

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5269 OF 2010.

DIST: AURANGABAD

In the matter of Articles 12, 14, 19 (1)
(g), 21 and 226 of the Constitution of
India.

AND

In the matter of Article 245 and 246
read with Seventh Schedule of the
Constitution of India.

AND

In the matter of Secs. , 7, 17, 23, 24, 24-A, 28, 29, 33, 34, 49, 49-A and 52 of the Advocates Act, 1961.

AND

In the matter of Bar Council of India Training - Conditions for right to Practice, Rules, 2009.

AND

In the matter of order dated 14-12-2009 in SLP (Civil)No.22337 of 2008 passed by the Hon'ble Supreme Court of India.

01. Sunil s/o Shamlal Bhagure,
Age 24 years, Occu. : Education,
R/o 141, Ayodhya Niwas,
Harsool, Aurangabad.
02. Pritam s/o Chatarsingh Rajput,
Age 26 years, Occu. Education,
R/o I-4, Gulmohar Row House,
Tirupati Park, N-4, CIDCO,
Aurangabad.
03. Avinash s/o Sahebrao Paikade,
Age 24 years, Occu. Education,
R/o 'Laxman Niwas',
Near Bhagatsingh Nagar,
Pisadevi Road, Harsool,
Aurangabad.
04. Rajesh s/o Fakirrao Rothe,
Age 26 years, Occu. Education,
N-7, C-24, CIDCO Police Colony,
Aurangabad

05. Alim s/o Kamal Patel
Age 24 years, Occ. Education,
R/o At Post Monsuri Colony,
Gangapur, Tq. Gangapur,
Dist. Aurangabad.
06. Madhav s/o Ramrao Mundhe,
Age 29 years, Occu. Education,
R/o Gadiya Vihar, Aurangabad.
07. Aishwarya d/o Vilas Kulkarni,
Age 22 years, Occu. Education.
R/o 20, Vedant, Jyotinagar,
Aurangabad.
08. Anagha d/o Anil Deshmukh
Age 23 years, Occu. Education,
R/o 32, Ekdanta, Jabinda Estate ,
Near Shahnoormiya Darga Road,
Aurangabad
09. Sunita d/o Shrikant Mishra,
Age 23 years, occu. Education,
R/o Vivekanand Colony,
Opp. Nandanvan Hotel, Station Road,
Aurangabad.
10. Bakul d/o Nandkishor Kulkarni
Age 24 years, Occu. Education,
R/o Alankar Society, Garkheda,
Aurangabad

PETITIONERS

VERSUS.

1. Union of India.
Ministry of Law, Justice and
Company Affairs,
Shastri Bhavan,
New Delhi.
2. The Bar Council of India,
(Through its Chairman),
New Delhi
3. Bar Council of Maharashtra & Goa
(Through its Secretary)
High Court Extension, Fort,
Mumbai-400 032. ..

RESPONDENTS

**To,
THE HON'BLE CHIEF JUSTICE AND
OTHER HON'BLE PUISNE JUDGES OF THE
HON'BLE HIGH COURT OF JUDICATURE
OF BOMBAY, BENCH AT AURANAGABAD**

**THE HUMBLE PETITION OF
PETITIONERS ABOVE NAMED**

MOST RESPECTFULLY SHOWETH AS UNDER:

1. The petitioners are the citizens of India. The petitioners have appeared in final year of the five year course of law examination held in May, 2010. All the petitioners have studied five year law course from Manikchand Pahade Law College, Aurangabad during the academic year 2005-06 and 2009-10. The results of the final year law examination (New Course) are awaited.

2. The petitioners have successfully completed their legal education except the fact that they have yet to receive law degree from Dr. Babasaheb Ambedkar Marathwada University, Aurangabad. Once the results of final year law examination are declared and they get through in the examination, the University will confer Law Degrees on them and as such, they will be entitled to be enrolled as Advocates and practice Law.

3. This petition is directed against the resolution adopted by the Bar Council of India (hereinafter refer to as 'BCI') on 10-04-2010 to conduct an All India Bar

Examination, the passing of which will entitle an Advocate to practice law in India. Consequent to the resolution, the **BCI** has inserted Rules 9 to 11 in Part VI, Chapter III of the Bar Council India Rules under the caption 'Conditions for Right to Practice' allegedly under Sec. 49 (1) (ah) of the Advocates Act, 1961. The said Rules are also impugned in this petition the same being *ultra-vires* the rule-making power of the Bar Council of India as available to it under the provisions of the Advocates Act, 1961 (hereinafter refer to as "the Act"). The petitioners are seeking a declaration that the direction given by the Hon'ble Supreme Court of India to the Central Government to ensure that entire program in respect of the All India Bar Examination framed by the three - members committee is operationalized forthwith vide order dated 14-12-2009 in Petition for Special Leave to Appeal (Civil) No.22337 of 2008 as *per incuriam*, null and void.

4. Before the Advocates Act, 1961 was enacted, there was a system by which a law graduate had to undergo training by way of apprenticeship in the chambers of a lawyer for one year and pass a separate Bar examination conducted by the Bar Council on the subjects of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898. It was only after a law graduate

successfully completed his apprenticeship and the Bar examination that he became eligible to be enrolled as an Advocate. Thus, prior to 1961, the enrolment had to be moved in the court of the Chief Justice of the High Court concerned and the motion for enrolment was to be by a senior advocate practicing in the High Court. There was convention of a brief interview in the chambers of the Chief Justice of the High Court before the enrolment was later moved in open court on the same day.

5. The Advocates Act is passed to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and all India Bar. Thus, the Bar Council of India and the State Bar Council are creations of the Act.

6. After the Advocates Act, 1961 came into force, the procedure for apprenticeship was continued by virtue of clause (d) of sub-section (1) of sec. 24. The enrolment was, however, to be before the Enrolment Committee of the State Bar Council. That clause required the graduate in law to undergo a course of "training in law and pass an examination after such training", before he could be enrolled. Certain categories of persons were exempted under a proviso to the said sub-clause.

7. The Act has undergone the number of amendments by the passage of time since its enactment in 1961. Thus, after 1964 till 1973, it was permissible for the State Bar Council to prescribe a course of training in Law as a pre-condition for enrollment of a candidate and he was also required to pass requisite examination during the training or even after completion of training course.

8. The Parliament amended the Act in 1964 vide Act 21 of 1964. Thus, sub-section (3) came to be inserted in Sec. 24 it is clear from the Statement of Objects and Reasons appended to the Bill that it was felt necessary to give powers to the Bar Council of India with a view to enable it to add to the categories of eligible candidates those persons who were otherwise not eligible to be enrolled under Section 17 read with Section 24 (1) of the Act, as it then stood on the statute-book.

9. The Act underwent a further amendment being Act 60 of 1973, which by Section 18 thereof, deleted the then existing clause (d) from sub-section (1) of section 24. Meaning thereby, after 31-01-1974, the State Bar Councils were deprived of their powers to prescribe a course of pre-enrolment training in law and examination to be undergone

by law graduates who were seeking enrolment as “advocates” on the State Roll.

10. It is clear from the Statement of Objects and Reasons as mentioned in the Advocates (Amendment) Bill, 1970 for further amending the Act and which (Amendment) Bill ultimately resulted in amending Act 60 of 1973 by which section 24 (1) (d) stood deleted. The said clause, as stood earlier, entitled the State Bar Councils to frame rules for prescribing pre-enrolment training and examination subject to which a person, who gets qualified to be enrolled as an advocate on the State Roll. The reason why this pre-enrolment training and examination was sought to be done away with by Parliament is clearly seen from the Statement of Objects and Reasons for introducing the aforesaid (Amendment) Bill, 1970. Paragraph (iii) of the said Statement of Objects and Reasons can be profitably reproduced as under:

“Pre-enrolment training.- The Bar Council of India has decided that in future a degree in Law can be obtained only after undergoing a three-year course of study in Law after graduation as a result of which the age of entry into the legal profession becomes much higher than the age of entry in other profession. It is, therefore, felt that after a three-year course in Law in

a university, it is necessary to retain the statutory provision in the Act requiring a further examination or practical training”.

11. It becomes clear from a mere look at the aforesaid paragraph in the Statement of Objects and Reasons that it was the Bar Council of India itself which had decided that the degree of Law obtained by a person after undergoing three years' course of study after graduation would be enough for qualifying him to be enrolled as advocate under the Act and, therefore, pre-enrolment training was dispensed with. The decision of the Bar Council of India was accepted by Parliament and as such, the additional eligibility condition for enrolment i.e. pre-enrolment training was done away with by deleting Section 24 (1) (d) of the Act. Meanwhile, the BCI suggested to include practical training in the course of study leading to a degree of Law. Once the practical training suggested by the BCI was included in the curriculum prescribed by the Universities for law students, it obviously became redundant for providing further practical training before enrolment of such trained graduates in law. That is precisely the reason why after January, 1974 need for pre-enrolment training was not insisted upon by the legislature and that too at the suggestion and on the recommendation of the Bar Council of India itself.

12. In 1994, the Chief Justice of India, Justice M.N. Venkatachaliah constituted the Ahmadi Committee on Legal Education. The Committee consisted of Justice A.M. Ahmadi, Justice B.N. Kirpal Justice and M. Jagannadha Rao. The Committee wrote to all Chief Justices of High Courts seeking their views. Almost all the Chief Justices felt that having regard to deterioration in the standards of students and in skills of advocacy, it was incumbent for the Bar Council of India to reintroduce the Training Programme for graduates. Responses were also received by the Committee from State Bar Councils and the Bar Council of India.

13. After the Ahmadi Committee Report in 1994, the Bar Council of India reconsidered the earlier decision of 1973 and decided to reintroduce the Training for one year after graduation. It accordingly made Rules soon after 1994 and the Rules were replaced by fresh Rules made on 19.7.98. It is these rules that were challenged in the Supreme Court. The Supreme Court considered the question in V.Sudeer Vs. Bar Council of India reported in 1999 (3) SCC 176 whether, having regard to the legislative history which revealed that the Training was part of the mandate in the Act, the same could not be reintroduced by

way of a Rule by the Bar Council of India. The court held that once the relevant statutory provisions in sec. 24 (1) (d) or in the proviso thereto were deleted and also when the subject of Training which was one of the items enumerated in clause (b) of sub-section (2) of sec. 28, (sec. 28 being the section relating to rule making), was deleted in 1973, the Bar Council of India could not have made any rule regarding Training and such a condition had to be introduced only by an Act by the Legislature. It was also held that it was for the State Bar Councils to introduce Training and that the Bar Council of India could not by itself introduce the Training.

14. It must be noted that the Supreme Court in V. Sudeer's case merely considered whether the new Rules were ultra-vires of the provisions of the Act. It did not say anywhere that Training was not necessary. On the other hand, it expressly endorsed the need for reintroducing training and accepted the recommendations of the Ahmadi Committee. It said: (pp.210-211).

“Before parting with these matters, it is necessary to note that in the light of the experience of various courts in which advocates are practicing since the time the Advocates Act has come into force, the Law Commission of India and other expert bodies that

were entrusted with the task of suggesting improvements in the standards of legal education and legal practitioners felt it necessary to provide for compulsory training to young advocates entering the portals of the courtrooms. Training under Senior Advocates with a view to equip them with court craft and to make them future efficient officers of the court became a felt need and there cannot be any dispute on this aspect. In fact, the question of making some suggestions regarding admission to law colleges, syllabus, training, period of practice at different levels of courts, etc, was taken up as item 16 in the last Conference of the Chief Justices held in December, 1993. The Conference resolved that Hon'ble the Chief Justice of India be requested to constitute a Committee consisting of Hon'ble Mr. Justice A.M. Ahmadi as its Chairman, and two other members to be nominated by Hon'ble the Chief Justice of India to suggest appropriate steps to be taken in the matter so that the Law graduates may acquire sufficient experience before they become entitled to practice in the courts. The said High-Powered Committee, after inviting the views of the Chief Justices and State Bar Councils as well as the Bar Council of India made valuable suggestions. The relevant suggestions in

connection with legal education are Suggestions 15 and 16 which are required to be noted. They read as under:

“15. Entrance into the Bar after 12 months or 18 months of apprenticeship with entry examination. For obtaining the licence/sanad from State Bar Councils it must be prescribed that one should secure at least 50 per cent or 60 per cent marks at the Bar Council examination.

16. So far as the training under a Senior Lawyer during the period of one year or 18 months of apprenticeship, the Act or the Rules must stipulate that the senior must have at least 10 or 15 years' standing at the District Court/High Court and the student's diary must reflect his attendance for three months in the grassroot level in a civil court and for three months in a Magistrate's Court and at least six months in a District Court. The advocate in whose office he works must also certify that the student is fit to enter the Bar . Unless these formalities are completed, the student should not be permitted to sit for the Bar Council examination.”

15. After saying so, the Supreme Court further observed (p.211) as follows:

“It is true that these suggestions of the High-Powered Committee clearly highlighted the crying need for improving the standards of legal education and the requirements for new entrants to the legal profession of being equipped with adequate professional skill and expertise. There also cannot be any dispute on this aspect. However, as the saying goes “a right thing must be done in the right manner”. We appreciate the laudable object with which the Bar Council of India has framed the impugned Rules for providing training to the young entrants to the profession by laying down details as to how they should get appropriate training during their formative years at the Bar. Unfortunately for the Bar Council of India, that right thing has not been done in the right manner. We equally share the anxiety of the Bar Council of India for evolving suitable methods for improving the standards of legal education and legal profession. The aforesaid recommendations made by the High-Powered Committee could have been put into practice by following appropriate methods and adopting appropriate modalities by the Bar Council of India”.

16. The Supreme Court further observed that the need to introduce training is a matter which cannot be left to the decision of the State Bar Councils. In as much as an enrolled lawyer can practice anywhere in India, this power of prescribing training and examination must be entrusted to the Bar Council of India so that the training could be uniform. The Supreme Court observed: (p.212-213)

“It is easy to visualize that appropriate amendments in sections 7 and 24 (1) would have clothed the Bar Council of India with appropriate power of prescribing such pre-enrolment training for prospective entrants at the Bar. That would have provided an appropriate statutory peg on which the appropriate rule could have been framed and hanged. It is also necessary to note in this connection that merely leaving the question of providing pre-enrolment training and examination to only the State Bar Councils may create difficulties in the working of the all-India statute. It goes without saying that as an enrolled advocate is entitled to practice in any court in India, common standard of professional expertise and efficient uniform legal training would be a must for all advocates enrolled under the Act. In these

circumstances, appropriate statutory power has to be entrusted to the Bar Council of India so that it can monitor the enrolment exercise undertaken by the State Bar Council concerned in a uniform manner. It is possible to visualize that if power to prescribe pre-enrolment training and examination is conferred only on the State Bar Councils, then it may happen that one State Bar Council may impose such pre-enrolment training while another Bar Council may not and then it would be easy for the prospective professional who has got the requisite Law Degree to get enrolment as an advocate from the State Bar Council which has not imposed such pre-enrolment training and having got the enrolment, he may start practice in any other court in India being legally entitled to practice as per the Act. To avoid such an incongruous situation which may result in legal evasion of the laudable concept of pre-enrolment training, it is absolutely necessary to entrust the Bar Council of India with appropriate statutory power to enable it to prescribe and provide for all-India basis pre-enrolment training of advocates as well as the requisite apprenticeship to make them efficient and well-informed officers of the court so as to achieve better administration of justice. We, therefore,

strongly recommend appropriate amendments to be made in the Act in this connection”

17. The Supreme Court suggested that before the Act is amended on the above lines for introducing Training, in the meantime, in-house training may be given to the new recruits after enrolment, as a temporary measure for a period of one year.

18. The Supreme Court also referred in (para 34) to the suggestions of the court as extracted in a letter dated 24-09-1977 of the Counsel representing the Bar Council of India. Those suggestions also included the Training programme for one year and a practical test. Certain further suggestions were given in para 5 in relation to those who have worked in solicitors’ offices or as corporate lawyers.

19. It may be necessary to refer to the following observation at p.213 of the judgment:

“We, therefore, strongly recommend appropriate amendments to be made in the Act in this connection.”

20. The Supreme Court had to strike down the rules prescribing pre-enrolment training and Bar examination in **Sudeer’s** case. The following paragraphs of the judgment are relevant for the purpose of deciding the validity of the

newly inserted Rules 9 to 11 in Part VI, Chapter III of the Bar Council of India Rules:

“31.

Now the Bar Council of India is wanting the reintroduction of Sec.28 (2) (b) by Parliament for training the law graduates for a period and for conducting the Bar Council Examination, the central Government must soon re-enact the provision. But the new section must say that the method of training and the examination must be such as may be prescribed by the Chief Justice of India after considering the views of the Bar Council of India. As this matter pertains to entry into the legal profession for practice in courts, the final authority in this behalf must be with the Chief Justice of India but after obtaining the views of Bar Council of India

.....

32. We may also mention that till Parliament steps in to make suitable statutory amendments in the Act for providing pre-enrolment training to prospective advocates seeking enrolment under the Act, the Bar council of India by way of an interim measure can also consider the feasibility of making suitable rules providing for in-practice training to be made available to enrolled advocates. Such an exercise may then not

fall foul on the touchstone of section 49(1)(ah). The impugned Rules can be suitably re-enacted by deleting the condition of pre-enrolment training to advocates and instead of treating them to be a hybrid class of trainee advocates with limited right of audience in courts, may provide in-practice training to already enrolled advocates at least for the first year of their practice as professionals. Such Rules can also provide for appropriate stipend to be paid to them by their guides, if during that period ,such enrolled junior advocates are shown to have no independent source of income. Then in the light of Section 17(2) of the Act, such newly-enrolled advocates who are required to undergo in-practice training for the first one year of their entry in the profession can legitimately fall in the category of “other advocates” apart from Senior Advocates as contemplated by that provision.

39. In the result, these writ petitions are allowed. The impugned Rules are struck down. Appeal arising out of the SLP filed by the Bar Council of Maharashtra and Goa is allowed. The impugned judgment of the High Court is set aside. The writ petition filed by the Bar Council of Maharashtra and Goa is accordingly allowed. The appeal filed by the Bar Council of India

arising out of SLP (C) 12989 of 1998 is dismissed on the ground that the petition regarding retrospective effect of the impugned Rules will not survive as the Rules themselves are struck down. The final decision of the High Court allowing the writ petition of the respondent is sustained on the aforesaid ground. There will be no order as to costs in all the cases”.

The copy of the Judgment of the Supreme Court in Sudeer’s case is annexed, herewith, and marked at **Exhibit –“A”**

21. In another judgement of the Supreme Court in All India Judges Assn. Vs. Union of India, 2002 (4) SSC 247 the Supreme Court issued a direction that law graduates from college must be enabled to directly enter the Judicial service at the lowest level instead of being required to have a minimum experience of 3 years at the bar but that after entering service, they should be given one year’s training.

22. The observations of the Supreme Court in the aforesaid judgments appear to have gone unnoticed and unattended and thus, ignored by the Bar Council of India when it adopted a resolution on 10th April, 2010 to conduct an All India Bar Examination, the passing of which will entitle an advocate to practice law in India, perhaps under the pretext of the direction issued by the Hon’ble Supreme Court of India. The Bar Council of India itself had invited a

direction through a statement made by the Solicitor General of India, who later on became the Chairman of the Bar Council of India.

23. The Bar Council of India has filed a Petition for Special Leave to Appeal against the judgement and order dated 17-03-2008 in WP No.13698/2007 of the High Court of M.P. at Jabalpur. One of the Law Colleges namely Bonnie FOI Law College had challenged the action of the Bar Council of India in refusing affiliation as well as recognition to the College on the ground that it did not have adequate infrastructure and other facilities. The High Court of Madhya Pradesh allowed the petition directing the Bar Council of India to grant affiliation as well as recognition to the College. Being aggrieved by the judgement of the High Court of M.P., the Bar Council of India preferred a Petition for Special Leave to Appeal. It appears that Mr. Gopal Subramaniam, the learned Solicitor General of India submitted before the Supreme Court that the first Bar Examination shall be conducted in July-August, 2010 by a specially constituted independent body, consisting of experts of various disciplines of national stature. In the facts and circumstances of the case, the Supreme Court directed the Central Government to ensure that the entire programme framed by the three-member Committee is operationalized forthwith. The copy of the

order dated 14-12-2009 in SLP (Civil) No. 22337 /2008 (Bar Council of India Vs. Bonnie FOI Law College & Ors) passed by the Supreme Court of India is annexed herewith and marked as **EXHIBIT-“B”**.

24. The petitioners submit that the subject matter of the SLP (Civil) No.22337 / 2008 pending in the Supreme Court and the controversy raised therein did not warrant a direction to hold all India Bar Examination, despite a statement made by the learned Solicitor General of India to that effect.

25. The Parliament had no occasion to amend the Advocates Act,1961 as recommended by the Supreme Court of India in V.Sudeer's case. Surprisingly enough, the **BCI** decided to conduct an All India Bar Examination, the passing of which will entitle an Advocate to practice law in India, without there being an amendment to the Advocates Act,1961.

26. The question that unless an advocate successfully passes the all India Bar Examination, he/she shall not entitle to a certificate of practice, which would permit him/her to practice under Chapter IV of the Advocates Act, 1961, had not fallen for consideration before the Supreme Court so that it was necessary to issue a direction to hold All India Bar Examination. It is against

the aforesaid background i.e. direction issued by the Hon'ble Supreme Court of India, the Bar Council of India passed a resolution prescribing All India Bar Examination almost as a condition precedent for right to practice.

27. The resolution adopted by the Bar Council of India on 10th April, 2010 reads thus:

“RESOLVED that as the Bar Council of India is vested with the power of laying down conditions subject to which an advocate shall have the right to practice, these Rules, therefore, lay down such condition of an All India Bar Examination, the passing of which would entitle the advocate to a Certificate of Practice which would permit him/her to practice under Chapter IV of the Advocates Act, 1961.”

28. Consequent to the resolution, the following rules are inserted into Part VI, Chapter III of the Bar Council India Rules.

“9. No advocate enrolled under section 24 of the Advocates Act, 1961 shall be entitled to practice under Chapter IV of the Advocates Act, 1961, unless such advocate successfully passes the All India Bar Examination conducted by the Bar Council of India. It is clarified that the Bar Examination shall be

mandatory for all law students graduating from academic year 2009-2010 onwards and enrolled as advocates under Section 24 of the Advocates Act, 1961”.

The All India Bar Examination

10.(1) The All India Bar Examination shall be conducted by the Bar Council of India.

- (a) The Bar Examination shall be held at least twice each year in such month and such places that the Bar Council of India may determine from time to time.
- (b) The Bar Examination shall test advocates in such substantive and procedural law areas as the bar Council of India may determine from time to time.
- (c) Such substantive/procedural law areas and syllabi shall be published by the Bar Council of India at least three months prior to the scheduled date of examination.
- (d) The percentage of marks required to pass the Bar Examination shall be determined by the Bar Council of India.
- (e) An unsuccessful advocate may appear again for the Bar Examination, without any limit on the number of appearances.

- (f) The Bar Council of India, through a committee of experts, shall determine the syllabi, recommended readings, appointment of paper setters, moderators, evaluators, model answers, examination hall rules and other related matters.
- (g) The Bar Council of India shall determine the manner and format of application for the examination.
- (h) Upon successfully passing the Bar Examination, the advocate shall be entitled to a Certificate of Practice.

Application for Certificate of Practice

11 .(1) The Certificate of Practice shall be issued by the Bar Council of India to the address of the successful advocate within 30 days of the date of declaration of results.

(2) The Certificate of Practice shall be issued by the Bar Council of India under the signature of the Chairman, Bar Council of India.

29. Meanwhile, the Bar Council of India has announced that it will carry out its all-India bar exam in association with legal market services provider Rainmaker as a multiple choice test of 100 questions on 5 December

2010 that will require a “basic amount of preparation” to pass. The BCI admitted that graduating students would probably not be able to practice in courts until 31 December, 2010.

30. The resolution passed by the Bar Council of India, insertion of Rules 9 to 11 in the Bar Council of India Rules providing for All India Bar Examination and the Vision Statement 2010-2012 announced by the Chairman BCI and the Solicitor General of India give rise to serious concerns to the petitioners.

31. The learned Judges of the Supreme Court of India in the case of University of Kerala Vs. Council, Principals’, Colleges, Kerala reported in 2010 AIR SCW 966 have referred the following questions of law, preferably to be decided by an authoritative Constitution Bench of the Supreme Court, to be nominated by the Hon’ble Chief Justice of India:

- “1. Whether the Court by an interim order dated 22-09-2006 can validity direct implementation of the Lyngdoh Committee’s Report;
2. Whether the order dated 22nd September, 2006 really amounts to judicial legislation;

3. Whether under our Constitution the judiciary can legislate, and if so, what is the permissible limits of judicial legislation. Will judicial legislation not violate the principle of separation of powers broadly envisaged by our Constitution;
 4. Whether the judiciary can legislate when in its opinion there is a pressing social problem of public interest or it can only make a recommendation to the legislature or concerned authority in this connection; and
 5. Whether Article 19 (1) (c) and other fundamental rights are being violated when restrictions are being placed by the implementation of the Lyngdoh Committee Report without authority of law.
 6. What is the scope of Articles 141 and 142 of the Constitution? Do they permit the judiciary to legislate and/or perform functions of the executive wing of the State”
32. The direction issued by the Supreme Court of India to hold All India Entrance Examination in the face of reference to a constitutional bench to be nominated by the Hon’ble Chief Justice of India as to whether judiciary can legislate, and if so, what is the permissible limits of judicial

legislation and whether such judicial legislation violates the principle of separation of powers envisaged under Article 50 of the Constitution of the India, in the most humble submission, is devoid of the judicial propriety, discipline and restraint to be observed by the highest Court of India. In any case direction to conduct an All India Bar Examination, the passing of which will entitle an advocate to practice law in India, given by the Supreme Court of India is a classic example of judicial legislation.

33. The petitioners submit that it is not known as to whether the Solicitor General of India who is also a member and the Chairman of the Bar Council of India can appear and make a statement to introduce All India Bar Examination as a condition to practice law, on behalf of the Bar Council of India in the absence of a specific power to make rules prescribing conditions for right to practice. There would , perhaps, be a conflict of interest between the duty of the Counsel as an officer of the Court and the interest of the Bar Council of India he wishes to pursue.

34. The petitioners submit that the resolution passed by the Bar Council of India suffers from lack of legislative powers, whereas the direction issued by the Hon'ble Supreme Court of India is *per-incuriam*.

35. Being aggrieved by a resolution adopted by the Bar Council of India on 10th April, 2010 to conduct an All India Bar Examination, the passing of which will entitle an advocate to practice law in India, the consequential rules 9 to 11 inserted in Part VI, Chapter III of the Bar Council of India Rules and the direction issued by the Hon'ble Supreme Court of India vide order dated 14-12-2009 in Petition for Special Leave to Appeal (Civil) No. 22337 /2008, the petitioners challenges the validity, legality and correctness of the same amongst others on the following grounds:

GROUND

- I. At the outset, the Bar Council of India lacks power to make rules prescribing conditions for right to practice, as a result of deletion of clause (b) of sub-Sec (2) of Sec. 28 of the Advocates Act in 1973.

- II. The direction issued by the Supreme Court of India vide its order dated 14-12-2009 in SLP (Civil) No.22337 /2008 being contrary to the judgement delivered by the larger bench of the Supreme Court of India in S. Sudeer Vs. Bar Council of India 1999 (3) SSC 176 cannot confer rule making power empowering Bar Council of India to lay down

conditions for right to practice at pre-enrolment stage. Moreover, the direction of the Supreme Court dated 14-12-2009 in SLP (Civil) No.22337/2008 is per-incuriam.

- III. The Supreme Court cannot legislate contrary to an explicit intention expressed by the Parliament while deleting clause (b) of sub-section (2) of sec 28 of the Advocates Act in 1973, however for a laudable object, contrary to its own judgement delivered by the larger bench.
- IV. The right to practice law being a concomitant or an attribute of right to livelihood guaranteed under Article 21 of the Constitution of India, the same cannot be taken away except according to procedure established by law.
- V. The newly inserted rules 9 to 11 of the Bar Council of India Rules is *ultra-vires* sections 7, 17, 24, 28 and 49 of the Advocates Act, 1961 as well as Articles 14, 19 (1) (g) and 21 of the Constitution of India.

36. The petitioners have not received any notice of the caveat till date from the respondents.

37. The petitioners undertake to supply the translation of vernacular documents into English as and when required.

38. The petitioners have not filed any other petition or proceeding before any other court including Hon'ble Court touching the subject matter except present writ petition.

39. The petitioners, therefore, most respectfully pray to your Lordship: .

[A] To quash the resolution adopted by the Bar Council of India on 10th April, 2010 to conduct an All India Bar Examination, the passing of which will entitle an advocate to practice in law in India by issuing writ of certiorari or any other appropriate writ order or direction as the case may be.

(B) To quash rules 9 to 11 inserted in Par VI, Chapter III of the Bar Council of India Rules by

issuing writ of certiorari or any other appropriate writ order or direction as the case may be.

- (C) To hold and declare that the order dated 14-12-2009 in Petition for Special Leave to Appeal (Civil) No. 22337 /2008 directing to hold All India Bar Examination issued by the Hon'ble Supreme Court of India as *per-incuriam* and, therefore, null and void.
- [D] To grant interim injunction restraining the respondents their agents, subordinates and servants from holding All India Bar Examination pursuant to the resolution adopted by the Bar Council of India on 10th April, 2010 and the consequential Rules 9 to 11 in Part VI, Chapter III of the Bar Council of India Rules as well as direction dated 14-12-2009 in SLP (Civil) No.22337/2008 issued by the Hon'ble Supreme Court of India, pending, hearing and final disposal of this writ petition.
- (E) To grant interim injunction restraining the Bar Council of Maharashtra and Goa, Mumbai from refusing to enroll the petitioners as advocates and thereby to practice law pursuant to the

resolution adopted by the Bar Council of India on 10th April, 2010 and the consequential Rules 9 to 11 in Part VI, Chapter III of the Bar Council of India Rules as well as direction dated 14-12-2009 in SLP (Civil) No.22337/2008 issued by the Hon'ble Supreme Court of India, pending, hearing and final disposal of this writ petition.

[F] To grant any other relief to which the petitioners is entitled to.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

Place: Aurangabad
Date: /06/2010

(S. B. TALEKAR)
ADVOCATE FOR PETITIONERS

SOLEMN AFFIRMATION

I, Sunil s/o Shamlal Bhagure, Age 24 years, Occu. :
Education, R/o 141, Ayodhya Niwas, Harsool, Aurangabad,
do hereby state on solemn affirmation that the contents of
the above writ petition from para Nos.01 to ____are true
and correct to the best of my knowledge and belief.

Hence, verified and signed at Aurangabad on this ____th
day of June, 2010.

Deponent

(Sunil s/o Shamlal Bhagure)

I know and identify
the deponent,

Advocate/ Clerk.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,**BENCH AT AURANGABAD****WRIT PETITION NO. 5269 OF 2010.****DIST: AURANGABAD**Sunil s/o Shamlal Bhagure
and others.. **PETITIONERS****VERSUS.**

State of Maharashtra and others.

..RESPONDENTS**LIST OF DOCUMENT**

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1.	Copy of the Judgment of the Supreme Court reported in 1999(3) SCC 176.	A	36 To 77
2.	Copy of the order dated 14-12-2009 in SLP (Civil) No. 22337 /2008 (Bar Council of India Vs. Bonnie FOI Law College & Ors) passed by the Supreme Court of India	B	78 To 79
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Place: Aurangabad
Date: 16/06/2010**(S. B. TALEKAR)**
ADVOCATE FOR PETITIONERS

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 5269 OF 2010.

DIST: AURANGABAD

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ADVOCATE FOR PETITIONERS

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SYNOPSIS

SN	DATE	PARTICULARS OF THE EVENTS
1	1898	Law graduates were required to undergo training by way of apprenticeship in the chambers of lawyers for one year and pass a separate Bar Examination conducted by the Bar Council on the subject of Code of Criminal Procedure.
2	1908	Law graduates were required to undergo training by way of apprenticeship in chambers of lawyers for one year and pass a separate Bar Examination conducted by the Bar Council on the subject of the Code of Civil Procedure.
3		Law graduates became eligible to be enrolled as advocates only after successfully completing apprenticeship and the Bar Examination
4		A motion for enrolment had to be moved in the court of the Chief Justice of the High Court concerned by a

		senior advocate practicing in the High Court
5	1961	After the Advocates Act, 1961 came into force, the procedure for apprenticeship was continued by virtue of clause (d) of sub-section (1) of Sec 24 of the Advocates Act, 1961. The law graduate was required to undergo a course of “training in law and pass an examination after such training”, before he could be enrolled.
6	1964	Sec 24 of the Advocates Act was amended, however, the procedure for apprenticeship was continued
7	1973	By Act 60/73, clause (d) of sub-section (1) of sec. 24 was omitted. Similarly, amendments made in 1964 to the proviso came to be omitted. As a result, there was no requirement of the training or the Bar examination.
8	1973	Clause (b) of sub-section (2) of sec 28 of the Advocates Act permitting the State Bar Council to make rules regarding the training and Bar examination was also deleted by the same Act 60 of 1973.
9	1994	The then Chief Justice of India, Justice M.N. Venkatachaliah constituted the Ahmadi Committee on legal education. The Committee consisted of Justice A.M. Ahmadi , Justice B.N. Kirpal and Justice M. Jagannadha Rao submitted its report in 1994, as a result of which

	19-07-1998	the Bar Council of India reconsidered the earlier decision of 1973 and decided to reintroduce the training for one year after graduation. It accordingly made rules soon after 1994 and the rules were replaced by fresh rules made on 19-07-1998
10	12-03-1999	The Supreme Court considered the question in V. Sudeer Vs. Bar Council of India 1999 (3) SSC 176 whether, having regard to the legislative history which revealed that the training was part of the mandate in the Act, the same could not be reintroduced by way of a Rule by the Bar Council of India. The Supreme Court further held that once the relevant statutory provisions in sec 24 (1) (d) or in the proviso thereto were deleted and also when the subject of training which was one of the items enumerated in clause (b) of subsection (2) of sec 28, was deleted in 1973, the Bar Council of India could not have made any Rule regarding training and such a condition had to be introduced only by an Act by the legislature. The Supreme Court ultimately held that the new rules were <i>ultra-vires</i> of the provisions of the Act. However, the Supreme Court strongly recommended appropriate amendments to be made in the Act in this connection.

11	15-06-2009	Mr. Gopal Subramaniam came to be appointed as Solicitor General of India and thereby became an <i>ex-officio</i> member of the Bar Council of India.
12	14-12-2009	Petition for Special Leave to Appeal (Civil) No.22337/2008 (Bar Council of India Vs. Bonnie FOI Law College and others) came-up for hearing before Supreme Court of India. Mr. Gopal Subramaniam, Solicitor General of India submitted that the first Bar Examination shall be conducted in July-August, 2010 by a specially constituted independent body, consisting of experts of various disciplines of National stature. The facts and circumstances of the case, the Supreme Court directed the Central Government to ensure that the entire program framed by the three-member committee is operationalized forthwith.
13	10-04-2010	The Bar Council of India adopted a resolution to conduct an all India Bar Examination, the passing of which will entitle an advocate to practice law in India. Consequent to the resolution, Rules 9 to 11 were introduced into Part VI , Chapter III of the Bar Council India Rules under sec. 49 (1) (ah) of the Advocates Act, 1961. Rule 9 provides that no advocate enrolled under sec. 24 of the Advocates Act, 1961 shall be entitled to practice under Chapter VI of

		the Advocates Act, 1961, unless such advocate successfully passes the All India Bar Examination conducted by the Bar Council of India. Rule. 10 deals with the conduct of the All India Bar Examination, whereas Rule. 11 provides for application for certificate of practice.
14	16-06-2010	Writ petition challenging the resolution adopted by the Bar Council of India on 10-04-2010, the constitutional validity of Rules 9 to 11 in Part VI Chapter III of the Bar Council of India Rules and the direction given by the Supreme Court of India being contrary to the judgement delivered by the larger bench of the Supreme Court of India, filed in the High Court.
		Hence, this writ petition.

POINTS FOR CONSIDERATION:

- I. Whether the Bar Council of India lacks power to make rules prescribing conditions for right to practice, as a result of deletion of clause (b) of sub-Sec (2) of Sec. 28 and clause (d) of sub-section 1 of Sec. 28 of the Advocates Act in 1973?
- II. Whether the direction issued by the Supreme Court of India vide its order dated 14-12-2009 in SLP (Civil) No.22337 /2008 empowering Bar Council of India to lay down conditions for right to practice at pre-enrolment stage is contrary to the judgement delivered by the larger bench of the Supreme Court of India in S. Sudeer Vs. Bar Council of India 1999 (3) SSC 176?
- III. Whether the direction of the Supreme Court dated 14-12-2009 in SLP (Civil) No.22337/2008 is *per-incuriam*?

- IV. Whether the Supreme Court can legislate contrary to an explicit intention expressed by the Parliament while deleting clause (b) of sub-section (2) of sec 28 and clause (b) of sub-section 1 of Sec. 24 of the Advocates Act in 1973, however for a laudable object contrary to its own judgement delivered by the larger bench?
- V. Whether the right to practice law being a concomitant or an attribute of right to livelihood guaranteed under Article 21 of the Constitution of India, can be taken away except according to procedure established by law?
- VI. Whether the newly inserted rules 9 to 11 of the Bar Council of India Rules are *ultra-vires* sections 7, 17, 24, 28 and 49 of the Advocates Act, 1961 as well as Articles 14, 19 (1) (g) and 21 of the Constitution of India?

ACTS AND RULES:

1. Constitution of India.
2. Advocates Act, 1961
3. Bar Council of India Rules, 2009

CITATIONS:

1. A.I.R. 1964 SC 855: (1964) 6 SCR 229
2. (1995) 1 SCC 732
3. (1999) 3 SSC 176
4. 2010 AIR SCW 996

Place: Aurangabad
Date: 15/06/2010

(S. B. TALEKAR)
ADVOCATE FOR PETITIONERS

IN THE HIGH COURT OF BOMBAY**JUDICATURE****BENCH AT AURANGABAD****WRIT PETITION NO. 5269/ 2010****Sunil Shamlal Bhagure others****V/S****Union of India & others**

Sr.No.	Name of the Parties	Citation	Page Nos.	Relevant para's
1.	In Re Lily Isabel Thomas	AIR 1964 SC - 855	1 To 4	
2.	Indian Council of Legal AID & Advice and others V/S Bar Council of India and another	(1995) 1 SCC 732	5 to 17	
3.	Musheer Khan Alias Badshah Khan & another V/S State of Madhya Pradesh	AIR 2010 SCW- 966	18 to 30	

Place: Aurangabad**Satish B. Talekar****Date : 18/06/2010 (Advocate For the Applicant)**