INDIAN BAR ASSOCIATION

(THE ADVOCATES' ASSOCIATION OF INDIA)

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22.10.2019

Case No. Before Hon,ble President of India: PRSEC/E/2019/20378

To,

1. **Hon'ble President of India**
2. **Hon'ble Chief Justice of India**
3. **Hon'ble Prime Minister of India**
4. **Hon'ble Home Minister of India**
5. **Commissioner of Police, Delhi**
6. **Director, C.B.I, Jawaharlal Nehru Stadium Marg/New Delhi 110003.**
7. **Enforcement Directorate, Khan Market/New Delhi, 110003.**

Sub:- **1. Investigation in to the serious conspiracy of Mr. M. A. Rashid editor 'Live-Law' Milind Sathe, of Bombay Bar Association, P. Chidambaram, Adv. Fali Nriman and other co-conspirators to excite disaffection, hatred, contempt, disloyalty, feelings of enemity towards our Indian Army, Indian Judiciary and Indian Government with ulterior motive and malafide intention to serve their anti-national agenda and thereby committing and abating the people to do offences under section 124-A R/W 120(B) & 34 of IPC.**

2. Direction for investigation of unholy nexus between these accused with other anti-national elements and terrorist funding organizations by forensic investigation of their Bank accounts, moveable & immoveable assets, mobile numbers, whatapps messages, emails and also conducting Naro Analysis,

Brain Mapping & i. e. Detector Tests.

Ref:- Earlier complaints against Adv. Fali Nariman, Adv. Milind Sathe ,Adv. P. Chidambaram.

Sirs,

1. By way of this representation, I am giving sound proofs of anti-national activities of high profile accused **'The Urban Naxals'** commonly known as the '**Tukde Tukde Gang'** with request of immediate action against them.
2. The relevant charges are as capulized as under;
3. That, petitioner believes that Hon. Supreme Court Collegium considering all aspects in its collective wisdom recommended the name of Justice Akil Kureshi as CJ of Tripura High Court and in the said back-drop the petitioner coming across irresponsible nay motivated news-items, interviews, resolutions by the respondents in scandalizing the Hon. SC Collegium members or attempting to lower their authority–*interalia* stated hereunder:
4. Live Law Publication dt/- 22nd Sept, 2019 authored by Nilashish Ray Chaudhary under the editorship of MA Rashid annexed as **Exh-A**. The title of the news item - ***'Justice Kureshi Saga: Death Knell for Independence of Judiciary'.*** The petitioner believes that over the course of landmark judgments viz. **S. P. Gupta v. Union of India – 1981, Supreme Court Advocates-on Record Association vs Union of India** & **In re Special Reference 1 of 1998**, the court evolved the principle of **judicial independence** to mean that no other branch of the state - including the legislature and the executive - would have any say in the appointment of judges. Hence, to term the recommendation of the collegium regarding Justice Akil Kureshi's appointmentas CJ of Tripura High Court titled as -***Death Knell for Independence of Judiciary*** prima-facie not only is an attempt to ascribe motives to the Hon'ble Supreme Court Collegium's recommendations, but also instigates questions of credibility and ability

of the Hon'ble members of the collegium to take a fair, **INDEPENDENT** & considered decision – an act prima-facie scandalizing and tending to lower the dignity of both Hon'ble Supreme Court Collegium & the Hon'ble Judges who are members of the Collegium; R/w the title of the news-item, the overall tenor of the article under Exh-A is loathsome contumacious attempt of meddling with the Collegium's recommendation excerpted as follows: '***This unprecedented deviation raises serious concerns about how unrelenting the government could have been in its opposition to the appointment and whether the Collegium is willing to accede to the Government's stand, if need be. Another serious question that arose was whether the Collegium chose to avoid a constitutional crisis by modifying its recommendation, since it apprehended non-compliance by the centre in case of reaffirmation***.' Accused Editor M. A. Rashid without disclosing the evidences, conjectured and surmised nay sowed baseless doubts about Collegium's independence to the point of even MA Rashid & Nilashish Ray Chaudhary deciding on the **apprehensions** being experienced by the Hon. Collegium members –

Though the Collegium never stated of any apprehension perceived or otherwise rather was categorical that based on communications from the government and accompanying material etc...it modified its earlier recommendation concerning Justice Kureshi as Chief Justice of MP HC to Chief Justice of Tripura HC –

5. To the Complainant's understanding there is nothing deviant giving rise to such a callous remark as to lack of independence of the judiciary in modifying its recommendation – more fully the Collegium didn't alter its recommendation baselessly but made it crystal transparent, that it's modification was based on communications from the government and

accompanying material – This justified modification of the Collegium, but for ill-motivated concern of M. A. Rashid & Nilashish Ray Chaudhary to disgrace the Hon. Collegium Members termed it as - ***Death Knell for Independence of Judiciary*– NOTHING CAN BE MORE CONTEMPTUOUS…**Perusing the news-item, prima-facie it appears the same is designed to place not only Hon'ble Tripura High Court, but also some other High Courts from the North-East region of the country on a lower pedestal vis-à-vis other High Courts and recommendation of a judges appointment in such courts puts them in '**JEOPARDY'**. Pertinent to extract further relevant portions of the said scandalous news item -***'Interestingly, this is not the first time that J Kureshi's appointment as Chief Justice of a High Court has been jeopardized'*** – terming the recommendation of Justice Akil Kureshi as the **CHIEF JUSTICE OF TRIPURA HIGH COURT** if termed as **jeopardy** brings out the manifest ill-motivated prejudice of M. A. Rashid & Nilashish Ray Chaudhary harbors against The Hon'ble Tripura High Court or for that matter such other High Courts in North-East region. It is most unfortunate of M. A. Rashid & Nilashish Ray Chaudhary, in their mis-directed attempt to bring disrepute to the Hon'ble Supreme Court members, made a very instigating comment to castigate nay scandalize the Hon'ble members of the SC, alluding them of *in-seriatim* jeopardizing appointment of Justice Akil Kureshi as Chief Justice of a particular High Court. The petitioner fails to understand as to how INDEPENDENCE OF JUDICIARY HAS BEEN DEATH KNELLED in passing the resolution of Sept 5th, 2019 by the Hon'ble Collegium modifying its earlier recommendation of May 10th, 2019. The transparency of the Collegium is in outright manifest - *A decision which was taken after taking into account 2 communications along with accompanying material from the Govt. dt/- 23rd Aug' 2019 & 27th Aug' 2019*.It is a matter of fact that Judicial appointments are made under the

existing laid out Procedure wherein the Collegium recommends a name to the Centre, **which either approves it or sends it back to the Collegium, with written reasons for reconsideration**, and the Collegium reconsidered and modified its earlier resolution – so except for an attempt to browbeat or scandalize the Hon. Collegium members, M. A. Rashid & Nilashish Ray Chaudhary had none other intent.

6. **The petitioner firmly believe that the Hon'ble SC Collegium in its collective wisdom** decided upon to recommend Justice Kureshi's name as Chief Justice of Tripura High Court, a belief which gets reinforced by the observation of the Hon'ble Supreme Court – '***Interference in administration of justice does not augur well for the institution'***. The petitioner is none to opine the professional competency of Justice Kureshi, but certainly has come across a complaint to the Hon. President of India, bearing registration No. PRSEC/E/2019 dt/ 26th July, 2019 which brings out instances of pin-pointed precision of Justice Akil Kureshi's competency/injudicious conduct and the petitioner has evidences that M. A. Rashid &/or Nilashish Ray Chaudhary are aware of the said complaint; M. A. Rashid & Nilashish Ray Chaudhary irresponsibility nay predilection to run down the Collegium and the government is corroborative of the fact, that M. A. Rashid &/or Nilashish Ray Chaudhary were in full know of the nefarious attempt of Sr. Advocate Yatin Oza, of the colorful dexterous PUBLIC INTEREST LITIGATION arraying battery of top-notch lawyers, to brow beat the collegium in reiterating/seeking implementation of its earlier recommendation, essentially seeking elevation of Justice Akil Kureshi as CJ of MP High Court.

7. The petitioner fails to understand as the venerable lawyers who possesses the capability to mould the best of minds but petitioner wonders as to how a third party writ petition in service matters is maintainable; the writ-petition itself is a deplorable and sensationalizing attempt to lower

the authority of Hon'ble Supreme Court and the faith of Indian Public Opinion in Judiciary at large, which M. A. Rashid & Nilashish Ray Chaudhary as front-line legal news portal was duty bound to fairly report and more fully when the M. A. Rashid was aware of the complaint against Justice Akil Kureshi.

8. The petitioner now refers to some sarcastic insinuations on the part of the Respondent M. A. Rashid, Nilashish Ray Chaudhary in their article under Exh – A, an attempt to act as a PR organization of Justice Kureshi; the article reads ***'J Kureshi is the senior-most judge of the Gujarat High Court, though currently on transfer in Bombay High Court on transfer, <u>where he is very popular and well-respected amongst members of the Bar</u>***. The petitioner begs to know - what sort of survey was conducted by M. A. Rashid & Nilashish Ray Chaudhary or whether any popularity contest of judges of Bombay High Court was conducted by them which certified Justice Kureshi as very popular & well-respected, though there stands a complaint against him with corroborating evidences and rulings of various Hon'ble Courts; *so but for an ill-motive to brow beat the Hon. SC Collegium it had no motive in ascribing popularity ratings to Justice Akil Kureshi, obliquely insinuates other Hon'ble judges of Bombay High Court as not so popular or not so well-respected, which apart from not only far from truth, but also a subtle affront to other Hon'ble members of the Judiciary.*

9. M. A. Rashid & Nilashish Ray Chaudhary has left no stone unturned to lower the dignity of other Hon'ble High Courts. The relevant extract of the news is –***The other concern one must raise is in light of recent events concerning the Madras High Court Chief Justice, J VK Tahilramani, whose resignation was accepted by the President on September 20. <u>Since J Kureshi has been recommended for the Tripura High Court and J Tahilramani</u>***

was to be transferred to Meghalaya, is it safe to assume that judges who are out of favour will be sent to states where courts are smaller, and matters fewer?

10. M. A. Rashid & Nilashish Ray Chaudhary continues its diatribe of demeaning the judicial appointment system, rather indulging contumacious allegations to run down the collective wisdom of the Hon. Collegium Members of their recommending Justice Akil Kureshi as CJ of Tripura HC – M. A. Rashid & Nilashish Ray Chaudhary's selective preference of reporting and lowering the authority of Hon'ble Tripura HC gets further exposed of the fact that Justice Ajay Rastogi prior to his being appointed as Judge of Supreme Court was the CJ of Tripura High Court, the court which brazenly M. A. Rashid & Nilashish Ray Chaudhary tried to subtly and obliquely malign-, to the point of even getting incendiary - The news-item reads – '***If a judge is not considered fit, based on merit, to discharge the duties of the Chief Justice of a High Court, should it matter whether that court is larger or smaller, whether it has more or less matters to deal with? If a judge lacks merit, according to the Government or the Collegium, is it not counter-productive to send them to head any court, regardless of the state? So if the Government has sent the Collegium two communications, which presumably highlight the reasons behind their disinclination to appoint J Kureshi as the CJ of the MP High Court, which presumably would to be based on merit, why is the same judge deemed fit to be the CJ of Tripura HC? Surely the competence of a judge would be the reason behind their appointment, but if a judge is deemed to not be competent enough to hold the office, surely they can't be thought of as competent enough for the same office in another part of the country. Or is it to be assumed that a judge who is not fit to preside over a HC in***

Madhya Pradesh, Gujarat or Tamil Nadu is a good fit to administer justice in Tripura or Meghalaya?' It is further argued that M. A. Rashid & Nilashish Ray Chaudhary are well-aware that Gujarat High Court Bar Association Writ Petition is subjudice before the Hon'ble Supreme Court & Hon'ble members of the same Bench adjudicating the petition are also member of Hon'ble Collegium. Thus, the entire news item under Exh- A is mischievous, motivated to browbeat the judges, more particularly the CJI of India, Sh. Ranjan Gogoi. There are instances of Justice Kureshi apparently acquiescing scandalous remarks concerning Hon'ble Justice Ranjan Gogoi's personal wealth, constituting part of Contempt Petition – 230/19in the Civil Appellate Jurisdiction of Hon'ble Bombay High Court.

11. The scandalous & out-of-context naming & shaming Hon'ble CJI Justice Ranjan Gogoiis not an isolated incident but a continuum of concerted efforts viz. calling the members of the collegium as '***IMPOTENT'*** by Sr. Advocate Yatin Oza ***vide*** Youtube link - https://www.youtube.com/watch?v=kVk36xAXXF4&. The temerity of Sr. Advocate Yatin Oza in asking the CJI to disclose income of his son & son-in-law is outrageous to assault the independence of judiciary https://www.business-standard.com/article/news-ani/disclose-incomes-of-your-son-son-in-law-president-gujarat-bar-association-to-cji-119042300083_1.html). The petitioner feels that the Respondent from M. A. Rashid, Nilashish Ray Chaudhary & Sr. Advocate Yatin Oza are acting in tandem to scandalize the authority & dignity of Hon'ble SC, thus ought to be prosecuted U/s 12 of Contempt of Courts Act.

12. As stated in the earlier para(s), the petitioner holds that no Writ petition by a third party lies in respect of service matters which was correctly as opined by the Hon'ble Former Chief Justice of Bombay High

Court Mohit Shah (reference vide complaint against Justice Akil Kureshi complaint No: PRSEC/E/2019/14516) – ***that apart from the aggrieved none else can file a writ petition***, which again substantiates the charges against Sr. Advocate Yatin Oza, that misusing his official position, a vexatious & frivolous writ-petition has been instituted by him to browbeat the Hon. SC Collegium; More shocking though, that Sr. Advocate like Fali Nariman, Darius Khambatta & such other such Sr. Advocates appeared, it is important to know as to how the Respondent(s) have organized the funding of such Advocates – since each of their per appearance fees can take away the last shirt of a commoner and a battery of them appearing in tandem - some of these advocates are outright defenders of the mass killers like Warren Anderson, known Anti-Nationals, TUKDE-TUKDE gang &other terrorist-sympathisers and strangely all of them ganged up thru frivolity to force the collegium in elevating Justice Akil Kureshi as CJ of Bombay HC – it is a known fact that Sr. Advocate Yatin Oza was a lawyer to Shri. Amit Shah and that he defended his case, since he believed Sh. Amit Shah deserving exculpation so at someone's behest or personal animosity Sr. Advocate Yatin Oza is shadow boxing and scandalizing the Hon. Judges highest court of India- rowdily calling them as impotents or alluding them as corrupt in asking bank details of their relatives – what more remains to scandalize the venerable CJI. The conduct of the respondent(s) and the punishment ought to be inflicted onto them, the petitioner feels is to be weighed of a recent order by the Bench of Hon'ble Justices R F Nariman & Vineet Saran where Advocate Mathews Nedumpara was convicted of brow-beating the judges for uttering the name of Sr. Adv. Fali Nariman to buttress his point concerning designation of Sr. Advocates. It is in this back-drop, Sr. Advocate Yatin Oza castigating the Supreme Court collegium as impotents and furthermore, M. A. Rashid, & Nilashish Ray Chaudhary publishing an

outright contumacious news item under Exh- A. It is pertinent to examine as to who are the vested elements in spreading disinformation and contumacious remarks about Hon'ble Supreme Court judges comprising the collegium.

13. Bombay Bar Association – majors of whom are famous for flexing themselves with the Hon. Judges – and Sr. Advocate Milind Sathe, in a recent past before some of the advocates was brazen to state –*Ye bambai key ke judge humarey talve pey jittey hai aur judge kare putation uskey order sey nahi hota who hum canteen mein decide kartey… Dekhanahi Times of India – Kathawala ki news kya chhape. Judge kaun kahan posting lega ye koi Chief Justice nahi karta yeh hum decide kartey, darjano sey kathwala* (Justice SJ Kathawala) *ke transfer ki arji lagi, nau saal sey humney usko bambai ki property ke cases mein bittha rakhey, majal hai koi Chief Justice ki, usko bambai sey bahar transfer karey…)* [**The judges of Bombay High Court are at our largesse. And the reputation of a judge is not decided by his orders but are decided by us in the canteen, haven't you seen the news item praising kathawala we got published in Times of India, there were dozens of representations to transfer Justice Kathawala, but for around nine years we continued to have his same assignment – No Chief Justice dares to transfer him out of Bombay…**] It is in this background the contemptuous UNANIMOUS RESOLUTION PASSED AT THE EOGM OF BOMBAY BAR ASSOCIATION ON THURSDAY, 26TH SEPTEMBER 2019 AT 2.30 PM published on the same day by M. A. Rashid at 7 PM, the nexus with respondent-1 is thus too glaring to be ignored – The resolution reads:

WHEREAS the Collegium by its Resolution dated 10th May 2019 recommended the appointment of Justice A. A. Kureshi as the Chief Justice of the Madhya Pradesh High Court;

WHEREAS the Government failed to act upon the Collegium's recommendation for a period of four months;

The Bombay Bar Association therefore resolves as follows:

RESOLVED THAT:

This Association expresses serious concerns and **strongly disapproves the Colleguim's manner of decision-making pertaining to the elevation of Justice A. A. Kureshi as Chief Justice of the Tripura High Court** and the modification of earlier recommendation **at the behest of the Government of India.**

This Association believes that the modification of the Collegium's **recommendation in the case of Justice A. A. Kureshi, at the behest of the Government undermines the independence of the judiciary and would have an adverse effect on the functioning of the judiciary as a whole and the ability of judges to discharge their constitutional functions without fear or favour**. This Association views with grave apprehension the opaque procedure adopted by the Collegium relating to the elevation of Justice A. A. Kureshi as Chief Justice. This Association believes that the disclosure of reasons behind the Collegium's recommendations (and any modifications thereof) is necessary, and would subserve the interests of the judiciary and the administration of justice.

This Association further strongly disapproves the manner in which the Government has interfered with the Collegium's decision-making in respect of the appointment of Justice A. A. Kureshi in particular and appointments, elevation or transfer of Judges in general thereby threatening the independence of the judiciary.

The resolution perse is discerningly contemptuous of the authority of the collegiums of the Hon. Supreme Court -

14. The Hon. Collegium explicitly stated that it modified its recommendation based on the communication of the government and the accompanying material – except for the emboldened bragging attitude of M. A. Rashid, they deciding the reputation of judges not by their decision but by their canteen gossip, else nothing explains the contemptuous statements in disparaging the Collegium –

This Association expresses serious concerns and ***strongly disapproves the Colleguim's manner of decision-making pertaining to the elevation of Justice A. A. Kureshi as Chief Justice of the Tripura High Court*** *and the modification of earlier recommendation* ***at the behest of the Government of India.***

15. Except for spite and malice, what record Sr. Advocate Milind Sathe, Sr. Advocate Nitin G Thakker & Advocate Birendra Saraf (office bearers of Bombay Bar Association) had in their possession to put a contemptuous statement in public domain that the decision to recommend Justice Kureshi as CJ of Tripura High Court is at the behest of Government of India.

16. Furthermore without even caring to bother the impact of their contemptuous publication of resolution, apart from intending to brow beat the Hon. Collegium members in tending to undermine the authority of Supreme Court, the wording of resolution is ex-facie contemptuous -

This Association believes that the modification of the Collegium's ***recommendation in the case of Justice A. A. Kureshi, at the behest of the Government undermines the independence of the judiciary and would have an adverse effect on the functioning of the judiciary as a whole and the ability of judges to discharge their constitutional functions without fear or favour****.*

17. CHARGE AGAINST ACCUSED M. A. RASHID OF 'LIVE LAW'

17.1 #CHARGE 1# MISUSE OF LIVE LAW TO CREATE PREJUDICE AGAINST GOVERNMENT, POLICE, ARMY AND TO HELP THE ACCUSED:-

In a sedition case at JNU Hon'ble Delhi High Court had made it clear that, it is a gross sedition to raise slogan against Indian Army & in favor of Pakistan.**[Kaniaya Kumar Vs. Stat e2016 SCC OnLine Del 1362]**

Thereafter, Delhi Police filed Charge-Sheet in the Court. Then accused Mr. M.A. Rashid of Live Law, with an ulterior motive to create prejudice in the mind of Ld. Judge hearing the case and also in the mind of witnesses and Indian Army had published an article on 17 January, 2019 titled as;

"JNU SEDITION ROW: WHY CHARGES AGAINST KANHAIYA AND OTHERS WILL NOT STAND"

The said article was by suppression of and against the finding of Hon'ble Delhi High Court in the same matter **2016 SCC OnLine Del 1362.** Publishing such article is a gross Contempt of Court as it is having tendency prejudice the pending trial.

In **Re: P.C.Sen (1969) 2 SCR 649** it is ruled as under;

*"**15.** In The **William Thomas Shipping Co., in re. H. W. Dhillon & Sons Ltd. v.The Company, In re. Sir Robert Thomas and Ors., [1930] 2 Ch. 368** it was observed that, the publication of injurious misrepresentations concerning parties to proceedings in relation to those proceedings may amount to contempt of Court, because it may cause those parties to discontinue or to compromise, and because it may deter persons with goods causes of action from coming to the Court, and was thus likely to affect the course of justice. But Maugham, J. observed :*

"There is an atmosphere in which a common law judge approaches the question of contempt somewhat different from that in which a judge who sits in this (Chancery) Division has to approach it. The common law judge is mainly thinking of the effect of the alleged contempt on the mind of the jury and also, I think, he has to consider the effect or the

possible effect of the alleged contempt in preventing witnesses from coming forward to give evidence. In these days, at any rate, a Judge who sits in this Division is not in least likely to be prejudiced by statements published in the press as to the result of cases which are coming before him. He has to determine the case on the evidence, of course, and with regard to the principles of law as he understands them; and the view of a newspaper, however intelligible conducted it may be, cannot possibly affect his mind. Accordingly, a Judge in the Chancery Division starts on the footing that only in the rarest possible case is it likely that the publication by a newspaper of such a statement as I have here to consider will affect the course of justice in the sense of influencing, altering or modifying the judgment or judgments which the Court will ultimately have to deliver;"

But our Courts, are Courts, which administer both law and equity. Assuming that a Judge holding a trial is not likely to be influenced by comments in newspapers or by other media of mass communication may be ruled out--though it would be difficult to be dogmatic on that matter also--the Court is entitled and is indeed bound to consider, especially in our country where personal conduct is largely influenced by opinion of the members of the caste, community, occupation or profession to which he belongs, whether comments holding up a party to public ridicule, or which prejudices society against him may not dissuade him from prosecuting his proceeding or compel him to compromise it on terms unfavourable to himself. That is a real danger which must be guarded against : the Court is not in initiating proceedings for contempt for abusing a party to a litigation, merely concerned with the impression on the Judge's mind or even on the minds of witnesses for a litigant, it is also concerned with the probable effect on the conduct of the litigant and persons having similar claims.

16.** In **Regina v. Duffey and Ors. Ex Parte Nash, [1960] 2 Q.B.D. 188** the Court of Appeal in England had to consider the question whether **comments made upon a person after his conviction and before his appeal was heard may be regarded as contempt of Court.

Where a proceeding which is tried on evidence in the Court of First Instance, or in the Court of Appeal on questions of fact as well as of

law, it would be an over-statement to assert that a Judge may not be influenced even "unconsciously" by what he has read in newspapers.

17. *No distinction is, in our judgment, warranted that comment on a pending case or abuse of a party may amount to contempt when the case is triable with the aid of a jury, and not when it is triable by a Judge or Judges.*

18. *The speech was ex facie calculated to interfere with the administration of justice. In the circumstances the order of Banerjee, J., observing that the Chief Minister had acted improperly and expressing disapproval of the action does not call for any interference by this Court."*

17.2. Prejudicing the public in favour of or against a party in pending case by writing an article in the Press is contempt. The reason is that such articles tend to prejudice the mind of the court, to deter witness from giving evidence, to induce a party to abandon his defence and to possibly affect the decision of the court, though as a rule courts are not affected. Such writings tend to prejudice the public opinion by incubating the public with definite opinion about the matter. The result may be that public confidence in court might be lost if the result was otherwise than the opinion formed. In the instant case of **Mankad Probodh Chandra v. Sha Panlal Nanchand, AIR 1954 Kutch 2,** a police officer was searched by the anti-corruption police on suspicion of bribery against the officer. Meantime a newspaper published a series of articles under the guise of publishing information, suggesting that the officer had accepted the bribe, that the trap was cent per cent successful, that the acceptance of the bribe of Rs. 100 had been ill-ominous to others and hence would be so in the case of that the officer also, that the officer had become nervous, he had no other hope of escape except invoke the aid of God, that attempts were being made by the friends of the officer to tamper with the witnesses and that at the instance of some outside agency the Court had advanced the date of the hearing of the case against the officer.

17.3. This kind of news conveying was held as flagrant contempt, scandalizing the Court and prejudicing the public mind against the office. The editor, the printer and the publisher are responsible for such publication and cannot escape the consequences by pleading that it was factual news as they bona fide got it or that they had no intention to

offend the Court proceedings; intention does not come in at all in such matters. It is the result or the consequence of such publication that counts. There was no doubt that it created disastrous results in interfering with the course of justice.

17.4. The law of contempt throws a ring of protection around the entire course of litigation. Party, witness, Judge or counsel are all integral parts of that process. Anything which tends to impair the legitimate freedom of any these cannot but result in obstructing the course of justice. In **Gaini Ram Vs. Ramnath Dutt, AIR 1955 Raj 123 (DB),** a superior official gave a charge-sheet to his subordinate who was figuring as a witness in a pending case. His evidence was not yet over. The departmental charge-sheet asked him to explain certain statements made by him as a witness. It was held that the action of the superior official was clear interference with the course of justice. He was hampering evidence being given, as he put the witness under departmental censure for the lacuna in the evidence. The Court is thereby deprived of Valuable testimony being given without fear or favour.

17.5. A person can convicted of Contempt of Court for interfering with the course of justice if it has shown:

> ***a)*** *That, something has been published which is either clearly intended or at least is calculated to prejudice a trial which is pending;*
>
> ***b)*** *That, the offending article was published with the knowledge of the pending cause or with the knowledge that the cause was imminent; and*
>
> ***c)*** *That, the matter published tended substantially to interefere with the due course of justice or was calculated to create prejudice in the public mind.*

It has to be borne in mind that an offending act, though not influencing the Judge's mind, may affect the conduct of parties to the proceeding which is likely to affect the course of true justice **[Awadh Narain Singh Vs. Jwa1a Prasad, AIR 1956 Pat 321 (03)].**

17.6. <u>MEDIA TRIAL</u>: Hon'ble Supreme Court in MP Lohiya's case 2005 Cri. LJ. 1416. Specifically observed that when the matter is subjudice then there could be no media trial. This is contempt of court and also against the constitutional mandate. Hon'ble High Court in the case of **<u>D.N. Prasad Vs. Principal Secretary to the State 2005 Cri. L. J. 1901</u>** Specifically prohibited the media to take interview of the accused.

2) Selective Reporting in **"Live-Law"** against Supreme Court guidelines:-

Shri. M. A. Rashid in 'Live Law' only publishes the article against government such as;

i) *JUSTICE KURESHI SUGA : DEATH KNELL FOR INDEPENDENCE OF JUDICIARY* ***[DT:- 22ND SEPTEMBER,2019]***

ii) *WHY THE GOVERNMENT'S MOVE ON ARTICLE 370 IS UNCONSTITUTIONAL* ***[DT.6TH AUGUST , 2019]***

iii) *RE- WRITING ARTICLE 370: THE LEGAL TEST AHEAD* ***[DT.8TH AUGUST , 2019]***

iv) *THE EFFECT OF ABROGATING ARTICLE 370, WILL IT INCREASE OR DECRESE THE J&K AUTONOMY* ***[DT.4TH AUGUST , 2019]***

v) *JNU SEDITION ROW: WHY CHARGES AGAINST KANHAIYA AND OTHERS WILL NOT STAND* **[Dt. 17th January,2019**]

17.7. Accused Mr. M. A. Rashid never published any article appreciating the government, police, Indian Army, Judiciary or any state agencies. This ex-facie shows the malafides and ulterior motives of Shri. M.A. Rashid and his portal 'Live-Law'. It needs investigation about his connection with terrorist organization.

17.8. The unholy nexus between Adv. Milind Sathe of Bombay Bar Association & Shri. M. A. Rashid is ex-facie clear more particularly from 2 instances related with the Bombay Bar Association & Adv. Nilesh C. Ojha , Adv. Mathews Nedumpara.

"Live- Law" published an article to support Bombay Bar Association in Cri. Contempt petition No. 03 of 2017 when Adv. Nilesh Ojha sent notice, the said "Live law" removed that article.

17.9. Secondly, when Advocate Mathews Nedumpara was declared guilty

in **SMCP No. 01 of 2019** and it was welcomed by BBA the "Live-Law" published an article. But when Supreme Court vide order dated 2nd September, 2019 discharged Advocate Mathews Nedumpara in connected matter observing that, the allegations of BBA & BILS are baseless, the "Live Law" did not published the said news. This is ex-facie proof of conspiracy between Adv. Milind Sathe of BBA & M.A. Rashid of Live Law. It is also against the rules of 'Press – Council of India' mandated by Hon'ble Supreme Court .

17.10. The law of conspiracy under section 120 (B) of I.P.C. is made clear in recent judgment in the case of **Raman Lal - Vs - State 2001 Cr.L.J. 800** where it is rule as under.

"Conspiracy – I.P.C. Sec. 120 (B) – Apex court made it clear that an inference of conspiracy has to be drawn on the basis of circumstantial evidence only because it becomes difficult to get direct evidence on such issue – The offence can only be proved largely from the inference drawn from acts or illegal ommission committed by them in furtherance of a common design – Once such a conspiracy is proved, act of one conspirator becomes the act of the others – A Co-conspirator who joins subsequently and commits overt acts in furtherance of the conspiracy must also be held liable – Proceeding against accused cannot be quashed."

17.11. Hon'ble Bombay High Court in the case of **CBI Vs. Bhupendra Champaklal Dalal 2019 SCC OnLine Bom 140** it is ruled as under;

"CHARGE FOR THE OFFENCE OF CRIMINAL BREACH OF TRUST :-

Hon'ble Apex Court in the case of ***Ram Narain Poply Vs. Central Bureau of Investigation, AIR 2003 SC 2748,*** *wherein the Hon'ble Apex Court has, at length, dealt with the charge of criminal conspiracy, in the backdrop of the similar allegations, in a case arising out of the decision of this Court in the matter of Harshad Mehta and others. While dealing with the essential ingredients of the offence of criminal conspiracy, punishable u/s. 120 B IPC, the* ***Hon'ble Court was, in paragraph No.349 of its Judgment, pleased to hold that, "349. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion***

in an elevated place open to public view. *Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference."*

[Emphasis Supplied]

177. This Court can also place reliance on another landmark decision of the Hon'ble Apex Court in the case of State of Maharashtra Vs. Som Nath Thapa, (1996) 4 SCC 659, wherein the Hon'ble Apex Court was pleased to observe as follows :-

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use." [See State of Kerala v. P. Sugathan, (2000) 8 SCC 203, SCC p. 212, para 14]"." [Emphasis Supplied]

178. While dealing with the offence of criminal conspiracy in respect of the financial frauds, the Hon'ble Apex Court in the case of Ram Narain Poply (supra), in paragraph No.344, was pleased to observe that,

"344. ..... The law making conspiracy a crime, is designed to curb immoderate power to do mischief, which is gained by a combination of the means. The encouragement

and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design."

[Emphasis Supplied]

179. In the context of Section 10 of the Indian Evidence Act, it was held by the Hon'ble Apex Court, in paragraph No.348, that, the expression "in furtherance to their common intention" in Section 10 is very comprehensive and appears to have been designedly used to give it a wider scope than the words "in furtherance of" used in the English Law : with the result anything said, done or written by co- conspirator after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is a relevant fact only.

186. The Hon'ble Apex Court has further quoted with approval in paragraph No.101, the observations made in the case of State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru, (2005) 11 SCC 600, wherein it was held that, "The cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances."

17.12. That, the `**Press Council of India's guidelines'** made mandatory by Hon'ble Supreme Court & Hon'ble High Court are as under;

18. SERIOUS CRIMINAL OFFENCES COMMITTED BY ADVOCATE MILIND SATHE

18.1. # CHARGE 1 # GROSS PROFESSIONAL MISCONDUCT :-

In PIL No. 28 of 2017 **Kamlakar Shinoy Vs. MHADA**, the said Adv. Milind Sathe appeared for MHADA to submit that, MHADA is protecting rights of State Government from builders. Surprising part was that in a connected matter he had earlier represented Builder against MHADA in **Writ Petition No. 2646 of 2014** and **Writ Petition No. 639 of 2011**.

Division bench of Hon'ble Bombay High Court had taken a note that, his submission was an attempt to save accused thereby meaning that not to protect the rights of the State.

This is a Gross professional misconduct on the part of Advocate Milind Sathe as he is barred to appear for MHADA as he earlier appeared for builder against MHADA. It is also an offence under section 409 of IPC about misappropriation of public funds to appoint such lawyer.

Section 409 of IPC reads as under;

409. Criminal breach of trust by public servant, or by banker, merchant or agent.—*Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment* for life], or with imprisonment of either description *for a term which may extend to ten years, and shall also be liable to fine.*

18.2. Hon'ble Bombay High Court in the case of **Prerna Vs. State 2002 ALL MR (Cri.) 2400** it is ruled as under;

"37. Advocates Act (1961) , Ss. 30,35 – Advocate appearing for a pimp or brothel keeper – Should not appear in the same case for the victims rescued from brothels. An advocate is barred from appearing for opposite party – Matter forwarded to Bar Council."

18.3. In **State Vs. Lalit Mohan Nanda AIR 1961 Ori 1** it is ruled as under;

"Advocate cannot appear for opposite party - It is well settled that counsel ought not to appear for the clients whose interests may conflict. Thus it is not the actual conflict but the possibility or likelihood of conflict of interest with his former client, which matters; and such possibility is sufficient consideration which should prevail with counsel not to appear for the opposite party.

12. So, when an Advocate has reason to believe that his

appearance for the opposite party may be prejudicial to his former client in the later litigation, as in the present case, it is unconscionable to appear for the opposite party in such litigation. In such matters it is not the actual prejudice which should decide the conduct of the Advocate. It is the tendency to prejudice his former client which is sufficient.

5. It will be sufficient to observe that neither the learned District Judge, to whom the reference was made for enquiry and report, nor the Bar Council considered the matter in the light of the provisions of the rules applicable to this Court, made under Section 15(a) of the Indian Bar Councils. Act relating to professional conduct of Advocates. What apparently weighed with them was that they found that there was no actual prejudice or any loss caused to Pareswar by reason of the appearance of Mr. Nanda for the opposite party Nilagiri. They both over-looked the clear provisions of the rules relating to professional conduct made under the Bar Councils Act. It is on this ground alone that the findings of both the learned District Judge and the Bar Council cannot be relied upon for decision of the case.

18.4. # CHARGE 2 # REPRESENTING A CASE WHERE HE HIMSELF IS A DE- FACTO PETITIONER:-

In Criminal Contempt Petition No. 03 of 2017 **"Bombay Bar Association Vs. Advocate Nilesh C. Ojha"** the said Advocate Milind Sathe himself was President of Bombay Bar Association (BBA) and who passed the resolution to file said petition.

But in Court hearing he represented the case of Petitioner as on advocate which isbarred by "Bar Council of India Rules". This objection by Respected Advocate Nilesh Ojha was taken note by Hon'ble Bombay High Court in judgment dated 22 February, 2017 **Bombay Bar Association Vs. Advocate Nilesh Ojha 2017 SCC OnLine Bom 4553.** It is observed as under;

*"**3.** The first Respondent appearing in person has raised various objections. The first objection is that the Petitioners are not registered associations and in any event, there is no resolution passed by both the associations authorising its office bearers to file this contempt petition. His second submission is that the present*

Petitioners are guilty of making false statements and they are guilty of commission of very serious offences. His submission is that an action should be taken against the Petitioners in that behalf. He states that he is filing a separate application for that purpose. ***He pointed out that if the learned counsel who argued the Petition on behalf of the Petitioners are the members of one of the two associations, they are guilty of gross professional misconduct.*** *He relies upon a decision of Madras High Court in the case of* ***S. Sengkodi v. State of Tamilnadu represented by its Chief Secretary to Government*** *2009 3 CTC 6 decided on 18 March 2009 in Habeas Corpus Petition No. 142/2008.*

5. *As far the allegations of professional misconduct are concerned, it is not for this Court to go into the said aspect and it is for the concerned Respondents to take out appropriate proceedings in accordance with law before the appropriate forum."*

On the similar issue recently Hon'ble Supreme Court had held that, it is a gross professional misconduct.

18.5. Hon'ble Supreme Court in the case of **Central Bureau of Investigation Vs. Mohd. Parvez Abdul Kayuum 2019 SCC OnLine SC 867** it is ruled as under;

"The appearance on behalf of the CPIL by a lawyer who is in the Executive Committee of the said Centre, cannot be said to be proper as it is defined misconduct under the rules. This is in breach of Rule 8 of the aforesaid Rules.

266. *"During the course of arguments, we had put a query to Mr. Prashant Bhushan, learned counsel appearing on behalf of CPIL, how he can appear as counsel in the case filed by CPIL as he admittedly is a member of the executive committee of CPIL. In view of the rule of professional ethics framed by the Bar Council of India contained in section I of Chapter II of Part VI, Rule 8 is extracted hereunder:*

"8. An advocate shall not appear in or before any court or tribunal or any other authority for or against an organisation or an institution, society or corporation if he is a member of the Executive Committee of such organisation or institution or society or corporation. "Executive Committee", by whatever name it may be called, shall include any Committee or body of persons which, for the time being, is vested with the general management of the affairs of the organisation or institution, society or corporation: Provided that this

rule shall not apply to such a member appearing as amicus curiae or without a fee on behalf of a Bar Council, Incorporated Law Society or a Bar Association."

267. *Rule 8 makes an exception only if such a member is appearing as an amicus curiae or without a fee on behalf of a Bar Council, Incorporated Law Society or a Bar Association. There is no exception to a body like CPIL. Mr. Prashant Bhushan learned counsel has stated that he had questioned the vires of Rule 8 by way of filing a writ petition in the High Court. In order to save vires of aforesaid Rule 8, the statement was made in the Court by the Bar Council that they are going to amend the rules, however, he submitted that the Bar Council has not amended the rules in spite of making the statement. The rule is arbitrary and ultra vires as such he can appear.*

268. *We are not happy with the entire scenario.* ***There cannot be any justification to appear in violation of Rule 8, on the ground that the rule is arbitrary or ultra vires. The rule is not so far declared to be illegal or ultra vires by the Court. The Rule 8 is binding on the members of the Bar unless and until the rule in question is amended or declared to be arbitrary or ultra vires for any reason, it is to be observed scrupulously by members of the Bar. Rules of professional ethics are meant to be observed by all concerned. In case their observance is done in a breach that too before this Court and that too knowing its implication on the aforesaid canvassed untenable ground, no one can prevent breach of rules of ethics.*** *If the Bar Council after making a statement has not amended the rule, the rule ought to have been questioned afresh in an appropriate petition.* ***The appearance on behalf of the CPIL by a lawyer who is in the Executive Committee of the said Centre, cannot be said to be proper as it is defined misconduct under the rules. This is in breach of Rule 8 of the aforesaid Rules.*** *We need not say any further on this. However, until it is declared ultra vires, we hold that the advocates are bound to observe the same.*

269. *Resultantly, we find that the petition cannot be said to have been filed bona fide."*

18.6. In **R. Muthukrishnan Vs. Union of India 2014 SCC OnLine Mad 737** it is ruled as under.

*"**Advocates Act - the Advocate cannot appear or plead before***

a court of law in dual capacity, one as party and other as an Advocate - he , himself is either espousing his own cause in the proceedings cannot claim any privileges available to Advocates appearing for the litigants before the Court and cannot be permitted to appear in robes before the Court - Advocate is the agent of the party, his acts and statements, made within the limits of authority given to him, are the acts and statements of the principal, i.e., the party who engaged him – Bombay High Court in the case of High Court on its own Motion vs. N.B.Deshmukh reported in 2011 (2) Mh.L.J., 273, taken the above view.

18.7. In **S. Sengkodi Vs. State 2009 Writ LR 318** it is ruled as under;

"Advocate can not represent a case in which he is interested - an advocate will not be allowed to enter in to the shoes of client - Bar Council of India Rules, wherein Rule 9 contemplated that 'an Advocate should not act or plead in any manner in which he is himself peculiarly interested' and Rule 18 mandated that 'an advocate shall not, at any time, be a party to fomenting litigation'

- Held , If such a situation is permitted, then, there may not be any client - Advocate relation but only a client and defacto client relationship between the party and his counsel, resulting in adversely affecting the dignity and decorum of the noble profession and further running contrary to the Standards of Professional conduct and etiquette, prescribed under the Bar Council of India Rules, wherein Rule 9 contemplated that 'an Advocate should not act or plead in any manner in which he is himself peculiarly interested' and Rule 18 mandated that 'an advocate shall not, at any time, be a party to fomenting litigation'. If an Advocate is permitted to enter into the shoes of his client, definitely, he would become a person of 'peculiarly interested' and there is every possibility of his fomenting the litigation, which is against Rules 9 and 18 of the Bar Council of India Rules. Thus, viewing this legal aspect from this angle also, we are not in a position to accept the plea urged on the part of the petitioner that she can enter into the shoes of her client."

18.8. # CHARGE 3# FILLING OF FRIVOLOUS PETITION TO SAVE A JUDGE FROM SERIOUS CHARGES OF FRAUD ON POWER BASED ON STING OPERATION:-

Advocate Milind Sathe is always involved in making false & frivolous communication to interfere with the enquiry against some selected Judges of his choice. Some instances are capulized as under;

3.1 That, Adv. Milind Sathe & his associates of Bombay Bar Association (BBA), Bombay Incorporated Law Society (BILS), are consistently taking a stand which is in para 4 of their letter dated 23.03.2019 which reads as under ;

"4. *The allegation made in the complaints against the Learned Judges of Supreme Court of India under reference are false, vexatious and designed to intimidate and browbeat the judges. The allegations are in respect of their acts in discharging judicial duties.* ***The remedy of a person aggrieved by such a judicial order is to take legal recourse by filing an appeal or other appropriate proceedings and a judge cannot be asked to be prosecuted for passing orders in judicial proceedings, which a person perceives as wrong or contrary to law.*** *This is also clearly impermissible in view of the provisions of the Judge (Protection) Act, 1985 passed by Parliament. In fact, the Indian Bar Association has gone to the extent of saying that the order was passed by the bench of the Hon'ble Supreme Court for ulterior reason of protecting a High Court Judge. The said allegation is false, scandalous, and scurrilous"*

The fundamental fallacy in abovesaid para need to be set as rest. The law regarding prosecution of a Judge for passing order contrary to law is well settled.

18.9. Full Bench of Hon'ble Supreme in the case of **Union of India Vs. K. K. Dhawan (1993) 2 SCC 56 (Full Bench)** had ruled that, if any Judge passes any order to favor or disfavor anyone then he is not acting as a Judge and he should be prosecuted and removed from the post of a Judge by ordering proper enquiry, it is ruled as under;

"If any Judge acts negligently or recklessly or in order to

confer undue favour on a person is not acting as a Judge. And he can be proceeded for passing unlawful order apart from the fact that the order is appealable. Action for violation of Conduct Rules is must for proper administration.

It is not objectionable to initiate criminal proceedings against public servant before exhausting the disciplinary proceedings, and a fortiori, the prosecution of a Judge for criminal misconduct before his removal by Parliament for proved misbehaviour is unobjectionable.

".....But we know of no law providing protection for Judges from criminal prosecution. Article 361(2) confers immunity from criminal prosecution only to the President and Governors of States and to no others. Even that immunity has been limited during their term of office. ***The Judges are liable to be dealt with just the same way as any other person in respect of criminal offence. It is only in taking of bribes or with regard to the offence of corruption the sanction for criminal prosecution is required.***

(61) For the reasons which we have endeavored to outline and subject to the directions issued, we hold that for the purpose of clause (c) of S. 6(1 of the Act ***the President of India is the authority competent to give previous sanction for the prosecution of a Judge of the Supreme court and of the High court.***

(79) Before parting with the case, we may say a word more. This case has given us much concern. We gave our fullest consideration to the questions raised. We have examined and re-examined the questions before reaching the conclusion. We consider that the society's demand for honesty in a judge is exacting and absolute. ***The standards of judicial behaviour, both, on and off the bench, are normally extremely high. For a Judge to deviate from such standards of honesty and impartiality is to betray the trust reposed in him. No excuse or no legal relativity can condone such betrayal.*** *From the standpoint of justice the size of the bribe or scope of corruption cannot be the scale for measuring a Judge's dishonour.* ***A single***

dishonest Judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system.

18.10. In **R. R. Parekh Vs. High Court Of Gujarat & Anr. (2016) 14 SCC 1** it is ruled as under;

A judge passing an order against provisions of law in order to help a party is said to have been actuated by an oblique motive or corrupt practice - breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice - No direct evidence is necessary - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - The Appellant had absolutely no convincing explanation for this course of conduct - Punishment of compulsory retirement directed.

18.11. Justice C.S. Karnan was prosecuted and punished for passing wrong judicial order. It is ruled by 7- Judge Constitution Bench in **(2017) 7 SCC 1** held that;

"A) High Court Judge disobeying Supreme Court direction and passing whimsical judicial order abusing process of court sentenced to six months imprisonment.

B) Even if petition is filed by a common man alleging contempt committed by a High Court Judge then Supreme Court is bound to examine these allegation."

18.12. Recently, **Smt. Justice Nirmal Yadav Vs. C.B.I. 2011 (4) RCR (Criminal) 809)** it is ruled as under;

"Hon'ble Supreme Court observed:

Be you ever so high, the law is above you." Merely because the petitioner has enjoyed one of the highest constitutional offices(Judge of a High Court), she cannot claim any special right or privilege as an accused than prescribed under law. Rule of law has to prevail and must prevail equally and uniformly, irrespective of the status of an individual.

The petitioner Justice Mrs. Nirmal Yadav, the then Judge of Punjab and Haryana High Court found to have taken bribe to decide a case pending before her- CBI charge sheeted - It is also part of investigation by CBI that this amount of Rs.15.00 lacs was received by Ms. Yadav as a consideration for deciding RSA No.550 of 2007 pertaining to plot no.601, Sector 16, Panchkula for which Sanjiv Bansal had acquired interest. *It has been observed by Hon'ble Supreme Court "Be you ever so high, the law is above you." Merely because the petitioner has enjoyed one of the highest constitutional offices(Judge of a High Court), she cannot claim any special right or privilege as an accused than prescribed under law. Rule of law has to prevail and must prevail equally and uniformly, irrespective of the status of an individual. Taking a panoptic view of all the factual and legal issues, I find no valid ground for judicial intervention in exercise of inherent jurisdiction vested with this Court. Consequently, this petition is dismissed.*

B) In-House procedure 1999 , for enquiry against High Court and Supreme Court Judges - Since the matter pertains to allegations against a sitting High Court Judge, the then Hon'ble Chief Justice of India, constituted a three members committee comprising of Hon'ble Mr.Justice H.L. Gokhale, the then Chief Justice of Allahabad High Court, presently Judge of Hon'ble Supreme Court, Justice K.S. Radhakrishnan, the then Chief Justice of Gujarat High Court, presently, Judge of Hon'ble Supreme Court and Justice Madan B.Lokur, the then Judge of Delhi High Court, presently Chief Justice Gauhati High Court in terms of In-House procedure adopted by Hon'ble Supreme Court on 7.5.1997. The order dated 25.8.2008 constituting the Committee also contains the terms of reference of the Committee. The Committee was asked to enquire into the allegations against Justice Mrs. Nirmal Yadav, Judge of Punjab and Haryana High Court revealed, during the course of investigation in the case registered vide FIR No.250 of 2008 dated 16.8.2008 at Police Station, Sector

11, Chandigarh and later transferred to CBI. The Committee during the course of its enquiry examined the witnesses and recorded the statements of as many as 19 witnesses, including Mrs.Justice Nirmal Yadav (petitioner), Ms. Justice Nirmaljit Kaur, Sanjiv Bansal, the other accused named in the FIR and various other witnesses. The Committee also examined various documents, including data of phone calls exchanged between Mrs. Justice Nirmal yadav and Mr.Ravinder Singh and his wife Mohinder Kaur, Mr.Sanjiv Bansal and Mr.Ravinder Singh, Mr.Rajiv Gupta and Mr. Sanjiv Bansal. On the basis of evidence and material before it, the Committee of Hon'ble Judges has drawn an inference that the money delivered at the residence of Hon'ble Ms.Justice Nirmaljit Kaur was in fact meant for Ms.Justice Nirmal Yadav."

18.13. In **Shameet Mukherjee Vs. C.B.I. 2003 SCC OnLine Del 821** where it is ruled as under;

"Cr. P.C. – Section 439 – ***Accused was a Judge of High Court*** *– Arrested under section 120 – B, IPC r/w sec. 7,8,11,12,13 (1) of prevention of corruption Act.- Charges of* ***misuse of power for passing favourable order*** *– Petitioner/accused is having relationship with another accused – Petitioner used to enjoy his hospitality in terms of wine and women – 12 days police remand granted but nothing incriminating was found – Petitioner's wife is ill – Held petitioner entitled to be released on bail."*

18.14. In **Raman Lal Vs. State of Rajasthan 2000 SCC OnLine Raj 226,** it is ruled as under;

A] Cri. P.C. Sec. 197 – Sanction for prosecution of High Court Judge – Accused are Additional High Court Judge, Suprintendant of Police Sanjeev Bhatt and others – The accused hatched conspiracy to falsely implicate a shop owner in a case under N.D.P.S. Act and when shop owner submitted to their demands he was discharged – Complaint u.s. 120-B, 195, 196, 342, 347, 357, 368, 388, 458, 482, I.P.c. and Sec. 17, 58 (1), (2) of NDPS Act – Held – there is no connection between

official duty and offence – No sanction is required for prosecution – Registration of F.I.R. and investigation legal and proper.

B] Cri. P.C. Sec. 156 – Investigation against accused Addl. High Court Judge – ***Whether prior consultation with Chief Justice is necessary prior filling of F.I.R. against a High Court Judge as has been laid down by Supreme Court in K. Veerswami's case (1991) (3) SCC 655)*** *– Held – In K. Veerswami's case Supreme Court observed that the Judges are liable to be dealt with just the same as any other person in respect of criminal offence and only in offence regarding corruption the sanction for criminal prosecution is required – the directions issued by Hon'ble Supreme Court are not applicable in instant case.*

C] The applicant – Ram Lal Addl. High Court Judge hatched criminal conspiracy – The Bar Association submitted a representation to Hon'ble Chief Justice of India on 11-09-1997 requesting to not to confirm Raman Lal as Judge of the High Court – Later on he was transferred to Principal Judge of city Civil and Sessions Court at Ahmedabad – S.P. (C.I.D.) Jaipur sent a questionnaire through the registrar, Gujrat High Court to accused Addl. High Court Judge – Chief Justice granted permission to I.O. to interrogate – Later on I.O. sent letter to applicant to remain present before Chief Judicial Magistrate at the time of filing the charge-sheet – Applicant filed petition before High Court challenging it – Petition of applicant was rejected by High Court and Supreme Court in limine – No relief is required to be granted to petitioner in view of the facts of the case.

D] Conspiracy – I.P.C. Sec. 120 (B) – Apex court made it clear that an inference of conspiracy has to be drawn on the basis of circumstantial evidence only because it becomes difficult to get direct evidence on such issue – The offence can only be proved largely from the inference drawn from acts or illegal ommission committed by them in furtherance of a common design – Once such a conspiracy is proved, act of one conspirator becomes the act of the others – A Co-conspirator who joins

subsequently and commits overt acts in furtherance of the conspiracy must also be held liable – Proceeding against accused cannot be quashed.

E] Jurisdiction – Continuing offence – Held – Where complainants allegations are of stinking magnitude and the authority which ought to have redressed it have closed its eyes and not even trid to find out the real offender and the clues for illegal arrest and harassment are not enquired then he can not be let at the mercy of such law enforcing agencies who adopted an entirely indifferent attitude – Legal maxim Necessiatas sub lege Non continetureQuia Qua Quad Alias Non EstLictumNecessitasfacitLictum, Means necessity is not restrained by laws – Since what otherwise is not lawful necessity makes it lawful – Proceeding proper cannot be quashed.

18.15. In **Umesh Chandra Vs. State of Uttar Pradesh & Ors. 2006 (5) AWC 4519 ALL** it is ruled as under ;

If Judge is passing illegal order either due to negligence or extraneous consideration giving undue advantage to the party then that Judge is liable for action in spite of the fact that an order can be corrected in appellate/revisional jurisdiction - The acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the Judicial Officer, in such cases imposition of penalty of dismissal from service is well justified

The order was passed giving undue advantage to the main accused - grave negligence is also a misconduct and warrant initiation of disciplinary proceedings - in spite of the fact that an order can be corrected in appellate/revisional jurisdiction but if the order smacks of any corrupt motive or reflects on the integrity of the judicial officer, enquiry can be held .

18.16. In **Govind Mehta Vs. State Of Bihar (1971) 3 SCC 329** it is ruled as under;

> ***Cri. P.C. Sec. 197 – I.P.C. Sec. 167, 465, 466 and 471 – Prosecution of Judge who made interpolation in the order sheet*** *– The appellant was posted as first class Magistrate – Accused whose case was pending in his Court filed transfer petition before District Judge to transfer case to another Court – The appellant Judge made some interpolation in the order sheet to show that some orders had passed earlier – After enquiry ADJ sent report to District Magistrate for initiation of proceeding against appellant – Magistrate – The report of District Magistrate forwarded to state Govt., Who accorded sanction for prosecution – The senior District prosecutor filed a complaint in the court against appellant u.s. 167, 465, 466 471 of I.P.C. – Charges framed against appellant – The appellant raised objection that there is bar under sec. 195 of cri. P.C. in taking cognizance – Held – The proceeding against appellant the then Judge is valid and legal-proceeding not liable to be dropped.*

18.17. Hon'ble Bombay High Court in the case of **Anverkhan Mahamad khan Vs. Emperor 1921 SCC OnLineBom 126** it is ruled as under;

> *Indian Penal Code Section 218 – The gist of the section is the stiffening of truth and the perversion of the course of justice in cases where an offence has been committed it is not necessary even to prove the intention to screen any particular person. It is sufficient that he know it to be likely that justice will not be executed and that someone will escape from punishment.*
>
> Section 219 of Indian Penal Code reads as under;
>
> ***219.*** *Public servant in judicial proceeding corruptly making report, etc., contrary to law.—Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*
>
> Section 218 of Indian Penal Code reads as under;

218. *Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

18.18. The Judges Protection 1985 says that prosecution can be launched by taking sanction.

Division Bench of Hon'ble Bombay High Court in **Deelip Bhikaji Sonawane Vs. State 2003 (1)B.Cr.C. 727**had ruled as under;

10. *So far as the respondent No. 2 is concerned, he is claiming protection under the provisions of the Judges (Protection) Act, 1985. The said Act is applicable to the Judges which includes a person who is empowered by law to give a judgment in any legal proceedings. Under Section 3(1) of the said Act it is provided that no Court can entertain a civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of acting or purporting to act int he discharge of his official or judicial duty or function. However, Sub-section (2) of Section 3 empowers the respective Government or the Supreme Court or the High Court or any other authority to take such action whether by way of civil, criminal, or departmental proceedings or otherwise against any person who is or was a Judge. As per the finding of the Sessions Court the petitioner was wrongfully and illegally confined for five days in Chapter Case No. 43 of 1994 which amounted to an offence under Section 342 of IPC. The respondent No. 2 was party to the said proceedings in the Sessions Court and was represented by his*

own Advocate. The said observations were never challenged by him before the higher forum. We are also of the view that the Respondent No. 2 was acted illegally without following the procedure under the provisions of Cr.P.C. before confining the petitioner to jail. In the circumstances, we direct the State Government to take appropriate action against the Respondent No. 2 for his wrongful and illegal act.

18.19. This Hon'ble Court in the case of **Re:M.P. Dwivedi and Ors. AIR 1996 SC 2299**had ruled as under;

VIOLATION OF GUIDELINES LAID DOWN BY SUPREME COURT BY POLICE AND JUDGE OF SUBORDINATE COURTS – THEY ARE GUILTY OF CONTEMPT.

Contemner No.7, B. K. Nigam, was posted as Judicial Magistrate First Class - contemner was completely insensitive about the serious violations of the human rights of accused and defiance of guidelines by Police - This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated - Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.

Held, The contemner Judicial Magistrate has tendered his unconditional and unqualified apology for the lapse on his part - The contemner has submitted that he is a young Judicial Officer and that the lapse was not intentional. But the contemner, being a judicial officer is expected to be aware of law laid down by this Court - It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing in as much as when the prisoners were produced before him in Court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the Court in handcuffs and

taking them away in the handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.

We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field.

18.20. This Hon'ble Court in **Smt. Prabha SharmaVs. Sunil Goyal and Ors.(2017) 11 SCC 77,** where it is ruled as under;

*"**Article 141 of the Constitution of India - disciplinary proceedings against Additional District Judge for not following the Judgments of the High Court and Supreme Court - judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision.***

18.21. In **Jagat Jagdishchandra Patel Vs. State of Gujarat and Ors. 2016 SCC OnLine Guj 4517** had ruled as under;

Two Judges caught in sting opration – demanding bribe to give favourable verdict – F.I.R. registered – Two accused Judges arrested – Police did not file charge-sheet within time –Accused Judges got bail – complainant filed writ for transferring inverstigation.

Held, the police did not collected evidence, phone details – CDRS – considering apparent lapses on the part of police, High Court transferred investigation through Anti-Corruption Bureau.

A Constitution Bench of this Court in Subramanian Swamy v. Director, Central Bureau of Investigation & Anr. (2014) 8 SCC 682, reiterated that corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the Act 1988.

18.22. It is worth to mention here that in the case related with the Bombay Bar Association (BBA) & Advocates' Association of Western India (AAWI) itself. This Hon'ble Court in **C. Ravichandran Iyer Vs. Justice A. M. Bhattacharjee and Ors.(1995) 5 SCC 457** had set the 'In-House-Procedure'.

18.23. So from all these case laws it is clear that the Judges are liable for prosecuted for passing order contrary to law of the land and against the settled law of binding precedent by unjust exercise of discretion.

But then also these two organizations Bombay Bar association & Bombay Incorporated Law Society (BILS) are taking stand against the settled law that too before Hon'ble Supreme Court that Judges cannot be prosecuted. BBA is trying to interfere In to the fundamental right and duties of an advocate and also of the citizens and therefore they are guilty of grossest Contempt & gross professional misconduct.

18.25.This Hon'ble Court in **Indirect Tax Practitioner Vs. R.K. Jain (2010) 8 SCC 281** it is ruled as under;

DUTY TO EXPOSE CORRUPTION :

CONTEMPT OF COURTS ACT- TRUTH should not be allowed to be silenced by using power of Contempt used by unscrupulous petitioners - Exposing corruption in Judiciary is Duty of every citizen as per Art. 51 - A (h) of Constitution of India - LET TRUTH AND FALSEHOOD GRAPPLE - WHOEVER KNEW TRUTH PUT TO THE WORSE, IN A FREE AND OPEN ENCOUNTER - TRUTH IS STRONG, NEXT TO THE ALMIGHTY; SHE NEEDS NO POLICIES, NO STRATAGEMS, NO LICENSINGS TO MAKE HER VICTORIOUS; THOSE ARE THE SHIFTS AND DEFENCES THAT ERROR MAKES AGAINST HER POWER.

A person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important

institution and there is no reason to silence such person by invoking Contempt jurisdiction Articles 129 or 215 of the Constitution or the provisions of the Act.

41. One of the most interesting questions with respect to internal whistleblowers is why and under what circumstances people will either act on the spot to stop illegal and otherwise unacceptable behavior or report it. There is some reason to believe that people are more likely to take action with respect to unacceptable behavior, within an organization, if there are complaint systems that offer not just options dictated by the planning and controlling organization, but a choice of options for individuals, including an option that offers near absolute confidentiality. However, external whistleblowers report misconduct on outside persons or entities. In these cases, depending on the information's severity and nature, whistleblowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, state, or federal agencies.

42. In our view, a person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important institution established for dealing with cases involving revenue of the State and there is no reason to silence such person by invoking Articles 129 or 215 of the Constitution or the provisions of the Act.

18.26. In **Anirudha Bahal Vs. State 2010 (119) DRJ 104** it is ruled that :

"Duty of a citizen under Article 51A(h) is to develop a spirit of inquiry and reforms. It is fundamental right of citizens of this country to have a clean & incorruptible judiciary, legislature, executive and other organs and in order to achieve this fundamental right every citizen has a corresponding duty to expose corruption wherever he finds. Constitution of India mandates citizens to act as agent provocateurs to bring out and expose and uproot the corruption - Sting operation by citizen - the sting operation was conducted by them to expose corruption - Police made them accused - The intention of the

petitioners was made clear to the prosecution by airing of the tapes on T.V channel that they want to expose corruption - Quashing the charge-sheet and order of taking cognizance and issuing summons against whistle Blower high Court observed that- it is a fundamental right of citizens of this country to have a clean incorruptible judiciary, legislature, executive and other organs and in order to achieve this fundamental right, every citizen has a corresponding duty to expose corruption wherever he finds it, whenever he finds it and to expose it if possible with proof so that even if the State machinery does not act and does not take action against the corrupt people when time comes people are able to take action.

It is argued by learned Counsel for the State that the petitioners in this case in order to become witnesses should have reported the matter to CBI rather conducting their own operation. I need not emphasize that in cases of complaints against the persons, in powers how CBI and police acts. The fate of whistle blowers is being seen by the people of this country. They are either being harassed or being killed or roped in criminal cases. I have no doubt in my mind that if the information would have been given by the petitioners to the police or CBI, the respective MPs would have been given information by the police, before hand and would have been cautioned about the entire operation. Chanakaya in his famous work 'Arthshastra' advised and suggested that honesty of even judges should be periodically tested by the agent provocateurs. I consider that the duties prescribed by the Constitution of India for the citizens of this country do permit citizens to act as agent provocateurs to bring out and expose and uproot the corruption

I consider that one of the noble ideals of our national struggle for freedom was to have an independent and corruption free India. The other duties assigned to the citizen by the Constitution is to uphold and protect the sovereignty, unity and integrity of India and I consider that sovereignty, unity and integrity of this country cannot be protected and safeguarded if the corruption is not removed from this country. - I consider that a country cannot be defended only by taking a gun and

going to border at the time of war. The country is to be defended day in and day out by being vigil and alert to the needs and requirements of the country and to bring forth the corruption at higher level. The duty under Article 51A (h) is to develop a spirit of inquiry and reforms. The duty of a citizen under Article 51A(j) is to strive towards excellence in all spheres so that the national constantly rises to higher level of endeavour and achievements I consider that it is built-in duties that every citizen must strive for a corruption free society and must expose the corruption whenever it comes to his or her knowledge and try to remove corruption at all levels more so at higher levels of management of the State.

9. I consider that it is a fundamental right of citizens of this country to have a clean incorruptible judiciary, legislature, executive and other organs and in order to achieve this fundamental right, every citizen has a corresponding duty to expose corruption wherever he finds it, whenever he finds it and to expose it if possible with proof so that even if the State machinery does not act and does not take action against the corrupt people when time comes people are able to take action either by rejecting them as their representatives or by compelling the State by public awareness to take action against them.

The rule of corroboration is not a rule of law. It is only a rule of prudence and the sole purpose of this rule is to see that innocent persons are not unnecessarily made victim. The rule cannot be allowed to be a shield for corrupt.

It requires great courage to report a matter to the Anti Corruption Branch in order to get a bribe taker caught red handed. In our judicial system complainant sometime faces more harassment than accused by repeatedly calling to police stations and then to court and when he stands in the witness box all kinds of allegations are made against him and the most unfortunate is that he is termed as an accomplice or an interested witness not worthy of trust. I fail to understand why a witness should not be interested in seeing that the criminal should be punished and the crime of corruption must be

curbed. If the witness is interested in seeing that there should be corruption free society, why Court should disbelieve and discourage him.

11. It is argued by learned Counsel for the State that the petitioners in this case in order to become witnesses should have reported the matter to CBI rather conducting their own operation. I need not emphasize that in cases of complaints against the persons, in powers how CBI and police acts. The fate of whistle blowers is being seen by the people of this country. They are either being harassed or being killed or roped in criminal cases. I have no doubt in my mind that if the information would have been given by the petitioners to the police or CBI, the respective MPs would have been given information by the police, before hand and would have been cautioned about the entire operation.

I consider that in order to expose corruption at higher level and to show to what extent the State managers are corrupt, acting as agent provocateurs does not amount to committing a crime. The intention of the person involved is to be seen and the intention in this case is clear from the fact that the petitioners after conducting this operation did not ask police to register a case against the MPs involved but gave information to people at large as to what was happening. The police did not seem to be interested in registration of an FIR even on coming to know of the corruption. If the police really had been interested, the police would have registered FIR on the very next day of airing of the tapes on TV channels. The police seem to have acted again as 'his master's voice' of the persons in power, when it registered an FIR only against the middlemen and the petitioners and one or two other persons sparing large number of MPs whose names were figured out in the tapes.

13. The corruption in this country has now taken deep roots. Chanakaya in his famous work 'Arthshastra' advised and suggested that honesty of even judges should be periodically tested by the agent provocateurs. I consider that the duties prescribed by the Constitution of India for the citizens of this country do permit citizens to act as agent provocateurs to bring

out and expose and uproot the corruption.

18.27. Hence it is clear the Bombay Bar Association are acting against the settled law and creating hurdles in the citizens fundamental rights and duties and also acting against the duty of an advocate to make complaint against Judges and therefore they are guilty of grossest Contempt as ruled by Hon'ble Supreme Court in **Krisnakant Tamrakar Vs. State MANU/SC/0310/2018,** where it is ruled as under ;

> ***51****. Accordingly, we consider it necessary, with a view to enforce fundamental right of speedy access to justice Under Articles 14 and 21 and law laid by this Court, to direct the Ministry of Law and Justice to present at least a quarterly report on strikes/abstaining from work, loss caused and action proposed. The matter can thereafter be considered in its contempt or inherent jurisdiction of this Court. The Court may, having regard to the fact situation, hold that the office bearers of the Bar Association/Bar Council who passed the resolution for strike or abstaining from work, are liable to be restrained from appearing before any court for a specified period or until such time as they purge themselves of contempt to the satisfaction of the Chief Justice of the concerned High Court based on an appropriate undertaking/conditions. They may also be liable to be removed from the position of office bearers of the Bar Association forthwith until the Chief Justice of the concerned High Court so permits on an appropriate undertaking being filed by them. This may be in addition to any other action that may be taken for the said illegal acts of obstructing access to justice. The matter may also be considered by this Court on receipt of a report from the High Courts in this regard. This does not debar report/petition from any other source even before the end of a quarter, if situation so warrants.*
>
> ***50.*** *Since the strikes are in violation of law laid down by this Court, the same amount to contempt and at least the office bearers of the associations who give call for the strikes cannot disown their liability for contempt. Every resolution to go on strike and abstain from work is per se contempt. Even if proceedings are not initiated individually against such contemnors by the court concerned or by the Bar Council*

concerned for the misconduct, it is necessary to provide for some mechanism to enforce the law laid down by this Court, pending a legislation to remedy the situation.

18.28 In <u>Kuldeep Agrawal Vs. State 2019 SCC OnLine 856</u>where it is ruled as under;

> ***<u>"No lawyer can also be visited with any adverse consequences by the Bar Association or the Bar Council, and no threat or coercion of any nature, including that of expulsion, can be held out against him to obstruct his duties towards the client or otherwise. If anyone does it, he commits a criminal offence, interferes with the administration of justice, commits contempt of Court, and is liable to be proceeded against on all these counts.</u>*** *(Sri Jayendra Saraswathy Swamigal3 and B.L. Wadhera Vs. State of (NCT of Delhi)7).*

18.29. Relying on overuled judgment by Adv. Milind Sathe, Mr. Kaiwan Kalyani walla & their executive members of BBA & BILS proves their incompetency and lack of knowledge. In **<u>State Of Orissa Vs. Nalinikanta Muduli (2004) 7 SCC 19</u>**had ruled as under;

> **<u>THE ADVOCATE RELYING ON OVERRULED JUDGMENT IS A GUILTY OF PROFESSIONAL MISCONDUCT.</u>**
>
> *"The conduct of an Advocate by citing a overruled judgment is falling standard of professional conduct.*
>
> *Citing case which was overruled by Supreme Court - is Falling standard of professional conduct - Deprecated .*
>
> *It was certainly the duty of the counsel for the respondent before the High Court to bring to the notice of the Court that the decision relied upon before the High Court has been overruled by this Court and it was duty of the learned counsel not to cite an overruled judgment .*
>
> *It is a very unfortunate situation that learned counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the learned single Judge. Members of the Bar are officers of the Court.* ***<u>They have a bounden duty to assist the Court and not to mislead it. Citing judgment of a Court which has been overruled by a</u>***

larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern. *It is one thing that the Court notices the judgment overruling the earlier decision and decides on the applicability of the later judgment to the facts under consideration on it - It was certainly the duty of the counsel for the respondent before the High Court to bring to the notice of the Court that the decision relied upon by the petitioner before the High Court has been overruled by this Court. Moreover, it was duty of the learned counsel appearing for the petitioner before the High Court not to cite an overruled judgment - We can only express our anguish at the falling standards of professional conducts.*

18.30. In **E.S. Reddi Vs. Chief Secretary, Government of A.P. and Anr. (1987) 3 SCC 258** it is ruled as under;

A) Duty of Advocates towards Court – Held, he has to act fairly and place all the truth even if it is against his client – he should not withhold the authority or documents which tells against his client – It is a mistake to suppose that he is a mouthpiece of his client to say that he wants – He must disregard with instruction of his client which conflicts with their duty to the Court.

B) Duty and responsibility of senior counsel - By virtue of the pre-eminence which senior counsel enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A senior counsel more or less occupies a position akin to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honor and privilege conferred on advocates of standing and experience by the chief justice and the Judges of this court. They thus become leading counsel and take precedence on all counsel not having that rank- A senior counsel though he cannot draw up pleadings of the party, can nevertheless be engaged "to settle" i.e. to put the pleadings into "proper and satisfactory form" and hence a senior counsel settling pleadings has a more

onerous responsibility as otherwise the blame for improper pleadings will be laid at his doors.

"(11) Lord Reid in Rondel v. Worsley has succinctly set out the conflicting nature of the duties a counsel has to perform in his own inimitable manner as follows :

Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, , which he thinks will help his client's case. As an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. By so acting he may well incur the displeasure or worse of his client so that if the case is lost, his client would or might seek legal redress if that were open to him.

(12) Again as Lord Denning, M. R. in Rondel v. W would say :

He (the counsel) has time and again to choose between his 265 duty to his client and his duty to the court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. . . . When a barrister (or an advocate) puts his first duty to the court, he has nothing to fear. (words in brackets added).

In the words of Lord Dinning:

It is a mistake to suppose that he is the mouthpiece of his client to say what he wants :. . . . He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honor. If he breaks it, he is offending against the rules of the profession and is subject to its discipline."

18.31. In **Heena Nikhil Dharia Vs. Kokilaben Kirtikumar Nayak and Ors. 2016 SCC OnLine Bom 9859** had ruled as under;

DUTY OF ADVOCATE

The counsel in question was A. S. Oka, now Mr. Justice Oka, and this is what Khanwilkar J was moved to observe in the concluding paragraph of his judgement:

While parting I would like to make a special mention regarding the fairness of Mr. Oka, Advocate. He conducted the matter with a sense of detachment. In his own inimitable style he did the wonderful act of balancing of his duty to his client and as an officer of the Court concerned in the administration of justice. He has fully discharged his overriding duty to the Court to the standards of his profession, and to the public, by not withholding authorities which go against his client. As Lord Denning MR in Randel v W. (1996) 3 All E. R. 657 observed: "Counsel has time and again to choose between his duty to his client and his duty to the Court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. Whereas when the Advocate puts his first duty to the Court, he has nothing to fear. But it is a mistake to suppose that he (the Advocate) is the mouthpiece of his client to say what he wants. The Code which obligates the Advocate to disregard the instructions of his client, if they conflict with his duty to the Court, is not a code of law — it is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.

This view is quoted with approval by the Apex Court in Re. T. V. Choudhary, [1987] 3 SCR 146 (E. S. Reddi v Chief Secretary, Government of AP & Anr.).

The cause before Khanwilkar J may have been lost, but the law gained, and justice was served.

B] Thirteen years ago, Khanwilkar J wrote of a code of honour. That was a time when we did not have the range, width and speed of resources we do today. With the proliferation of online databases and access to past orders on the High Court website, there is no excuse at all for not cross-checking the status of a

judgement. I have had no other or greater access in conducting this research; all of it was easily available to counsel at my Bar. Merely because a judgement is found in an online database does not make it a binding precedent without checking whether it has been confirmed or set aside in appeal. Frequently, appellate orders reversing reported decisions of the lower court are not themselves reported. The task of an advocate is perhaps more onerous as a result; but his duty to the court, that duty of fidelity to the law, is not in any lessened. If anything, it is higher now.

C] Judges need the Bar and look to it for a dispassionate guidance through the law's thickets. When we are encouraged instead to lose our way, that need is fatally imperilled. Judges need the Bar and look to it for a dispassionate guidance through the law's thickets. When we are encouraged instead to lose our way, that need is fatally imperilled.

18.32. Division Bench of hon'ble High Court in **Kusum Kumria And Pharma Venture (India) Pvt. Ltd. MANU/DE/3144/2015,** it is ruled as under.

Grossest Abuse of The Judicial Process - Pressing pleas contrary to settled legal positions tantamounts to grossest abuse of the judicial process.

The instant case manifests abuse of judicial process of the worst kind - Filing of frivolous application, adopting dilatory tactics, pleading contradictory stands and pressing pleas contrary to settled legal positions tantamount to the grossest abuse of the judicial process. More so, the entirety of this litigation is misconceived and without any merit. It has had the effect of entangling valuable rights of the defendants in this legal tussle - costs of the present appeal are assessed at a total of Rs. 6,00,000/- in addition to (ii), counsel's fee is assessed at Rs. 19,750/- also payable in equal shares by the three appellants.

18.33. In **New Delhi Municipal Council Vs. M/S Prominent Hotels Limited 2015 SCC Online Del 11910** had ruled as under ;

While setting aside the judgment of Trial Court and passing strictures against the Trail Court's Judge , and imposing cost against the Plaintiff, High Court held as Follows;

RATIO:

(i) ***Judgments/case laws pronounced by Higher Courts are binding on all including the Licensee/Plaintiff who could not bypass or disregarded them otherwise he is liable for action of contempt of this Court*** *- The plaintiff misled the Trial Court to disregard well settled law* **-** *The Trial Court has dared to disregard and deliberately ignore the judgments - The impugned judgment and decree is vitiated on account of conscious disregard of the well settled law -*

> *30.26. The impugned judgement and decree is vitiated on account of conscious disregard of the well settled law by the Trial Court. The Trial Court, who was obliged to apply law and adjudicate claims according to law, is found to have thrown to winds all such basic and fundamental principles of law. The Trial Court did not even consider and apply its mind to the judgments cited by NDMC at the time of hearing. The judicial discipline demands that the Trial Court should have followed the well settled law. The judicial discipline is one of the fundamental pillars on which judicial edifice rests and if such discipline is routed, the entire edifice will be affected. It cannot be gainsaid that the judgments mentioned below are binding on the Licensee who could not have bypassed or disregarded them except at the peril of contempt of this Court. This cannot be said to be a mere lapse. The Trial Court has dared to disregard and deliberately ignore the judgments.*

19. FALSITY OF SUBMISSIONS IN LETTER DATED 23RD MARCH, 2019 BY BOMBAY BAR ASSOCIATION (BBA) & BOMBAY INCORPORATED LAW SOCIETY (BILS) MAKES THEM LIABLE FOR PROSECUTION OF 191, 192, 193, 199, 200, 201, 465, 466, 469, 120 (B) & 34 OF INDIAN PENAL CODE.

The falsity is capulized as under ;

19.1. Malafides and modus operandi of Adv. Milind Sathe & Mr.

Kaiwan Kalyaniwalla & others to interfere with prosecution against errant Judges without any lawful authority are cupulized as under;

19.2. That, Adv. Milind Sathe as he himself says openly that he is close associate and middleman of Justice S. J. Kathawala, Retd. Justice V.M Kanade, Retd. Justice Mohit Shah (we are having all sound proofs including sting operation) and misuses his position of Bombay Bar Association to safeguard the errant Judges.
It can also be proved from following instances:

19.3. That, 5- Judge's collegium of Hon'ble Supreme Court headed by Hon'ble Chief Justice of India Altamas Kabir based on the report of Intelligence bureau found the Justice Retd. Mohit Shah was found to be corrupt, counter productive and non- conducive to the administration of justice and therefore elevation of Mohit Shah to Hon'ble Supreme Court was rejected.

Then also his name was considered for elevation to Supreme Court by then Chief Justice of India H.L. Dattu. The second time consideration was strongly opposed by Supreme Court Bar Association. The Supreme Court Bar Association's Chairman Senior Counsel Adv. Shri. Dushyant Dave gave representation to Hon'ble Supreme Court and its collegium member with sound documentary proofs exposing corruption of retired Justice Mohit Shah.

After getting the knowledge of such move, the middlemen of retired Justice Mohit Shah mainly Adv. Milind Sathe & Ors.passed a resolution of their Bombay Bar Association (BBA) and forwarded it to Supreme Court stating that Mohit Shah should be elevated.

When matter came up before collegium, the representation by Bombay Bar Association was rejected outright as obviously it was not based on any sound reason as compared to representation by Supreme Court Bar Association.

19.4. This ex-facie proved the malafides of Adv. Milind Sathe & other executive members of Bombay Bar Association that they are not working for welfare of administration of justice but are involved into polluting the same by supporting the corrupt and incompetent people. This is a sufficient ground to prove unholy nexus between Advocate Milind Sathe, Bombay Bar Association and retired Judge Mohit Shah.

19.5. It is worth to mention here that despite the reports of Intelligence Bureau and proofs given by Supreme Court Bar Association and decision of collegiums of 5 senior most Judges of Hon'ble Supreme Court, the accused Milind Sathe & his Bombay Bar Association did not think it proper to take any action against errant Justice Mohit Shah as earlier directed by Hon'ble Supreme Court to Bombay Bar Association (BBA) & Advocates' Association of Western India(AAWI) in the case of **C. Ravichandran Iyer Vs. Justice A. M. Bhattacharjee and Ors. (1995) 5 SCC 457,**where on the basis of representation given by Bombay Bar Association, Chief Justice of Hon'ble Bombay High Court resigned. But accused Adv. Milind Sathe & ors gave their full support to accused Judge Mohit Shah.

Hon'ble Supreme Court while criticizing Bombay Bar Association (BBA) observed as under;

"Resolution against Chief Justice of Bombay High Court, to resign from the office as Judge by Bombay Bar Association [BBA] and the Advocates' Association of Western India [AAWI], Bar Council of Maharashtra and Goa [BCMG] - Justice A.M. Bhattacharjee Chief Justice of Bombay High Court resigned from the post.

The BBA filed a counter-affidavit through its President, Sri Iqbal Mahomedali Chagla.

Question raised in the petition about independence of judiciary –Held, when the Bar of the Court, in which the Judge occupies the set of office, honestly believes that the conduct of the Judge or of the Bench fouls the fountain of justice, or undermines or tends to undermine the dignity expected of a Judge and the people are tending to disbelieve the impartiality or integrity of the Judge - It is of importance to emphasise here that impeachment is meant to be a drastic remedy and needs to be used in serious cases. But there must exist some other means to ensure that Judges do not abuse the trust the society has in them. - proper care should be taken by the Bar Association concerned,. First, it should gather specific, authentic and acceptable material which would show or tend to show that conduct on the part of a Judge creating a feeling in the mind of 2 reasonable person doubting the honesty,

integrity, impartiality or act which lowers the dignity of the office but necessarily, is not impeachable misbehavior. In all fairness to the Judge, the responsible office bearers should meet him in camera after securing intervie and apprise the Judge of the information they had with them. If there is truth in it, there is every possibility that the Judge would mend himself. Or to avoid embarrassment to the Judge, the office bearers can approach the Chief Justice of that High Court and apprise him of the situation with material they have in their possession and impress upon the Chief Justice to deal with the matter appropriately.

Despite the above direction to Bombay Bar Association (BBA) & Advocates' Association of Western India (AAWI), they are not performing their duty as responsible members of the noble profession.

On the contrary, Bombay Bar Association (Adv. Milind Sathe, Adv. Rajeev Chavan etc.) stand by the side of errant Justice Mohit Shah and gave him a grand farewell.
This itself proves their intention and also their loyalty to corruption and disrespect to the decision 5- Judge Collegium of Hon'ble Supreme Court and also failure of their duty as an advocate as mandated by Hon'ble Supreme Court in Ramchandran's case *(supra)*.

Oswald in Contempt said.
"Extra subservient bar is greatest misfortune happened to the Court"

19.6. Furthermore in another Case of Justice S. J. Kathawala alleging that he had committed blatant wrong in order to help an accused in a case related to property worth Rs. 5000 Crore. The gross illegality by Ld. Justice S. J. Kathawala was that he did not recorded the statement of a Public Servant and created forged record of Court proceedings to save the accused. However the episode was recorded in a sting operation done by one Social Activist.

A complaint is lodged against Ld. Justice S. J. Kathawala of Bombay High

Court.

When the complaint was under enquiry by Hon'ble Chief Justice of India then in order to threaten the informant and their advocates, Adv. Milind Sathe through his BBA & AAWI filed Contempt Petition against the complainant and the witness.

The said Criminal Contempt Petition No. 1 of 2017 filed by Bombay Bar Association (BBA) & Advocates' Association of Western India (AAWI) is not supported by any proof, nor having a mention of single word to say that as to whether any wrong information or incorrect statement is made by the complainant in his complaint against Justice S.J.Kathawala.

19.7. Furthermore the Petition filed by Bombay Bar Association (BBA) was itself containing false and misleading evidences. Adv. Nilesh Ojha (Respondent No.3) filed an application being Criminal Application No.03 of 2017 before Hon'ble Bombay High Court for taking action against members of Bombay Bar Association (BBA) & Advocates' Association of Western India(AAWI) under section 191,192,193, 464, 466, 471,474, r/w 120 (B) & 34 etc. of Indian Penal Code as per provisions of Section 340 of Criminal Procedure Code. Adv. Nilesh Ojha also claimed Compensation of Rs. 100 Crores. Bombay Bar Association (BBA) & Advocates' Association of Western India (AAWI).

Thereafter the accused Adv. Milind Sathe have not persued the said matter for hearing.

Even Adv. Nilesh Ojha had given letter to Chief Justice of Hon'ble Bombay High Court, then too, the matter is not listed.

But these material facts were suppressed by Adv. Milind Sathe in his letter dated 23.03.2019. This itself makes him liable for prosecution.

In **Samson Arthur Vs. Quinn Logistic India Pvt. Ltd. and Ors. 2015 SCC OnLine Hyd 403** it was held that;

"***Section 340 of Cr.P.C- SUPPRESSIO VERI SUGGSTIO***

<u>FALSI</u> – <u>SUPPRESSION AND FALSE STATEMENT BEFORE COMPANY COURT.</u>

A] Suppressio veri", i.e., the suppression of relevant and material facts is as bad as Suggestio falsi i.e., a false representation deliberately made. Both are intended to dilute- one by inaction and the other by action. "Suppressio veri Suggestio falsi"-suppression of the truth is equivalent to the suggestion of what is false.

B] A false statement willfully and deliberately made, and a suppression of a relevant and material fact, interfere with the due course of justice and obstruct the administration of justice.

C] An enquiry, when made under Section 340(1)CrPC, is really in the nature of affording a locus paenitentiae to a person and, at that stage, the Court chooses to take action.

D] As a petition containing misleading and inaccurate statements, if filed to achieve an ulterior purpose, amounts to an abuse of the process of the court, the litigant should not be dealt with lightly. A litigant is bound to make full and true disclosure of facts.

E] It is the duty of the Court, once false averment of facts are discovered, to take appropriate steps to ensure that no one derives any benefit or advantage by abusing the legal process. Fraudulent and dishonest litigants must be discouraged. (A. Shanmugam24). It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.

F]Dishonesty should not be permitted to bear fruit and confer benefit to the person who has made a misrepresentation.

G] A person, whose case is based on falsehood, can be summarily thrown out at any stage of the litigation. (S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs.). Grave allegations are levelled against the appellants herein of having deliberately and consciously made false statements on oath, of having suppressed material facts, and to have misled the

Company Court into passing an order appointing a provisional liquidator and, thereafter, into passing an order of winding up. These allegations, if true, would mean that the process of the Court has been abused. It is therefore expedient, in the interest of justice, that the matter is enquired into and action is taken by lodging a complaint before the Magistrate. Compounding offences, where litigants are alleged to have abused the process of Court, may not be justified. We find no merit in the submission of Sri S. Ravi, Learned Senior Counsel, that the offences, alleged to have been committed by the appellants, should be compounded."

19.8. That the letter Dated 23.03.2019 in para 3.7 itself states that earlier also when complaint was filed against Judges especially against Justice S.J.Kathawala, they come in his defence and made representation dated 30th June, 2018 against the Complaint by Indian Bar Association the complaint of IBA which is based on proofs.

The allegation in para 3.8 of the letter by accused Adv. Milind Sathe is itself a case of perjury. This issue is regarding gross illegaties of Justice A.K.Menon was already dealt in the Complaint Under Section 340 of Criminal Procedure Code filed against Bombay Bar Association.
For the sake of brevity it is explained as under:

It is falsly and maliciously mentioned by BBA that the Complaint of Adv. Nilesh Ojha against Justice A.K.Menon was rejected. In fact it was informed by secretariat of Hon'ble President of India to Adv. Nilesh Ojha that the procedure of action against Judges can be the jurisdiction of different forums including impeachment proceedings.

19.9. Further the Contempt notice against Respondent No. 3 was based on the incorrect misleading observation of Justice A.K.Menon and in reply to the said notice Respondent No. 3 had filed affidavit supported by proofs and demanded compensation of Rs. 5 Crores . Till date the said Contempt proceedings are not listed.

It is worth to mention here that the records of the same case were stolen by associates of Adv. Milind Sathe and Complaint under section 409 of Indian Penal Code is likely to be registered soon as Respondent No. 3 gave Complaint to Hon'ble Chief Justice of Bombay High Court and in the said act of stealing of Court record the beneficiaries are Adv. Aspi Chinoy, Adv. Derius Khambata, Adv. Federal & Rashmikant & Other.

In a similar case Division Bench of Hon'ble Bombay High Court in the case of **Suo Motu (Court's on its own motion) Vs. T.G Babul 2018 SCC OnLine Bom 4853** had apologized the advocates for illegality committed by the Ld. Single Judge while issuing contempt notice.

"28 "We are, therefore, of the considered view that the observations made by the Ieamed Single Judge are totally contrary to the material placed on record. We may only observe that, while making such drastic observations, which have the effect of adversely affecting the career of the promising Lawyers, some sort of caution and circumspection ought to have been exercised by the learned Single Judge. Perusal of the order passed by the learned Single Judge itself would reveal, that the names of Lawyers who were appearing in the matters were known to the learned Single Judge, inasmuch as he had called for Vakalatnamas. The least that the learned Single Judge should have done was to give notice to theses lawyers before making any obervation with regard to their conduct.

29. We find that such an exercise by the learned Single Judge was wholly "unwarranted in the facts and circumstances of the case. Had the learned Single Judge called upon the Lawyers, they couId have assisted the Court. May be after perusing the record which we have perused, the learned Single Judge would have come to the some other conciusion and would not have passed such a drastic order. We are sure that the learned Singie Judge must not have intended to cause any harm to the Lawyers, but, in a spur of moment, on the basis of submission made before him, he might have passed the said order. We may gainfully refer to the observations of Lord Denning in the case of Balogh v. Crown Court at St Albans, All England Law

*Reports, [1974] 3 ALL ER 283**,** which read thus:*

" ..... We always hear these appeals within a day or two. The present case is a good instance. The Judge acted with a firmness which became him. As it happened, he went too far. That is no reproach to him. It only shows the wisdom of having an appeal"

30. We only wish to adopt the aforesaid observations, With only one change i.e. instead of word "appeal" – word "referance".

*31. **We cannot undo the damage which is caused to the Lawyers concernced and the agony with which they were required to go through for no reason. The only thing that we can do is to express regreat for the same.***

32. In the result, the Proceedings initiated as per the referance of the Learned Single Judge shall stand dropped.

20. However, the learned Single Judge appears to have lost sight of the fact that, some of the Judicial Officers are courageous enough not only to ignore the orders passed by this Court, but also by the Apex Court. Perusal of the record would reveal that the Zilla Parishad had specifically taken a stand before the learned Labour Court that, a statement was made by the Zilla Parishad before the Division Bench of this Court and that the termination of complainants before them was in accordance with the statement made before the Division Bench of this Court. It will be relevant to refer to paragraph 5 of the order passed by the learned Labour Court, Chandrapur, dt.2.11.2007 in Complaint (ULP) No. 90 of 2007 and Others.

***"Respondent has filed reply at Ex. 11. It is submitted that as per statement made by their counsel Shri H.A. Deshpande it was necessary for them to cancel earlier selection process and start fresh process which is undertaken.** Therefore complainants are bound to be terminated. So to allow them as fresh candidates for interview, there is nothing wrong to rectify mistake or mistaken view. They are required to conduct fresh interview. They have submitted that termination is not illegal. Complainants were wrongly appointed on the basis of old list. The appointment was purely temporary. Complainants were on probation of one*

year and their services are liable to be terminated. Complainants have tactfully suppressed material fact. There is no cause of action in the present complaints. It prays to reject these applications. ”

21. Perusal of the aforesaid order would reveal that, the impression of the learned Single Judge that no Labour Court can pass an order if it was pointed out that the statement made by the petitioner before this Court, is incorrect from the record itself. Perusal of the order dt.2.11.2007 would reveal that, in spite of the Zilla Parishad specifically informing the learned Labour Court about the statement made before this Court, the learned Labour Court has been courageous enough to grant interim protection. Not only that, but same came to be challenged before the learned Single Judge of this Court. It appears that, 'in the said petition being Writ Petition No. 4206 of 2008, which was again filed by same celebrated Irfan Hussain, Intially, on 1.12.2015, only rule was granted. Subswquentaly, the said petition came to be listed before the very same learned Single Judge , who has passed the referral order.”

19.10. Needless to mention here that as per Constitution Bench judgment in **Baradkanta Mishra Vs. Registrar (1974) 1 SCC 374** the previous contempt cannot be taken in to consideration.

Secondly, all the abovesaid cases are still sub-judice matters and the alleged contemnors are entitled for protection of presumption in said cases. But taking reference of said subjudice cases BBA & BILS committed contempt of this Hon’ble Court.

19.11. That, the entire letter dated 23.03.2019 sent by Adv. Milind Sathe nowhere states that which part of the Complaint given by Adv. Vijay Kurle, & Rashid Khan Pathan is wrong or incorrect. But in the letter there is only repeating of the words that we people are in habit of making Complaints maliciously.

This itself proves the hollowness of the letter dated 23.03.2019 by accused Adv. Milind Sathe.

Hon'ble Delhi High Court (C.B.I Special Court) in the case of **Benny Mohan Vs. State (Govt. of NCT of Delhi)** had ruled that;

> "*Reverting to the present matter, it is found that in the proceedings dated 03.07.2015, inter alia, it has been observed by ld. Trial court that the defence counsel was continuously disturbing the proceedings and getting into baseless and illogical arguments with the Court and spoke unnecessarily and irrelevant words against Ld. PP for State, witness as well as Presiding Officer.* ***But there is no mentioning of the exact words uttered by the defence counsel which forced Ld.Trial Court to observe the same to be baseless or illogical. It transpires the lack of cogent material in the impugned proceedings, in regard to the exact conduct of defence counsel unacceptable to the Ld.Trial Court.***

19.12. The Bombay Bar Association (BBA) is adopting perceptually causal approach and recourse to falsehood is taken with oblique motive and with ulterior purposes to hinder, hamper and impede the flow of justice and which performing their legal duties as they are suppose to do and therefore Adv. Milind Sathe of Bombay Bar Association (BBA) alongwith all signatories to the resolution of Bombay Bar Association and Mr. Kaiwan Kalyaniwalla with all signatories to the resolution by Bombay Incorporated Law Society (BILS) are liable to punished under Contempt as per law laid down in **Chandrashashi Vs. Anil Kumar (1995) 1 SCC 421.** They are also liable to be prosecuted under section 191,192,193,199,200,465,466,469,471,474, r/w 120(B) & 34 of Indian Penal Code.

19.13. In **Ahmad Ashrab, Vakil Vs. State 1926 SCC OnLine ALL 365** it is ruled as under;

> *A) Indian Penal Code, Sec. 466, 193 – 10 years imprisonment to defendants and Lawyer for filling false reply to defeat the lawful claim of the plaintiff. – Practitioner Suspended.*
>
> *In the suit filed by the plaintiff, the defendant used forged documents. Jokhul Lal having only four sons. But defendants tried to create confusion to show that he had fifth. This forgery was carried out by ganjeshri. Based on the aforesaid false*

documents a document, which was answer to the application for review, was prepared and filed in the court. The said document /reply was signed by Vakil, Ahmad Ashrat.

B) I.P.C. 466, 193 – A Defendant was sentenced to two rigorous imprisonment of 5 years for filling document containing false statement – Held, If Legal practitioner signs a document it is presumed that he fixes signatory with knowledge of contents – A Vakil so signing cannot plead that he did not know the contents – A man who signs his name to a document makes himself responsible in every way – He is bound to answer for every word, line, sentence and paragraph, and it will be no defence that somebody else wrote it and he only signed it – signature implies association and carries responsibility – He will be bound by all the implications arising from it just as much as if he had written every word – Practitioners must realize that if they associate themselves with statements which they know to be dishonest and untruthful for the purpose of misleading the Court then they should be punished - practitioner suspended.

20. # CHARGE 4 # CONTEMPT OF SUPREME COURT DIRECTION IN DATTARAJ THAWRE VS. STATE AIR 2005 SC 540

It is ruled by Hon'ble Supreme Court in **Dattaraj Thawre Vs. State AIR 2005 SC 540** case as under;

"Advocate to gain private profit and to gain ulterior purposes filed petition and claiming it to be in the interest of public- official document annexed to the petition but no explanation is given as to how he come in possession thereof –the attractive brand name of public interest litigation should not be used for suspicious product of mischief and it should not be publicity oriented or founded on personal vendetta – Bar Council and Bar Association directed to ensure that no member of the bar becomes party as petitioner file frivolous petitions- no one should be permitted to bring disgrace to the noble profession and high traditions of the bar. Imposition of cost Rs 25000/ on advocate is proper- Copy of order sent to

Bar Council for necerry action against advocate."

But Advocate Milind Sathe, Advocate Nitin Thakkar and his Associates took a stand before Hon'ble Bombay High Court that, they are not bound to disclose the sources of information in filling **Criminal Contempt Petition No. 03 of 2017.**

This shows their tendency to undermine the majesty and dignity of Hon'ble Supreme Court and therefore they are liable to be expelled permanently from the Roll of Bar Council of Maharashtra & Goa.

21. # CHARGE 5 # CONTEMPT OF DIRECTION BY HON'BLE SUPREME COURT IN THEIR OWN CASE TO THEM IN THE CASE OF C. RAVICHANDRAN IYER VS. JUSTICE A. M. BHATTACHARJEE (1995) 5 SCC 457.

In abovesaid case Hon'ble Supreme Court had set-out the procedure for making complaint against Judges and it was further ruled as under:

"Resolution against Chief Justice of Bombay High Court, to resign from the office as Judge by Bombay Bar Association [BBA] and the Advocates' Association of Western India [AAWI], Bar Council of Maharashtra and Goa [BCMG] - Justice A.M. Bhattacharjee Chief Justice of Bombay High Court resigned from the post.

The BBA filed a counter-affidavit through its President, Sri Iqbal Mahomedali Chagla.

Question raised in the petition about independence of judiciary –Held, when the Bar of the Court, in which the Judge occupies the set of office, honestly believes that the conduct of the Judge or of the Bench fouls the fountain of justice, or undermines or tends to undermine the dignity expected of a Judge and the people are tending to disbelieve the impartiality or integrity of the Judge - It is of importance to emphasise here that impeachment is meant to be a drastic remedy and needs to be used in serious cases. But there must exist some other means to ensure that Judges do not abuse the trust the society has in them. - proper care should be taken by the Bar Association concerned,. First, it should gather specific,

authentic and acceptable material which would show or tend to show that conduct on the part of a Judge creating a feeling in the mind of 2 reasonable person doubting the honesty, integrity, impartiality or act which lowers the dignity of the office but necessarily, is not impeachable misbehavior. In all fairness to the Judge, the responsible office bearers should meet him in camera after securing interview and apprise the Judge of the information they had with them. If there is truth in it, there is every possibility that the Judge would mend himself. Or to avoid embarrassment to the Judge, the office bearers can approach the Chief Justice of that High Court and apprise him of the situation with material they have in their possession and impress upon the Chief Justice to deal with the matter appropriately.

The Chief Justice of India is expected to find a desirable solution in such a situation to avoid embarrassment to the learned Judge and to the Institution in a manner which is conducive to the independence of judiciary and should the Chief Justice of India be of the view that in the interests of the institution of judiciary it is desirable for the learned Judge to abstain from judicial work till the final outcome under Article 124(4), he would advise the learned Judge accordingly.

Even if the Judge were not eventually condemned, the mere invocation of the statutory provisions might taint him with a devastating stigma. The vestment of authority might remain but the aura of respect and confidence so essential to the judicial function would be forever dissipated. He, therefore, suggested that pressure by the peers would yield salutary effect on the erring judge and, therefore, judicial system can better survive by pressure of the peers

Misbehavior by a judge - Judicial office is essentially a public trust. Society is, therefore, entitled to except that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of

the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge.

The conduct that tends to undermine the public confidence in the character, integrity or impartiality of the Judge must be eschewed. It is expected of him to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities.

Guarantee of tenure to a Judge and its protection by the Constitution that he will not be removed without impeachment would not, however, accord sanctuary for corruption or grave misbehavior.

To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behavior. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behavior of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.

Scope and meaning of "misbehavior" in Article 124(4):

Willful abuse of judicial office, wilful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude would be misbehavior.

Misconduct implies actuation of some degree of mensrea by the doer. Judicial finding of guilt of grave crime is misconduct. Persistent failure to perform the judicial duties of the Judges or wilful abuse of the office dolusmalus would be misbehavior. Misbehavior would extend to conduct of the Judge in or beyond the execution of judicial office.

A misbehavior which is ' a good behaviour may be improper conduct not befitting to the standard expected of a Judge.

The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as a whole. When the edifice of judiciary is built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution.

26. Bad conduct or bad behavior of a Judge, therefore, needs correction to prevent erosion of public confidence in the efficacy of judicial process or dignity of the institution or credibility to the judicial office held by the obstinate Judge.

Rule of Law and Judicial Independence - Why need to be preserved?

10. *The diverse contentions give rise to the question whether any Bar Council or Bar Association has the right to pass resolution against the conduct of a Judge perceived to have committed misbehavior and, if so, what is its effect on independence of the judiciary. -if there is one principle which runs through the entire fabric of the Constitution it is the principle of the rule of law, and under the Constitution it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective. - The judiciary seeks to protect the citizen against violation of his constitutional or legal right or misuse or abuse of power by the*

State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive. It is, therefore, absolutely essential that the judiciary must be free from executive pressure or influence which has been secured by making elaborate provisions in the Constitution with details. ***The independence of judiciary is not limited only to the independence from the executive pressure or influence; it is a wider concept which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz., fearlessness of other power centers, economic or political, and freedom from prejudices acquired and nourished by the class to which the judges belong.***

40. *Bearing all the above in mind, we are of the considered view that where the complaint relates to the Judge of the High Court, the Chief Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office bearers against the Judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him. When the Chief Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter.*

The Bar Association could remain a useful arm of the judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of the High Court and await his response for the action taken thereunder for a reasonable period.

42. *It would thus be seen that yawning gap between proved misbehavior and bad conduct in consistent with the high office on the part of a non cooperating Judge/ Chief Justice of a High Court could be disciplined by self-regulation through in house procedure. This in-house procedure would fill in the*

constitutional gap and would yield salutary effect. Unfortunately, recourse to this procedure was not taken in the case at hand, may be, because of absence of legal sanction to such a procedure.

43. *Since the 1st respondent has already demitted the office, we have stated as above so that it would form a precedent for future."*

22. Despite the above law & direction Advocate Milind Sathe & his associates are always committing gross Contempt of above directions and taking a stand in Criminal Contempt Petition No. 03 of 2017 and all other Communication that, no one can file Complaint against Judge. Judges cannot be prosecuted.

This is also Contempt of the law laid down by Constitution Bench of Hon'ble Supreme Court in **K. Veeraswami Vs. Union Of India (1991) 3 SCC 655** it is ruled as under;

"It is not objectionable to initiate criminal proceedings against public servant before exhausting the disciplinary proceedings, and a fortiori, the ***prosecution of a Judge for criminal misconduct before his removal by Parliament for proved misbehaviour is unobjectionable.***

…….But we know of no law providing protection for Judges from criminal prosecution. Article 361(2) confers immunity from criminal prosecution only to the President and Governors of States and to no others. Even that immunity has been limited during their term of office. ***The Judges are liable to be dealt with just the same way as any other person in respect of criminal offence. It is only in taking of bribes or with regard to the offence of corruption the sanction for criminal prosecution is required."***

Let us take a case where there is a positive finding recorded in such a proceeding that the Judge was habitually accepting bribe, and on that ground he is removed from his office. On the argument of MrSibal, the matter will have to be closed with his removal and he will escape the criminal liability and even the ill-gotten money would not be confiscated. Let us consider another

situation where an abettor is found guilty under S. 165-A of the Indian Penal Code and is convicted. The main culprit, the Judge, shall escape on the argument of the appellant. In a civilized society the law cannot be assumed to be leading to such disturbing results."

In Prominant Hotel's case 2015 it is ruled that 'The person taking stand aginst settled law is guilty of contempt'

23. # CHARGE 6 # CONTEMPT OF COURT AND PROFESSIONAL MISCONDUCT BY APPEARING BEFORE A JUDGE FOR WHOM THEY HAVE FILED PETITION AND MADE REPRESENTATION:-

That, it settled law by Hon'ble Supreme Court and also Bar Council of India that, if any advocate had acted for a Judge then he should not represent any case before the said Judge or the said Judge should recuse himself from hearing the case **[Fakhruddin Vs. Principal Consolidation Training Institute (1995)4 SCC 538, P.K.Ghosh Vs. J. G. RajputAIR 1996 SC 513,Justice P.D. Dinakaran Vs. Hon'ble Judges Inquiry Committee (2011) 8 SCC 380, S. Sengkodi Vs State 2009 SCC OnLine Mad 626, State Vs. Davinder Pal Singh Bhullar (2011) 14 SCC 770 , Suresh Ramchandra Palande Vs. The Government of Maharashtra 2016 (2) ALL MR 212.**

In the case of Adv. Kapil Sibbal & Adv. Abhishek Manu Singhvi on 1st April 2018 Bar Council of India had given following submission before Hon'ble Supreme Court;

"BCI Chairman Manan Kumar Mishra stated that, " The BCI has come to a final conclusion that we cannot stop or ban MPs from practicing in the courts, but there is an exception to it. ***The lawyer-MPs or MlAs, if they start any motion of impeachment or removal proceedings against any high court or Supreme Court Judge, will not be allowed to practice in that particular court. This is the majority view of the council."***

But Advocate Milind Sathe and his Associates Advocate Aspi Chinoy, Advocate Rajeev Chavan who appeared and fought for protecting rights of Justice S. J. Kathawalla, Justice (Retd.) Mohit Shah , Justice B.P. Collabwalla, Justice K.K. Tated Etc. are appearing before the

same Judges in various litigations and obviously prejudice is being caused to many lawyers and litigants for opposite side. This is a gross professional misconduct on their part.

24. Recently, Hon'ble Supreme Court in **Shrirang Waghmare Vs. State 2019 SCC OnLine SC 1237** had termed it as a corruption. It is ruled as under;

> **"10.** *There can be no manner of doubt that a judge must decide the case only on the basis of the facts on record and the law applicable to the case. If a judge decides a case for any extraneous reasons then he is not performing his duty in accordance with law.*
>
> **11.** *In our view* ***the word 'gratification' does not only mean monetary gratification. Gratification can be of various types. It can be gratification of money, gratification of power, gratification of lust etc., etc. In this case the officer decided the cases because of his proximate relationship with a lady lawyer and not because the law required him to do so. This is also gratification of a different kind."***

25. # CHARGE 7 # FRAUD ON BOMBAY HIGH COURT:-

That, Adv. Milind Sathe, Adv. Nitin Thakkar filed a false affidavit before Bombay High Court. Respondent No.1 filed on application under section 340 of Cr.P.C. before Hon'ble High Court in Criminal Contempt Petition No. 03 of 2017 for prosecuting the accused Milind Sathe, Nitin Thakkar & Ors. under section 191, 192, 193, 199, 200, 465, 466, 471, 474 r/w 120 (B) & 34 of IPC.

Since then the matter is not being taken for hearing by said Adv. Milind Sathe.

26. # CHARGE # CONTEMPT OF CONSTITUTION BENCH JUDGMENT OF SUPREME COURT IN BARADKANTA MISHRA Vs. REGISTRAR OF ORISSA HIGH COURT (1974) 1 SCC 374.

Hon'ble Supreme Court in judgement in **Baradakanta Mishra Vs. Registrar of Orissa High Court (1974) 1 SCC 374** had ruled as that:

That pendency of any Contempt Petition have no legal impact and cannot be taken in to consideration for any case. In fact every respondent in Contempt Proceedings have constitutional protection of

presumption of innocence.

But Advocate Milind Sathe in his letter dated **23rd March, 2019** addressed to many Judges had taken a reference of Pendency of Contempt cases against Adv. Vijay Kurle & Adv. Nilesh Ojha, Shri. Rashid Khan Pathan.

This is a gross Contempt on the part of Advocate Milind Sathe & Mr. Kaiwan Kalyaniwalla.

They also intereferred with the Fundamental Right and duty of an advocates and citizens of their right to make complaint against Judges as mandated under Article 51 (A) (h) of the Constitution and Bar Council of India Rules as ruled by Hon'ble Supreme Court in the case of **R. Muthukrishnan Vs. The Registrar General of the High Court of Judicature at Madras AIR 2019 SC 849** ruled as under ;

> *"The protection of the basic structure of the Constitution and of rights is possible by the firmness of Bar and Bench and by proper discharge of their duties and responsibilities.* ***We cannot live in a jungle raj****.*
>
> ***Making the Bar too sycophant and fearful which would not be conducive for fair administration of justice****. Fair criticism of judgment and its analysis is permissible.* ***Lawyers' fearlessness in court, independence, uprightness, honesty, equality are the virtues which cannot be sacrificed. It is duty of the lawyer to lodge appropriate complaint to the concerned authorities as observed by this Court in Vinay Chandra Mishra (supra), which right cannot be totally curtailed."***

26.1. In **Indirect Tax Practitioners Association Vs. R.K. Jain, (2010) 8 SCC 281,** it is ruled as under ;

> ***"Exposing corruption in Judiciary is Duty of every citizen as per Art. 51 - A (h) of Constitution of India - Let Truth and Falsehood grapple - whoever knew Truth put to the worse, in a free and open encounter - Truth is strong, next to the Almighty; she needs no policies, no stratagems, no licensings to make her victorious; those are the shifts and defences that error makes against her power."***

27. Disaffiliation of Bombay Bar Association & Ors. and action for

professional misconduct for Passing resolution to welcome conviction of an advocate without defended by Lawyer and sending letter in a pending case.

In a recent judgment it is ruled that, the Bar Association like (BBA) obstructing the duty of a lawyer and citizen should be disaffiliated and criminal prosecution, Contempt proceedings be initiated against such Bar Associations.

28. Hon'ble Uttarakhand High Court in the case of **Kuldeep Agarwal Vs. State 2019 SCC OnLine Utt 856** it is ruled as under;

> ***"No lawyer can be visited with any adverse consequences by the Bar Association or the Bar Council, and no threat or coercion of any nature, including that of expulsion, can be held out against him for performing his duty . If anyone does it, he commits a criminal offence, interferes with the administration of justice, commits contempt of Court, and is liable to be proceeded against on all these counts.*** *(Sri JayendraSaraswathy Swamigal3 and B.L. Wadhera Vs. State of (NCT of Delhi)7).*
>
> *"If the advocate refuses to defend from what he may think of the charge or of the defence, he assumes the character of the judge; nay he assumes it before the hour of the judgment; and in proportion of his rank and reputation puts the heavy influence of perhaps a mistaken opinion into the scale against the accused in whose favour the benevolent principles of English law make all assumptions, and which commands the very Judge to be his Counsel"*
>
> *The nobility of the profession, and the high traditions of the Bar, are best reflected in the views of Clarence Darrow (widely renowned as the Attorney for the Damned), that a person, however wicked, depraved, vile, degenerate, perverted, loathsome, execrable, vicious or repulsive he may be regarded by society, has a right to be defended in a court of law and, correspondingly, it is the duty of the lawyer to defend him. (A.S. Mohammed Rafi1).*
>
> *Justice Hugo Black of the US Supreme Court, in his dissenting judgment in Re Antastaplo2, said :-*
>
> *"Men like Lord Erskine, James Otis, Clarence Darrow, and a*

multitude of others have dared to speak in defense of causes and clients without regard to personal danger to themselves. The legal profession will lose much of its nobility and its glory if it is not constantly replenished with lawyers like these. To force the Bar to become a group of thoroughly orthodox, time-serving, government-fearing individuals is to humiliate and degrade it."

Instead of following the path which these eminent lawyers have shown, we face a situation today where the miniscule few, who dare to tread the solitary path of taking up the cause of the damned, are threatened with dire consequences, for nothing more than the discharge of their duties as an Advocate. Unlike Sir Thomas Erskine, the threat which lawyers, such as the petitioner, face is not from outside but from within i.e. from the Association of Advocates of which they are members. Several Bar Associations (in the present case, the Kotdwar Bar Association) have been passing resolutions that no member of their association should defend a particular person or persons in a particular case, or a person accused of a brutal or a heinous crime, though such resolutions are wholly illegal, against all traditions of the Bar, and against professional ethics. (A.S. Mohammed Rafi1).

Such illegal threats of expulsion from the Bar Association was in violation of Rules 11 and 15 of Chapter II of Part VI of the Bar Council of India Rules made under the Advocates Act, 1961; the second respondent had locked down the Court premises of the premises of the Kotdwar District Court protesting against the hearing of the case of the accused
In our interim order, in Writ Petition (PIL) No.71 of 2019 dated 13.06.2019, we had, after noting that the petitioner, a senior member of the Kotdwar Bar Association, had invoked the writ jurisdiction of this Court complaining of the resolution passed by the Kotdwar Bar Association that nobody should represent the accused in Case Crime No.281 of 2017, observed:-
"Since, by way of the said resolution, the Bar Association has already determined the guilt of the accused in Case Crime No. 281 of 2017, though such a conclusion can only be arrived at

by a competent court, that too after completion of a free and fair trial. It is the obligation of an Advocate, subject to his being paid the fees he is entitled to, to represent the accused, and in case the accused is not able to afford legal representation then the State is obligated to provide him legal aid. We are disturbed by the resolution passed by the Advocates Association, who were responsible for such acts."

The resolution of the Kotdwar Bar Association, restraining Advocates from defending a particular accused, is antithetical to the idea of "Justice", "Equality" and "the dignity of the individual" as embedded in the preamble to the Constitution of India; the said resolution, passed by the KotdwarBar Association, is violative of the fundamental right enshrined in Article 21 of the Constitution; denial of the right to be defended in a case would result in depriving the accused of his right to life and liberty as guaranteed under Article 21 of the Constitution, that too when no procedure by law has been established for denial of such a right to any accused, no matter how heinous be the nature of the offence so committed; the Constituent Assembly, while debating Article 15-A of the draft constitution on the 16th of September, 1949, specifically added "the right to defense by the counsel of his choice" as a fundamental right; the right to speedy trial was also discussed, and left out from the Part relating to fundamental rights only because there existed statutory provisions, although by later interpretation of the Supreme Court it has been made as a part of the right to life; the Bar Association resolutions, barring Advocates from appearing for a particular accused, is in violation of Articles 21, 22 (1) and 39-A of the Constitution of India; the said Bar Association resolution is also in violation of the Bar Council of India Rules contained in Part VI- Chapter II "Standards of Professional Conduct and Etiquette"; it is also in violation of Section-I : duty to the Court and Section II : duty to the Client; and the State Bar Council should be directed to take action against the resolution of the Kotdwar Bar Association for restraining advocates from defending a particular accused.

Every accused has a fundamental right, under Article 22(1) of the Constitution of India, not to be denied the right to consult, and to be defended by, a legal practitioner of his choice. Paragraph No. 1 of the Resolution dated 16.05.2019, as noted hereinabove, whereby members of the Kotdwar Bar Association were directed not to represent the accused, has, in effect, resulted in the accused being denied his fundamental right to be defended by a lawyer of his choice. Article 39-A, in Part IV of the Constitution, relates to equal justice and free legal aid, and requires the State to secure the operation of a legal system which promotes justice on the basis of equal opportunity and, in particular, to provide free legal aid by suitable legislation, or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The object sought to be achieved thereby is that no accused is denied his fundamental right to be defended by a lawyer merely on the ground of economic or other disabilities which he may suffer from; and the State is obligated to provide such an accused free legal aid. If that be the laudable object of Article 22(1) in Part III of the Constitution, and Article 39-A in Part IV, any fetter placed on the fundamental right of the accused, to be defended by a lawyer of his choice, be it for economic or other reasons, is illegal and unconstitutional.

A resolution, such as that passed by the Kotdwar Bar Association (which is impugned in this Writ Petition), and the petitioner's claim to have been threatened by lawyers to desist from representing the accused, also affects the fundamental right of the accused to have a free and fair trial, which is the sine qua non of Article 21 of the Constitution (Sri Jayendra Saraswathy Swamigal (II) vs. State of T.N.3) and K. Anbazhagan vs. Supdt. ofPolice4). Obstructions, caused to the case of the accused being heard, result in denial of speedy justice which is also a threat to public confidence in the

administration of justice. (Hussain and another vs. Union of India5).

Whatever the offence may be, had the inherent right to be represented by a counsel of his choice; the traditions of the Bar, and the fundamental concept pertaining to access to justice, did not permit any Bar Association to pass such a resolution; despite the assurance, that none of the members of the Bar would create any kind of hindrance or obstruction for the smooth hearing of the case, they were obliged to hold that none of the members of the Bar should create any kind of impediment in the ingress and egress of any counsel representing the petitioner; it shall be the responsibility of the office-bearers of the Bar to see that the order was complied with in its entirety; and any deviation would be seriously dealt with.

It requires him to defend a person accused of a crime r egardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence. It is this duty of an Advocate, to defend a person accused of a crime, which is sought to be interfered with by the Kotdwar Bar Association by the threat of action being taken against him for removal of his membership of the Bar Association. No lawyer (or for that matter an Association of Lawyers) can obstruct or prevent another lawyer from discharging his professional duty of appearing in Court on behalf of his client.

Irrespective of the belief of the members of the Kotdwar Bar Association regarding his guilt, the accused cannot be denied the benefit of effective legal representation, and to be defended by an Advocate of his choice, provided, of course, he is in a position to pay the fees which the Advocate is entitled to.

The anguish of the members of the Kotdwar Bar Association notwithstanding, it is not for them to pronounce upon the guilt or otherwise of the accused even before investigation is completed, a charge-sheet is filed, and the accused is tried in accordance with law. It is only the Criminal Court of Competent jurisdiction which can decide upon the guilt or otherwise of the accused. Whatever the

belief of the members of the Kotdwar Bar Association may be, the fundamental postulates of criminal jurisprudence, and the penal laws in India, are primarily based upon certain procedural values which are the right to a fair trial and the presumption of innocence. A person is presumed to be innocent till proven guilty, as envisaged under Article 14(2) of the International Covenant on Civil and Political Rights. In a criminal trial innocence of an accused is presumed, unless there is a statutory presumption against him. The Kotdwar Bar Association was, therefore, not justified in pre-determining the guilt of the accused even before investigation is completed, and in passing such a resolution based on this premise.

We see no reason, in the absence of a specific denial in the counter affidavit, to disbelieve the petitioner's assertion that the Kotdwar District Court premises had been locked in protest against the case of the accused Sri Vinod Kumar being heard. It does appear that the District Court at Kotdwar has not only failed to take action against these acts of hooliganism, but has also kept the High Court in the dark of such unruly acts which the members of the Kotdwar Bar Association had indulged in. The High Court is requested to examine, on its administrative side, whether or not the Additional District Judge, Kotdwar has failed to discharge his duties in preventing such incidents of lawlessness by members of the Kotdwar Bar Association.

The Additional District Judge, Kotdwar shall, henceforth, ensure that interruption, in any form, being caused to Court proceedings, by any member of the Kotdwar Bar Association is sternly dealt with, and prompt action is taken against those who may cause any impediment to the petitioner in the discharge of his obligations as an Advocate for the accused. The Superintendent of Police, PauriGarhwal shall provide adequate police protection to prevent any untoward incident taking place in the Court precincts, and to ensure that court proceedings continue uninterrupted. In case of any such recurrence, the Additional District Judge, Kotdwar shall, forthwith, submit a report making a reference to the High Court, to enable it to consider whether cognizance of criminal

contempt should be taken, under Section 15(2) of the Contempt of Courts Act, 1971, against such of those Advocates who interrupt Court proceedings, or lock down Court premises, protesting against the hearing of the case of the accused. The Superintendent of Police, PauriGarhwal, and the concerned police officials at Kotdwar, shall, in case any request is made by the Additional District Judge, promptly provide necessary police protection in the Court precincts to enable justice to be administered unhindered. In case the petitioner faces any kind of physical threat to his person, for representing the accused, the Superintendent of Police, PauriGarhwal, shall, on being informed of any such threats, promptly examine whether he should be provided police protection, and take such steps as are necessary to ensure his physical safety and well-being.

The resolution, passed by the Kotdwar Bar Association dated 16.05.2009 is declared null and void in its entirety. The second respondent-Bar Association shall ensure that none of its members, henceforth, restrain or cause any impediment to the petitioner in appearing for the accused, and refrain from issuing any threats to him, much less of termination of his membership of the second respondent- Bar Association.

Section 6 of the Advocates Act relates to the functions of the State Bar Council and, under Sub-Section (1)(c) thereof, the functions of the State Bar Council include entertaining and determining cases of misconduct against advocates on its rolls.

Members of the Kotdwar Bar Association are Advocates enrolled with the Uttarakhand State Bar Council, and for holding out such threats, the State Bar Council has undoubtedly the power to proceed and take disciplinary action against the errant Advocates including the office- bearers of the Kotdwar Bar Association.

The State Bar Council also has the power to take action against the Bar Associations under the Advocates Welfare Fund Act, 2001. Chapter IV of the said Act relates to recognition of any association of advocates, and Section 16 thereunder, relates to the recognition by a State Bar

Council of any association of advocates. Sub-sections (1) and (2) of Section 16 permit any association of advocates, registered as an association, to apply for recognition to the State Bar Council. The explanation below Section 16(4) defines the word 'registered', for the purposes of Section 16, to be registered or deemed to be registered under the Societies Registration Act, 1860. Section 16(4) enables the State Bar Council, after such enquiry as it deems necessary, to recognize the association and issue a certificate of recognition in such form as may be prescribed. Section 16(5) stipulates that the decision of the State Bar Council on any matter, regarding recognition of an association under sub-section (4), shall be final. In view of Section 21 of the General Clauses Act, 1897, the power conferred on the State Bar Council, to issue a certificate of recognition, would include the power to rescind the certificate issued by them, which power they can exercise in exceptional circumstances. We may not be understood to have held that theUttarakhand State Bar Council should rescind the certificate of recognition issued earlier to the Kotdwar Bar Association. We merely remind the Uttarakhand State Bar Council of its powers to control recalcitrant Bar Associations which continue to flout the law, and indulge in acts which affects the rights of advocates to appear on behalf of an accused, as also the fundamental right of the accused to be defended by a lawyer of his choice.

In case such resolutions are passed in future by any of the recognized Bar Associations, including the Kotdwar Bar Association, the Uttarakhand State Bar Council shall forthwith initiate action against the office-bearers of such an Association, and the Advocates guilty of such acts of misconduct, referring the complaint to its Disciplinary Committee. Even, in the absence of the elected members of the State Bar Council, the Special Committee of the Uttarakhand State Bar Council, constituted under Section 8(A) of the Advocates Act, has the power to take action, and shall do so accordingly.

The resolution passed by the Kotdwar Bar Association dated 16.05.2019 is declared null and void, and is accordingly quashed in its entirety. The writ petition is allowed with costs of Rs.25,000/- which the Kotdwar Bar Association shall pay the petitioner within four weeks from today, failing which it shall be open to the petitioner to recover the said amount in accordance with law."

29. The executive members of Bombay Bar Association (BBA), Advocates Association of Western India (AAWI), & Bombay Incorporated Law Society (BILS) have passed a resolution welcoming the conviction of an Advocate Mr. Mathews Nedumpara, who was declared guilty by the Court without any trial and without being represented by any lawyer. They also sent the copy of the said resolution in a subjudice matter to the court hearing the case on sentence.

This is an indirect attempt to promote the violation of fundamental rights of a party to be defended by a lawyer of his choice. In fact it was expected from a lawyer to raise voice against any such violation. Hence the abovesaid Bar Association i.e. BBA & ors by their act of commission and omission have committed serious criminal offences and they are also guilty of gross professional misconduct. Sending a letter in a sub-judice case is also gross contempt.

30. Hon'ble High Court in **State Vs. Radhagobinda Das 1953 Cr.L.J. 1906,** it is ruled as under;

"37. *That position was clarified there in the following terms:*

"Any extra-judicial interference whatsoever directed towards influencing the manner of disposal of a pending case amounts to serious contempt of Court. A Court can be approached in one way only, that is, by a judicial application in proper form. Any instance of approach with reference to a pending case in any other manner must be immediately reported to the High Court."

26. *The mischief of the letter arises from the statement therein that "this is a spectacular case in which large quantity of clothes was hoarded by the accused dealer (a Marwari Merchant), by fabricating false accounts of the sale." Here are two categorical assertions as of fact, viz., (1) that large quantity of clothes was hoarded, and (2) that the modus operandi was the fabrication of false accounts for the sale. Obviously, these two are issues of fact involved in the very case*

which was sent up to the 1st class Magistrate Shri C.V. Murty, for trial. A communication, therefore, of this letter to him through the channel of superior higher authorities, to whom in his executive capacity he is subordinate, is a course which has the necessary tendency to embarrass and hamper the trying Magistrate in the free and unbiased exercise of his judicial function.

24. *The contemner no. 3, Sri S.N. Patnaik, is also guilty of the offence of contempt of Court in having forwarded this letter to the Trying Magistrate simultaneously while transferring the case for trial.*

23. *I am, therefore, definitely of the view that the letter expressing the opinion of a superior Officer of the position of the Deputy Secretary to the Government (Enforcement) of Orissa that it is a spectacular case in which a large quantity of clothes was hoarded by the accused by fabricating a false account of sale, with the endorsement of the District Magistrate "Show this to S.D.M. Sadar for needful", and further containing similar endorsement of the Sub-divisional Magistrate, when it reaches the Trying Magistrate, is bound to embarrass him and has a definite tendency of seriously affecting the fair trial of the case. The contemner No. 1, in having forwarded this letter to the Sub-divisional Magistrate when it is manifest from the contents of the letter that the filing of the case was at least imminent if cognisance had not already been taken with the endorsement, as quoted above, knowing that the Sub-divisional Magistrate was to exercise a judicial discretion under Section 204 of the Cr PC, in taking cognisance of the case and that it is quite likely that the Sub-divisional Magistrate may himself try the case, "has undoubtedly committed the offence of contempt of Court."*

22. *The act of Sri Patnaik, who was in charge of the current duties of the Sub Divisional Magistrate on 28-4-1952, in transmitting this letter to the trying Magistrate, while he was on that very day transferring the case with an endorsement "To Trying Magistrate for needful" is more serious. In usual course, he must have read the letter, and, as is expected, he ought to have realised the implications of the contents and the influence it might exert upon the Magistrate before whom the accused, as recognised by all civilised jurisprudence, is certainly entitled to the fairest trial in a perfectly unbiased atmosphere.*

25. *This is not the first instance of its kind. We had the sad*

experience of several cases during the recent years with such attempt at extra-judicial interference with the administration of justice. This Court had to issue General Letter No. 1 of 1949 (Criminal), dated 26-4-49 giving directions against any such extra-judicial interference. The Home Department of the Government also had issued letter dated 24-8-50 with similar directions. But in spite of our repeated warnings and directions, if such an act comes to our notice which has a definite tendency of interfering with the fair trial, we are definitely of the view that if we do not take any serious notice of such an act we would be failing in our duties if we do not maintain an atmosphere of complete assurance to the public of the State of a fully unbiased and fair trial of the case free from any extra-judicial interference whatsoever. I, therefore, entirely agree with the order which is being passed by My Lord the Chief Justice.

29. *In the context of the previous contents of the letter and the statement that it was a 'spectacular case' it might well be taken to convey a hint that the District Magistrate is to keep an eye on the result of the case, though ostensibly, it may pass off as a routine matter, having regard to what he states to be his normal duty to keep in touch with the District Magistrate with reference to his branch of the work. Even the request for a speedy trial emanating from a Deputy Secretary to the Government to the District Magistrate and intended to be communicated to the trial Magistrate, might well be a source of serious embarrassment to the trial Magistrate and affect the judicial discretion that he may be called upon to exercise when one or other of the parties to the case feel the necessity to ask for adjournments.*

32. *But as pointed out by my learned brother, it is the Sub-Divisional Magistrate that takes cognizance of a case and exercises the preliminary function of summoning the accused to appear as, in fact, he has done in this case (vide the order-sheet). Taking cognizance is not a mere routine or ministerial function. Section 204 of the Cr PC, shows that the Magistrate who takes cognizance of an offence is to issue summonses to the accused only if, in his opinion, there is sufficient ground for proceeding. He, therefore, exercises a judicial function even at that stage. As pointed out in — 'Boywalla J.D. v. Sorab Rustomji Engineer', AIR 1941 Bom 294 at p. 295 (H), the wording of Section 204 of the Cr PC, seems to suggest that there may be a case in which a Magistrate has taken cognizance, but in*

which, in his opinion, there is no sufficient ground for proceeding. It seems to follow by necessary implication that the Magistrate in such a case has the power to discharge the accused. If this view be correct — and I am respectfully inclined to agree with it — it is quite clear that the communication of this letter even to the Sub-Divisional Magistrate himself with the knowledge that in the ordinary course he is at least bound to take cognizance clearly constitutes contempt of Court.

33. *Both the District Magistrate contemner No. 1 and the Sub-Divisional Magistrate, contemner No. 3 justify their action by suggesting that they forwarded the letter sent by the Deputy Secretary to the Government to the trial Magistrate, as a routine measure, in order to convey the request of the Deputy Secretary for ensuring the speedy trial. They assert that they had no intention of prejudicing the fair trial of the case on its merits. But, as pointed out by my learned brother, it is well settled that it is the clear tendency of the letter and not the intention with which the sender has sent it, that is the determining criterion in such cases. Some further question has been raised that the District Magistrate was not aware at the time that the case was already taken cognizance of by the Sub-Divisional Magistrate. But this clearly is also immaterial as shown by my learned brother. I have, therefore, no hesitation in agreeing with my learned brother in adjudging both the District Magistrate, contemner No. 1 and the Sub-Divisional Magistrate, contemner No. 3, as being guilty of the offence of contempt of Court in respect of the criminal proceeding then pending or at least known to be imminent.*

PRAYER:- It is therefore humbly requested for;

1. Investigation in to the serious conspiracy of Mr. M. A. Rashid editor 'Live-Law' Milind Sathe, of Bombay Bar Association, P. Chidambaram, Adv. Fali Nriman and other co-conspirators to excite disaffection, hatred, contempt, disloyalty, feelings of enemity towards our Indian Army, Indian Judiciary and Indian Government with ulterior motive and malafide intention to serve their anti-

national agenda and thereby committing and abating the people to do offences under section 124-A R/W 120(B) & 34 of IPC.

2. Direction for investigation of unholy nexus between these accused with other anti- national elements and terrorist funding organizations by forensic investigation of their Bank accounts, move able & immoveable assets, mobile numbers, whatapps messages, emails and also conducting Naro Analysis, Brain Mapping & i. e. Detector Tests.

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Adv. Vivek Ramteke
Secretary
Indian Bar Association