financial performance data shall depend upon the previous five years annual accounts, annual reports, annual budget, fund raised, financial asset management and deployment, future plan, asset structure and any other financial information as may be required.

(*viii*) The administrative performance would be assessed on the basis on composition of the management body, observance of regulatory rules, administrative staff ratio, working days loss and any other information that may be required for ascertain the management QC.

(*ix*) The study shall be based on (a) records, (b) visit, inspection and dialogue of the committee with the management, staff, students and the faculty.

(*x* The committee may visit the institution after providing notice or without and can visit if required, more than once.

(*xi*) Data based analysis shall be communicated to the institution before rating begins for further observation and supplementary information, if required.

32. Obligation of the institution to facilitate free and fair enquiry The institution shall provide all information required and all copies of documents and facilities to the accreditation committee. Facility has to be provided so that the committee may meet management, faculty members, staff and the students and record their comments, if needed.

33. Anti Ragging Measures Every University / Centre of Legal Education shall take appropriate measures to prevent ragging in any form with a standing Committee appointed for the purpose from among faculty and student representation. In case of occurrence of any incident of ragging the violator shall be dealt with very seriously and appropriate stringent action be taken.

CHAPTER IV

Directorate of Legal Education

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

(*a*) Continuing Legal education, (*b*) Teachers training, (*c*) Advanced specialized professional courses, (*d*) Education program for Indian students seeking registration after obtaining Law Degree from a Foreign University, (*e*) Research on professional Legal Education and Standardization, (*f*) Seminar and workshop,

(*g*) Legal Research, (*h*) any other assignment that may be assigned to it by the Legal Education Committee and the Bar Council of India .

35. Director of Legal Studies

(*a*) The Directorate shall be under the charge of a Director of Legal Studies.

(*b*) The Director shall be appointed by the Bar Council of India on the advice of the Legal Education Committee from leading senior legal educationists holding the post of Professor of Law in a University whose degree is recognized, either in service or retired.

36. Legal Education Officer (LEO)

(*a*) The Bar Council of India may appoint one or more LEO on the recommendation of the Director of Legal Education and in consultation with the Chairman of the Legal Education Committee.

(*b*) The LEO shall be in the whole time service of the Council on such terms and conditions and selected in such manner as may be determined by the Council from time to time.

(*c*) The LEO shall have the minimum qualification to be appointed as an Associate Professor or Reader in law in any University under UGC Rules.

(*d*) The LEO shall discharge such functions as may be allotted to him by the Legal Education Committee, Bar Council of India or the Director of Legal Studies.

CHAPTER V

Recognition of Degree in law of a Foreign University

37. Degree of a Foreign University obtained by an Indian citizen If an Indian national having attained the age of 21 years and obtains a degree in law from a Foreign University such a degree in law can be recognized for the purpose of enrolment on fulfillment of following conditions:

(*i*) completed and obtained the degree in law after regularly pursuing the course for a period not less than three years in case the degree in law is obtained after graduation in any branch of knowledge or for a period of not less than five years if admitted into the integrated course after passing +2 stage in the higher secondary examination or its equivalent; and (*ii*) the University is recognized by the Bar Council of India and candidate concerned passes the examination conducted by the Bar Council of India in substantive and procedural law subjects, which are specifically needed to practice law in India and prescribed by the Bar Council of India from time to time as given in the schedule XIV. Provided that those who joined LL.B. course in a recognized Foreign University prior to 21st February, 2005 the date of notification in this regard by the Bar Council of India need not seek for such examination, other aforesaid condition remain same. Provided the same privilege shall be also extended to Persons of Indian Origin having double citizenship in India.

38. Enlisting a Foreign University

The Bar Council of India on the recommendation of the Legal Education Committee may consider the application of a foreign University to enlist the name of the University in the Schedule V of these rules. The degree in law obtained from which Foreign University by an Indian national shall be considered for the application preferred under Rule 37 above.

39. Recognition of a Foreign University

(I) For the purpose of recognition of Degree in Law under Rule 37 above, any Foreign University may apply to the Bar Council of India for granting recognition to such University.

(II) Such application shall contain (i) History of the University, (ii) its Hand book, Brochure, Prospectus containing courses of study, (iii) University's standing in the Accreditation list made officially or by any recognized private body, and (iv) any other information that the Bar Council of India may prescribe from time to time and subject to inspection by the Bar Council of India of the University, if necessary.

(III) The matter shall be placed before the Legal Education Committee with all details and Legal Education Committee shall recommend to the Bar Council of India.

(IV) Legal Education Committee may make any other enquiry as may be needed to recommend the University whose degree in law shall be recognized for the purpose of application under Rule 37.

40. Standard test for recognition Recognition of Degree in law of a foreign University for the purpose of enrolment as Advocate in India would depend on the following criteria of standards that:

(*i*) The degree in law shall be a second stage degree offered either after graduation from an approved University by the Bar Council of India for the purpose of admission in the course leading to Degree in Law in the Foreign University concerned; or shall be an integrated program offered after 10+2 or 11+1 school education.

(*ii*) The course leading to the Degree in Law in the Foreign University

(hereinafter mentioned as The course) concerned shall be at least for three years' duration if taken after graduation in the manner stated above, or shall be at least for five years' duration if undertaken in a integrated program as mentioned above.

(*iii*) The course shall be a regular course of study undertaken in a University or Centre of Legal Education affiliated to a University, as the case may be.

(*iv*) The course shall contain, *mutatis mutandis*, subjects of studies, which are prescribed as compulsory subjects, by the Bar Council of India on recommendation of the Centres of Legal Education from time to time, in the LL.B. program of a recognized University in India for the purpose of enrolment.

CHAPTER VI

Miscellaneous Provisions

41. Uniform Identity Number of students and faculty Each recognized University and its approved institutions registering students for law courses shall send particulars as prescribed in the Schedule X of its registered students and Faculties for the purpose of building up of uniform data of the faculty and the students of law and for issue of Uniform Identity Number to students and faculty against a fee prescribed by the Bar Council of India from time to time.

42. Annual Report and Return All approved Centres of Legal Education of the Universities whose degree is approved for enrolment shall submit to the respective University with a copy to the Bar Council of India an annual return in the form prescribed in schedule VIII in hard and soft copy at the end of its annual academic session failing which a new inspection would be required for the University with the local enquiry.

43. Dispute Resolution Body The Legal Education Committee of the Bar Council of India shall be the dispute resolution body for all disputes relating to legal education, which shall follow a procedure ensuring natural justice for such dispute resolution as is determined by it.

44. Annual Notification: (1). The Council shall notify in its website and send copies to each State Bar Councils as per Schedule I of these Rules, the names of Universities whose degrees in law recognized under these rules with a list of approved Centres of Legal Education. The Council shall require each University and the State Bar Council to also notify the same within its jurisdiction and provide a copy to each of its approved Centres of Legal Education, including the same in their respective website in so far as the Centres of Legal Education within the respective jurisdiction of these institutions.

(2) Information about the non-recognition or de-recognition of the degree in law of a University and that of CENTRES of Legal Education shall also be sent to all Universities in India imparting legal education and to all State Bar Councils which shall include the same in their website.

45. Over-riding effect Any resolution passed earlier by Bar Council of India / Legal Education Committee inconsistent with these rules shall not bind the Bar Council of India and all other bodies constituted in pursuance of the Advocates Act 1961, after these rules come into force.

46. Savings

Any action, decision or direction taken or directed by the Bar Council of India under any Rule or Regulation in force at any time earlier than these Rules coming into force, shall be valid, binding on the institutions as the case may be, and remain in enforce notwithstanding anything contained in these Rules.

47. Amending procedures Any amendment proposed by Bar Council of India in the Rules shall be carried through consultation with the Universities and the State Bar Councils by way of circulation of the proposal to the Universities and the State Bar Councils for the written submission within the scheduled notified date and after consideration of such written submission on merit. The Legal Education Committee/ Bar Council of India shall on consideration of the representation finalise the said amendments, which shall come into force by way of notification in the website. The Bar Council of India shall also send the hard copy of notification to the Universities, provided that any provision in the Schedule may be amended by the Bar Council of India on the recommendation of the Legal Education Committee and the same shall also be notified in the website of the BCI for enforcing the provision.

Dr. S. Radha Krishnan report on Higher Education-1948—1962

Chapter VII Part E—Law

Dr. Radha Krishnan report on Higher Education submitted to the Ministry of Education and higher education also played a vital role in shaping the legal education n India. This report was submitted by the eminent personalities like Dr. S. Radha Krishnan, Dr. Zakir Hussain, Vice-chancellor of Muslim University, Aligarh, Dr. Lakshmanaswami Mudhaliar, Vice-Chancellor, University of Madras were the members among the committee constituted to study the status of higher education in India during 1948-1962. The committee has underwent various stages to find out the lacunas in the higher education of various disciplines like Medicine, Law, Education, Agriculture, Economics etc. Chapter VII part E of the report speaks about the suggestion made out by the committee to enhance the standard the legal education in India. The gist of the report is as follows;

1. Introduction-In Europe and America, legal education has long occupied a high niche among the learned curricula. Products of the study of law have frequently risen to positions of distinction in public service or have amassed fortunes in the private practice of law or have acquired wide reputation as scholars without even entering practice. Legal education is on an elevated plane and teachers of law enjoy a high respect, perhaps as high or higher than those of any other field of instruction. The names of Dicey, Pollock, Anson, Maine and Holdsworth of Oxford, as examples, are known wherever there is knowledge of law and jurisprudence. The same might be said of men like Roscoe Pound of Harvard University in America.

In our country, we have many eminent practitioners and excellent judges. Some of these appeared before us as witnesses and made valuable_ comments and suggestions concerning the improvement of legal education. The law has also given us great leaders and men consecrated to public service. Most conspicuous of these is Gandhiji. Here the comparison ends. We have no internationally known expounders of jurisprudence and legal studies. Our colleges of law do not hold a place of high esteem either at home or abroad nor has law become an area of profound scholarship and enlightened research. This is probably no reflection upon us as it arose from conditions inherent in our position as a dependent nation. There were eminent legal scholars in our ancient universities, and faculties of law were among the first established in the early modern universities at Calcutta, Bombay and Madras. The opportunity, however, for original, stimulating study of law hardly existed; certainly no demand was created for it while the burden of Government, public service and legal transactions were carried by others. Most of our universities set up their colleges of law but they readily succumbed to the general policy of using the universities as training grounds for government service, and, 225 because the important areas of legal study and practice were occupied by English lawyers and English law-for the most part in the larger cities-there was little possibility of employment for our young men, except in clerical, minor or routine legal services. The amazing fact is that we now have so many able practitioners and well qualified judges, rather than that there is a scarcity of gifted legal scholars and researchers.

2. Our Changed Position-With the attainment of independence, and the consequent responsibility of developing our own constitutional government, together with international relations, now as important as domestic affairs, it becomes imperative that we develop high grade colleges of law, manned with real scholars, and capable of producing men who can cope with international, constitutional and administrative problems, as well as with the civil, criminal and routine demands which exist. Our gifts for philosophical studies would indicate that it is possible to have as great students of systematic law and the principles of jurisprudence as any other people.

3. The Present Situation in our Law Colleges-In the light of what we have said, it is not strange that we have found conditions in law colleges generally at low ebb. At one or two universities, the authorities said their situation was satisfactory but the majority admitted the contrary and confessed that improvements were needed. There should be no need for alarm and discouragement. Conditions have not permitted the development of great colleges of law in the immediate past. Such as we have existed largely on a basis of convenience and opportunism and are secondary to other Faculties and studies, with the inevitable consequence of indifferent or poor spirit. The deficiencies are apparent for the most part and devices for improvement are not far to seek nor matters of real debate. There is little uniformity in present practices.

Law courses are now post-intermediate and post-graduate; there is no sound policy of recruitment of teachers-occasionally there are well-paid, highly qualified, full-time professors-but all too often the staff is burdened with young inexperienced men serving their apprenticeship at the Bar, who undertake to teach in law colleges part-time in order to supplement their meagre income and who have no real abiding interest in teaching. When there are outside calls some of them often do not appear for lectures. As a rule law lectures are not scheduled in the regular hours on the time-table; they are fixed in the early morning or

evening, when they do not conflict with other things regarded as more important. Again, law has not been wholeheartedly Pursued as a single subject of study, is usually a subsidiary course while major effort is being directed to a master's or some other non legal degree. Obviously, we now need to re-organise our law colleges and give emphasis to this subject second to none. India's prominence and importance among independent nations and the realisation of our national aims demand such a course of action.

4. The Nature of Legal Studies-In the range of subjects studied in our universities there are some like Mathematics and Philosophy which are studied for their value as cultural disciplines; others like Medicine and Engineering have a definite vocational end in view. Law stands midway between these two groups. There are some who take Law as part of a 226 liberal education; others because they wish to enter the legal profession after graduation. Many who would enter public services, international organisations or business concerns would like to read Law at the universities. Some of our witnesses suggested and there exist, in some places two types of courses, one designed for the production of legal scholars and another for those who will practice law as a profession. Some even think that it is not the function of the law college to produce practioners, that the aim of a University course in law should not be a vocational one, that this is a responsibility which should be discharged otherwise.

Among English universities, Oxford offers both a, Bachelor of Arts degree in Jurisprudence, a scholarly pursuit of legal study, and a Bachelor of Civil Law degree, designed more for professional development. Oxford, however, is unique among universities in this plan. Again, in England, there are organisations of practitioners, such as the Inns of Court, prepared to develop and qualify men for admission to the Bar. Such organizations do not exist here or in the United States. Under all the circumstances, we think we would do well to concentrate on a single degree course leading to a bachelor's degree which, with some variation, can serve the dual function of producing both scholars and lawyers. This policy has been pursued successfully by all law colleges in America. There should be increased study and research on the post-graduate level. This is now a conspicuous weakness, already adverted to; we must stimulate a wider and deeper study of basic law and principles. For this purpose, we would suggest a two-year post-graduate course, leading to a Master's degree and, eventually, when we are able to provide it, an earned Doctorate in law for which intensive research in one field shall be required. There is fairly general agreement among those who have given real study to legal education that there should be two periods in the process.

First, a rather long period of pre-legal or general education ill which the student must acquire a thorough grasp of important areas of knowledge, as a base upon which to build his more technical studies. Second, he must concentrate in the body of materials and the methods of the several branches of the law itself. We think that a degree course either in Arts or Science should be pre-requisite and that this should be followed by three years of study for the Bachelor of Laws, the last year being given over to practical applications, such as reading in advocates' chambers and acquiring the art and familiarity with court room procedures, and the like. Our suggestions here are in accord with much testimony and good authority as well as experience. They are similar to the conclusions reached by the Calcutta University Commission and are exemplified in the Law Schools of the United States.

5. The Pre-legal Degree Course- A few of our witnesses and others regard the pre-legal course in general education as unnecessary. We are definitely and strongly of a contrary opinion. A favourite argument of those opposing pre-professional general education is: "Look at Abraham Lincoln! He became a great lawyer and statesman without even going to college". Any tyro can see the fallacy in this argument. The question is not whether men of superior talent and industry can equal or surpass the average man who has more advantages. What we wish to know is how the average man can find the best preparation and enjoy the most reasonable expectation of success in-the-study and practice of law. The volume of evidence and experience indicates that a broad general education followed by thorough training in scientific legal study

and techniques offers the best hope of success. The minimum requirement, of pre-legal training of the American Bar Association and the American Association of Law Schools is two years of college work but the best colleges of law including Harvard, Columbia, Michigan, Chicago, California and others require completion of a four-year degree course in Arts and Science before admission to the law courses.

There has been much debate regarding the exact studies which should be pursued in the general education course but we cannot enter into this here. Suffice it to say, after much experimentation, no positive correlation has been established between Preliminary training in any special group of subjects and success in law. The value of some general studies, such as language, logic, government and economics for the purposes of the lawyer are obvious but experience has shown that law is so comprehensive that almost any subject of study may become not only desirable but necessary. Any important subject of legal study or litigation is likely to involve several technical fields of knowledge. For example, the Dairy Industry, a two billion dollar annual business in the U.S.A. is threatened by the competition of Oleomargarine made from cotton seed.

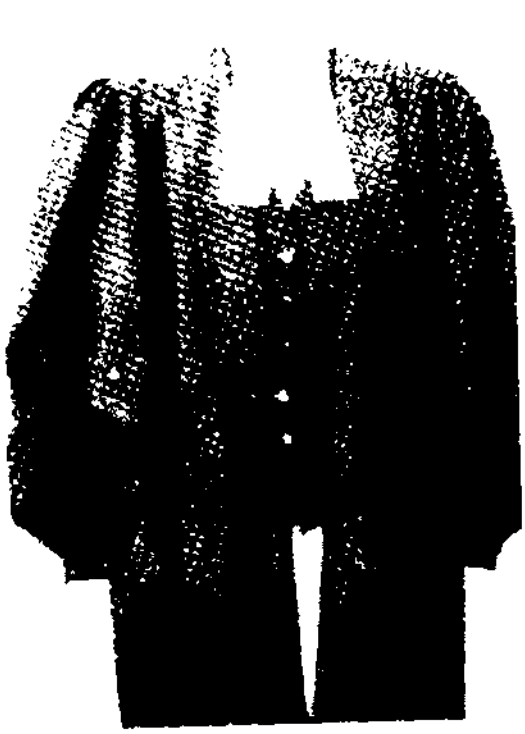
The Diary industry contends Oleomargarine is injurious to health. Its exponents say it is more nutritious than butter. Knowledge of chemistry is fundamental in this case- important questions of economics enter in the relation of the powers of the States and the Federal Government which are delicate matters of constitutional law are, involved; and so on. It is clear that law, its fundamentals and its applications are enmeshed in the whole warp and woof of human knowledge and experience. The lawyer, unacquainted at least with the major areas of knowledge and their practical bearing on technical questions of law, is now almost without hope of success and is certainly greatly handicapped. Therefore, we feel that the lawyer should have as wide preliminary training as possible but no set programme of studies. There should be variable groups of studies adapted to those who may expect to enter special fields of law such as Commercial Law, for example; but in general the Arts and Sciences should comprise the central core of the curriculum.

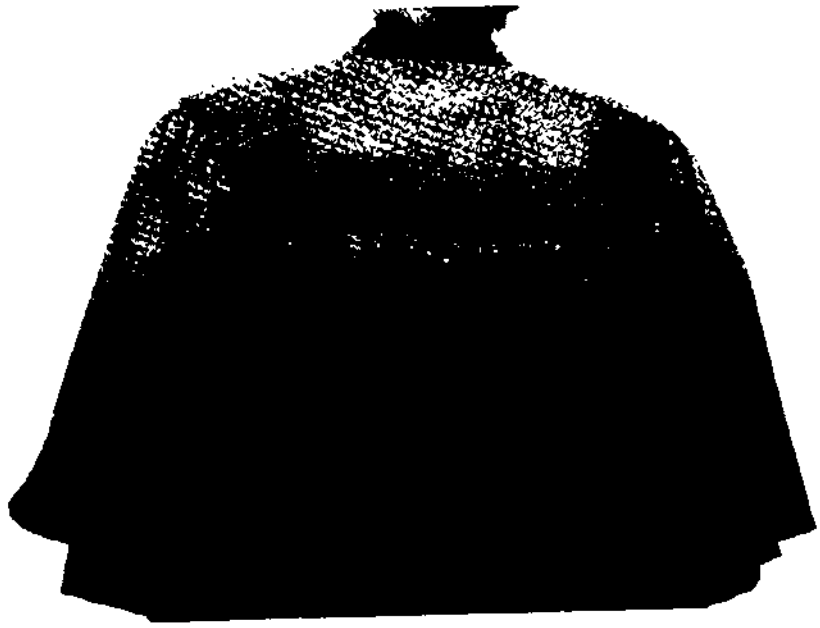
6. The Degree Courses in Law-We do not think that a set curriculum of studies can be offered throughout India for the degree course in Law. We have suggested a course of three years' duration with emphasis in the last year on practical phases. The subjects could be made more uniform than at present but they should be applicable to the variations that arise from differences in special acts, customs and other factors in the several Provinces and States. We believe that Roman Law, basic to practically all modern systems and the most complete and systematic body of law ever developed, should have a place. Essentially; all acknowledged branches of law now in use must be taught; contracts, torts, criminal and civil law and procedures, land tenure, transfer of property, etc. Familiarity, if not mastery, must be acquired of the two indigenous systems of Hindu and Muslim law which are monuments of systematised common sense; some knowledge of English common law and equity is important. We think that more attention must now be given to Constitutional Law, International Law, Legal History and the, fundamentals of Jurisprudence. It is important that, whatever subjects may be offered, the Stu- dent should acquire the powers of clear thinking, accurate analysis, and cogent expression. Without these qualities, he cannot hope for success as an attorney.

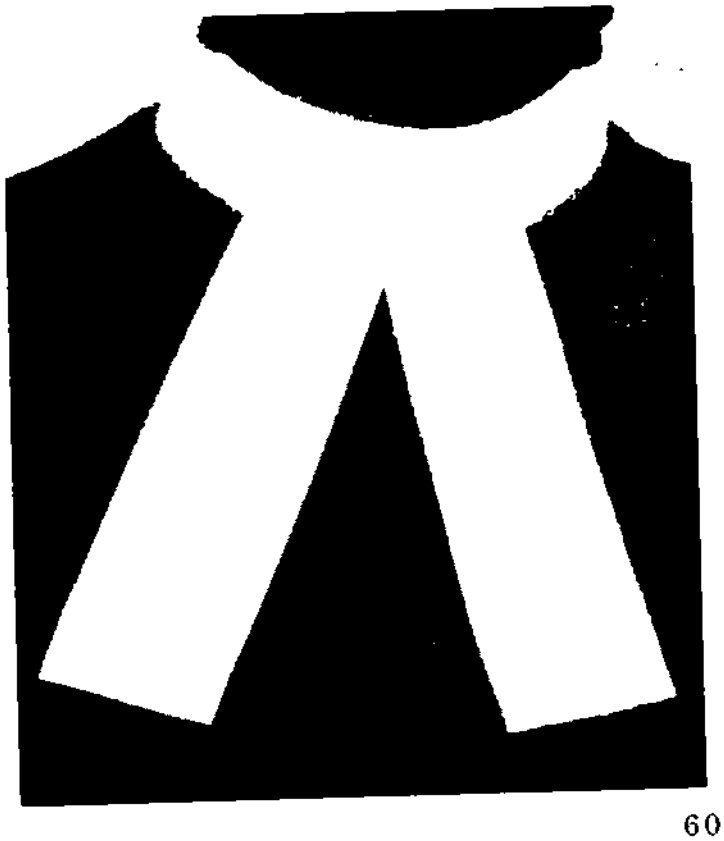
The courses now are confined too much to lectures. We think these should be supplemented with tutorials, seminars, Moot-Courts and something of the case-method., made world-renowned at, Harvard. The Moot-Courts must be under the supervision of a specially selected and equipped member of the Staff. Unless carefully prepared and directed Moot-Courts do not have much value. We suggest tests of progress and compartmentalization of examinations both time and subject-wise. For the Master's degree, advanced courses may be offered in the fields of special interest to the candidate and strong programmes in Constitutional, International, Administrative Law, Jurisprudence and both Hindu and Muslim Law should be available. At the completion of the two years, written papers and Viva-Voce examination should be required together with an acceptable thesis. For the encouragement of research, fellowships should be available in law as in other fields. Intensive and original investigation in an important area should be essential for the Doctorate, if and when offered.

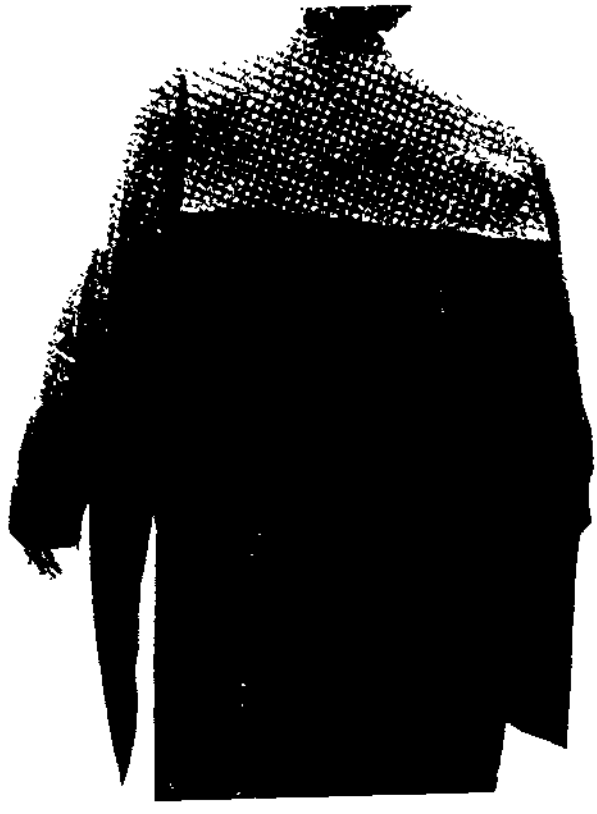
7. Recommendations: We recommend: (1) that our law colleges be thoroughly re-organised. (2) that the staff of the law Faculties be recruited and controlled by the universities in a fashion similar to Arts and Science Faculties; (3) that a three-year degree course in pre-legal and general studies be required for admission to law courses; (4) that a three-year degree course be offered in special legal subjects, the last year to be given over largely to practical work, such as apprenticeship in advocates' chambers; 229 (5) that the staff shall be whole-time and part-time. The whole-time staff should teach largely in the fields of fundamental subjects and the part-time staff more largely in the fields of practical application and procedures. Part-time staff members should be recruited on a contract basis and paid only if full services are performed; (6) that law classes be scheduled only during the regular hours of teaching; (7) that students pursuing degree courses in law shall not be permitted to carry other degree courses simultaneously except in a few instances where advanced student; have proved their interest and are studying related subjects in law and some other fields. (8) that opportunities for research be available in every law faculty, particularly in Constitutional Law, International Law, Administrative Law, Jurisprudence and our systems of Hindu and Muslim Law. (9) that progress tests be introduced and examinations be by compartments both time and subject-wise.

IX : DRESS CODE FOR ADVOCATES









Why do lawyers wear black gown or robe?

History suggests that, by the start of 16th century, the fashion was for a long, open gown of sombre color, mostly mulberry. Thereafter, on the death of Charles II in 1685, the Bar entered a period of mourning and barristers wore a mourning gown. This was actually the origin of the robe worn by barristers today: with pleated shoulders and bell-shaped sleeves tapered at the elbow with two buttons.

For no particular reason, the fashion followed by the barristers and it was carried on for a longer period than they thought it would prevail.

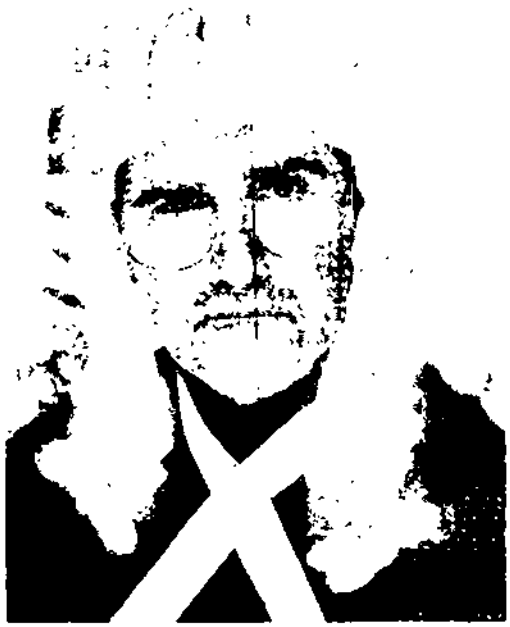
The modern robe or gown also has a mysterious piece of triangular cloth attached to the left shoulder, often described as 'violin-shaped', which is cut in two lengthways. Its origin is obscure and there exist two theories. The first is that, this was once a money sack for brief fees. According to some, it is divided in half to create two segments, one for gold coins, and the other for silver. The theory is that since barristers were not openly paid for their work, clients placed ex-gratia payment into counsel's pocket, literally behind their back, to preserve their dignity. The idea was that, if barristers could not see how much they were being paid, the quality of their advocacy in court could not be compromised.

The second theory is that the triangular cloth is a derivative of the mourning hood introduced following the death of Charles II, in keeping with traditional mourning dress of the time. This was the cast over the barristers' left shoulder and held in place by a long tassel known as liripipe, originally held in the left hand. This liripipe has survived on the robe today, and is now represented by the strip of cloth that hangs down the front of the modern gown.

3. Why do lawyers wear Bands (Jabot)?

The white-collar bands which lawyers wear these days too has a long-standing in history. In 1640, lawyers swapped their neck ruffs, the fashion of the era, for plain linen 'falling bands', to conceal the collar of the shirt. The bands were originally wide and tied with the lace at the front. By the 1860's, they had become two rectangles – as worn by barristers today. One theory is that the two rectangles represent the tablet of Moses. They were also worn by doctors and clergymen, however, and were probably a sign of learning.

4. Why do Judges wear Wig?



Weirdest theory for wigs:

Even now, many Judges across the Globe wear wigs of different types. Costumes of Judges across various countries can be seen. A glimpse of it would show Judiciary is more fashionable than any other profession of its time.

Historically speaking, Charles II returned to England from France and brought with him the trend of the '*periwig*' from Louis XIV's court. English society adopted the trend, as did barristers in 1663. Thereafter, the most fashion-conscious members of society tried to outdo one another with larger and larger wigs, hence the term '*bigwig*'. Certain judges and senior counsel even today wear the long, bottomed wig – the spaniel look – on ceremonial occasions, to indicate their position.

Three styles of legal wig survived the fashion trends of the 17th and 18th centuries and are still in use:

(a) the long full – bottomed wig;

(b) the bob-wig, or 'bench' wig, which has frizzled sides rather than curls and a 'queue' (looped tail), and

(c) the tie-wig, the most common style worn by the majority of barristers today. The tie-wig has a fuzzed crown, with rows of curls, known as 'buckles' along the sides and back, and a looped tail at the rear.

In the time of King Charles II, all lawyers wore the full-bottomed wig. These were abandoned around 1740 in preference for the smaller, lighter tie-wigs. By the 19th century, the tie-wig became the hairpiece of choice for barristers, and is still worn today. Though, in many countries, the fashion of wearing wigs is still prevalent, India has lost interest in it.