

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 6-10-2015****CORAM****THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN****CrI.O.P.(MD)No. 14573 of 2014**

S.M.Anantha Murugan

... Petitioner

Versus

- 1.The Chairman,
Bar Council of India,
New Delhi.
- 2.The Chairman and Secretary
Bar Council of Tamil Nadu and Pondicherry
High Court Building,
Chennai-104.
- 3.The Director General of Police,
O/o.Director General of Police,
Kamarajar Salai,
Chennai-4.
- 4.The Inspector General of Police,
South Zone,
Madurai.
- 5.The Inspector General of Police,
North Zone,
Chennai.
- 6.The Inspector General of Police
West Zone, Coimbatore.
- 7.The Inspector General of Police,
Central Zone,
Trichy.
- 8.Union of India,
Rep. by its Secretary,
Ministry of Law and Justice,
New Delhi.
- 9.Law Commission of India,
New Delhi.
- 10.State Rep. by
Law Secretary,
Saint George Fort,
Chennai-600 009.
- 11.The Registrar General,
High Court of Madras,
Chennai-600 104.
RR 8 to 11 are suo-motu impleaded as
per the order of this Hon'ble Court
dated 11.8.2014 in
CrI.O.P.(MD)No.14573/2014.
- 12.Central Bureau of Investigation,
Rep. by its Director,
New Delhi .
- 13.The Chairman,
Union Public Service Commission,

New Delhi.
(RR 12 & 13 are suo-motu impleaded as
per the order of this Hon'ble Court
dated 29.04.2015

... Respondents

This petition is filed under Section 482 Cr.P.C. to give necessary direction by exercising Power under Section 34 of the Advocates Act, Article 235 of the Constitution of India to prevent intrusion of person having criminal antecedents without legally studying bachelor of Law Degree for maintaining the purity in the justice delivery system.

For Petitioner :Mr.J.Lawrence
Mr.Saji Chellan &
Mr.V.Ramesh

For Respondents :Mr.Subash Babu for R1
Mr.Masood for R2
Mr.Kandasamy
Govt. Advocate (Crl.Side)
for RR 3 to 7
Mr.G.R.Swaminathan
Addl.Solicitor General for RR-8 & 9
Mr.Chellapandian
Addl. Advocate General for R-10
Mr.S.S.Sundar for R-11
Mr.K.Srinivasan for R-12
Mr.Su.Srinivasan,
Asst. Solicitor General for R-13

Amicus Curiae : Mr. K.K. Ramakrishnan

ORDER

“Neither Legal Profession is an asylum for criminals

Nor law Degrees are shields for their criminal activities ”.

Legal profession is blighted by the entry of criminal elements. It is seen from a number of cases coming up before this court and also from media reports that persons with criminal background getting law degrees claiming to be advocates are indulging in criminal activities including conducting “Kangaroo Courts”, degrading and damaging the image of noble profession and for which we have to hang our heads down in shame. It is said that many persons claiming as leaders of the Bar are safeguarding and aiding those elements. The sorry state of affairs is not only due to a few members of the Bar, but also, because of entry of criminal elements into the profession by taking advantage of loop holes in 50 year old The Advocates' Act, 1961 and The Bar Council of India Rules regarding admission to law colleges and lack of effective fool proof procedure for enrolling law graduates as advocates. The present pitiable status of the legal profession

could be attributed to the miserable failure of the Bar Council of India which is incapable of addressing the menace affecting the system. In fact, the Chairman of BCI stated in a seminar conducted in Chennai, in July 2015 that 30% advocates are fake, bad and non-practising, indulging in illegal acts and more than 20% persons sporting Court dress have no proper degrees. The present petition is aimed at blocking the entry of criminal elements, who do not possess basic qualifications and purchase law degrees which are generously sold for a song by Letter Pad law colleges located in other States especially in neighbouring States except Kerala.

2. The petitioner contends that many persons, who are accused of heinous criminal offences, without any basic qualification, attendance and examination, are able to secure law degrees and are trying to get enrolled by producing false police verification certificates, suppressing their criminal background.

The petitioner stated in paragraphs 3 to 5 are as follows:

“ 3. It is submitted that the persons, who cannot get admission in the law College in Tamil Nadu Government, they are getting admissions and buying LLB degrees in the Private college in Karnataka, Andhra, Chhattisgarh, Jharkhand and other northern States. At the time of enrolment, the applicant shall produce no objection certificate received from the police department that no criminal case is pending against him as on date. On receiving such application, the Bar Council of Tamil Nadu and Pondicherry shall make cross verification regarding the genuine of certificates produced for getting enrolment.

4. It is submitted that while making such verification the police department shall verify that whether any criminal case is pending against him in any police station within Tamil Nadu. The applicant who are involved in heinous offences shall not

be permitted to enroll as Advocate in the Bar Council of Tamil Nadu and Pondicherry.

5. It is submitted that on 02.08.2014 the Bar Council of Tamil Nadu and Pondicherry proposed to enrol 900 members as Advocate. Further, 40% out of 900 persons are having criminal background and involved in heinous offences. The Bar Council of Tamil Nadu is proposed to enrol the persons who are involved in murder case, theft case and rape cases as advocates. Further so many persons purchased LLB degree in Karnataka, Andhra and other states are going to enrol in the Bar Council with criminal backgrounds.”

A perusal of the aforesaid paragraphs would shock everybody. It is alleged that out of 900 members, who are to be enrolled, about 40% of the persons are having criminal background, having been involved in heinous offences and they managed to obtain police verification certificates suppressing their criminal background. Two persons, namely, Elango, from Ramnad District, who is said to be having 14 criminal cases pending against him and Mr.Ali Siddick from Madurai, who is said to be having 7 criminal cases to his credit are to be enrolled.

3. Filtering those criminal elements and preventing them from entering into the profession, would be, not only in the interest of the society, but also, the judiciary, which is one of the pillars of the State. Even, one drop of poison would spoil the whole pot of milk. Hence, interim direction was given on 1.08.2014 to postpone the enrolment dated 2.8.2014.

4. After interim direction was given by this Court, enrolment of 699 candidates to be held on 2.8.2014 was postponed. On notice, Bar Council of Tamil Nadu submitted on 11.8.2014, before this Court, that out of 699 candidates, 41 candidates alone are having criminal background and therefore,

this Court permitted enrolment of 658 candidates except those 41 candidates with criminal background. However, it was made clear that even the enrolment of 658 candidates would be subject to result of the main criminal original petition.

5. Though, originally, the petitioner sought for a direction to respondents 3 to 7 to register the complaint dated 11.8.2014, seeking to cancel the “No Objection” certificates granted by the respondent police in favour of persons, who are having criminal background and to conduct a fresh enquiry, subsequently, the petitioner filed M.P.No.4 of 2014 seeking amendment of the main prayer. The said amendment was allowed and the following prayer was substituted:

“ give necessary direction by exercising power under Section 34 of Advocates Act, Article 235 of Constitution of India to prevent intrusion of person having criminal antecedents without legally studying the bachelour of law degree for maintaining the purity in the justice delivery system.”

Originally, respondents 1 to 7 alone were made as parties and subsequently, this Court, suo motu, impleaded Union of India, represented by its Secretary, Ministry of Law and Justice, Law Commission of India, the State Government represented by its Law Secretary, and the Registrar General, High Court of Madras as respondents 8 to 11 as per order dated 11.8.2014 and the Central Bureau of Investigation and Union Public Service Commission as 12th and 13th respondents on 29.04.2015.

6. Mr.Peter Ramesh Kumar, learned counsel for the petitioner would contend that already, the profession is an attraction for criminal elements, who got into the profession by purchasing LLB degrees from neighbouring states and they are trying to enrol as advocates. Invasion of profession by criminals affects the image of the profession. Therefore, he seeks appropriate orders in the interest of the profession.

7. Mr.P. Kandasamy, learned Government Advocate (Crl.side) appearing for RR 3 to 7 would submit that the petitioner gave a complaint to higher police authorities and after due verification, appropriate steps would be taken. Mr.Subash Babu, learned counsel appearing for the Bar Council would submit that after getting antecedent verification certificate from the police only, endorsement is made. Mr.G.R.Swaminathan, learned Additional Solicitor General appeared for respondents 8 and 9. Mr.Chellapandian, learned Additional Advocate General appearing for the 10th respondent would submit that after due verification by police, antecedent verification certificates are sent. Mr.S.S.Sundar, learned counsel appearing for the 11th respondent would submit as per the Apex Court's judgement in **R.K.Anand's case (2009 (8) SCC page 106)**, a Committee has been constituted to frame Rules U/s.35 of the Advocates' Act, 1961. Mr.K.Srinivasan, learned counsel appeared for the 12th respondent and Mr.Su.Srinivasan, learned Assistant Solicitor General appeared for the 13th respondent.

8. Mr.K.K.Ramakrishnan, learned counsel, assisted the Court as Amicus Curiae, very effectively, by referring to the procedures followed for enrolment of advocates in some of the countries and the relevant judgements in this regard. The learned Amicus Curiae, Mr.K.K.Ramakrishnan, would further submit that by applying the purposive interpretation to the word "a person" employed in Section 24 of the Advocates' Act, 1961, it shall mean a qualified person with moral character and ethics as required for appointment of Judicial Officer and constitutional posts such as Advocate General etc. By applying the dictum laid down by the Honourable Supreme Court in the matter of **Mr.'P', an Advocate** reported in **AIR 1963 SC 1313**; **Babul Chandra Mitra vs. Chief Justice and Judges of Patna High Court** reported in **AIR 1954 SC 524** and Judgement of Gujarat High Court in '**C**' vs **Bar Council** reported in **1982 (2) GLR 706**, that persons having criminal antecedents and infamous conduct have to be prohibited from entering into the noble legal profession. He further emphasised that interpretation of the word "a person" in Section 24 of the

Advocates' Act, 1961, requires a re-look to suit the present situation of degradation of legal profession and the same is permissible by applying the principle laid down by the Hon'ble Supreme Court's Constitution Bench in para 31 of its Judgment in ***M.C.Mehta Vs. Union of India*** reported in ***1987 (1) SCC 395***. Even Tamil Nadu Village Servants' Service Rules, 1980, prescribe mandatory requirement of verification of the criminal antecedents of the candidates and Tamilnadu Police Sub-ordinate Service Rules also provides for denial of employment to persons involved in criminal cases. So, he would emphasize that an Advocate must be a person having moral character as required for the appointment of judicial officers. He would submit that maintainability of petition under Section 482 Cr.P.C., after the dismissal of SLPs by the Apex Court on 19.9.2014, 31.3.2015 against the interim order dated 31.8.2014 passed by this Court is impliedly answered conferring the jurisdiction of this Court to pass appropriate orders as per the amended prayer. Apart from that, it is specifically submitted that under Section 34 of Advocates' Act, 1961 and Article 235 of the Constitution of India, in paras 239, 242, 335 and 342 of the Judgement of the Hon'ble Supreme Court rendered in ***R.K. Anand V. Registrar, Delhi High Court*** reported in ***2009 (8) SCC page 106***, directions have been given in the interest of the profession. The Hon'ble Supreme Court, in the above said judgement, in para 335, directed the Bar Council of India to take necessary steps for maintaining the standards of the legal profession. In ***Chandra Prakash Chouhan Vs. State of U.P. And another*** reported in ***2012 Crl.L.J. Page 1502***, in paras 7 and 8, the Honourable Apex Court specifically directed the Bar Council to examine whether the persons having criminal background should be on the rolls of legal profession, enjoying the benefits, privileges and freedom attached to the noble legal profession. So, the Bar Council of India has to take steps to safeguard the legal profession and to remove the cancerous growth (Criminal elements) from the legal profession by giving appropriate therapy. Finally, he submitted that all over the world, the moral character of the person concerned is considered by the respective legal professional body before allowing him to enter into the legal profession. Reference has been made to the

judgement of this Court in ***Santhosh Antony Vareed vs. Dr.Ambedkar Law University, Chennai reported in 2009 (8) MLJ 1677*** in which this Court specifically suggested that antecedents of the students seeking law college admission should be verified. The said judgment was confirmed by the Hon'ble Supreme Court in SLP No.13846 of 2010 in March, 2013. **In view of the above, he submitted that to issue direction prohibiting the criminal elements from gaining entry into the legal profession is well within the power of this Court** and hence, appropriate Committee should be constituted to eliminate the criminal elements in the legal profession.

9. Heard the parties and perused the records carefully.

10. The vexed issue of entry of criminals into the profession raised by the petitioner is begging for a solution. Entry of criminal elements into law colleges as well as in to the profession cannot be lightly taken, as it tends to shake the foundation of the justice delivery system affecting the litigants, the legal profession, Courts and the society as a whole. As the entry of criminal elements starts from getting admission in law colleges, taking stock of the present day status of law colleges, failure of Bar Council to maintain standards in legal education, following effective enrolment procedure, to take action against erring advocates and weed out criminal elements from the profession, this Court, comprehensively considers all the issues including dubious and faulty Bar Council election process in this matter as standard of legal profession and purity of justice delivery system are of paramount importance. When the facts of the case require invoking the appropriate provision, de hors the provision under which the petition has been filed, this Court has to necessarily invoke the required law for issuing directions to do complete justice as a Constitutional Court. Though this Court finds required facts to pass appropriate orders, if this Court throws out the petition on the ground of lack of jurisdiction, then this Court would be shirking its responsibility. That kind of approach would lead to multiplicity of proceedings

which should be avoided. For that, this Court incidentally invokes Article 226 of the Constitution of India also to do complete justice.

11. Entry of criminal elements into law colleges and legal profession, taking advantage of loopholes in the Advocates' Act, 1961 and Bar Council of India Rules and shielding their nefarious activities with law degrees and committing illegal acts and offences thereby creating havoc in the society and weakening the justice delivery system are circumstances, which are extraordinary and an unprecedented situation. Therefore, the present day pathetic position of legal profession requires extraordinary measures and this Court has to pass unconventional orders/directions, in an effort to redeem the profession.

COMPETENT ADVOCATES WITH INTEGRITY, HIGH MORAL VALUES, ETHICS AND COMMITMENT TO THE SOCIETY ARE THE REQUIREMENTS OF CONSTITUTION.

12. It was the intention of framers of the Constitution to provide standard and quality legal education inculcating moral values, ethics as lawyers are to occupy many important Constitutional posts and one can understand from going through our Constitution.

Articles 124 to 147 in Chapter IV of Part V of the Constitution of India deals with; Articles 214 to 231 in Chapter V of Part VI of the Constitution describe about "The High Courts in the States". Similarly Articles 233 to 237 in Chapter VI of Part VII speaks about "Sub-Ordinate Courts". [Article 76](#) speaks about appointment and powers of "Attorney General of India" and his right is described in [Article 88](#). "Advocate General's" appointment and functions are given in [Article 177](#). The common thread in the aforesaid Articles is that the persons, who are to be appointed in "Union Judiciary", "High Court", "Sub-Ordinate Court", "Attorney General" and "Advocate General" are Advocates. No other profession except legal profession has been recognised by the Constitution. The appointments for the aforesaid coveted posts are made from lawyers. Hence, requirement of

Constitution is "Standard Quality Legal Education" which alone can produce competent Advocates, who could occupy the constitutional posts to act as per Constitutional mandate. Then only the scheme of the Constitution will be fulfilled by appointing competent, qualified, capable and proper Advocates to discharge the constitutional functions as stated in the above Articles.

13. The nobility of the legal profession has been expressed in many judgements of the Honourable Supreme Court. The importance of the legal profession, the high standards to be maintained and the ethics to be followed by the Advocates are given in detail in various judgments, which are as follows:

(i) In ***O.P. Sharma v. High Court of Punjab & Haryana, (2011) 6 SCC 86***, paragraph 17 of the Judgement reads as follows:-

"17. The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's administration was to be governed by the rule of law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. These include the names of a galaxy of lawyers like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Bhulabhai Desai, C. Rajagopalachari, Dr. Rajendra Prasad and Dr. B.R. Ambedkar, to name a few. The role of lawyers in the framing of the Constitution needs no special mention. In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present kind. Lawyers are the officers of the court in the administration of justice."

(ii) In ***R.D.Saxena Vs. Balram Prasad Sharma reported in (2000) 7 SCC 264***, it was held that a social duty is cast upon the legal profession to show the people a beacon light by their conduct and actions. The poor, uneducated and the exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession.

(iii) Para 40 of the Judgement of the Hon'ble Apex Court in ***Sudha v. President, Advocates' Association, Chennai and others*** reported in ***(2010) 14 SCC 114*** reads as follows :

“40. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification prescribed by different universities, **the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as an intelligent citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life.** The different Associations of the members of the Bar are being formed to show the strength of lawyers in case of necessity. The lawyer while exercising vote in an election of office bearers of the Association must conduct himself in an exemplary manner. Those who are concerned about the high standard of the profession are supposed to take appropriate action to see that the election takes place peacefully and in an organised manner.”

(Emphasis supplied)

(iv) In ***V.C. Rangadurai v. D. Gopalan, reported in (1979) 1 SCC 308***, the Supreme Court outlined the importance of Advocates observing that nothing should be done by any member of the legal fraternity, which might lessen in any degree the confidence of the public, fidelity, honesty and integrity of the profession. The relevant paragraphs 4 and 5, read as follows:

“4. Law is a noble profession, true; but it is also an elitist profession. Its ethics, in practice, (not in theory, though) leave much to be desired, if viewed as a profession for the people. When the Constitution under Article 19 enables professional expertise to enjoy a privilege and the Advocates Act confers a monopoly, the goal is not assured income but commitment to the people — the common people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a Human Tomorrow. This desideratum gives the clue to

the direction of the penance of a deviant geared to correction. Serve the people free and expiate your sin, is the hint.

5. Law's nobility as a profession lasts only so long as the members maintain their commitment to integrity and service to the community. Indeed, the monopoly conferred on the legal profession by Parliament is coupled with a responsibility — a responsibility towards the people, especially the poor. Viewed from this angle, every delinquent who deceives his common client deserves to be frowned upon. This approach makes it a reproach to reduce the punishment, as pleaded by learned counsel for the appellant.”

(Emphasis supplied)

14. When such is the glory of the profession, what is the plight of the legal profession in reality?. There are very many instances which demonstrate that offences including heinous offences are being committed in the name of advocates, degrading the noble profession due to high-handed conduct of those elements. The following incidents would clearly prove as to how the criminals are entering into the profession and are creating havoc inside and outside courts:

(i) S.Kamesh, an Advocate was shot down by his client and history sheeter Easwaran in conspiracy with one Selvam, an Advocate near Maduranthakam on 6.09.2015.

(ii) Jamal Mohammed, an Advocate was murdered on 7.9.2015 in a bar in Chithayankottai, Dindigul.

(iii) A.M.Mohan, an Advocate and accused in two murder cases has been detained under the Goonda's Act on 2.9.2015 for having murdered one Alwar on 25.7.2014 in Tanjore and one Abineshababu on 30.7.2015 in Chengalput.

(iv) Mr.C.Stalin, a lawyer was beaten to death by a rival group of advocates after Egmore Bar Association elections in January 2015.

(v) Mr. Kalaiselvan, from Madurai and Mr. Muthiah, from Coimbatore, who are advocates are said to have committed triple murder on 27.8.2015 in Coimbatore at Cinthamanipudur Signal.

(vi) Mr. Ranganathan, an Advocate, was murdered by another advocate, Pon-Muthuramalingam in Sivaganga Court Campus in daylight on 7.8.2015.

(vii) Mr. M.K. Raja, an Advocate, who himself was an accused in the murder of one Selvakumar, was murdered by a gang near Kumbakonam, on 3.4.2015.

(viii) Mr. K. Tamil Anban was murdered in Thillai Nagar, Kovai Pudur as per newspaper report dated 21.1.2015. The said person was a criminal having many cases and was allegedly studying LLB through correspondence course in a Bangalore College.

(ix) Mr. Sounder, an Advocate, was murdered by his friend who conducted Kangaroo Court in a booze party on 28.08.2014 in Kilpauk, Chennai.

(x) Mr. Shanmugam, an Advocate, from Sankarapuram, who was an accused in four cases including a murder case in Crime No. 293/2012 Chinnselam Police Station was murdered by a gang in Kallakurichi on 13.09.2014.

(xi) An Advocate, Mr. Muthu Durai, who was said to have murdered his clerk Shanmugam, was murdered on 08.08.2014 in Thiruppalai, Madurai.

(xii) Mr. D.P. Kamaraj, an Advocate, who was said to have conducted Kangaroo Courts was murdered on 28.08.2014.

(xiii) Mr. Nithiyanandan, an advocate, was murdered on 23.1.2014 in Chennai due to rivalry regarding sand quarrying and previous enmity.

(xiv) Mr. Mathialagan, an Advocate, Woraiyur, who used to conduct Kangaroo Court was murdered on 05.05.2014.

(xv) Mr.Manigandan @ Jahirmani, was murdered on 22.2.2014. He was involved in many anti-social activities including a murder case under Section 302 IPC in Crime No.451 of 2007 on the file of Koodal Pudur Police Station, Madurai and after getting bail, he joined LLB course in Bangalore.

(xvi) Another advocate was murdered in Salem in 2014 in connection with silver robbery.

(xvii) One Muthu Pandi was murdered in Madurai by three LLB degree holders viz. M.Mukesh Sharma (A1), K.Manisekaran (A3), who got LLB degrees from Survothaya Law College, Karnataka in 2013 and got enrolled in Bar Council of Kerala and Balamurugan (A4), LLB holder from Survothaya Law College, Karnataka on 18.09.2014.

(xviii) Dr.Subbiah attached to Billroth Hospital, Abiramapuram, was said to have been murdered by a gang which included two advocates, by name, Mr.P.M.Basil and William on 14.9.2014.

(xix) Mr.Saravanaperumal, an advocate and others allegedly murdered one Subbiah on 08.03.2011 in Thetchanallur, Tirunelveli.

(xx) A group of advocates murdered another advocate by name Rajinikanth in Egmore Court Campus, Chennai on 22.2.2008.

(xxi) Five advocates were murdered in Tamilnadu and those advocates were themselves accused in many criminal cases including murder cases in August 2014 alone.

(xxii) Mr.Lakshmanan, an Advocate stabbed one Mary regarding an illicit affair on 13.9.2014 in Arakkonam.

(xxiii) One Josep Jayaseelan, who is a history sheeter and detained under The Goonda's Act got enrolled as an advocate in 2013 (enrolment No.1305 of 2013) and one Karmegam, who is an accused in Crime No.78 of 2010, Central Crime Branch, Madurai, got enrolled as an advocate in 2013 (enrolment No.1319/2013)

(xxiv) Robbery of jewellery in Madurai was said to have been committed by a person, alleged to be an advocate in 2014.

(xxv) Three advocates namely, Raja, Subramani and Gurumurthi, after consuming liquor in the Court Campus, attacked another advocate namely, Ambed Kumar with a knife inflicting grievous injuries in October, 2013 in Egmore Court Campus.

(xxvi) Asaithambi, an Advocate was arrested on 26th December, 2014 in connection with robbery of 3 kilogram gold from a jeweller in Kancheepuram District.

(xxvii) One P.Vijayanand, an Advocate was a murder accused in the murder of one Thangapandian, in 2006, in Madurai and he came out on bail and obtained LLB degree from Karnataka and he was arrested in September, 2014 for land grabbing.

(xxviii) In March, 2015, one Doraisami, a retired bank official from Lakshmi Vilas Bank was kidnapped for a ransom by a gang which included one Mr.Arul, a Law College student, by pasting an Advocate Sticker in the car used for kidnapping, to escape from the police.

(xxix) One Sridar, an Advocate from Vellore, was said to have attacked a constable with iron rod in June, 2014 in Chennai.

(xxx) In September, 2013 a person alleged to be an Advocate, was said to have attacked the trainee Doctors of Government Hospital in Tirunelveli.

(xxxi) One Sanjeevikumar, an advocate was said to have committed robbery along with others in Omalur Salem District and a news report has been published in the newspapers dated 29.3.2015.

(xxxii) In June, 2014, a group of lawyers were said to have ransacked MKB Nagar Police Station, Chennai.

(xxxiii) In June, 2013 a group of lawyers were said to have attacked Municipality staff at Kumbakonam.

(xxxiv) On 18th March, 2014, one Pondy, Inspector of Police was said to have been beaten up in Human Rights Commission by advocates and one of the Advocates was also said to have been injured in the incident.

(xxxv) Advocate Raja and Mr. Premkumar, a law college student, in an inebriated condition, were alleged to have attacked Doctors working in Stanley Medical College Hospital.

The above cases are only tip of an iceberg. In most of the above murder cases, either the victim or the accused is an advocate, invariably holding LLB degree from Karnataka or Andhra Pradesh. It only proves the fact that criminals themselves get admission in law colleges in the neighbouring States without basic qualifications and purchase law degrees from Letter Pad colleges to shield their criminal activities. **Therefore, the law colleges are required to get antecedents certificate from police before admission. It is only in three year course, criminals join and not in five year course as age factor is a problem. Therefore, three year course has to be scrapped in the interest of judicial system.**

WHY CRIMINAL AND COMMUNAL ELEMENTS ENTER INTO LEGAL PROFESSION?

15. If one looks into the basic reason for the criminals getting law degrees, it is only to avoid police action for committing offences. If a criminal gets an avatar of advocate by purchasing law degree, if any action is taken against him, he would play the advocate card and the advocate community would resort to boycott of Courts paralysing the Courts' functioning without even verifying as to whether action has been taken against regular practitioner or a criminal turned lawyer. This act of boycotting by advocates has encouraged the criminals to purchase law degrees to avoid police action. Very easy availability of admission

in law colleges and law degrees without insistence of basic qualification, without attendance and age restriction for admission from Letter Pad Colleges for Rs.50,000/- to 3,00,000/- or similar sums is another important reason, as the Bar Council liberally granted approval to many Letter Pad Colleges, without any manpower policy, to do business by selling law degrees. Label of advocate makes the criminal to have acquaintance with police, threaten police and to conduct *Katta Panchayat* without any problems and avoid police action including filing of complaints against them. In a nutshell, the criminals and communal elements are masking their ugly faces with the label of Advocate to shield their illegal acts and to continue committing offences without fear of police. In fact, the so-called Bar leaders and Communal leaders, Bar Council members want their men to enter into profession to get elected as Bar leaders and as Bar Council members in an attempt to control the very system. Therefore, the reason for entry of criminals, into the legal profession, has to be squarely attributed to the alleged Bar leaders and many Bar Council members and their boycott of Courts.

16. It is reported in newspapers that many persons, alleged to be advocates, are said to be indulging in unlawful eviction of tenants/occupants by force and they are said to be involved in land grabbing in and around Chennai and other important towns/urban areas in Tamil Nadu in connivance with goondas and the police. The police is also said to be afraid of registering cases against the alleged advocates, as they fear dire consequences including paralysis of Courts' proceedings by boycott of Courts and therefore, they are compelled to keep quiet. Many of the cases have not been registered either because the police is afraid of registering cases against the so-called advocates or the police compels the complainants not to mention the names of advocates in the complaints. The affected parties have already moved direction petitions before this Court.

17. One such incident is prevention of sealing of a building constructed unlawfully in Vaidyanathan Street, George Town which was directed to be sealed

and demolished as per order of the Hon'ble First Bench. When the CMDA officials tried to seal the unauthorised building, the police force withdrew, after a group of advocates prevented the sealing of building stating that the advocates would foist cases under Special Act. In the Contempt proceedings initiated in this regard, two advocates and a politician appeared before the First Bench on 18.09.2015 and tendered apology and they were directed to undergo training under a lawyer, as they have oddly two years standing in the bar.

18. The above incidents only speak about the present position of legal profession and no one can deny the serious and grim condition prevailing. It is said that there is systematic entry of criminal, communal elements and extremist groups into the profession and they are trying to hijack the very system for their illegal activities, antisocial acts and personal benefits. Some of the advocates had even gone to the extent of barging into Chief Justice's House in May, 2015 seeking permission to move anticipatory bail in a criminal case for an advocate. If the situation is not contained with an iron fist, justice delivery system will be weakened irreversibly. Therefore, it is high time to perform a surgery to chop off the gangrene affected part of the body and to revamp the whole system, right from election to Bar Council, admission to law colleges, as otherwise life (legal profession) would be at risk. It is heartening to note that the present petition filed by a committed lawyer has come as a device to salvage the situation.

19. Is it possible to prevent entry of criminal elements with the available provisions in the Advocates' Act, 1961? Sections 24 and 24A of the Act have to be considered in this regard. Section 24 is extracted as follows:

“24. Persons who may be admitted as advocates on a State roll.—

(1) Subject to the provisions of this Act, and the rules made thereunder, **a person** shall be qualified to be admitted as an advocate on a State roll, if he fulfills the 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 as 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 1[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 2[(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] 3[(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; 4[he is barrister and is called to the Bar on or before the 31st day of December, 1976 5[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;] 6[***]

(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 [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 9[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 Stateroll,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 [***] 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 1st day of December, 1961, was entitled otherwise than as an advocate practise the profession of law (whether by way 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).

What is the definition of “**A Person**”?

The word “ A Person” employed in Section 24 shall mean a person with honesty, moral values, ethics, integrity and without criminal background and that

person alone is qualified to be admitted as advocate on a State Roll (Section 24 of the Advocates' Act)" and "An advocate shall be permitted to practice in the High Court and Subordinate Courts thereto (Section 34 of the Advocates' Act)" must possess good moral character without involvement in crime. So after enactment of Advocates' Act, 1961 stated in the above Section, the enrolment form contains a clause regarding the applicant's involvement in criminal case. Therefore, the State Bar Council is duty bound to verify the nature of the crimes alleged and also verify the antecedent of the candidate seeking enrolment in a meticulous manner so as to deny entry pass to such criminal elements into legal profession. In such circumstances, the purposive interpretation to the word 'person' incorporated in section 24 of the Advocates' Act is necessary to curtail the entry of criminals in the Noble legal profession which is permissible under the Indian Legal systems to meet out the present day demand of purity of legal profession by applying dictum of the Constitution Bench's Judgement of the Honourable Supreme Court in ***M.C.Mehta vs. Union of India* reported in 1987 (1) SCC Page 395** wherein Para 31 reads as follows:

"Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise, the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy."

So, this court, taking serious note of the degradation of standard of legal profession by entry of criminals interprets the word 'person' to mean a person of moral character, integrity and ethical values without involvement in criminal case/cases.

20. Section 24A states about disqualification for enrolment and reads as follows:

“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).)”

Section 24A speaks about “**moral turpitude**”. A Constitution Bench of Hon'ble Supreme Court, in the matter of *P, An Advocate*, reported in **AIR 1963 SC 1313** held that the expression “ **moral turpitude**” **should not receive narrow construction and wherever conduct proved against an advocate is contrary to honesty, or opposed to good morals or is unethical, it may be safely held that it involves moral turpitude**. The above judgement was given while dealing with the misconduct of an advocate as per order IVA Rule 18 of the Supreme Court Rules 1950. Paragraphs 7,9 and 12 are extracted as follows:

“ 7. It is true that mere negligence or error of judgment on the part of the Advocate would not amount to professional misconduct. Error of judgment cannot be completely eliminated in all human affairs and mere negligence may not necessarily show that the Advocate who was guilty of it can be charged with misconduct, *vide In re A Vakil*¹ and *in the matter of an Advocate of Agra*². But different considerations arise where the negligence of the Advocate is gross. It may be that

before condemning an Advocate for misconduct, courts are inclined to examine the question as to whether such gross negligence involves moral turpitude or delinquency. **In dealing with this aspect of the matter, however, it is of utmost importance to remember that the expression “moral turpitude or delinquency” is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude.** A wilful and callous disregard for the interests of the client may, in a proper case, be characterised as conduct unbefitting an Advocate. **In dealing with matters of professional propriety, we cannot ignore the fact that the profession of law is an honourable profession and it occupies a place of pride in the liberal professions of the country. Any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant, must be regarded as conduct involving moral turpitude.** The Advocates-on-record like the other members of the Bar are Officers of the Court and the purity of the administration of justice depends as much on the integrity of the Judges as on the honesty of the Bar. That is why dealing with the question as to whether an Advocate has rendered himself unfit to belong to the brotherhood at the Bar, the expression “moral turpitude or delinquency” is not to be construed in an unduly narrow and restricted sense.

9. As early as 1894, Lopes, L.J. attempted to give the definition of misconduct of a medical man in *Allinson v. General Council of Medical Education and Registration*³. In that case Lopes, L.J. said:

“The Master of the Rolls has adopted a definition which, with his assistance and that of my brother Davey, I prepared. I will read it again ‘If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency,’ then it is open to the General Medical Council to say that he has been guilty of ‘infamous conduct in a professional respect’.”

This definition was held applicable while dealing with the case of a solicitor *In re A Solicitor Ex parte the Law Society*⁴. Mr Justice Darling quoted this definition and added “It at the Law Society are very good judges of what is professional misconduct as a solicitor, just as the General Medical Council are very good judges of what is misconduct as a medical

man.” With respect, we think the same observation can be made with equal force about the Tribunal which has dealt with this matter and made its report in the present case.

12. The next question which we have to consider is: what would be the appropriate order to make in this case? Fortunately, cases of professional misconduct are rare in this Court; but when they are brought to the notice of this Court and it is proved that the allegations made against an Advocate are true, it would be unwise and inexpedient for this Court to take a lenient view of the lapse of the Advocate. The members of the Bar owe it to themselves and to the Court to live up to the best traditions of the Bar, and any serious lapse on the part of any member of the Bar must be severely dealt with. **Healthy traditions at the Bar help not only to make the Bar strong and respected, but render valuable and effective assistance to the Courts to deserve and sustain the absolute confidence and faith of the litigating public in the fairness of the administration of justice, for we must always remember that on the ultimate analysis, the real strength of the administration of justice lies in the confidence of the public at large.** We are, therefore, reluctant to accede to the plea made before us by Mr Sarjoo Prasad that we should reprimand the Advocate for his misconduct and pass no further orders against him. Having carefully considered all the relevant circumstances in this case, we are satisfied that in the interests of the profession itself, it is necessary to direct that the name of the Advocate should be removed from the rolls for five years. We also direct that the Advocate should pay the respondent's costs of the enquiry before the Tribunal and of the hearing before us. Before we part with this matter, we ought to add that it has been conceded before us both by Mr Sarjoo Prasad and by the learned Solicitor-General that Part V of the Advocates Act, 1961 (25 of 1961) has not still been brought into force and so, Section 50(4) of the said Act is still not applicable, and that means that the present proceedings have to be dealt with by the court in accordance with the existing law.

(Emphasis supplied)

When such is the definition of “ **moral turpitude**” given by the Hon'ble Apex Court, definitely, elements with criminal background have no place in the profession.

21. Therefore, persons with good character, moral values, ethics and commitment to the society alone are entitled to become advocates and not criminals. The Hon'ble Supreme Court, in the following judgement, decried about the falling standards and unethical practices of the advocates. In ***R.K.Anand, Vs. Registrar, Delhi High Court*** reported in ***2009 8 SCC 106***, the Honourable Apex Court warned about the decline of ethical and professional standards among the lawyers and the relevant paragraphs are extracted as follows:

"331. **The other important issue** thrown up by this case and that causes us both grave concern and dismay **is the decline of ethical and professional standards among lawyers.** The conduct of the two appellants (one convicted of committing criminal contempt of Court and the other found guilty of misconduct as Special Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation. **The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels.** We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a Section of lawyers, we find that even some highly successful lawyers seem to live by their own rules of conduct.

.....

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

(emphasis supplied)

Similarly, the Hon'ble Supreme Court in ***Satish Kumar Sharma vs. Bar Council of Himachal Pradesh*** reported in ***AIR 2001 SC 509*** emphasised the need for deserving, clean and efficient Bar in the Country. Para 10 of the judgement reads as follows:

" 10. The profession of law is called a noble profession. It does not remain noble merely by calling it as such unless there is a continued, corresponding and expected performance of a noble profession. Its nobility has to be preserved, protected and promoted. **An institution cannot survive in its name or on its past glory alone. The glory and greatness of an institution depends on its continued and meaningful performance with grace and dignity. The profession of law being noble and honourable one, it has to continue its meaningful, useful and purposeful performance inspired by and keeping in view the high and rich, traditions consistent with its grace, dignity, utility and prestige. Hence, the provisions of the Act and Rules made thereunder inter alia aimed at to achieve the same ought to be given effect to in their true spirit and letter to maintain clean and efficient Bar in the country to serve cause of justice which again is noble one.**"

(Emphasis supplied)

The Apex Court in ***Chandra Prakash Singh Chauhan vs. State of U.P. and another*** reported in ***2012 CRI.L.J. 1502*** expressed a hope that Bar Council of India and other State Bar Councils examine whether Advocates involved in criminal cases should be on the rolls of the noble profession and enjoy the benefits, privileges and freedom available to the profession. Paragraph-7 of the said judgement is usefully extracted as follows:

“ 7. Before we examine the merit or otherwise of the contention raised before us on a question of law, we must and we do not hesitate in observing that conduct of the advocate was contemptuous and cannot be justified on any grounds whatsoever. The counsel who, besides being a representative of a party, is always treated as an officer of the courts, owes a duty to the system to act with utmost dignity, respect and morality. The profession of advocates besides being controlled by the statutory provisions of the Advocates Act, 1961 and the Bar Council of India Act and the Rules framed thereunder is

also expected to maintain certain high values and standards of professionalism. The advocates owe a dual duty, firstly to the court i.e. the justice delivery system and secondly, to the society at large. Public reposes great confidence in the judicial system of the country, of which lawyers are an indispensable part. In the present case, the contemner, who wears the robes of a lawyer, has thrown off the wings of dignity, values and expectations of all concerned by using filthy and abusive language in the court. This is nothing but a definite act of criminal contempt within the scope of Section 12 of the Act.. We are aware that the power of contempt of a court should be used sparingly, but certainly not where the majesty of the court as well as the administration of justice system is being undermined by use of such foul language and, that too, with an attempt to get a particular relief from the Judges, who are dealing with the cases at the ground level and are serving the society to the best of their ability. Limitations of these courts in regard to the infrastructure and other matters are a well known fact. Added to that injury is the insult inflicted by such unruly behavior of the advocate, who has no respect for the system, to which he himself belongs to. To add to his glory of disrepute, **we are also informed that the same counsel is involved in some criminal cases and has been in and out of jail. We do express a hope that this would be an eye-opener for the State Bar Council and the Bar Council of India to examine whether such person should be on the rolls of this noble profession and enjoy the benefits, privileges and freedom available to this profession.”**

(emphasis supplied)

When such is the castigation made by the Hon'ble Supreme Court with regard to the advocates involved in criminal cases, definitely, the profession cannot accommodate the persons, who are accused of criminal offences, except those with bailable offences or cases relating to matrimonial matters, family disputes and civil litigations.

Necessity of Amendment to the Advocates' Act

22. When the Advocates' Act 1961 was passed, there was no provision incorporated in the Act regarding disqualification for enrolment. As there was no necessity for such a provision, it was not incorporated in the original Statute.

However, by passage of time, taking into account subsequent developments, Parliament brought an amendment introducing Section-24A regarding disqualification for enrolment. However, in due course, criminals started entering into the profession in full view of Bar Council. Noting criminalisation of the Bar, the Hon'ble Apex Court has, time and again called upon the authorities to make amendments in the existing statute and rules which are incompetent to deal with present day situation. The Apex Court in ***R.K.Anand vs. Registrar Delhi High Court*** reported in ***2009 (8) SCC 106*** in paras 242,243 and 343 held as follows:

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

243. In order to avoid any such controversies in future all the High Courts that have so far not framed rules under Section 34 of the Advocates Act are directed to frame the rules without any further delay. It is earnestly hoped that all the High Courts shall frame the rules within four months from today. The High Courts may also consider framing rules for having Advocates-on-Record on the pattern of the Supreme Court of India.

.....

343. The High Court has got ample powers for all this both on the judicial and administrative sides. Article 227 of the Constitution of India that gives the High Court the authority of superintendence over the subordinate courts has great dynamism and now is the time to add to it another dimension for monitoring and protection of criminal trials. Similarly, Article 235 of the Constitution that vests the High Court with the power of control over subordinate courts should also include a positive element. It should not be confined only to posting, transfer and promotion of the officers of the subordinate judiciary. The power of control should also be exercised to protect them from external interference that may sometimes appear overpowering to them and to support them to discharge their duties fearlessly.

A Division Bench headed by Chief Justice ***M.P.Thakkar in C Vs. Bar Council*** reported in ***1982 (2) GLR 706***, while dismissing a Writ Petition filed by a convicted Public Officer for illegal gratification, seeking a direction to enrol him as an advocate without waiting for the lapse of two years period, as per Section 24A of the Advocates' Act, 1961, gave suggestions in 1982 itself to bar enrolment of criminals. The relevant paras are extracted as follows:

“ We, however, wish to avail of this opportunity to place on record our feeling of distress and dismay at the fact that a public servant who is found guilty of an offence of taking an illegal gratification in the discharge of his official duties by a competent Court can be enrolled as a member of the Bar even after a lapse of two years from the date of his release from imprisonment. It is for the authorities who are concerned with this question to reflect on the question as to whether such a provision is in keeping with the high stature which the profession (which we so often describe as the noble profession) enjoys and from which even the members of highest judiciary are drawn. It is not a crime of passion committed in a moment of loss of equilibrium. Corruption is an offence which is committed after deliberation and it becomes a way of life for him.

A corrupt apple cannot become a good apple with passage of time. It is for the legal profession to consider whether it would like such a provision to continue to remain on the Statute Book and would like to continue to admit persons who have

been convicted for offences involving moral turpitude and persons who have been found guilty of acceptance of illegal gratification, rape, deceits, forgery, misappropriation of public funds, relating to counter felt currency and coins and other offences of like nature to be enrolled as members merely because two years have elapsed after the date of their release from imprisonment. Does passage of 2 years cleanse such a person of the corrupt character trait, purify his mind and transform him into a person fit for being enrolled as a member of this noble profession? Enrolled so that widows can go to him, matters pertaining to properties of minors and matters on behalf of workers pitted against rich and influential persons can be entrusted to him without qualms. Court records can be placed at his disposal, his word at the Bar should be accepted? Should a character certificate in the form of a Black Gown be given to him so that a promise of probity and trustworthiness is held out to the unwary litigants seeking justice? A copy of this order may, therefore, be sent to the appropriate authorities concerned with the administration of the **Bar Council of India and the State Bar Council, Ministry of Law of the Government of India and Law Commission** in order that the matter may be examined fully and closely with the end in view to preserve the image of the profession and protect the seekers for justice from dangers inherent in admitting such persons on the rolls of the Bar Council. “

Subject to the aforesaid observations, the petition is rejected.”

Similarly in ***Joginder Singh vs. The Bar Council of India New Delhi*** and another reported in ***AIR 1975 Delhi 192***, the Hon'ble Delhi High Court sustained the order of the Bar Council removing the appellant as an advocate for non-disclosure of previous conviction.

17. Having regard to the known high traditions of the **legal profession and the functions which its members are expected to perform**, I cannot help thinking that those who seek to enter its portals are obliged to declare whether they were convicted of an offence. Especially this is true in respect of offences involving moral turpitude. These are matters which the admitting authority certainly ought to know. They are relevant for ascertaining the character of the man. Character is, and always has been, a most material consideration for deciding whether to admit a person as an advocate or not. That is the reason

for the invariable and indispensable requirement of a certificate of good character. It is the means by which an assurance of good character is obtained. **In England, no person can be admitted as a student of an Inn with a view to being called to the Bar unless he produces such a certificate or other evidence of good character. Nor, if he has been convicted of a criminal offence of such a nature that in the opinion of the Masters of the Bench his admission is undesirable: see Halsbury's Laws of England, 4th Edn., Volume 3, page 596, para. 1113.** Duties with respect to call to the Bar are duties to the public. Hence, securing admission to the Bar by fraud is punishable as 'an act tending to public mischief': see *Ibid*, page 590, para. 1106. which shows that underlying it all is the public interest, and this was the aspect stressed. In the Matter of a Complaint of Professional Misconduct against, Shri Inder Singh, (1963) 65 Pun LR 619. “

28. I do not think that the order of the Bar Council lends itself to this construction. The falsity of the certificate of character is referred to in that part of the order which records the answers given by the appellant and the submissions made by his counsel. There is nothing to suggest that the ultimate decision of the Bar Council was based on the finding that the certificate of character produced by the appellant was untrue. As I understand the order, it holds that the appellant had gained admission as an advocate by fraud or misrepresentation in that he had refrained from disclosing that he had previously been convicted of offences. The facts on which that conclusion rested were admitted by the appellant. Merely because the certificate was referred to in the interrogation of the appellant, or in the argument of his counsel, do not mean that the Bar Council relied on it, or the surrounding circumstance, for the purpose of reaching its decision”.

23. Therefore, the present grim situation requires further amendment of the Advocates' Act, 1961, to disqualify persons with criminal background. Parliamentarians would not have imagined or thought of either, when the Act was passed or subsequently, that persons with pending criminal cases, Bootleggers, History-sheeters, accused of heinous offences would enter the profession. In keeping with the changes in society and according to reality, law requires to be

updated and amended to address the prevailing situation, failing which, the Act would become redundant or a dead letter.

24. In ***Rattan Chand Hira Chand vs. Askar Nawaz Jung (Dead) by LRs and others*** reported in ***1991 (3) SCC 67***, the Apex Court insisted about the duty of the Court to step in, to fill the lacuna, in the event of unexpected situations and contingencies, when the legislature fails to keep pace with changing needs and values. Para-17 of the said judgement reads as follows:

“17. I am in respectful agreement with the conclusion arrived at by the High Court. It cannot be disputed that a contract which has a tendency to injure public interests or public welfare is one against public policy. What constitutes an injury to public interests or welfare would depend upon the times and climes. The social milieu in which the contract is sought to be enforced would decide the factum, the nature and the degree of the injury. It is contrary to the concept of public policy to contend that it is immutable, since it must vary with the varying needs of the society. What those needs are would depend upon the consensus value judgments of the enlightened section of the society. These values may sometimes get incorporated in the legislation, but sometimes they may not. The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed.”

From the above, it is clear that the Hon'ble Supreme Court categorically held that the duty of the Court is to step in to fill up lacuna in the event of unexpected situation and recognizes the affirmative action to fill legislative gap. Similar dictum has been given in ***Vineet Narain v. Union of India*** reported in ***(1998) 1 SCC 226 in Para 52 as follows:***

“52. As pointed out in Vishaka, it is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field.”

The Honourable Apex Court also gave guidelines for having effect of law.

In ***Lakshmi Kant Pandey vs. Union of India*** reported in ***(1984) 2 SCC 244***, a Constitution Bench of the Hon'ble Supreme Court gave guidelines for adoption of minor children by foreigners.

In ***Heil v. Rankin and another*** reported in ***2000 (3) All ER 138***, at Paragraph No. 48, it was held as follows:

“ 48. In summary, our conclusion is therefore that it is appropriate for the court to consider the commission's recommendation. **What is involved is part of the traditional role of the courts. It is a role in which juries previously were involved. Now it is the established role of the judiciary. It is a role which, as a result of their accumulated experience, the judiciary is well qualified to perform. Parliament can still intervene. It has, however, shown no inclination that it intends to do so. If it should decide to do so then the fact that the courts have already considered the question will be of**

assistance to Parliament. Until Parliament does so, the courts cannot avoid their responsibility. While a public debate on this subject would no doubt be salutary, the contribution which it could make to the actual decision of the court is limited. The court has the report of the commission. It also has the other material which the parties have placed before it. It is in as good a position as it is likely to be to make a decision in the context of the present appeals. We see no reason to accede to Mr.Havers' submission that we should postpone doing so. **To postpone would be to neglect our responsibility to provide certainty in this area as soon as it is practical to do so."**

In view of the above position of law, this Court has to act pro-actively to give directions according to the new situations which were not in existence when the policy makers took decision.

25. If a person accused of criminal offences is allowed to enrol, he would stand as an accused in one case and in some other cases, he would be representing as an advocate. Such an incongruous situation should be avoided. Persons with good reputation, character, moral values, ethics, integrity and having commitment to the society, alone are required to enter into the profession. Criminal elements, bootleggers, Communal leaders/sponsored candidates, political leaders and persons with questionable extremist ideology get proper protection by having law degrees and hence they invariably get admission in law colleges, which are mostly letter pad colleges and purchase degree. **Therefore, admission of these elements into law colleges have to be prevented by getting antecedent certificates.**

26. The echo of the criminal elements already in the profession, is heard by way of boycotts even for trivial issues, creating a situation to exhibit

unruly behaviour before the Courts and for threatening Judicial Officers for favourable orders. Taking law in their hands, the so-called lawyers are indulging in criminal activities like dispossession of properties by force illegally in connivance with criminals and unruly elements, attacking police officials invariably in Court campus, barging into Police Stations, threatening the police officials and whisking away accused from police stations highhandedly and involving in clashes affecting and shaking the rule of law. These kinds of incidents are very many and they were never heard of 30 years ago, in the history of legal profession. It is ideal to have law graduates without criminal cases. However, sometimes, nowadays, very easily, cases are being foisted to wreck vengeance by the enemies, by relatives viz. Family disputes, matrimonial disputes and because of that, future of many of the innocent people cannot be spoiled. Therefore, in an attempt to make difference in cases, this Court classifies as (a) bailable offences attracting punishment upto 3 years, compoundable offences including family, matrimonial and civil disputes and (b) non-bailable offences and heinous crimes. If a candidate has a criminal case attracting punishment upto 3 years can be granted provisional admission in law colleges and the provisional enrolment shall be subject to result of the criminal case. Merely because this Court permits admission into law colleges and conditional enrolment to the candidates, who are said to have committed minor offences (upto 3 years punishment), it does not mean that this Court has approved entry of those alleged offenders. If non-bailable offences, heinous crimes and white collar crimes are committed, those candidates cannot get either law college admission or enrolment. **Therefore, it is strongly recommended that the Parliament amend the Advocates' Act suitably incorporating the provisions for disqualifying persons accused of offences except bailable offences attracting upto 3 years punishment, compoundable offences either from getting into law colleges or entering into the profession and convicted persons, as it has become necessary.**

Till the amendment is brought in, to safeguard the profession and to enable smooth functioning of Courts, there shall be a direction to the Bar Council of India and Bar Councils,

a) Not to enrol any candidate accused of offences attracting punishment exceeding 3 years except bailable offences attracting punishment upto 3 years, and compoundable offences including matrimonial, family and civil dispute offences;

b) persons who had suffered conviction in any criminal case; and

c) persons who have been dismissed or removed from any service or left service pursuant to any departmental action/domestic proceedings in any service.

(d) Bar councils are to grant conditional/provisional enrolment to law graduates, who are having criminal cases involving bailable offences attracting punishment upto 3 years and compoundable offences including matrimonial, family and civil disputes and the Bar Council shall open a separate file/register for this specific purpose which shall contain the number of the case, offences involved, name of the police station, and the court shall direct the police station to give information about the disposal of the case disclosing the result viz. conviction or acquittal; and

(e) If the candidates suffer any conviction, the Bar Councils, immediately issuing show cause notice shall revoke provisional enrolment of such convicted persons as advocates from the rolls unless the conviction to set aside is informed to the Bar Council with a certified copy of such judgement.

(f) If any above mentioned case is pending against the candidates, they cannot be admitted into law colleges except on acquittal, as these candidates will not have mind set to learn law and would tend to spoil other students. Therefore, Bar Council is directed to direct all Law Institutions, either private or public, not to admit the students without antecedent verification certificates. If any criminal case except excepted

categories mentioned above, is revealed in the verification, Law Colleges shall not admit those candidates.

27. It has to be remembered that even for entering into service as a Police Constable, one should not have any case and even acquittal is not enough as held by Full Bench and a Larger Bench of this Court in. ***Manikandan vs. Taminadu Uniformed Services, Recruitment Board*** reported in ***(2008) 2 CTC 97 (FB) and J.Alex Ponselvan Vs. Director General of Police, Tamilnadu*** reported in ***2014(2) CTC 337***. Even for appointment as a Village servant, as per Tamil Nadu Village Servants Service Rules, 1980, there should not be any criminal case.

Tamil Nadu Village Servants' Service Rules, 1980	The Tamilnadu Special Police Subordinate Service Rules, 1978 Rule 14(b)
5. Qualification:- 3) In making appointments under these rules, the appointing authority shall take into consideration the character and antecedents of the applicants.	i) that his character and antecedents are such as to qualify him for such service; and ii) that he has not involved in any criminal case before police verification

For appointments to even lower grade posts, closely connected with public service, the antecedents of the selected candidates are considered in order to maintain the purity of service. When such is the position for appointment as a police constable, being a limb of law enforcement system, persons with integrity and honesty and without criminal background alone have to be allowed to enrol as advocates. As legal profession is a service oriented profession, people with honesty, integrity, impeccable character with social commitment alone have a place in the profession and not others. The advocates, who are champions of people's right, ought to possess such quality of character as required for a Judge.

28. Elements like Goondas, Criminals, law violators cannot take the avatar of an advocate and take shelter under the name of Advocate and try to shield their illegal/unlawful acts by entering into the profession and pollute the

same which will be against the public interest. When Law is a service oriented profession, very harsh and shameful allegations are made against some of the persons, who seek to become Advocates. It is very shocking to note that persons, who were detained under the Goondas Act, the Tamil Nadu Act 14 of 1982, and history sheeters got enrolled as Advocates. If criminals and history sheeters are allowed to enrol and practise as lawyers before Courts of law, then it would bring about the end of rule of law. The justice delivery system has to function based on the valuable assistance rendered by the Advocates, who are officers of the Court. They owe duty not only to their clients but, also to the Court as well as to the society. It is evident that such a noble profession is sought to be hijacked by the criminal elements, it is contended. Presence of criminal elements in the profession will definitely jeopardise the very justice delivery system and the functioning of Courts will also be irreversibly affected.

Character verification

29. Most of the countries, before allowing a person to enter into the legal profession, have been verifying the character of the Law degree holder concerned.

<i>Name of country</i>	<i>Relevant Rule</i>
British Columbia enacted the Legal Education Amendment Act, 2012	(b) by repealing the definition of “conduct unbecoming a lawyer” and substituting the following: “conduct unbecoming the profession”includes a matter, conduct or thing that is considered, in the judgement of the benchers, a panel or a review board, (a) to be contrary to the best interest of the public or of the legal profession, or (b) to harm the standing of the legal profession;
Legal Professional Admission Rules 2005, under the Legal Profession Act 2004 of the New Southwales	(2) The Board may refuse to register an applicant if it is not satisfied that he or she is of good fame and character and otherwise suitable for registration.
United of Supreme Court of United States	1. To qualify for admission to the Bar of this Court, an applicant must have been admitted to practice in the highest court of a State, Commonwealth, Territory of possession, or the District of Columbia

<i>Name of country</i>	<i>Relevant Rule</i>
also provided as follows:	for a period of atleast three years immediately before the date of application; must not have been the subject of any adverse disciplinary action pronounced or in effect during that 3 year period; and must appear to the Court to be of good moral and professional character.
The United States District Court	The application shall also contain a certificate of two members of the Bar of this Court, vouching for the good moral character and professional reputation of the applicant.
Malaysia	Admission is at the Chief Justice's discretion and he shall further take into consideration the following criteria-3: i) if the applicant has attained the age of 21 years; ii) if he is of good character; iii)if he has served satisfactorily his required period of publiage as prescribed by the Pupillage Rules.
Newyork State Board of Law Examiner	Every applicant for admission to practice must file with a committee on character and fitness appointed by the Appellate Division of the Supreme Court affidavits of reputable persons that applicant possesses the good moral character and general fitness requisite for an attorney and counsellor-at-law as required by section 90 of the Judiciary Law. The number of such affidavits and the qualifications of persons acceptable as applicants shall be determined by the Appellate Division to which the applicant has been certified.
The South African Legal System	That he/she is over the age of twenty one years and is a fit and proper person to be so admitted and authorised.

THE LEGAL PROFESSION ACT 2007 OF QUEENSLAND, UNDER SECTION 30, HAS ALSO ISSUED THE FOLLOWING QUESTIONS TO BE ANSWERED BY THE APPLICANT FOR ADMISSION:

FORM 14

(Rule 68(2))

QUESTIONS TO BE ANSWERED BY AN APPLICANT FOR ADMISSION UNDER RULE 17

- 1. What is your full name?
- 2.Whom have you served as an articled clerk and during what period of periods, and where (provide specific details)?

3. Have you been admitted to an approved degree in Law? If so, give particulars and attach a certificate of admission to the Degree.
4. Did the whole of your service under articles take place, in the case of each master, at the master's office? If not, state the reason.
5. Have you performed any part of your prescribed service as a clerk, to a town agent of your master, and if so, to whom and during what period?
6. Did you at any time interrupt your service of any master to whom you were articled or his/her town agent whom you were serving as a clerk? If so, state the occasion and length of each interruption, and whether it was with or without the permission of the master, town agent or judge, as the case may be.
7. Have you since first obtaining the Board's consent in Form 2 or in Form 5, and before completing your prescribed service, been engaged or concerned in any profession, trade, business, or employment other than that of a clerk to a master to whom you were articled or his/her town? If so, give particulars.
8. Have you since completing your prescribed service been engaged or concerned in any profession, trade, business, or employment other than that of clerk to a Legal Practitioner? (If so, give particulars).
9. Prior to the date of this statement have you been convicted of, pleaded guilty to or been found guilty of any criminal or quasi-criminal offence, whether in Queensland or elsewhere, even though a conviction may not have been recorded? (If so, you must furnish full details thereof.)
10. Do you know of any other matter which might bear on your fitness to be admitted as a Legal Practitioner of the Supreme Court of Queensland or to practise in Queensland as such. (If there are any such matters, you must furnish full details thereof.)

11. I consent to the Board making inquiries of, and exchanging information with, my law school/University as to whether any matter in respect of alleged academic misconduct relates to me.

.....

.....

Date

Signature

The procedure adopted by the above countries is to prevent the entry of criminal elements into the profession.

As more criminals are trying to enter into the profession, as elaborately discussed in previous paragraphs, verification of antecedents of the proposed candidate for enrolment is a must to save the profession, Courts and innocent clients and to maintain purity and standards in legal profession by allowing only person with integrity, values good conduct become as advocates to practice. Therefore, **respective Bar Councils have to be informed about the antecedents of the candidates. If there is any criminal case, attracting punishment exceeding 3 years or more, such candidates should not be enrolled.**

APPRENTICESHIP – PRE-ENROLMENT TRAINING

30. The Hon'ble Supreme Court of India in ***V.Sudeer vs. Bar Council of India and another*** reported in ***(1999) 3 SCC 176*** struck down the Bar Council of India Training Rules 1995 prescribing pre enrolment training on the ground that Bar Council of India lacks statutory power to issue such Rule. However, the Hon'ble Supreme Court felt the necessity for improving standard of legal education and the requirements for new entrants to the legal profession of being equipped with adequate professional skill and expertise. It also held in paras-31,34 and 35 of the judgement that pre-enrolment training is a laudable concept which reads as follows:

"31. To avoid such an incongruous situation which may result in legal evasion of the **laudable concept of pre-enrolment training**, it is **absolutely necessary to entrust the Bar Council of India with appropriate statutory power to enable it to prescribe and provide for All India basis pre-enrolment training of advocates** as well as requisite apprenticeship to make them efficient and well-informed officers of the court so as to achieve better administration of justice. **We therefore, strongly recommend appropriate amendments to be made in the Act in this connection.**"

(Emphasis supplied)

34. Before parting with this aspect of the matter, we may also mention that in the present proceedings at an earlier stage, a Bench of this Court which was then seized of this matter, after listening to the arguments of the parties for some time had observed that the Legal Education Committee and the Bar Council of India should once again consider the recommendations of the Hon'ble Three Judges' Committee, the Law Ministers' Conference and the recommendations made in the Fourteenth Law Commission Report at pp. 548 to 550. The Court also gave appropriate suggestions. The said suggestions have been brought on the record of this case by way of a copy of a letter addressed by Advocate, Shri Sanjeev Sachdeva dated 24-9-1977 to the Chairman, Bar Council of India. The said suggestions read as under:

"a. Only graduates should be allowed to take the degree course in Law.

b. The university course in Law should extend for a period of two years and should be confined to the teaching of theory and principles of Law. Procedural, taxation and other laws of a practical character should not be included in the university course.

c. Entry to the law colleges should be restricted by a system of strict tests so that only deserving candidates are admitted. This restriction of admission is necessary so that proper standards of teaching may be maintained.

d. A person who after obtaining his degree wishes to enter the profession should pursue a professional course conducted by the Bar Council in procedural and practical subjects.

- e. The Bar Councils should arrange lectures for the benefit of apprentices undergoing this professional course.
- f. Attendance by the apprentice of a certain minimum number of lectures should be made compulsory.
- g. Those who wish to enter the legal profession should be required to work in the chambers of an experienced lawyer and maintain diaries showing the work done by them.
- h. The apprentice course should be of one year's duration.
- i. The apprentices should be subjected to a very stiff practical test."

These suggestions were communicated to the Bar Council of India by its Advocate, Shri Sanjeev Sachdeva in the said letter. It is profitable to extract what was sought to be conveyed to the Bar Council of India as recommendations from this Court:

"It also fell from their Lordships that the training should be part of the curriculum of the university and should not extend the period of study beyond the existing three years or five years as the case may be. It also fell from their Lordships that the training could be under the supervision of the respective High Courts of the State and the State Bar Councils.

It also fell from their Lordships that the training need not be restricted to merely attending to the chamber but may also include attending to the court under the supervision of the concerned court staff."

35. It is also to be considered whether post-enrolment training for one year or less is at all required for those entrants to the profession who have already worked as solicitor's article trainees for a number of years before they apply for being enrolled as advocates. The nature of the training which they have already undertaken while working in the firms of solicitors may pose the question whether any duplication of training or any additional training is required for them for entering the legal profession as advocates. Another aspect which requires consideration by the Bar Council of India is as to whether the corporate lawyers, meaning those who have already acquired sufficient legal training while working in the corporate offices as law officers, should be subjected to such post-enrolment training either wholly or even partially. The Bar Council of India may do

well to consider all these relevant aspects before taking any decision on this vexed question.

The observations of High-Powered Committee clearly indicates that it was the stand of representative of the Bar Council of India before them that Section 28(2) (b) which was earlier on the Statute Book and was deleted by the parliament, was required to be reintroduced. In other words, it was felt that the Bar Council of India itself before the High Powered Committee that for providing pre enrolment training to prospective advocates, relevant amendments to the Act were required to be effected. It is easy to visualise that appropriate amendments in Section 7, 24 (1) would have clothed the Bar Council of India with appropriate power of prescribing such pre enrolment training for prospective entrants at the Bar.”

By the above judgement, the Hon'ble Supreme Court recommended appropriate amendments to be made in the Advocates' Act, 1961, for introducing pre-enrolment training (Apprenticeship). The above judgement was delivered on 12th March 1999. More than 16 years have passed, but, so far no steps have been taken by the Parliament to amend the Advocates' Act, 1961 as strongly recommended by the Hon'ble Supreme Court. If apprenticeship is introduced, it will give required training to fresh law graduates. In the absence of apprenticeship, fresh law graduates, without any training, cannot practice in the service oriented profession, without knowing the procedures and formalities before the Court, resulting in lack of proper assistance from those lawyers. Lawyers are officers of the Court and they are expected to assist the Court in rendering justice. Non-introduction of apprenticeship affects the functioning of the Court itself as stated above. **Justice K.Ramasamy, retired Supreme Court Judge and a reputed Jurist wrote about the importance of legal training in his foreword dated 2.10.1997 to the Book titled “ADVOCATES PRACTICE” By Padala Rama Reddi 1998 edition and it is as follows:**

“The thrust in legal education primarily rest on formal lectures. The curriculum consist of traditional subjects but the method of teaching of the rudiments in law in the colleges and the practice in the courts are very wide and unrealistic. **Thus there is a deep gap between “law in action “and “the law in books.”** The student in law is **neither prepared nor even made to think as an Advocate resultantly when the launches into action, after enrolment, finds himself completely at a loss, affecting all concerned in the administration of justice.** Until recently, dispensing with apprenticeship had added further problems to the newly enrolled advocates who do not find proper guidance in the professional conduct as an advocate. It is now generally believed that many an advocate turn out “ambulance chasers” or “catchers in railway platforms of the litigants.” In addition, there is plethora of statutory laws being made by the legislatures and the Parliament every year. **There is no occasion for the new entrants into the legal profession to keep abreast with the changing needs of the society and the interpretation of laws to suit the changing needs. Thus unbridgeable gap has arisen to educate the law students on the correct perspectives.** Thus, there is a wide gap between advocates equipped with the knowledge in law in action in the changing social, economic and political scenario and tahe law taught to them in the colleges. Stream cannot raise higher than the source. **Therefore, what is imperative is of higher standards in the legal education and legal services imbued with efficient, honest and sincere legal practitioner studded with ethical standards. Practical training is almost absent in legal education. Thorough grounding not merely in law and legal literature but also practical side of the world of the business; mastering of some subjects, grounding in preparation of a brief, techniques to interact with the client to elicit relevant facts and case study, etc., are of absolute necessity, for success at the Bar. Because of fallen standards in the legal education and lack of ethics find their manifestation in the poor quality of legal**

service and the persons manning the judiciary including in many a case, constitutional courts. It is, therefore, necessary to stem the rot from the bottom itself.

31. The Bar Council of India is a statutory body constituted as per Section-4 of the Advocates' Act, 1961 to carry out the functions as stated in the Act. Though the main object is to lay down the standard of profession, conduct of advocates and to promote the standards of legal education, the Bar Council, miserably failed to take steps to seek amendment of the Advocates' Act, 1961, regarding apprenticeship. The Hon'ble Supreme Court of India in ***V.Sudeer vs. Bar Council of India and another*** reported in ***(1999) 3 SCC 176***, recommended appropriate amendment in the Advocates' Act, 1961, endorsing statutory power to the Bar Council to make pre-enrolment trainee as mandatory.

In spite of the above pronouncement on 12.03.1999, nothing has been done to bring amendment. The Apex Court, having stressed the importance and necessity of having pre-enrolment training to fresh law graduates, it would have approved the pre-enrolment training Rule under Article 142 of the Constitution of India. However, it only recommended to the Parliament to bring amendment in the Advocates' Act, 1961, since the Apex Court felt that bringing amendment in the Act is in the domain of Parliament. Having faith and trust in Parliament and without encroaching upon the field of Legislature/Parliament, the Apex Court strongly recommended to the Parliament to amend the Advocates' Act in 1999. The recommendation was made as early as on 12.3.1999. However, the recommendation fell on deaf ears without any action. In the absence of apprenticeship, law graduates are getting enrolled without joining any Senior's office and getting training, affecting the Courts and rendering sub-standard service to their clients. This Court is very much aware of the settled position of law that Courts cannot direct the Legislature/Parliament to enact a law or amend the law. Still, to prevent further deterioration of standards in the legal profession, this Court is compelled to direct the Union Government to implement the recommendation made in Para 31 of the judgement in ***V.Sudeer vs. Union of***

India and another reported in 1999 (3) SCC 176 within six months and file a report before this Court. **Union of India is directed to take steps, at the earliest, to have amendments in the Advocates' Act, 1961, for introducing pre-enrolment training (Apprenticeship) by implementing para 31 of the Sudeer's judgement**, rendered by the Hon'ble Supreme Court in the above cited judgment within six months.

ABOLITION OF THREE YEAR COURSES AND RETENTION OF 5 YEAR COURSE ALONE.

32. Insofar as other professional courses like Medicine and Engineering, only five year courses are offered and no three year courses are available. Besides, the maximum age limit has to be prescribed for admission to law colleges, on par with other professional colleges, namely 21 years, so that the criminal elements and elderly people could be prevented completely from entering into law colleges to pursue three year course. The details of criminal elements, goondas, bootleggers, sufferers of detention orders getting law degrees would only go to show that they are purchasing only three year degrees as they would have crossed 21 years usually. This Court can take judicial notice that many persons employed in Government and private service are attending their work and simultaneously studying 3 year Law Course from Law Colleges which are located more than 100 kilometers away from their work place and it only proves that these people undergo course by proxy which is prohibited. Therefore, 3 years course has to necessarily be abolished. This Court is aware that many law colleges, who depend on fees from proxy candidates, would oppose to this proposal and many Bar Council members, too, would oppose as they are stated to be sponsored by these colleges. **Former Chief Justice of India Dr.J.S.Anand, on 31.08.1998, delivered a lecture on "LEGAL EDUCATION IN INDIA "PAST, PRESENT and FUTURE" in Sarin Memorial Legal Aid Foundation at Chandigarh published in 1998 (3) SCC Journal** and

he stressed the importance of uniform five year Law Course in the country and the relevant portion is as follows:

“Legal education must be given its status of a professional course of study and like any other professional course its standards must be regulated. The content of legal education must be given its due importance. **Legal education should be uniform in the country and should be a five-year course after 10+2. The standard of legal education should be laid down and the minimum norms that law schools must satisfy must be prescribed. Notice to all the law schools should be given by the Bar Council of India/university** thereafter to ensure that within the time allowed they must satisfy the norms and if they fail to do so, the university concerned should withdraw the recognition or affiliation from such school or college and that would once for all put an end to those law schools which do not deserve to exist. Unless such a drastic surgery is undertaken without loss of time, the patient, that is legal education, will be fatally wounded and consequently the country's justice delivery system will stand bereaved.”

Therefore the Bar Council is directed to positively consider abolishing the three year Law Degree Course and to retain only five year course at the earliest on par with Medical and Engineering courses.

ENTRUSTING FUNCTIONS OF BAR COUNCIL TO KNOWLEDGE COMMISSION. LEGAL EDUCATION COMMITTEE OR AN EXPERT BODY.

33. Though with a noble object of regulating and administering legal profession, the Advocates' Act, 1961, was enacted and the Bar Council was statutorily constituted, the object is frustrated because of the inaction and malfunction of the Bar Council members. Many of the Bar Council Members are not acting in the interest of legal profession or Courts and they are only interested to see that they are re-elected by making unruly elements as advocates. The elective system has made the functioning of Bar Council a mockery. They are said to be sponsoring law colleges, which sell degrees without even conducting classes and without attendance, on payment of

Rs.25,000/- or Rs.1,00,000/-. Many law colleges appoint local agents to canvass and to give spot admission in law colleges as seen from many advertisement published by the said agents. It is also evident that many cases, which have been referred to the Bar Council of India, appear to be pending for more than 5 years or 10 years and consequently, those lawyers, who are facing Bar Council action go scot-free. Bar Councils, mindlessly, have been recognising more Bar/Advocate Associations in each Court, for various reasons, mostly based on communities and other considerations dividing the advocates on communal and religious basis. Often, there are many clashes between the associations. Even judicial officers are unnecessarily facing problems due contrary claims made by different Bar Associations like accommodation, recognition, etc. Therefore, the Bar Councils have to withdraw recognition given to various Bar/Advocate Associations which have been granted for the past 20 years and maintaining one association for one Court except Associations which are 20 years old and more for a conducive atmosphere in Courts.

34. How the elective system adopted by Bar Council to elect its members are tainted with corrupt practices, violence and money power is demonstrated by the following case. In O.A.No.18 of 2011 in C.S.No.7 of 2011 filed by the ***Tamil Nadu Advocates Association, Chennai Vs. Bar Council of Tamil Nadu and others***, this Court appointed a **reputed jurist Mr.Justice K.P.Sivasubramaniam** to conduct Bar Council Election, over see, monitor the process of Election held on 4.3.2011 and ensure that free and fair poll was conducted. After conducting the Election, the Hon'ble Mr.Justice K.P.Sivasubramaniam filed a report dated 10.4.2011 giving details as to how money power and corrupt practices were used by the contestants to the August Body. In paragraph-19 of his report, the learned Judge expressed his dissatisfaction about the Election process and paragraph-19 of the report reads as follows:

“19. But with all the improvements effected in the poll process, yet I do not feel happy at the overall outcome. There

are not only many areas/issues which require tightening up of further measures which can be eliminated atleast in the future election. But the most incurable disease which is beyond control/scrutiny of the Hon'ble High Court or the Election Commissioner whoever it may be, is the wide spread allegations of corruption, buying of Associations and individual voters etc. which is totally depressing and a shame on the noble profession. I would first deal with the issues which require attention to improvise the election process and then deal with the complaints of corruption.”

The learned Judge gave details of bribery and corrupt practices which took place in the said Election by the contestants and paragraphs 22 to 25, 32 to 36 and 41 are usefully extracted as follows:

“ Bribery and corruption:

22. The most depressing feature of this election is that notwithstanding all steps taken to regulate the election process, the fact remains that **money had played a major part in the election and some of the successful candidates had managed to win the election not with their popularity or record of service to the society or to the profession, but only by means of the money they have spent.**

23. **Even before the start of the election process, this malady affecting the profession had been projected in the newspapers reporting about huge sums of money the candidates were spending for 'buying' the Associations and individual voters and gifts to the voters. This is an issue which cannot be controlled either by the Hon'ble High Court itself** monitoring the election or a Retired Judge of the High Court being appointed to supervise the election. This Hon'ble Court was pleased to make it clear in its order itself and I had also expressed in my instructions to the candidates and voters dated 28.1.2011 that such happenings can be avoided only by the individual/collective introspection of each member and the Association and their determination to eliminate such issues and the conscience of the individual members of the profession. This Hon'ble Court in its order dated 2.2.2011 was pleased to observe as follows:

“ At the outset, I must point out that it is not possible to ensure that all types of mal-practices are totally curtailed. If a member of the profession, which is supposed to belong to the learned and the noble, deliberately and consciously decides to sell his vote, there is little that a court can do. ”

24. There is an attempt to justify buying of Associations by stating that there is nothing wrong in the Association electing a person who is prepared to donate funds for the Association for improving its facilities like providing air conditioner, books for library, furniture etc. and the Association unanimously resolving to vote in favour of the donor. This is nothing but hypocrisy. **It is true that about two or three decades back, District Associations used to select an agreeable candidate with a motive to ensure that a representative of their District will be in the Bar Council and in the process a recognised and reputed senior member of that Bar will be selected.** It is also true that often donations are made by senior members of the bar and well to do advocates for the betterment of the facilities of the Association whenever possible, totally unconnected with the election to the Bar Council. **But such things never happened with a motive to catch votes for the Bar Council at the time of election that too by persons without any proper standing or reputation in the bar. It is alleged that Associations are purchased by the highest bidder, irrespective of his standing or reputation and I ask myself the question as to why he should spend several lakhs of rupees and for what purpose and what will such a persons do, if elected to the council. Surely there can be no justification for bribery being received by individual members. Bar Council is a statutory regulatory body and unless individuals with high caliber and integrity are elected, the moral and legal caliber of the profession is bound to suffer. This does not require any elucidation or explanation and no one can save the reputation of the profession if individual members insist on receiving the bribe and vote for an undeserving person.** No person with good reputation and who will not expect anything in return would ever offer bribe for the purpose of election.

25. We cannot visualize any machinery to check this evil, if individual members are not vigilant. Mere talks and whispering among the members will not be of any use unless someone comes forward with proper proof and be bold enough

to complain before the Court / appropriate authority / police etc. with proper materials.

.....

32. I am very sure that there are few more candidates who have won or lost the election have also indulged in bribery but not disclosed in the above list. Unless and otherwise, there is a proper and sustained enquiry if may not be possible to apprehend all the culprits who have indulged in a mockery of democracy even at the level of a regulatory body of an enlightened profession.

33. Now the next stage is set for the Election of the Chairman. About two days back there was a demonstration by a group of advocates in front of the Bar Council, alleging that heavy stakes were involved in the election of the Chairman and steps should be taken to prevent such open scandal.

34. **It is also a sad fact that caste and community has also played a part in voting. Though it may not be as bad as corruption or bribery, yet voting on the basis of caste and community is also not in the interest of the institution. When importance is given to the caste, the question of moral and professional eligibility is naturally pushed back.** It is a paradox that this could happen in the election to the Bar Council where the electorate are mostly double graduates. But this malady is rooted in our system and we have to wait for better days.

MOTIVES FOR BRIBERY IN THE BAR COUNCIL ELECTION

35. While dealing with the shocking information reaching the ears of every responsible citizen and even through newspapers **regarding lakhs of rupees being spent on election for Bar Council, it arouses a natural curiosity to know about the exact reason for spending so much of money. I can now only think of three reasons viz., (1) possibility of making illegal money in disciplinary proceedings, (2) possibility of making money in granting recognition to private law colleges and (3) the status which a person gains as a member or as office bearer of the Bar Council and it gives lot of opportunities and the hopes to exploit his position with obliging judges, police and politicians and will provide a shield to many illegal activities.** One need not spend so much of money if the motive

is only to serve the Bar Council in a dignified manner. **It is a matter of regret that in recent times the Bar Council had been taking part in the agitations held by Advocates' Associations on issues like clash with the police or public.** Such an attitude on the part of Bar Council was never thought of some years back. A statutory disciplinary body cannot involve itself in such matters. But that is the level to which the members of the Bar Council have converted the very object and functions of the Bar Council.

36. Apart from the three possible reasons mentioned above, **there is a widespread allegation of misuse of Welfare Fund.** It is not known whether there is nay scope of making money in the matter of grant of Welfare Fund. The widespread allegation pertains to the issue of Welfare Stamps viz., that there is no proper accounting of the inflow and outflow of the stamps at various stages and lot of unaccounted money is generated by the sale of Welfare Stamps.

.....

41. On an overall consideration, I fee that it would be in public interest to order an appropriate probe. How it should be done is a matter for the Hon'ble Court to decide. A court mentioned probe can be ordered and if a prima facie basis for any suspicion is found then the matter can be entrusted to the State or Central Police agencies to probe further. This is only a suggestion, which passes in my mind and it is certainly possible for the Hon'ble Court to device a better alternative.

A perusal of the above report would shock the conscience of anybody. The Election to the Bar Council is being conducted like High Stake By-Elections to Legislative/Parliament by the political parties. Openly, money is being paid and articles including gold coins are being gifted. Community and Religion, language cards and money are freely and shamelessly used to win the Elections. Alcohol flows freely. Communal organisations, political parties show their might in the election. The worst part is many members of the legal profession are expecting and willingly accepting them. Such is the sanctity of the Elections conducted to elect the members of Bar Council, a statutory body which is supposed to be the

watch-dog of the legal profession. One can imagine the credentials of the candidates, who commit all possible malpractices to become Bar Council members.

35. The Advocates' Act, 1961 was enacted to amend and consolidate the Law relating to Legal Practitioners and to provide for Constitution of Bar Councils and Bar Council of India by implementing the recommendations of All India Bar Committee made in 1953 and after considering the recommendations of Law Commission. The essential functions of Bar Council have been incorporated in Sections 6 and 7 of the Advocates' Act, 1961; The members, who are getting elected are vested with the power to admit Advocates on roll, to take disciplinary action against the Advocates for their misconduct, to safeguard the privileges of the Advocates, to permit and support Law Reforms, to organize Legal Aid to the poor, to lay down the standards of profession, conduct and etiquette for Advocates, to promote Legal Education, to lay down the Standards of Education and to recognize University offering law degrees. The above vital functions of the Bar Councils could be discharged by the members very meticulously in the interest of the society only when they possess extraordinary legal knowledge, wide exposure to various laws and sufficient years of standing in the Bar. Whereas the reality is something shocking and disturbing. Mostly, persons, who make money through real estate business and not practising in Courts, having communal backing, distributing free gifts, spending in lakhs and even more than a crore, without any practice in law, much less good practice and without even minimum years of practice, are elected. If this is the quality of the members elected, one can imagine as to how they would discharge their functions of the statutory body which prescribes standards of legal education, professional conduct and etiquettes for advocates. Corrupt practices adopted in the election are the reason for establishment of many Fake Colleges without any sufficient infrastructure and conduct of classes to sell degrees to criminal elements and others. It is being said that some of the Bar Council members

allegedly own Fake Colleges in their benami names and are making money by selling law degrees to people including criminal elements without having basic qualification like pass in +2 examination or pass in any degree. If such type of elements enter into the profession, naturally, the profession would get criminalised and the standard of lawyers would be without substance.

36. Lawyers are Officers of Courts. They owe duties to the Courts, clients and to the society. The Bar Council is supposed to have control over the Legal Profession to prescribe standard of legal education and it should be responsible for guiding the members in the right direction. However, the Bar Council of India itself is calling for boycott of Courts for various reasons, when especially, the Bar-strikes by Advocates have been declared illegal by the Hon'ble Supreme Court in 2003 in ***Ex-cap Harish Uppal vs. Union of India and another*** reported in ***AIR 2003 SC 739***. Therefore, there is a blatant failure on the part of the Bar Council to discharge its functions as per the Act.

37. There is no yardstick or minimum experience for contesting the Bar Council Elections. Even a newly enrolled Advocate can contest the elections. Experience shows that what is required is only money power to win Bar Council elections. Election of legal luminaries as Bar council members has become a thing of the past and those who are making money through dubious means are mostly elected. It is being said that some of the elected members threaten Subordinate Judiciary to get favourable orders and they are said to be conducting "Kangaroo Courts". Time has come to dissolve the Bar Council and entrust its functions with "National Knowledge Commission" as proposed by the former Law Minister or with the Legal Education committee or an expert body consisting of experts from various fields. Only then, there will be a chance for survival of the system.

38. The Bar Council members as well as Advocates should have character, dignity and responsibility as necessitated by the Hon'ble Supreme

Court in ***Yogendra Singh Tomar vs. Bar Council for Uttarakhand*** reported in ***(2014) 2 SCC 524*** and paragraph-26 of the said judgment is usefully extracted as follows:

“26. We have already used the phrase “before parting” and expressed our views about proper drafting of the rules and, therefore, what we are further going to add, may appear as an elongation but we are disposed to think, it is necessary. In any democratic institution, like the Bar Council, where holding of election is imperative, the authority concerned, the aspirants and the electoral college have a greater degree of responsibility. Collective collegiality must surface. Needless to say, there has to be individual ambitions, but the institutional aspirations should be treated as paramount. Every member of the profession should understand, realise and practise so that the nobility of the profession is maintained and sustained in a noble manner.”

(Emphasis given)

Contrary to the above judgement only, most of the Bar Council members conduct themselves. In fact, some of them are stated to be accused in Criminal Cases. It is stated that some of them are conducting “Kangaroo Courts” illegally and making huge sums without having any Court Practice.

39. Bar Councils have been consistently failing to take action against erring advocates who are creating unfavourable condition in Courts, by their indecorous, high handed, shameful and violent behaviour in and outside Courts. In fact, it is stated by Mr.Mannan Kumar Mishra, Chairman, Bar Council of India in his order dated 22.9.2015 that Tamil Nadu Bar Council informed that no action could be taken against the trouble creating advocates as they command muscle and communal power and the proceedings of the Chairman of Bar Council of India reads as follows:

“The most showing state of affairs is that the **Chairman of Bar Council of Tamil Nadu has expressed his inability to take any action against the errant lawyers, particularly the leaders**

of the unruly advocates because of their muscle power bad antecedents and criminal history. Not only the Chairman but even the majority of the members of the Bar Council of Tamil Nadu are fearful and in panicky because of the strong hold of these lawyers claiming themselves to be the leader of the Bar. The Bar Council of India is very much alive to the situation and we are aware of the fact that **because of the abnormal increase in the number of lawyers, it is becoming very difficult to maintain the standard of profession. But it is also a fact that most of the State Bar Councils are very slow in punishing the Advocates even in cases of gross professional misconduct. The number of non-practicing Advocates and the number of persons with fake and forged certificates** (posing themselves to be the lawyers) is **increasing** day by day.

..... Such so-called leaders of the Association or of the Bar Councils are not supposed to curb strike or any unruly protest or procession or arrogant activities of the Advocates. Rather they are adding fuel to the fire.....

For stopping the mushroom growth of Law Colleges, the Bar Council of India has already resolved and written to all the states governments and universities not to grant “no objection certificate” or recognition in casual manner and to limit the number of Law Colleges, Schools in their respective jurisdiction.

..... The faith of the people, the litigants as well as Institutions is shaken day by day because of the continuous illegal, uncalled for strikes boycotts and abstention of the lawyers and due to inaction of State Bar Councils. On such issues, in my opinion, the time has come when the Bar Councils will have to make a drastic change in their attitude, while dealing with the cases of professional misconduct. If we fail to do so, the profession will lose its importance and the standard, and there shall be no dignity

and respect left in the litigants, the general public for the legal profession..... “

(Emphasis supplied)

What else is needed, to understand the pitiable and pathetic state of the noble profession and its members. The Chairman very candidly stated that :

- (1) Many members of the profession indulge in violence;
- (2) Bar leaders possess muscle power and criminal background;
- (3) Bar Councils are unable to take action due to fear;
- (4) People with bad and criminal antecedents have become advocates and bar leaders;
- (5) High increase in lawyers who cannot be controlled;
- (6) Mushrooming growth of law colleges etc.

40. In view of the above, the Bar Council has become redundant and self regulative body of the Advocates has proved to be counter productive, as the members of Bar Council of India, always try to keep even the errant members in good humour so that they would be re-elected. **In the said process, vote alone counts and the interest of the public and Courts are compromised. Resultantly Justice delivery system is suffering as proved by various unsavoury incidents which took place inside and outside Courts.**

41. The Bar Council of India framed clause 28 of Schedule III of Rule 11 Legal Education Rules, 2008, after much deliberations with intellectuals and experts as per the report submitted by a Committee headed by Hon'ble Mr. Justice Ahmadi fixing the upper age for admission to Bachelor of Law Degree Programme and it was notified and the same came into force in the year 2008. Clause 28 of the above said Rules reads as follows:

“28. Age on admission: (a) Subject to the condition stipulated by a University on this behalf and the high degree of professional commitment required, the maximum age for seeking admission

into a stream of integrated Bachelor of Law Degree program, is limited to twenty years in case of general category of applicants and to twenty two years in case of applicants from SC, ST and other Backward communities. (b) Subject to the condition stipulated by a University, and the general social condition of the applicants seeking legal education belatedly, the maximum age for seeking admission into a stream of Three Year Bachelor Degree Course in Law, is limited to thirty years with right of the University to give concession of 5 further year for the applicant belonging to SC or ST or any other Backward Community.”

The above Rule was the subject matter of challenge before this Court in W.P.No.14877 of 2009 (***M.Santhosh Antony Vareed v. The Registrar, Tamil Nadu Dr.Ambedkar Law University, Chennai***) and this Court upheld the said Rule by order dated 9th September, 2009 and the said judgment is reported in ***2009(8) MLJ 1677***. Paragraph No. 20 of the Judgement is extracted as follows:

“ 20. This Court feels that, the new Bar Council rule is a welcome step to enhance the standard and quality of the legal education. In western countries, the rank holders/higher mark holders are opting for Law Colleges first like medical colleges in our country. The legal education has to be made meaningful. William Wordsworth wrote: "Child is the Father of Man". Likewise, law student is the future of Legal profession, Judiciary and Rule of Law. Hence utmost care has to be given to legal education which was hitherto neglected. Legal education requires to be made on par with the other professional courses. The following suggestions are made regarding quality law education and the Government and Bar Council of India may take note of the suggestions:

- a) The classes in law colleges have to be conducted like a regular college on the line of National Law School and the attendance has to be made mandatory where as law classes are taught like part time course in shifts and in a few colleges, this court understands that attendance is not a must.
- b) College hours have to be increased from 4 hours to 5 hours or 6 hours and having classes in morning as well as afternoon so that the students would get stuck to their studies.
- c) Higher marks like minimum 60% marks may be prescribed for getting admission into law colleges so that comparatively more competent, bright and intelligent students would join the course and it would enhance the quality and competence in the legal profession. Even if all the seats in the law colleges are not filled up

by fixing higher marks, those seats need not be filled up with students with lesser marks. This would enable the law colleges to get credible image.

d) As stated earlier the antecedents of the students, if necessary, may be verified before admitting them into law course.

e) Appointment of competent full time professors/lecturers is to be made.

f) Appropriate infrastructure like proper libraries have to be provided and those colleges which do not have proper infrastructure and provide quality education should be closed down and new colleges need not be opened considering availability of long number of advocates and Law Colleges.

g) Three year law course has to be scrapped in a phased manner as five year integrated course was introduced to replace three year course.

h) Standardising legal education, in keeping pace with globalisation and new trends and challenges in the field by updating the syllabus is essential.

i) Jurists like Judges of Supreme Court, High Court, Senior Advocates, Academicians have to be involved in legal education by involving them in making syllabus and to contribute by way of lectures, seminars workshop etc.

j) Ethical and moral values have to taught as subjects and have to be inculcated in their minds, as they are necessary and essential for legal profession inevitably.

k) Law students have to be involved in field study like court visit, social services, Legal Workshop so that they could interact with masses.

l) Police officials can also be associated with legal education by inviting them to give lectures on investigation and prosecution in criminal cases. The interaction between police and law students prevent or bring down the clashes between the lawyers and police in future.

Aggrieved by that, the petitioner therein (**M.Santhosh Antony Vareed**) filed a Special Leave Petition before the Hon'ble Supreme Court in S.L.P.No.13846 of 2010. After hearing all the parties, including the Bar Council of India, the Hon'ble Apex Court was pleased to dismiss the Special Leave Petition in March, 2013. The Bar Council of India also supported the Rule by filing appropriate counter affidavit before the Hon'ble Supreme Court. Therefore, it is clear that the Rule was upheld by this Court and the same was also confirmed by the Hon'ble Supreme Court taking into consideration that the Rule was framed

based on the report submitted by the three-member Committee headed by Hon'ble Mr. Justice Ahmadi and it is in the interest of the profession.

42. However, it is surprising to note that the said Rule had been withdrawn based on a report submitted by one man Committee of the Bar Council and it has been notified in the Government Gazette on 31st October, 2013 hurriedly. A copy of the said notification dated 31st October, 2013 has been produced before this Court. A perusal of the said notification reveals that based on a report submitted by single member of Bar Council, the resolution was passed. From the above, it is clear that the age limit fixed for getting admission to Law Degree Programme has been done away with. Obviously, this Court views the said resolution as an attempt to invalidate the order passed by this Court, in ***Santhosh Antony Vareed vs. The Registrar, Dr. Ambedkar Law University*** reported in ***2009 (8) MLJ 1677*** as confirmed by the Apex Court in SLP.No.13846 of 2010 in March 2013.

43. The said Bar Council notification dated 28.09.2013 removing the upper age limit to get admission to Bachelor of Law degree Programme was challenged before the Madurai Bench of this Court in W.P.No.9533 of 2015. A Division Bench headed by Hon'ble Mr. Justice S. Manikumar, by order dated 7.08.2015, quashed the Bar Council notification removing age restriction and restored the age ceiling as per clause 28 of Schedule-III of Rule 11 of Legal Education Rules, 2008 and paras 217 and 218 are extracted as follows:

“217. In the light of the discussion and decisions, we are of the view that clause 28 under Schedule-III to Rule 11 of the Rules of Legal Education 2008 has been amended, without following provisions of the Act and the Rules made thereunder. The Government of Tamil Nadu has only followed the decision of the Bar Council of India and G.O.(Ms) No.194, Law (LS) Department dated 3.06.2015 and consequently, the Registrar, Ambedkar University issued an admission notification.

218. For the reasons, stated supra, the impugned notification of the Bar Council of India, dated 28.09.2013 and

G.O.(Ms)No.194, Law (LS) Department dated 3.06.2015 are quashed and the consequential admission notification dated 04.06.2015 is quashed, in so far as three year degree course is concerned.”

44. In the interest of legal profession, when the previous Bar Council framed the Rule, as per the report submitted by the Three Member Committee headed by Former Chief Justice, the Bar Council had deliberately, for reasons best known to it, withdrew the Rule affecting the legal profession to help Letter Pad Colleges and Law Colleges which are without infrastructure, selling law degrees even to antisocial elements. That apart, as against the Bar Council, adverse orders were passed in ***Chandra Prakash Singh Chauthan v. State of U.P. & Anr.*** reported in ***2012 CRI.L.J.1502***, wherein the Hon'ble Supreme Court deprecated the non-representation on behalf of the Bar Council. In the said case, paragraph 8 reads as follows:

“ 8. Despite service of notice, nobody is present on behalf of any of the Bar Councils. Therefore, we are left with no alternative but to issue a specific direction to them to take action in accordance with law and take a view which would be expected of the august body of the State Bar Council and in its default, by the Bar Council of India in the facts of the case.”

Similarly, Bar Council of India did not contest **W.P.No.20966 of 2010 (*Rajan Sharma vs. The Bar Council of India and another*)** filed before the Division Bench of Punjab & Haryana High Court challenging the age restriction rule and the same was mentioned in the order dated 20.10.2011 and the same is the position in W.P.Nos.11947 & 12097 of 2009, 20966 of 2010 and 12528 of 2011 before the same High Court. Likewise, in many High Courts and Apex Court, Bar Council has not defended the cases filed against it.

45. Eventhough the Hon'ble Apex Court in ***Sudeer vs. Bar Council of India and another*** reported in ***1999 (3) SCC 176*** recommended amendment of the Advocates' Act, 1961, to introduce Apprenticeship, even after the lapse of 16

years, the Bar Council has not taken any steps to send the proposal to Central Government in this regard. It is a failure on the part of the Bar Council.

46. Furthermore, the Bar Council committed a blunder by recognising Open University M.A. Degrees without any basic qualification and admitting those candidates in law colleges and making them as Advocates. One wonders as to whether this kind of act would be possible in other professional courses like Medicine and Engineering?

47. As already stated, even a newly enrolled advocate can contest the Bar Council Elections. A Statutory Body which is entrusted to oversee the conduct of advocates, the standard of legal education and grant of affiliation to law colleges should at least prescribe the minimum years of experience in the Bar to contest the Bar Council Elections. If newly enrolled advocates are elected by adopting dubious methods, they cannot be expected to discharge the duties and functions, as entrusted to them, either as per the Advocates' Act, 1961 or as per the Bar Council Rules, in a proper manner. **The election process adopted for Bar Council membership, in fact, is a miserable failure.** It elects mostly moneyed and influential people without required exposure in law alone as members. Merit and legal knowledge have no place in the process and mostly persons with legal acumen, moral values and ethics are not elected as members. **Hence, the election system to Bar Council should be abolished,** as it failed to achieve the purpose for which it has been created. Mr Justice Krishna Iyer in ***Bar Council of Maharashtra vs. M.V.Dabholkar reported in (1975) 2 SCC 702*** condemned corrupt practices of advocates in para 52 which reads as follows:

“52. The Bar is not a private guild, like that of “barbers, butchers and candlestick-makers” but, by bold contrast, a public institution committed to public justice and pro bono publico service. **The grant of a monopoly licence to practice law is based on three assumptions: (1) There is**

a socially useful function for the lawyer to perform, (2) The lawyer is a professional person who will perform that function, and (3) His performance as a professional person is regulated by himself not more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice (*'The Practice of Law is a Public Utility' — 'The Lawyer, The Public and Professional Responsibility'* by F. Raymond Marks *et al* — Chicago American Bar Foundation, 1972, p. 288-89). A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honourable order. **If pathological cases of member misbehaviour occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more concerned with and sensitive to this potential disrepute the few black sheep bring about? The official heads of the Bar i.e. the Attorney-General and the Advocates-General too are distressed if a lawyer "stoops to conquer" by resort to soliciting, touting and other corrupt practices."**

Moreover, Justice K.Ramasamy, retired Supreme Court Judge wrote on 2.10.1997 about failure of the elective system to Bar Council as follows:

" Unfortunately due to elective process of the members of the Bar Council, instead of maintaining standards in the legal profession, steady deterioration in the legal standard and in the professional standards for their manifestation".

48. **Failure and the inaction on the part of the Bar Council to prevent the influence of money and use of muscle power during Bar Council Elections and to prevent candidates with criminal cases from entering the profession raises a doubt regarding the very existence and purpose of the Bar Council.** The power to initiate disciplinary proceedings against the erring advocates is entrusted with the elected members. However in spite of many complaints of misconduct, unruly behaviour against many advocates, Bar Councils are not taking any action as the members of Bar

Councils fear of losing votes at the time of Bar Council election. The election to Bar Council is conducted in such a way that the votes in the Local Bar are auctioned to the candidate, who pays higher amount to purchase their votes en bloc. If the elections are held in such an undemocratic manner, the functioning of the Bar Council cannot be effective and the purpose of the constitution of Bar Council is frustrated. The very purpose of entrusting the administration of the legal profession to the members of Bar Council, is only to oversee that the advocates do their duty properly without any misconduct and to improve the standards of legal education whereas many of the Bar Council members, in reality, are using their position to entice clients and to conduct *Katta Panchayats* and to threaten judiciary for favourable orders. However, the Bar Council miserably failed to take action against the advocates, who indulge in criminal activities and often boycott Courts even for trivial issues. Even the Bar Council calls for boycott, contrary to the Supreme Court's Judgement in ***Ex-Cap. Harish Uppal vs. Union of India and another*** reported in ***AIR 2003 SC 739*** wherein boycott has been held to be illegal.

49. When other professions are advancing and upgrading technically and globally, in this era of technological advancement, no worth programme is introduced to upgrade and update the knowledge of the advocates. Doctors and Engineers have got opportunities world wide whereas advocates have to practice only in India, mostly in one State. **Therefore, the practice of legal profession by advocates is restricted to our country except in arbitration. Therefore, the number of advocates should be directly proportionate to the number of cases and consequently, the number of colleges.** It is indeed, admitted by Bar Council of India in the order dated 22.09.2015 that because of abnormal increase in the number of lawyers, it is very difficult to maintain the standard of profession and colleges mushroomed. **Hence, the seats in various law colleges have to be drastically reduced to control the population of advocates.** This is also indication of failure of the Bar Council. **Therefore, time has come to entrust the functions of the Bar Council with an Expert Body**

or a body of persons of reputed legal luminaries, academicians, educationalists, doctors, retired I.A.S & I.P.S. Officers so that, the functions are carried out effectively and objectively in the interest of legal profession and justice delivery system.

MAINTAINABILITY & JURISDICTION

50. Regarding maintainability, the petition has been filed under Section 482 Cr.P.C.. The prayer sought is to see that criminal elements do not enter into the profession and to frame guidelines for enrolment as well as entry into legal profession. However, the Criminal Procedure Code does speak about the lawyers or legal profession. Section 2(q) of the Criminal Procedure Code defines "Pleader" and Section 2(u) of the Code defines "Public Prosecutor". Section 24 of the Code states about "Public Prosecutor" and Section 25 of the Code speaks about "Assistant Public Prosecutor". Section 25A defines "Directorate of Prosecution". Section 302 of the Code states about "Permission to conduct Prosecution". Section 303 of the Code defines "right of accused to be defended by advocate" and Section 304 gives the details about "Legal aid to the accused at the State's expense". They are extracted as follows:

"Section 2(q) **"Pleader"**, when used with reference to any proceeding in any court, means a person authorized by or under any law for the time being in force, to practice in such court, and includes any other appointed with the permission of the court to act in such proceeding.

"Section 2(u) " **Public Prosecutor**" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor;

Section 24. Public Prosecutors

1. For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutor, for conducting in such

Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

2. The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district, or local area.
3. For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:
Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.
4. The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutor or Additional Public Prosecutors for the district.
5. No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under Sub-Section (4).
6. Notwithstanding anything contained in Sub-Section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:
Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under Sub-Section (4).

“Section 25--Assistant Public Prosecutors

The State Government shall appoint in every district one or more Assistant public Prosecutors for conducting prosecutions in the Courts of Magistrates.

- 1A. The Central Government may appoint one or more

Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

1. Save as otherwise provided in Sub-Section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

2. Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case;

Provided that a police officer shall not be so appointed—

1. if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

3. if he is below the rank of Inspector.”

“ 25A Directorate of Prosecution

1. The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

2. A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, **only if he has been in practice as an advocate for not less than ten years and** such appointment shall be made with the concurrence of the Chief Justice of the High Court.

3. The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

4. Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

5. Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-Section (1), or as the case may be, Sub-Section (8), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

6. Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-Section (3), or as the case may be, Sub-Section (8), of section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under Sub-Section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.

7. The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.
8. The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.”

302. Permission to conduct prosecution

1. Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

2. Any person conducting the prosecution may do so personally or by a **pleader**.

Section 303. Right of person against whom proceedings are instituted to be defended. Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a **pleader of his choice**.

Section 304. Legal aid to accused at State's expense in certain cases – (1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rule providing for --

- (a) the mode of selecting pleaders for defence under sub- section (1);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fee payable to such pleaders by the Government, and generally for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before the Courts of Session.

The persons being appointed as **Pleaders, Public Prosecutors are all advocates. Without the assistance of lawyers as Public Prosecutors as well as Defence Counsel**, the criminal justice delivery system cannot function and similarly, in civil proceedings also, without assistance of lawyers, Courts cannot render justice. If persons with dubious character and criminal background are allowed to enter into the profession, then there is every possibility of those elements being appointed as Public Prosecutors. Persons who should protect the interest of their clients should not have any criminal background. If any such person is allowed to enter into the profession, then the interest of clients and the whole system would be affected. The Hon'ble Supreme Court in ***Jimmy Jahangir Madan vs. Boly Cariyappa Hindley*** reported in ***2004 (12) SCC 509***, in ***Popular Muthiah vs. State*** reported in ***2006 (7) SCC 296*** stated about the importance of assistance of Pleaders.

51. Inherent powers are specifically given only to prevent miscarriage of justice and to protect the justice delivery system and to make such orders as may be necessary as held in ***State of Haryana vs. Bajanlal*** reported in ***1991 SCJ 106***. To meet the ends of justice, Section 482 Cr.P.C. can be invoked as per the judgement of the Hon'ble Supreme Court of India in ***State of U.P. v. Mohd. Naim*** reported in ***AIR 1964 SC 703***.

52. Therefore, it cannot be stated that a direction under Section 482 Cr.P.C. cannot be granted for the relief sought for by the petitioner. **When the**

Criminal Procedure Code speaks about “Pleader” and functions of the advocate as Public Prosecutor, as defence counsel, this Court has jurisdiction to safeguard the interest of justice delivery system by properly framing rules, giving appropriate directions to prevent unruly elements entering either into law colleges or getting enrolled as advocates, to meet the ends of justice. That apart, this Court is a Constitutional Court which can give directions incidentally by suo motu invoking Article 226 of the Constitution of India, when the facts of the case warrant.

POWERS OF COURT TO MAKE RULES U/S 34(1) OF THE ADVOCATES ACT.

53. Section 34(1) of the Advocates' Act, 1961, reads as follows:

“ 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.”

From the above, it is clear that this Court has got power to permit or refuse the practice of Advocates. The Hon'ble Supreme Court in ***R.K.Anand vs. Registrar, Delhi High Court*** reported in **2009 (8) SCC 106** in paras 242 and 343 held as follows:

“**242.** Ideally every High Court should have rules framed under Section 34 of the Advocates Act in order to meet with such eventualities but even in the absence of the rules the High Court cannot be held to be helpless against such threats. In a matter as fundamental and grave as preserving the purity of judicial proceedings, the High Court would be free to exercise the powers vested in it under Section 34 of the Advocates Act notwithstanding the fact that rules prescribing the manner of exercise of power have not been framed. But in the absence of statutory rules providing for such a course an advocate facing the charge of contempt would normally think of only the punishments specified under Section 12 of the Contempt of Courts Act. He may not even imagine that at the end of the proceeding he might end up being debarred from appearing before the court. The rules of natural

justice, therefore, demand that before passing an order debarring an advocate from appearing in courts he must be clearly told that his alleged conduct or actions are such that if found guilty he might be debarred from appearing in courts for a specific period. The warning may be given in the initial notice of contempt issued under Section 14 or Section 17 (as the case may be) of the Contempt of Courts Act. Or such a notice may be given after the proceedee is held guilty of criminal contempt before dealing with the question of punishment.

...

343. The High Court has got ample powers for all this both on the judicial and administrative sides. Article 227 of the Constitution of India that gives the High Court the authority of superintendence over the subordinate courts has great dynamism and now is the time to add to it another dimension for monitoring and protection of criminal trials. **Similarly, Article 235 of the Constitution that vests the High Court with the power of control over subordinate courts should also include a positive element.** It should not be confined only to posting, transfer and promotion of the officers of the subordinate judiciary. **The power of control should also be exercised to protect them from external interference that may sometimes appear overpowering to them and to support them to discharge their duties fearlessly."**

In view of the above, it is evident that the High Court would be free to exercise powers vested in it under Section 34 of the Advocates' Act, 1961 to frame rules to preserve purity of judicial proceedings without any interference.

Registrar General of this Court, eleventh respondent herein, by way of an affidavit, informed this Court that a Committee has been constituted to frame the rules under Section 24(1) of the Advocates Act and Article 235 of the Constitution of India as per the Apex Court judgement in ***R.K.Anand vs. Registrar, Delhi High Court*** reported in ***2009 (8) SCC 106***. Hence, it is expected that the eleventh respondent complete the process of framing rules at the earliest.

54. It is a fact that the interim order passed by this Court on 11.8.2014 in this matter was challenged before the Hon'ble Supreme Court in Crl.M.P.No.18383 of 2014 by one V.C.Vinothkumar and the same was dismissed by the Hon'ble Supreme Court on 10.09.2014. The direction of this Court dated 1.8.2014 postponing the enrolment of the candidates on 2.8.2014 was challenged before the Hon'ble Supreme Court in **Crl.M.P.No.18064 and 18065 of 2014 by All India Association of Jurist (AIHJ) Regd** and the Special Leave Petition was rejected on 19.9.2014. The interim order dated 1.08.2014 passed by this Court in M.P.No.1/2014 in this matter was challenged before the Hon'ble Supreme Court in **S.L.P.(Crl.) Crl.M.P.No.4733 of 2015, 4870/2015, 4966/2015 and 5031 of 2015** and the said SLPs were dismissed on 27.3.2015 by the following order:

“We are not inclined to entertain these special leave petitions, which are dismissed.

We find that the learned Judge has only passed an interim order and it is always open to the aggrieved law graduates waiting for enrolment to move the learned Judge and seek for appropriate orders. Further, inasmuch as, High Court has now in public interest **taken the initiative to ascertain the background of the persons who want to get themselves enrolled and who do not have a clean record due to the involvement of some of them in criminal offences, we feel that the High Court can also enlarge the scope of its enquiry and call for a Report from the Bar Council of Tamil Nadu as to whether the procedure followed for enrolment to ensure genuine law graduates is strictly adhered to. In that context, the High Court can also take judicial notice of alleged Law degrees secured from fake Institutions/Universities and give appropriate directions to the Bar Council and authorities to hold necessary enquiry in order to ensure that only genuine law graduates are allowed to be enrolled and/or to continue on the roll in accordance with the Bar Council Rules read along with the provision of the Advocates Act.”**

Hence, as per the above judgement of the Apex Court, the maintainability of Crl.O.P is upheld confirming jurisdiction of this Court to direct the authorities to conduct enquiry and to issue appropriate orders.

55. Moreover, the Rules and procedures are handmaids of Justice as stated in paragraph 26 of the judgement of the Hon'ble Supreme Court in ***General Instruments Co. v. Union of India*** reported in ***(2008) 11 SCC 775***:

“26. It is trite that no man should suffer a wrong by technical procedure of irregularities. **The rules or procedures are the handmaids of justice and not the mistress of justice.** *Ex debito justitiae*, we must do justice to him (vide *A.R. Antulay v. R.S. Nayak*¹). However, in the present case, although we feel that the appellant has suffered on account of confusion in the nature of the licence to be issued to it but the appellant's main prayer for conversion of special imprest licence into a project import licence having been granted by the High Court, the wrong caused stands remedied to a large extent.”

56. The Apex Court in ***Baby vs. Travancore Devasvom Board and others*** reported in ***1998 (8) SCC 310*** held that the powers of the High Court under Constitution of India is always in addition to the powers of revision given under Section 103 of Kerala Land Reforms Act. Similarly, the power conferred under Article 226/227 of the Constitution of India is in addition to Section 482 Cr.P.C. That apart, in ***Jasbir Singh vs. State of Punjab*** reported in ***2006 (8) SCC 294***, the Honourable Supreme Court held that power of superintendence conferred on this Court under Article 227 of the Constitution of India over all the courts and tribunals throughout the territory of the State is both of administrative and judicial nature and it could be exercised *suo motu* also. In ***Union of India and another vs. Kriloskar Pneumatic Co.Ltd*** reported in ***1996 (4) SCC 453***, the Honourable Apex Court held that the power conferred under Article 226/227 of the Constitution of India is designed to effectuate the law. This Court is also empowered under Section 34 of the Advocates' Act, 1961 and Article 235 of the Constitution of India to pass orders. Therefore, this Court, *suomotu*, invokes

Article 226 of the Constitution of India, to give necessary directions to meet the ends of justice, considering all the issues affecting legal profession which are essential for administration of Justice.

57. A three Judges' Bench of the Hon'ble Apex Court declared in ***Shivajirao Nilangekar Patil vs. Dr. Mahes Madhar Gosavi and others*** reported in ***1987 (1) SCC 227*** in para 51 that when situation arises for providing remedies, Court should not remain as a mute spectator. Para 51 is extracted as follows:

“51. This Court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country along with or even before cleaning the physical atmosphere. The pollution in our values and standards in (*sic* is) an equally grave menace as the pollution of the environment. Where such situations cry out the courts should not and cannot remain mute and dumb.”

Extraordinary situations demand extraordinary remedies. This case makes out an extraordinary situation, where criminals are trying to hijack the judicial system to the detriment of the interest of the society. Para 50 of the judgement in ***Prithipal Singh vs. State of Punjab*** reported in ***(2012) 1 SCC 10*** is extracted as follows:

“ 50. Extraordinary situations demand extraordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass an unconventional order keeping in mind that an extraordinary fact situation requires extraordinary measures. In *B.P. Achala Anand v. S. Appi Reddy*⁴² this Court observed: (SCC p. 318, para 1)

“1. Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice.”

Thus, it is evident that while deciding the case, the court has to bear in mind the peculiar facts, if so exist, in a given case.

The extraordinary situation in this case is entry of criminal elements with communal backing and extremist background into the profession disturbing Court functioning by their high handed belligerent activities affecting justice delivery system and society as a whole. Entry of criminal elements into profession is a grave situation and the prevention of criminal elements is fundamental to preserve purity of profession and judicial proceedings. The entry has to be stopped at the college level itself. Therefore, this court has duty to give unconventional directions novel way addressing evils affecting legal profession.

58. This Court is a Constitutional Court exercising statutory power of the particular Statute as well as plenary powers conferred on it by the constitution to do away with injustice whenever and wherever is found. Once facts are brought before the Court under specific statute and jurisdiction and the said facts clearly demonstrate entry of criminal, communal and extremist elements into legal profession causing unrest in the profession affecting the very justice delivery system by browbeating judges, this Court cannot and should not shirk its responsibility due to lack of jurisdiction and power. If the party is directed to approach appropriate forum for want of jurisdiction it will lead to multiplicity of proceedings which is not good for the system, which is already facing mounting arrears of cases. Hence, this Court is duty bound to consider all the issues in toto and give required and appropriate orders. Otherwise, this Court will not go by the Oath taken by it. As a Constitutional Court, though this Court deals with petition under Section 482 of the Cr.P.C. this Court, *suomotu*, invokes Article 226 of the Constitution of India and passes directions by moulding the prayers even if such directions are not sought for. Courts should be alive to the changes in the society, otherwise, Courts' orders will be futile orders incapable of addressing the menace existing. As stated by the Hon'ble Supreme Court in ***M.C.Mehta vs. Union of India*** reported in **1987 (1) SCC 395** that law has to grow in order to satisfy the

needs of the fast changing society and the Courts have to evolve new principles and lay down new norms, this Court passes directions to address the extraordinary situation. This Court is compelled to issue certain directions to the Union Government in this case, even though this Court is aware of the well settled position of law that Courts cannot direct Legislature/Parliament to enact a law or amend the provisions of law as held by various judgements including ***Asif Hameed vs. State of Jammu & Kashmir*** reported in **1989 Supp (2) SCC 364**, ***A.M.Mathur vs. Promod Kumar Gupta*** reported in **1990(2) SCC 533**, ***S.C.Chandra vs. State of Jharkand*** reported in **2007 (8) SCC 279**, ***State of UP vs Mahindra and Mahindra Ltd.*** reported in **2011 (13) SCC 77** ***State of U.P. and others vs. Anilkumar Sharma and others*** reported in **2015 (6) SCC 716** etc.

59. Therefore, persons, who enter the legal profession should be good persons with integrity, values, honesty, rectitude and commitment to society. There is a likelihood of an Advocate becoming a Judge in future. When such an onerous responsibility is likely to be shouldered by the members of the legal fraternity, in future, it is incumbent on the Bar Council to verify the background of the candidates thoroughly. If the criminal elements are allowed to enter, then the justice delivery system will be hijacked and it will be the end of rule of law.

60. Hence, this Court passes the following directions:

1) Union of India is to consider revisiting of provisions of the Advocates Act including Section 24A of the Advocates' Act, or introduce a new Section prohibiting persons with pending cases or criminals entering into legal profession at the earliest considering continuing entry of criminals, communal and extremist elements at the earliest.

2) Bar Council of India shall direct the State Bar Councils to get antecedents verification of all law graduates compulsorily, from their native place as well as from the place of study, from the police for enrolment.

3) Bar Council of India shall direct the State Bar Councils not to enrol any law graduate with pending criminal cases except bailable cases attracting punishment upto three years and compoundable offences involving matrimonial, family and civil disputes, till the changes are brought in The Advocates' Act & Bar Council of India Rules.

4) Bar Council of India shall direct State Bar Councils

a) To grant only conditional/provisional enrolment to law graduates, who are having criminal cases involving bailable offences attracting punishment upto 3 years and compoundable offences including matrimonial, family and civil disputes and to open a separate file/register for this specific purpose which shall contain the number of the case, offences involved, name of the police station, and the Court, who shall communicate to the respective State Bar Council about the disposal of the case enclosing a certified copy of the judgement;

(b) To revoke provisional enrolment of the law graduates on conviction after issuing show notice unless the setting aside of conviction is informed to the Bar Council with a certified copy of the judgement.

(c) Bar Council of India shall direct all law institutions not to admit candidates with criminal cases except minor offences viz., offences attracting punishment upto 3 years and compoundable offences including matrimonial, family and civil disputes and on acquittal.

5) Bar Council of India shall direct the State Bar Councils not to enrol any law graduate, who had already suffered conviction in any criminal case.

6) Bar Council of India shall direct the State Bar Councils not to enrol any person, who have been dismissed or removed from service or left the services consequent to departmental/inhouse proceedings.

7) Bar Council of India shall direct all law colleges to get police verification certificates compulsorily before admitting the candidates to the law degree course.

8) Union of India shall direct all the States to send police antecedent verification certificate within three weeks from the date of receipt of the request made by respective State Bar Councils.

9) Union of India is directed to implement the recommendation of the Hon'ble Supreme court with regard to introduction of pre-enrolment training (Apprenticeship) to law graduates as per para 31 of the decision in **V.Sudeer Vs.Bar Council of India** reported in **1999 (3) SCC 176**, as the recommendation has not been considered even after 16 years of the judgement.

10) Union of India is to consider positively, within six months, to entrust the functions of the Bar Council of India to an expert body, headed by a retired Supreme Court Judge permanently or till The Advocates' Act and the Bar Council Rules are revisited, nominating Academicians, Legal Luminaries, prominent social workers, retired I.A.S Officers , police officers and Doctors as members as the electoral system followed by Bar Council failed to elect appropriate persons as members of Bar Council resulting in making the Council incapable of handling issues properly.

11) Bar Council of India shall not conduct the next Bar Council election, after expiry of the present term in 2016, without prescribing minimum qualification like 20 years standing in the Bar or a Senior counsel, who does not have any criminal case or criminal background for the candidates to contest Bar Council elections and till the verification of advocates is done as per "Bar Council of India Certificate and Place of practice (Verification) Rules 2015, by entrusting the functions to an expert body.

12) Bar Council of India shall reduce the number of seats in law colleges drastically and the number of law colleges, as the population of advocates is increasing enormously year after year.

13) Bar Council of India is to abolish three year Law Degree Course at the earliest and retain only five year Law Degree Course on par with other Professional Courses like Medicine and Engineering, to make the course as a serious one and;

14) Bar Council of India shall direct the State Bar Councils to withdraw the recognition/approval given to various Bar/Advocates Associations for the past 20 years maintaining one Court-one Bar Association except older associations.

61. Criminalisation of Bar has already started and is spreading like a wild fire sullyng, degrading and destroying the image and prestige of the noble profession. As a member of the legal fraternity and the higher judiciary, for the past 30 years, this Court has been witnessing steep fall in the standards, steady invasion of the profession by criminal, communal and extremist elements, by purchasing law degrees without any basic qualifications and without attendance from Letter Pad Law Colleges and their attempt to disturb normal Court proceedings by boycotts, exhibition of unruly high handed behaviour inside and outside Court and committing offences and covering up by advocate's label as explained in detail. It is very unfortunate that the so-called Bar leaders and many of the Bar Council members are said to be associated with these elements. If this menace is not prevented and curtailed, the day is not too far when Courts will be conducted as per the wishes of criminal elements and communal leaders ending the rule of law. One needs to take a look at the grim and serious state of the legal profession practically. As a member of the legal profession, this Court hopes that the issue of criminalisation of the profession is seriously taken note of by the Hon'ble Supreme Court and the Central Government and appropriate action be taken to redeem the profession from the clutches of persons with criminal background, communal elements with muscle power, persons with extremist ideology otherwise **"NEETHI DEVATHAI"** (Goddess of Justice) will not forgive all the stake holders of justice delivery system.

62. The petition is kept pending for passing further directions.

63. Call the matter on 28.10.2015.

6.10.2015

Internet:Yes/No
Index :Yes/No
vk

To

- 1.The Chairman,
Bar Council of India,
New Delhi.
- 2.The Chairman and Secretary
Bar Council of Tamil Nadu and Pondicherry
High Court Building,
Chennai-104.
- 3.The Director General of Police,
O/o.Director General of Police,
Kamarajar Salai,
Chennai-4.
- 4.The Inspector General of Police,
South Zone,
Madurai.
- 5.The Inspector General of Police,
North Zone,
Chennai.
- 6.The Inspector General of Police
West Zone, Coimbatore.
- 7.The Inspector General of Police, Central Zone,
Trichy.
- 8.Union of India,
Rep. by its Secretary,
Ministry of Law and Justice,
New Delhi.
- 9.Law Commission of India,
New Delhi.
- 10.State Rep. by
Law Secretary,
Saint George Fort,
Chennai-600 009.
- 11.The Registrar General,
High Court of Madras,
Chennai-600 104.
RR 8 to 11 are suo-motu impleaded as
per the order of this Hon'ble Court
dated 11.8.2014 in
Crl.O.P.(MD)No.14573/2014.
- 12.Central Bureau of Investigation,
Rep. by its Director,
New Delhi .
- 13.The Chairman,
Union Public Service Commission,New Delhi.

LIVELA Win

N.KIRUBAKARAN,J.

vk

Crl.O.P.MD.No.14573 of 2014

6.10.2015

LIVELA Win