PETITIONER:
V.SUDEER

Vs.

RESPONDENT:
BAR COUNCIL OF INDIA & ANR.

DATE OF JUDGMENT: 15/03/1999

BENCH:
S.B.Majmudar, S.N.Phukan

JUDGMENT:

S.B.Majmudar, J.

Leave granted in the Special Leave Petitions.

These Writ Petitions under Article 32 of the Constitution of India as well as the two special leave petitions being S.L.P.(C) Nos.13755 of 1996 and 12989 of 1998 moved by the Bar Council of Maharashtra & Goa and the Bar Council of India respectively raise a common question for our consideration, namely, whether the Bar Council of India Training Rules, 1995 (for short 'the Rules) as amended by the Resolution of the Bar Council of India in its meeting dated 19th July, 1998 relating to training to entrants of legal profession are within the competence of the Bar Council of India or are ultra vires its rule making powers under the Advocates Act, 1961 (for short 'the Act) and in the alternative whether these Rules are unreasonable and arbitrary and hence violative of Article 14 of the Constitution of India.

The writ petitioners, who have successfully completed their legal education by getting requisite Law degrees from the Universities concerned have contended before us in these writ petitions that their right to practise Law as made available under the relevant provisions of the Act is being arbitrarily denied by the impugned rules framed by the Bar Council of India and, therefore, their fundamental right under Article 19(1)(g) of the Constitution of India is being violated. That the said Rules do not impose any reasonable restrictions on the exercise of their fundamental right. It is also contended that in any case, the Rules are so framed as to be totally unworkable and are highly unreasonable and discriminatory in character and hence they offend Article 14 of the Constitution of India also. The civil appeal arising out of the SLP by the Bar Council of Maharashtra & Goa brings in challenge the decision of the Bombay High Court which upheld the impugned rules and dismissed the writ petition filed by it and that is how the State Bar Council is before us. Its contention is on the same lines as canvassed by learned counsel appearing for the writ petitioners. While civil appeal arising out of SLP (C)No.12989 of 1998 filed by the Bar Council of India, on the other hand, brings in challenge the Judgment and Order

rendered by the learned Single Judge of Punjab & Haryana High Court, who took the view in favour of the original writ petitioner - Respondent herein, that the impugned rules would not apply to the writ petitioner who had obtained his Law degree in 1981 as the Rules were purely prospective in character. It is, therefore, obvious that all these matters raise a common question regarding legality and validity of the impugned rules. If the Rules are upheld, then only further question whether they are prospective in nature or not would survive. This Court has treated the Writ Petition (Civil) No.398 of 1996 as the leading petition and, therefore, we shall also refer to the pleadings of the parties and the relevant documents filed therein in the latter part of this judgment. By order dated 16th September, 1997, a three Judge Bench of this Court, presided over by S.C.Agrawal, J., appointed Shri Joseph Vellapally, learned senior advocate as amicus curiae to assist the Court on behalf of the petitioner. All other petitioners in person were permitted to submit their written submissions and the oral arguments were permitted to be submitted on behalf of all of them by learned amicus curiae senior advocate. We have to place on record our high sense of appreciation for the pains taken by amicus curiae Senior Advocate, Shri Joseph Vellapally, who has been good enough to look into all the relevant aspects of the matter and has placed his oral and written submissions in this connection. By order dated 21st February, 1997, another two Judge Bench of this Court, while treating writ petition (Civil) No.398 of 1996 as a leading petition, directed that other petitions that are pending in the High Court or which may be filed thereafter shall remain stayed till further orders of this Court. The parties have exchanged relevant pleadings which are all brought on record supported by documents on which they rely.

It appears that earlier when these group of matters reached final hearing, in the light of what transpired in the Court then, a Bench of this Court consisting of S.C.Agrawal and B.N.Kirpal, JJ. by order dated 30th September, 1997 adjourned these proceedings to enable the Bar Council of India to take a fresh decision in the matter in the light of its decision taken in the earlier meetings regarding suitable modification of the impugned rules. It appears that ultimately on 4th August, 1998, before the Bench of three learned Judges, Shri P.P.Rao, learned senior counsel, placed a copy of the Resolution of Bar Council of India whereby the Rules were amended. We have also mentioned the earlier Resolution by which the impugned rules were amended. It is thereafter that these group of matters reached for final hearing before us. We, therefore, have to examine the legality and validity of the impugned rules as amended by the Resolution of the Bar Council of India dated 19th July, 1998.

Rival Contentions: We may briefly mention the rival contentions submitted for our consideration by learned counsel Shri N.N.Keshwani, who appeared in support of Writ Petition No.425 of 1998, as well as learned amicus curiae Shri Joseph Vellapally on behalf of other writ petitioners and Shri P.P.Rao, learned senior counsel for the Bar Council of India, which is the author of the impugned rules in support of their respective cases.

Learned counsel for the petitioners submitted, tracing the history of the relevant provisions of the Act and the

Rules, that there is no power with the Bar Council of India to frame the impugned rules. That Section 7 of the Act lays down the statutory functions of the Bar Council of India. The provisions thereof do not entitle the Bar Council of India to frame such impugned rules prescribing a pre-condition before enrolment of an applicant as an advocate under the Act by requiring him to undergo pre-enrolment training and apprenticeship as laid down under the impugned rules. It was also submitted that Section 24 sub-section (3)(d) of the Act also was not available to the Bar Council of India to frame such Rules. As a sequel, it was submitted that rule making power of the Bar Council of India as laid down by Section 49 could not be pressed in service by it in support of the impugned rules.

On the other hand, learned counsel in writ petition No.425 of 1998, submitted that even assuming that the impugned rules fall within the rule making power of the Bar Council of India, the Rules framed are so obnoxious, arbitrary, unreasonable and unworkable that they violate the fundamental right of the petitioners under Article 14 of the Constitution of India in any case. The appeal arising from SLP No.12989 of 1998 filed by the Bar Council of India, raising the question of retrospective effect of the Rules in question projected an additional contention, which may not survive if the Rules are held to be ultra vires the rule making power of the Bar Council of India. In support of the contentions raised on behalf of the petitioners by the learned counsel, reliance was placed on a three Judge Bench judgment of this Court in Indian Council of Legal Aid & Advice & Ors. vs. Bar Council of India & Anr., 1995 (1) SCC 732, while Shri Rao, learned senior counsel for the Bar Council of India, submitted on the other hand, that the said decision while interpreting the provisions of Section 49(1)(ah) of the Act was rendered per incuriam as it had not noticed the decision of the Constitution Bench of this Court in re: Lily Isabel Thomas, 1964 (6) SCR 229, as well as the express provisions of Section 24(3)(d) of the Act. Mr. Rao submitted that the impugned rules were legal and valid and were properly framed under Section 7 read with Section 24(3)(d) and Section 49(1) and (2) of the Act. In the light of the aforesaid rival contentions, the following points arise for our consideration :

1. Whether the impugned rules are ultra vires the rule making power of the Bar Council of India as available to it under the provisions of the Act. 2. If the aforesaid question is answered in negative and in favour of the Bar Council of India, whether the impugned rules are arbitrary and unreasonable so as to violate the guarantee of Article 14 of the Constitution of India; 3. If the impugned rules are legal and valid, whether the respondent in Bar Council of Indias appeal, who has got his Law degree prior to the coming into force of these Rules, can be required to comply with these Rules if he applies for being enrolled as an advocate under the Act after the Rules came into force; and 4. What final order? We shall deal with these points seriatim. Point No.1: In order to appreciate the rival contentions centering round this point, it will be necessary to have a peep into the historical background of the Act which came into force years back in 1961 and also have a birds eye view of the subsequent amendments thereto spread over number of years during its currency till date. It will also be necessary to keep in view the salient features of the relevant provisions of the Act. The Act seeks to amend

and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. A Bill was introduced in the Parliament seeking to implement the recommendations of the All-India Bar Committee made in 1953 after taking into account the recommendations of the Law Commission on the subject of Reform of Judicial Administration in so far as the recommendations related to the Bar and to Legal Education. The main features of the Bill were as under :-

(1) the establishment of an All-India Bar Council and a common roll of advocates, an advocate on the common roll having a right to practise in any part of the country and in any Court, including the Supreme Court; (2) the integration of the bar into a single class of legal practitioners known as advocates; (3) the prescription of a uniform qualification for the admission of persons to be advocates; (4) the division of advocates into senior advocates and other advocates based on merit; (5) the creation of autonomous Bar Councils, one for the whole of India and one (sic) for each State.

Section 2, sub-section (1) clause (a) of the Act defines, amongst others, an advocate to mean an advocate entered in any roll under the provisions of this Act. Section 2, sub-section (1) clause (d) defines Bar Council to mean a Bar Council constituted under this Act. While as per clause (e) Bar Council of India means the Bar Council constituted under Section 4 for the territories to which this Act extends. Law graduate is defined by clause (h) to mean a person who has obtained a bachelors degree in Law from any University established by Law in India; and a legal practitioner in clause (i) to mean an advocate [or vakil] of any High Court, a pleader, mukhtar or revenue agent;. The term roll is defined in clause (k) to mean a roll of advocates prepared and maintained under this Act;. The State Bar Council is defined in clause (m) as a Bar Council constituted under Section 3; and State roll is defined in clause (n) as a roll of advocates prepared and maintained by a State Bar Council under Section 17. When we turn to Section 17, we find that it is in Chapter III of the Act dealing with admission and enrolment of advocates. Section 16, which precedes Section 17, deals with Senior and other Advocates and lays down in sub-section (1) thereof that : There shall be two classes of advocates, namely, senior advocates and other advocates and then follows Section 17, sub-section (1) which provides that : Every State Bar Council shall prepare and maintain a roll of advocates. Sub-section (2) reads thereof as under :- Each such roll of advocates shall consist of two parts, the first part containing the names of senior advocates and the second part, the names of other advocates.

Section 22 provides for certificate of enrolment and sub-section (1) thereof lays down that There shall be issued a certificate of enrolment in the prescribed form by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act. Section 23 lays down Right of pre-audience and the priority given to the various advocates while addressing Courts. It lays down the scheme of priority as follows : The Attorney-General of India has pre-audience over all other advocates. Next comes Solicitor-General of India in the order of priority for audience. Then, the Additional

Solicitor-General of India; followed by the second Additional Solicitor- General of India, further followed by Advocate General of any State. Next in the hierarchy of the priority come senior advocates and last are other advocates having right of audience. It becomes, therefore, clear that once an applicant is enrolled as an advocate in the State roll maintained by the State Bar Council, he gets right of audience subject to the scheme of priorities as mentioned in Section 23 and naturally audience implies the full right of addressing the Court on all legal and factual issues involved in the case in which he appears as an advocate under the Act. Now follows Section 24, which lays down the qualifications for a person to be admitted as an advocate on a State roll. The said section, with its relevant sub-sections (1),(2) and (3) deserves to be extracted in extenso at this stage :

Persons who may be admitted as advocates on a State roll. - (1) Subject to the provisions of this Act, and the Rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions, namely :- (a) he is a citizen of India: Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise Law in that other country; (b) he has completed the age of twenty-one years; (c) he has obtained a degree in Law - (i) before the [12th day of March, 1967], from any University in the territory of India; or (ii) before the 15th day of August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or [(iii) after the 12th day of March, 1967, save as provided in sub-clause (iiia), after undergoing a three-year course of study in Law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or (iii-a) after undergoing a course of study in Law, the duration of which is not less than two academic years commencing from the academic year 1967-68, or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or] [(iv) in any other case, from any University outside the territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India; or] [he is a barrister and is called to the Bar on or before the 31st day of December, 1976; [or has passed the articled clerks examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court;] or has obtained such other foreign qualification in Law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act]; (d)[xx xx xx] (e) he fulfils such other conditions as may be specified in the Rules made by the State Bar Council under this Chapter; [(f) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 (2 of 1899), and an enrolment fee payable to the State Bar Council of [six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council]: Provided that where such person is a member of the Scheduled Castes or the Scheduled Tribes and produces a certificate to that effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be [one hundred rupees and to the Bar Council of India, twenty-five

rupees] . [Explanation - For the purposes of this sub-section, a person shall be deemed to have obtained a degree in Law from a University in India on the date on which the results of the examination for that degree are published by the University on its notice-board or otherwise declaring him to have passed that examination.] (2) Notwithstanding anything contained in sub-section (1), [a vakil or a pleader who is a Law graduate] may be admitted as an advocate on a State roll if he - (a) makes an application for such enrolment in accordance with the provisions of this Act, not later than two years from the appointed day; and (b) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1). [{3) Notwithstanding anything contained in sub-section (1), a person who - (a)[xx xx] has, for at least three years, been a vakil or a pleader or a mukhtar, or was entitled at any time to be enrolled under any Law [xx xx xx] as an advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union territory; or [(aa) before the Ist day of December, 1961, was entitled otherwise than as an advocate to practise the profession of Law (whether by way of pleading or acting or both) by virtue of the provisions of any Law, or who would have been so entitled had he not been in public service on the said date; or] (b) [xx xx xx] (c) before the 1st day of April, 1937, has been an advocate of any High Court in any area which was comprised within Burma as defined in the Government of India Act, 1935; or (d) is entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf, may be admitted as an advocate on a State roll if he- (i) makes an application for such enrolment in accordance with the provisions of this Act; and (ii) fulfils the conditions specified in clauses (a), (d), (e) and (f) of sub-section (1). Xx xx xx The aforesaid Section has undergone number of amendments by passage of time since the enactment of the said Act. It is, therefore, necessary to refer to the relevant amendments to that Section. It may be noted that Section 24 sub-section (1), as it stands on the statute book on date, does not include clause (d) which was omitted by Section 18 of amending Act 60 of 1973 with effect from 31st January, 1974. This clause (d) of Section 24 as it stood originally from 1961 read as under :

(d) he has undergone a course of training in Law and passed an examination after such training both of which shall be prescribed by the State Bar Council; Provided that this clause not apply to - (i) a barrister who has received practical training in England or a person who has obtained a degree in Law from any University in India before the appointed day; (ii) any person who has for at least two years held a judicial office in the territory of India or is a member of the Central Legal Service; (iii) any person who has for at least two years held a judicial office in any area which was comprised before the 15th day of August, 1947, within India as defined in the Government of India Act, 1935, or has been an advocate of any High Court in any such area; (iv) any person who has practised before any High Court and who has discontinued practice by reason of his taking up employment under the Government, a local authority or any other person; and (v) any other class of persons who by reason of their legal training or experience are declared by the Bar Council of India to be exempt from the provisions of this clause;

The aforesaid clause (d) also underwent a change from

1964. The said clause (d), in the form in which it is extracted above was operative only upto 1964. It was amended in 1964 and then read as under :

in clause (d) - (i) the words after such training shall be omitted; (ii) in the proviso, for paragraph (i), the following paragraph shall be substituted, namely :- (i) a person who has obtained a degree in Law from any University in India on the results of an examination held before the 31st day of March, 1964 or such other later date as may be prescribed, or a barrister who was called to the Bar before such date, or a barrister who, having qualified after that date, has received such practical training in Law as may be recognised in this behalf by the Bar Council of India;

It becomes, therefore, clear that between 1961 to 1964, the State Bar Council, as a condition of enrolment, required an applicant to undergo a course of training in Law and also required him to pass the examination after such a training. But after 1964 till 1973, it was permissible for the State Bar Council to prescribe a course of training in Law as a precondition for enrolment of a candidate and he was also required to pass the requisite examination during the training or even after completion of the training course and such examination could be prescribed by the State Bar Council concerned only. It is further required to be noted that in the aforesaid Section 24, between 1961 to 1964, there was no sub-section (3). That sub-section (3) came to be inserted in Section 24 in 1964 by Act 21 of 1964. In order to appreciate the scope and ambit of sub-section (3) of Section 24, as inserted by the aforesaid amending Act, it will be profitable to have a look at the objects and reasons underlying the introduction of the said amendment. These objects and reasons stated 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. In para 3 of the objects of the Bill at Item No.5 was mentioned the fact that categories of persons who were not by then entitled to be enrolled as advocates could be brought in by conferring powers on the Bar Council of India as per the amending provisions. Thus, sub-section (3) of Section 24 was brought on the statute book by the said amending Act 21 of 1964.

Before we come to the present texture of Section 24, we may mention one more amending 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 31st January, 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.

We may at this stage refer to 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 into the Amending Act 60 of 1973 by which Section 24(1)(d) stood deleted. The said clause, as noted earlier, entitled the State Bar Councils to frame Rules for prescribing pre-enrolment training and examination

subject to which a person would get 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 the Parliament is clearly seen from the statement of objects and reasons for introducing the aforesaid (Amendment) Bill of 1970. The said statement of objects and reasons was produced before us by learned Additional Solicitor General, Shri.C.S.Vaidyanathan for our scrutiny. Amongst others the need for deleting the statutory provision regarding pre-enrolment training was highlighted by paragraph (iii) of the said statement of objects and reasons. It is profitable to reproduce the said paragraph 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 professions. It is, therefore, felt that after a three- year course in Law in a University it is not necessary to retain the statutory provision in the Act requiring a further examination or practical training.

It becomes clear from a mere look at the said paragraph that it was the Bar Council of India itself which had decided that a 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 an Advocate under the Act and, therefore, pre-enrolment training till then required of him before getting enrolment was not necessary. This decision of the Bar Council of India was accepted by the Parliament and aforesaid provision by way of additional eligibility condition for enrolment as an advocate as then existing under Section 24(1)(d) was deleted. So far as three years LLB degree course is concerned, the syllabus prescribed by the Bar Council of India itself by its communication dated 21st October, 1997 addressed to the Registrars of all the Universities imparting Legal Education in India, the Deans of faculties of Laws of Universities and the Members of the Law colleges makes it clear that practical training to be given to a Law student prior to his getting degree of Law from University after completing three years course was to be included in the course of study. As practical training was suggested by the Bar Council of India itself for being included in the curriculum to be 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. However, learned Senior Counsel Shri P.P.Rao for the Bar Council of India is right when he contends that in those days it may have been so felt, but with passage of time and experience gained by the Bar Council of India regarding the actual working of legal profession at various levels in India and also in the light of the recommendation of higher power committee chaired by Honble Mr. Justice A.M. Ahmadi to be referred to hereinafter, the need for providing training to advocates before they become entitled to practise was visualised and that is the reason why the impugned rules were enacted and that, therefore, what the Bar Council of India decided in 1973 cannot create any estoppel against the Bar Council of India in 1995. Even

accepting this contention, the question remains whether the Bar Council of India by resorting to the enactment of impugned rules had remained within the permissible limits of its rule making power or not and it is this question which has to be considered by us in the present proceedings.

We may, at this stage, also refer to Section 7, laying down the statutory functions of the Bar Council of India. This Section, as it stood at the relevant time, read as under :

7. Functions of Bar Council of India - [(1)] The functions of the Bar Council of India shall be - (a) [xx xx xx] (b) to lay down standards of professional conduct and etiquette for advocates; (c) to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council; (d) to safeguard the rights, privileges and interests of advocates; (e) to promote and support Law reform; (f) to deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council; (g) to exercise general supervision and control over State Bar Councils; (h) to promote Legal Education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils; (i) to recognise Universities whose degree in Law shall be a qualification for enrolments as an advocate and for that purpose to visit and inspect Universities [or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf]; [(ia) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest; (ib) to organise legal aid to the poor in the prescribed manner; (ic) to recognise on a reciprocal basis foreign qualifications in Law obtained outside India for the purpose of admission as an advocate under this Act;] (j) to manage and invest the funds of the Bar Council; (k) to provide for the election of its members; (l) to perform all other functions conferred on it by or under this Act; (m) to do all other things necessary for discharging the aforesaid functions. [(2) The Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of - (a) giving financial assistance to organise welfare schemes for indigent, disabled or other advocates; (b) giving legal aid or advice in accordance with the Rules made in this behalf; [(c) establishing Law libraries.] (3) The Bar Council of India may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.]

(Emphasis supplied)

It is to be noted that clause (a) of Section 7, which originally stood, got omitted with effect from 31st January, 1974. That clause (a) pertained to maintenance of rolls of advocates. Hence from 1974 the Bar Council of India was not concerned with maintenance of rolls of advocates which function became the sole concern of State Bar Councils only. These rolls obviously consisting of names of entrants to the legal profession were clearly envisaged under Section 24 of the Act. The next relevant Section is 24-A dealing with disqualification for enrolment of a person desirous of being an advocate under the Act. That section was inserted

by Act 60 of 1973. It is relevant to note that the Legislature thereunder has enumerated three categories of persons who are disqualified from being enrolled as advocates even though they might otherwise fulfil the requirements of Section 24 sub-section (1). The imposition by the impugned Rules of the requirement of an applicant to undergo pre-enrolment training does not result into any disqualification of such an applicant if he has not undertaken such a training as it is not treated by the legislature as one of such disqualifications as envisaged by Section 24A. In other words, by the statutory provisions of Sections 24(1) and Section 24-A, after 1973, no legislative intention can be culled out requiring an applicant law graduate seeking enrolment as advocate under the Act to undergo any pre-enrolment training as a condition for enrolment nor its absence to be treated as a disqualification for enrolment. Next relevant Section is Section 28, which deals with powers of the State Bar Council to make Rules to carry out the purposes of the Chapter dealing with admission and enrolment of advocates. The said Section, as standing on the statute book on date, does not contain clause (b) in sub-section (2) thereof. Clause (b) was deleted by Section 21 of amending Act 60 of 1973 with effect from 31.1.1974. The said sub-clause (b), prior to its deletion read as under : (b) a course of practical training in Law and the examination to be passed after such training for admission as an advocate on the roll of the Bar Council;

A conjoint reading of Section 28, sub-section 2(b) and Section 24(1)(d) as it existed on the statute book prior to 31.1.1974 makes it clear that from 31st January, 1974, the legislature did not think it fit to clothe the State Bar Councils with the power to prescribe any pre-enrolment training and examination to be undergone by an applicant for enrolment as an Advocate on the State roll. As clause (d) was deleted from Section 24(1), simultaneously the rule making power earlier conferred on the State Bar Councils for effective exercise of that statutory function also stood withdrawn. Meaning thereby, from 31.1.1974 any person who had a requisite Law degree as laid down by Section 24 sub-section (1), became entitled to be enrolled as an Advocate on the State roll maintained by the State Bar Council and he was not required to undergo any such pre-enrolment training which he was required to undergo prior to 31st January, 1974. It is also pertinent to note that sub- section (3) of Section 24 had remained operative from 1964 onwards all throughout till 1974 simultaneously with the then existing power of the State Bar Councils to prescribe pre-enrolment training and examination to be undertaken by the applicants desirous of being enrolled as advocates. When both these provisions simultaneously existed on the statute book from 1964 to the beginning of 1974, it becomes obvious that the question of prescribing pre-enrolment training and examination to be undertaken by an applicant for being enrolled as an advocate on the State roll, remained solely in the domain of the concerned State Bar Councils and the Bar Council of India had nothing to do on this aspect of the matter. Consequently Section 24(3) dealt with a topic not covered by the sweep of Section 24(1) especially clause (d) thereof. The next relevant Section for our present purpose is Section 29, which is found in Chapter IV dealing with right to practise. The right to practise naturally is available to those advocates who are enrolled under the Act

and whose names are mentioned in the State roll as per Section 17 of the Act. A new entrant to the legal profession obviously would be an ordinary advocate and not a senior advocate. But only two types of advocates are contemplated by Section 17 sub-section (2) of the Act as seen earlier. An advocate can either be a senior advocate or a non- senior advocate, meaning thereby, other advocate. Moment a person is enrolled as an advocate on the State roll, he would become statutorily entitled to practise as laid down under Section 17 which provides under sub-section (1) that : Every State Bar Council shall prepare and maintain a roll of advocates in which shall be entered the names and addresses of - (a) all persons who were entered as advocates on the roll of any High Court under the Indian Bar Councils Act, 1926 (38 of 1926), immediately before the appointed day [including persons, being citizens of India, who before the 15th day of August, 1947, were enrolled as advocates under the said Act in any area which before the said date was comprised within India as defined in the Government of India Act, 1935, and who at any time] express an intention in the prescribed manner to practise within the jurisdiction of the Bar Council; (b) all other persons who are admitted to be advocates on the roll of the State Bar Council under this Act on or after the appointed day.

Section 30, which up till now has not come into force lays down :

Subject to the provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends, - (i) in all Courts including the Supreme Court; (ii) before any tribunal or person legally authorised to take evidence; and (iii) before any other authority or person before whom such advocate is by or under any Law for the time being in force entitled to practise.

So far as clause (i) of Section 30 is concerned, it is not in dispute that even though the main section has not come into force, all persons who are enrolled as advocates on the State roll are entitled as of right to practise in all Courts, including the Supreme Court and no one has challenged their said right. Whether such enrolled advocates can practise in Tribunals or any other authority would remain a moot question in the absence of bringing into force Section 30. Section 32 deals with the power of Court to permit appearances in particular cases by persons not enrolled as advocates. That power of the Court obviously is not touched by the impugned rules, as fairly stated by learned senior counsel Shri P.P.Rao for the respondent Bar Council of India. Then follows Section 33 which deals with the right to practise conferred on the advocates and lays down that :

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

A conjoint reading of Sections 23, 29 and 33 leaves no room for doubt that once a person is found qualified to be admitted as an advocate on the State roll having satisfied

the statutory conditions of eligibility laid down in sub-section (1) of Section 24, he will automatically become entitled as of right to practise full-fledged in any Court including the Supreme Court. Next follows Section 34, sub-section (1) which provides that : (1) The High Court may make Rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the Courts subordinate thereto.

This rule making power of the High Court operates on its own and cannot be pressed in service by the Bar Council of India for effectively proving the authorship of their impugned rules and, therefore, we need not dilate on the same any further. The next relevant section is Section 49. This is the section which lays down the rule making power of the Bar Council of India and is the sheet-anchor of the respondent Bar Council of India for supporting the impugned rules. It is, therefore, necessary to note the relevant provisions of this Section. Section 49 sub-section [(1)] provides that : The Bar Council of India may make Rules for discharging its functions under this Act, and, in particular, such Rules may pr escribe - xxx xxx xxx [(af)the minimum qualifications required for admission to a course of degree in Law in any recognised University;] (ag) the class or category of persons entitled to be enrolled as advocates; (ah) the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a Cou rt;] xxx xxx xxx

Before considering the next relevant Section, it is necessary to note that clause (af), as it stands in the present form in Section 49(1), was substituted by Act 60 of 1973 by Section 38 thereof with effect from 31.1.74. Prior thereto, clause (af) which was in force from 1964 onwards, read as under : (af) the category of persons who may be exempted from undergoing a course of training and passing an examination prescribed under clause (d) of sub-section (1) of Section 24;

It, therefore, becomes clear that from 1964 till the end of 1973, the Bar Council of India had rule making power to exempt those persons who were otherwise required to undergo pre-enrolment training and passing an examination as prescribed by the State Bar Councils under Section 24 (1)(d) as it stood on the statute book during that time. So the power of exemption from undergoing the training to applicants for enrolment as advocates was with the Bar Council of India, while the power to prescribe training and examination solely rested with the State Bar Councils concerned. Once the legislature by Act 60 of 1973, deprived the State Bar Councils of their rule making power to prescribe training and examination in view of deletion of clause(d) of sub-section (1) of Section 24 from the parent Act, the rule making power exempting categories of persons from pre-training and pre-examination prior to enrolment as earlier available to the Bar Council of India was also withdrawn and clause (af) in the present form got substituted with effect from 31.1.1974. Clauses (ag) and (ah) were already inserted in Section 49 by Act 21 of 1964 and they have continued to exist on the statute book all throughout till date. These topics of rule making power existed with the Bar Council of India at the same time when the provision regarding pre-service training and examination as a condition of enrolment existed on the statute book

under Section 24(1)(d). In other words, between 1964 to the end of 1973 i.e. till 31st January, 1974, the topic of prescription of pre-enrolment training and pre-enrolment examination which remained strictly in the domain of the State Bar Councils remained excluded from the rule making powers provided by clauses (ag) and (ah) of Section 49 so far as the Bar Council of India was concerned. It is axiomatic that these general rule making powers in clauses (ag) and (ah) of Section 49 necessarily did not take in their sweep the power to provide for pre-enrolment training and examination for applicants who were seeking enrolment as advocates under the Act from 1964 to the end of 1973. It is easy to visualise that the legislature itself dispensed with the concept of pre-enrolment training and examination for new entrants to the Bar with effect from 31.01.1974. As noted earlier, this was done on the recommendation of the Bar Council of India itself. Under these circumstances, it cannot be presumed that the same legislature without expressly including the same topic in the rule making power of the Bar Council of India, impliedly permitted the Bar Council of India itself to prescribe pre-enrolment training to new entrants at the Bar simultaneously with the withdrawal of the same training from 1974 onwards. It is difficult to countenance the submission of Shri Rao for the respondent Bar Council of India that there was any concurrent power to prescribe pre-enrolment training to applicants both with the State Bar Councils and the Bar Council of India between 1964 and end of 1973. The next relevant Section for our purpose is Section 49-A, which deals with the power of Central Government to make Rules. Sub-section (1) lays down that :

> The Central Government may, by notification in the Official Gazette, make Rules for carrying out the purposes of this Act including Rules with respect to any matter for which the Bar Council of India or a State Bar Council has power to make Rules.

Thus, powers of the Central Government to make Rules are parallel to the powers to make Rules available to the Bar Council of India or the State Bar Councils under the very same Act. Sub-section (2) of Section 49-A, as it stood prior to 31.1.1974, provided amongst others, by clause(d) thereof, rule making power in connection with the category of persons who were exempted from undergoing a course of training and passing an examination prescribed under clause (d) of sub-section (1) of Section 24. It becomes obvious that this provision had become otiose as it sought to exempt the category of persons from the sweep of compulsory pre-enrolment training and examination being a condition for enrolment as advocates under the then existing clause (d) of sub- section (1) of Section 24 which was deleted from the statute book from 1974 onwards. Thus, from 1974 there will be no occasion for the Central Government to exercise power of exemption for such category of persons earlier covered by Section 24(1)(d). However, it may be noted that Section 49-A sub-section 2 (c) entitles the Central Government to frame Rules regarding the class or category of persons entitled to be enrolled as advocates under the Act. It is on the same lines as the rule making power of the Bar Council of India under Section 49 sub-section (1) clause (ah). We may note at this stage that the Central Government has not exercised any rule making power regarding pre-enrolment training for prospective advocates. We,

therefore, need not dilate on this aspect any more. The last relevant Section is Section 52 which deals with Saving and it lays down that : Nothing in this Act shall be deemed to affect the power of the Supreme Court to make Rules under Article 145 of the Constitution - (a) for laying down the conditions subject to which a senior advocate shall be entitled to practise in that Court; (b) for determining the persons who shall be entitled to [act or plead] in that Court.

It is in the background of the aforesaid statutory scheme of the Act, as subjected to various amendments from time to time till date, that the moot question posed for our consideration about the legal efficacy of the impugned rules will have to be examined.

It becomes, therefore, necessary to have a close look at the impugned rules as amended by the Resolution of the Bar Council of India dated 19th July, 1998. These rules styled as the Bar Council of India Training Rules, 1995 provided for certain pre-conditions to be complied with by an applicant to be enrolled on the roll of the State Bar Council. The Rules are said to have been promulgated in exercise of the Bar Council of Indias rule making powers under Section 24(3)(d) of the Act. However, Shri Rao, learned senior counsel for the respondent Bar Council of India, is right when he contends that he can also sustain the Rules under any other legally permissible rule making power discernible from the relevant provisions of the Act. Rule 2 of the impugned rules provides that No person shall be entitled to be enrolled as an advocate unless he is eligible to be enrolled as such under Sec.24 of Advocates Act, 1961 and has undergone training as prescribed under these Rules. The said rule 2, as amended up to 19th July, 1998 further reads that: However, while undergoing training, the trainees shall be enrolled provisionally as Trainee Advocates after approval of name of their guides by the State Bar Council and the State Bar Council shall issue identity card to said provisionally enrolled Trainee advocates for their identification. Detailed procedure has been laid down how a trainee advocate has to function during the period of training. Such candidate has to maintain two types of diaries as approved by the State Bar Council - one for the work done in chambers and the other for the work in Courts. As per Rule 4 the training period shall commence from the certificate of guide that the candidate is being trained by him. Rule 5 deals with qualification of advocate to become guide of such trainees. Rule 7 deals with period of training for a minimum of one year. Rule 10 provides that : No candidate shall engage himself in any employment, profession, business, trade or calling during the course of training in any manner. Rule 15 lays down seniority of a trainee advocate on successful completion of the training period by providing that he shall be entitled to seniority from the date of provisional enrolment as trainee under the Rules. Such a trainee advocate as per Rule 15 (b) shall be entitled to appear in the Court for seeking adjournments and to make mentioning on instruction of their guide and shall be under disciplinary control of the State Bar Council and the Bar Council of India. Rule 15AA provides that in case period of training of a particular candidate is extended by the State Bar Council under Rule 9 on the ground of inadequate training, said extended period shall not be

counted towards seniority.

It becomes at once clear that the impugned rules are said to have been framed by the Bar Council of India in exercise of its statutory powers under Section 24(3)(d) of the Act. We have already traced the history of the aforesaid statutory provisions. It is no doubt true that sub-section (3) of Section 24 starts with a non obstante clause and provides that notwithstanding anything contained in sub-section (1), a person mentioned in categories (a),(aa), (c) and (d) may be admitted as an advocate on a State roll if he applies as laid down in clause (1) and fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub- section (1). The objects and reasons for enacting the said provision, as noted earlier, have clearly laid down that it was felt by the legislature that despite the operation of Sections 17 and 24 of the Act, there were some persons who though not covered by the said provision and had not satisfied the conditions for enrolment as laid down in these provisions deserved to be enrolled as advocates. With that end in view, the Bar Council of India was provided with the rule making power under sub-section 3(d) of Section 24 by way of an enabling provision to extend the statutory coverage of Section 24(1) for bringing in such otherwise ineligible candidates for enrolment and even for such additional class of persons to be enrolled as advocates by exercise of rule making power of the Bar Council of India they had to satisfy the statutory requirements of clauses (a), (b), (e) and (f) of sub-section (1) of Section 24. This enabling provision available to the Bar Council of India by Rules to extend the scope of eligibility in favour of those who were ineligible under Section 24(1) to be enrolled as advocates did not touch upon the question of eligibility in connection with pre-enrolment training and examination or to put it differently, the enabling power available to the Bar Council of India to make eligible otherwise ineligible persons for enrolment as advocates under Section 24(1) did not cover the question of pre-enrolment training and examination at all. It must, therefore, be held on express language of Section 24 sub-section 3(d) that the rule making power of the Bar Council of India proceeded only in one direction, namely, for bringing into the sweep of Section 24(1) all those who were not entitled to be enrolled as advocates under the provisions of Section 24(1). The non-obstante clause with which sub- section (3) of Section 24 starts, provides that despite the conditions mentioned for enrolment in sub-section (1) of Section 24 might not have been satisfied by person concerned, if the Bar Council of India thought that such a person also deserved to be enrolled as an advocate, then rule making power under clause (d) of sub-section (3) of Section 24 could be resorted to by the Bar Council of India. The said power, to say the least, could be utilised for making ineligible persons eligible for enrolment despite what is stated under sub-section (1) of Section 24 but it could never be utilised in the reverse direction for disqualifying those from enrolment who were otherwise qualified to be enrolled as per sub- section (1) of Section 24. It was a power given to the Bar Council of India to extend the coverage of Section 24(1) and not to whittle it down. It is, therefore, difficult to appreciate the contention of learned senior counsel, Shri Rao for the Bar Council of India, that by exercise of the said rule, it could impose a further condition of disability of otherwise eligible candidate to be enrolled even if he had satisfied

all the statutory conditions laid down by Section 24 sub-section (1). To illustrate the nature of such rule making power and the limited scope thereof, it may be visualised that as per Section 24 sub-section (1) clause (c) unless a person has obtained the degree of Law from any recognised University in India, he would not be entitled to be enrolled as an advocate. Still the Bar Council of India in its wisdom and discretion by exercising its enabling rule making power under Section 24 sub-section (3)(d) read with Section 49(1) may permit a citizen of India who might have obtained degree from a foreign University like a Law degree from England or a Law degree from Harvard Law School of America or a law degree from Canadian or Australian University to be enrolled as advocate. Such category of persons who could not have been enrolled on the express language of Section 24 (1) could be enrolled by the State Bar Councils under Section 24(3)(d) if the Bar Council of India in exercise of its rule making power had covered them for such enrolment. It is this beneficial and enabling power for bringing in the sweep of the umbrella of Section 24(1) those who would have otherwise been out of it which is conferred by Sub-section (3) (d) of Section 24 on the Bar Council of India read with Section 49(1). It is also necessary to note that this power is available to the Bar Council of India from 1964 all throughout till date, while between 1963 to January 1974, pre-enrolment training and examination could be prescribed as a condition by the State Bar Councils as per the then existing condition (d) of sub-section (1) of Section 24 for such enrolment. Consequently, it cannot be said that the rule making power under sub-section (3) (d) of Section 24 still enables the Bar Council of India, after deletion of Section 24(1)(d) to promulgate such a rule by which almost by back door such an additional condition for enrolment to restrict the entry of otherwise eligible candidates for enrolment under Section 24(1) can be imposed. Consequently, Section 24 sub-section (3) (d) of the Act cannot be legitimately invoked by the Bar Council of India for sustaining the impugned rules.

We may also mention one additional submission of senior advocate Shri P.P.Rao in support of the impugned rules. He contended that Section 24(1) of the Act itself enables rule making authorities to enact Rules which may go beyond the statutory provisions of Section 24(1) as enacted by the legislature and, therefore, the Bar Council of India as a rule making authority can by exercise of the said power add to the conditions of enrolment as expressly laid down by Section 24(1). It is not possible to agree with this submission for the simple reason that Section 24 itself contemplates the qualifications of a person who seeks admission as an advocate on the State roll. To reiterate granting of admission to a person for being enrolled as an advocate under the Act is a statutory function of the State Bar Council only. The Bar Council of India has no role to play on this aspect. All it has to do is to approve any Rules framed by the State Bar Council under Section 24(1) laying down further qualifications for a person to be enrolled by it on the State roll as an advocate. We have, therefore, to read the rule making power mentioned under Section 24(1) conjointly with the rule making power of the State Bar Council as provided by section 28(1) especially clause 2(d) thereof which provides as under :- (1) A State Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for - Xxxx Xxxx Xxxx (d) the conditions subject to which a person may be admitted as an advocate on any such roll.

Consequently, the submission of Shri P.P.Rao, learned senior counsel for the Bar Council of India that the Council also can exercise rule making power under Section 24(1) for imposing an additional condition of qualification for a person to be enrolled on State roll obviously cannot be accepted. Shri Rao then next turned to Section 7 of the Act and submitted that, amongst enumerated functions of the Bar Council of India, at clause (h) of sub-section (1) is specified a provision regarding promoting the legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. It is difficult to appreciate how the aforesaid clause (h) can also give any support to the impugned rules. Shri Rao, learned senior counsel for the Bar Council of India, is right when he contends that the concept of 'legal education is not necessarily confined to only class room lectures or theoretical study of law. It can include practical training of prospective advocates. But even accepting that legal connotation of the term 'legal education, the question remains as to how the Bar Council of India can promote legal education. It can obviously promote legal education by laying down standards of such education in consultation with the respective universities in India imparting such education. The words Universities in India imparting such education as found in clause (h) of sub-section (1) leave no room for doubt that the question of imparting legal education is entrusted to the Universities in India and not to the Bar Council of India. All that the Bar Council of India can do is to suggest ways and means to promote such legal education to be imparted by the Universities and for that purpose it may lay down the standards of education, syllabi in consultation with the Universities in India. It is, therefore, difficult to appreciate how for promoting legal education through the Universities imparting legal education in India, the Bar Council of India can itself take up the role of laying down pre- enrolment training for applicants seeking to enter legal profession by getting enrolled under Section 24 of the Act. The history of this relevant provision spread over years, shows that pre-enrolment training and examination constitute a topic which the legislature in its wisdom entrusted to the State Bar Councils and not to the Bar Council of India. Merely because the legislature withdrew even that rule making power in the light of the withdrawal of the statutory condition of enrolment by enacting Section 24(1)(d) from the 31st January, 1974, it could not be said that the then existing rule making power on other topics which was available to the Bar Council of India got enlarged or elongated by necessary implication. The power, as couched in the same earlier existing terms, has remained as it is after deletion of Section 24(1)(d) by the Parliament. It is also to be noted that the functions of the Bar Council of India under Section 7 were not enlarged to cover such a provision for pre-enrolment training to applicants by suitably entrusting the Bar Council of India such a function. Save and except Section 7(1)(h) there is no sub-section in the said Section which entitles the Bar Council of India to prescribe any pre-enrolment training or examination to be undertaken by

the prospective professional who wants to enrol himself as such once he satisfies the requirements and the conditions for such enrolment as laid down by Section 24 (1). Consequently, the support of Section 7(1) as tried to be invoked for sustaining the impugned rules also is of no avail to learned senior counsel Shri Rao for the respondent Bar Council of India. We may now refer to Section 49 of the Act, which deals with general power of Bar Council of India to make Rules. Sub-section (1) thereof lays down that the Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe on various topics as enumerated therein from clauses (a) to (j). A mere look at the aforesaid provision makes it clear that the rule making power entrusted to the Bar Council of India by the legislature is an ancillary power for fructifying and effectively discharging its statutory functions laid down by the Act. Consequently, Rules to be framed under Section 49(1) must have a statutory peg on which to hang. If there is no such statutory peg the rule which is sought to be enacted dehors such a peg will have no foothold and will become still born. The statutory functions entrusted by the legislature to the Bar Council of India under the Act so far as relevant for our present purpose and which could be relied upon by Shri Rao, learned senior counsel for the respondent Bar Council of India, are Section 7(1)(h) and Section 24(3)(d). We have seen earlier that neither of these statutory provisions entitles the Bar Council of India to provide for the disqualification or a disability or an additional condition for enrolment of a person who is otherwise eligible to be enrolled as an advocate under Section 24(1). Once that conclusion is reached, the very foundation for supporting the impugned rules gets knocked off. Consequently, if any such rule is framed, supposedly by exercise of the rule making power as enumerated in Section 49(1)(af), (ag) or (ah) on which also reliance was placed by Shri Rao, the said rule having not been made for discharging any of the statutory functions of the Bar Council of India in this connection must necessarily fail as it would be ultra vires the statutory functions of the Bar Council of India. Any rule framed by rule making authority going beyond its statutory functions must necessarily be held to be ultra vires and inoperative at law. Consequently, the valiant attempt made by Shri Rao for sustaining the Rules under Section 49(1)(af), (ag) and (ah) would remain abortive only on this short ground. But even that apart, let us see whether any of these provisions can sustain the impugned rules even on the assumption that such an exercise otherwise remains a permissible one for the Bar Council of India. Section 49(1)(af) deals with minimum qualifications required for admission to a course of degree in law in any recognised University. That obviously has nothing to do with the impugned rules. Then comes clause (ag) which deals with the class or category of persons entitled to be enrolled as advocates. To recapitulate, Section 49(1)(ag) was already on the statute book since 1964 till January 1974 when the topic of pre-enrolment training and examination was solely within the domain of the State Bar Councils and once on the said topic the State Bar Council concerned had framed the requisite rules, they were then subject to approval by the Bar Council of India. Therefore, there was a complete code in this connection. Once the State Bar Councils framed such rules and got them approved by the Bar Council of India, then because of the thrust of the parent provision of Section 24(1)(d) which was operative at that time, it became a pre-condition for

enrolment. There cannot be two parallel pre-conditions of enrolment which can be simultaneously imposed, one under Section 24(1)(d) by the concerned State Bar Council by exercise of its powers under Section 28(2)(b) which existed on the Statute Book between 1964 to January, 1974 and also the possible provisions for imposing such pre-conditions for enrolment by the Bar Council of India taking resort to the supposed wide wordings of Section 49(1)(ag) during the very same period as during that period Section 24(1)(d), Section 28(2)(b) and Section 49(1)(ag) conjointly existed on the statute book. If such a concurrent power is envisaged by Section 49(1)(ag), then the Bar Council of India instead of being an approving authority at the relevant time would itself become a prescribing authority in connection with pre-enrolment training. It has also to be kept in view that on the scheme of the Act enrolment of advocates is the task of the State Bar Councils and not of the Bar Council of India. It must, therefore, be held that the rule making power contemplated by the legislature under Section 49(1)(ag) for being exercised by the Bar Council of India was pertaining to only those classes or categories of persons who were thought fit to be enrolled as advocates though they might not be eligible to be enrolled under Section 24(1) of the Act as it stood on the statute book. In other words, this enabling rule making power only by which the Bar Council of India could add to the category of eligible persons for enrolment which would have otherwise remained outside the sweep of the statutory scheme of eligibility for enrolment as laid down by Section 24(1), did not contemplate any power to curtail the existing eligibility of applicants under Section 24(1) for enrolment as advocates. It is only for such additional class or category of persons that the enabling provision as per the said rule making power could be available to the Bar Council of India. It is difficult to appreciate how by any process of interpretation an enabling provision can be treated as a restrictive one. In fact, on a conjoint reading of Section 24(3)(d) and Section 49(1)(ag) the conclusion becomes inevitable that the Bar Council of India in exercise of its statutory function entrusted to it under sub-section (3)(d) of Section 24(1) can frame suitable rule for bringing in the umbrella of enrolment provision those who otherwise would have remained outside. The rule making power under Section 49(1)(ag) has to take colour from the statutory function entrusted to the Bar Council of India by Section 24(3)(d). As we have already held that Section 24(3)(d) does not enable the Bar Council of India to impose additional restriction on the eligibility of an applicant who seeks enrolment as per Section 24(1) by necessary implication power under Section 49(1)(ag) also cannot enable such an impermissible exercise. The rule making power under Section 49(1)(ag) is ancillary to the statutory function entrusted to the Bar Council of India by Section 24(3)(d) and it cannot travel beyond the said statutory sphere.

So far as Section 49(1)(ag) is concerned, it has also to be kept in view, as noted earlier that Section 24(3)(d) and Section 49(1)(ag) were simultaneously introduced in the Act in 1964. At that time there were specific provisions regarding pre-enrolment training under Section 24(1)(d) and Section 28(2)(b). Thus, the enactment of Section 24(3)(d) and Section 49(1)(ag) could never have been intended to include implied power/function to make pre-enrolment training Rules and that too by the Bar Council of India which had nothing to do at the initial stage of enrolment of

advocates on the State rolls. In this connection, it is also useful to refer to section 49(1)(ag) with section 29 of the Act. Section 29 in terms provides as under:- Subject to the provisions of this Act and any Rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of Law, namely, advocates.

Section 49(1)(ag) also deals with the class or category of persons entitled to be enrolled as advocates. Thus, by the said provision the Bar Council of India in exercise of its rule making power can add to the class of persons contemplated by Section 29 by enlarging the said class of advocates entitled to practise as full-fledged advocates. Entitlement to practise the profession of law necessarily means full- fledged entitlement to plead and argue cases of their clients before the courts of law. There cannot be any truncated right to practise profession of law which is sought to be culled out by Shri P.P. Rao, learned Senior Counsel for the Bar Council of India on a conjoint reading of Sections 29 and 49 (1)(ag) of the Act. That takes us to the last provision on which reliance was placed by Shri Rao, learned senior counsel for the respondent. That is Section 49(1)(ah). A mere look at the said provision shows that it confers rule making power on the Bar Council of India to prescribe conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a Court. It is, therefore, obvious that once a person has been enrolled as an advocate under the Act, his right to practise can be made subject to certain conditions if the Bar Council of India seeks to impose such conditions on an enrolled advocate. In other words, rule making power under Section 49(1)(ah) deals with a situation which is post enrolment of an advocate and does not deal with pre-enrolment situation for a candidate seeking enrolment. The impugned rules provide for pre-enrolment training. It is true that the Rules also provide for provisional enrolment. But provisional enrolment envisaged by the rules is totally dehors the scheme of the Act. To recall enrolment of advocates is a function entrusted by the legislature to the State Bar Councils and not to the Bar Council of India. Section 17 read with Section 24, leaves no room for doubt that a person who seeks enrolment as an advocate has to show his eligibility to be brought on State roll of advocates. A State roll of advocates has to be maintained only by the State Bar Council. Consequently, there would remain no occasion for the Bar Council of India to provide for a condition of pre- enrolment training. The State Bar Councils alone could provide for pre- enrolment training till Section 24(1)(d) was on the statute book up to January, 1974. After an advocate is enrolled as a full-fledged advocate how his right to practise is to be conditioned may be made a subject matter of rule making power of the Bar Council of India as per Section 49(1)(ah). But in the facts of the present case, the aforesaid provision cannot be of any help to the respondent Bar Council of India for sustaining the impugned rules for two obvious reasons; firstly, provision for pre-enrolment training of prospective advocates is not entrusted by the legislature to the Bar Council of India while laying down its statutory functions under Section 7, as seen earlier. Therefore, the very first part of Section 49 will hit the said rule as it would not be a rule for discharging the statutory function of the Bar

Council of India. But there is still a second cogent reason for showing that clause (ah) of sub-section (1) of Section 49 cannot support the impugned rules. The said rules do not seek to regulate the right of practice available to an already enrolled full-fledged advocate. The entitlement of an enrolled advocate is to be culled out from a conjoint reading of Sections 17, 24(1) and the definition of advocate as found in Section 2(1)(a). Once a person is enrolled as an advocate, how the right to practise of such enrolled advocate can be regulated or monitored may legitimately form the subject matter of a rule framed under Section 49(1)(ah). But the impugned rules by providing the concept of a trainee advocate with only a limited right to ask for adjournment and mentioning the cases of his guide totally violate the scheme of the Act. Section 17 sub-section (2) of the Act lays down that there can be only two classes of advocates; senior advocates and non-senior or ordinary advocates. It is difficult to appreciate how a trainee advocates class can be created by exercising supposed rule making power of the Bar Council of India under Section 49(1)(ah). It is also interesting to note that the Bar Council of India itself in exercise of its rule making power under Section 49(1)(ah) has framed the Rules laying down conditions under which an enrolled advocate may not be permitted to practise or may be suspended from practice or when can he resume practice. Shri Rao, learned senior counsel for the respondent, was right when he contended that even though such rules might have been framed in past, if the rule making power inheres in the Bar Council of India then such power can be exercised from time to time by framing additional rules. However, the question is whether Section 49(1)(ah) confers such a power on the Bar Council of India. So far as this question is concerned, it has stood answered against the respondent Bar Council of India by a three Judge Bench judgement of this Court reported in Indian Council of Legal Aid & Advice & Ors. case (supra). A.M.Ahmadi, CJI, speaking for the three Judge Bench, had to consider in the said decision, the question whether the Bar Council of India could frame a rule restricting the enrolment of advocates to the State roll to only those who had not completed 45 years of age. Holding such rule to be ultra vires the powers of the Bar Council of India under the Act, it was held that such a rule could not be sustained under Section 49(1)(ah) as the said provision dealt with a situation after enrolment of advocates and could not take in its sweep any situation prior to their enrolment. Shri Rao, learned senior counsel for the respondent Bar Council of India, tried to salvage the situation by submitting that the said decison was per incuriam on the ground that Section 24(3)(d) was not noticed. We have already held that Section 24 (3)(d) is the provision which permits the Bar Council of India by exercise of rule making power to make otherwise ineligible person eligible for enrolment and does not act in the reverse direction to make otherwise eligible persons ineligible. Once that conclusion is reached, Section 24(3)(d) becomes totally irrelevant for deciding the question whether the rule impugned before the three Judge Bench in that case could have been sustained by the Bar Council of India by taking resort to Section 24(3)(d). Non-consideration of such irrelevant provision, therefore, cannot make the ratio of the decision in the aforesaid case per incuriam. The second ground on which Shri Rao tried to submit that the said decision was per incuriam was by inviting our attention to a Constitution Bench judgment of this Court in re: Lily Isabel Thomas case (supra). Now it must be kept in view

that the said decision was rendered in connection with an entirely different statutory scheme. Section 52 of the Act, as noted earlier, saves power of the Supreme Court to make Rules under Article 145 of the Constitution of India for determining persons who are eligible to practise before the Supreme Court. Thus, the constitutional power of the Supreme Court for regulating the working of advocates in the Supreme Court who were otherwise entitled to practise in any Court in India under the Act could be validly exercised. When we turn to the constitutional power of the Supreme Court under Article 145, we find clearly mentioned therein that subject to the provisions of any law made by the Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including rules as to the persons practising before the Court. As Section 52 of the Act has expressly saved the powers of the Supreme Court under Article 145 for determining the persons who shall be entitled to practise and plead before the Supreme Court, Article 145 could operate on its own without any fetter being imposed by any statutory law enacted by the Parliament. Accordingly, in the light of Article 145, a question arose before the Constitution Bench in the aforesaid case, whether the Supreme Court was competent to enact a rule in connection with advocates practising before it, who could act as an advocate on record subject to their passing examination as laid down under the rules. The term persons practising before the Court as laid down by Article 145(1)(a) in connection with such rule making power was interpreted to take in its sweep not only persons actually practising but even entitled to practise before the Supreme Court. In this connection, the phraseology found in the Union List in the 7th Schedule of the Constitution in Entry 77, namely, persons entitled to practise before the Supreme Court was held to be in pari materia with the phrase persons practising before the Court as found in Article 145(1)(a). In the light of the aforesaid wide sweep of Article 145(1)(a), expressly saved by Section 52 of the Act it was held that the rule laying down examination to be undergone by practising advocates before the Supreme Court before they could act as advocates on record was within the rule making power of the Supreme Court. It is difficult to appreciate how the aforesaid decision of the Constitution Bench rendered in the light of an entirely different constitutional scheme can be of any assistance to the Bar Council of India in the present case. For sustaining the rule making power of the Bar Council of India, the express provisions of Section 7 and Section 24(3)(d) read with Section 49(1)(ah) would be the only relevant provisions which were considered by this Court in a three Judge Bench judgment Indian Council of Legal Aid & Advice & Ors. case (supra). The ratio of the Constitution Bench judgment rendered in connection with an entirely different question posed for decision in the light of the relevant provisions of the constitutional scheme dealing with the rule making power of the Supreme Court under Article 145, therefore, cannot be said to be laying down anything contrary to what the three Judge Bench judgment laid down in connection with this very statutory scheme which squarely arises for consideration in the present case. Hence, even the second ground canvassed by learned senior counsel, Shri Rao for the Bar Council of India, for whittling down the binding effect of the aforesaid three Judge Bench judgment of this Court, cannot be sustained.

We may at this stage note one submission of Shri C.S.Vaidyanathan, learned Additional Solicitor General. He contended that the impugned Rules 15A to 15C atleast can be sustained under the rule making power of the Bar Council of India under section 49(1)(ah) of the Act. It is not possible to agree with this contention for the simple reason that by the impugned rules no training is prescribed subsequent to enrolment under the Act. Rules seek to impose pre- enrolment training, as noted earlier. Consequently, such a rule cannot be sustained under the aforesaid provision as clearly ruled by a Three Judge Bench Judgment of this Court in Indian Council of Legal Aid & Advice Boards Case (supra). Even that apart, a close look at Section 49(1)(ah) clearly shows that the said provision enables the Bar Council of India to lay down conditions subject to which an advocate who has already got enrolled can have a right to practise. Right to practise as available to an advocate duly enrolled under the Act is a full-fledged right to practise which, as noted earlier, would include not only seeking adjournments but also to plead and argue for the client for whom he appears before the Court. Thus any truncating of the very right to practise itself in exercise of rule making power under Section 49(1)(ah) by creating a new class of trainee advocates cannot be sustained by the said provision. All that the said provision enables the Bar Council of India to do is to frame a rule under the said provision which may impose conditions subject to which an enrolled advocate can carry on his full-fledged practice as an advocate. In this connection, it is profitable to look at the very Rules earlier enacted by the Bar Council of India under Section 49(1)(ah) of the Act. They are found in Part VI, Chapter-III of the Bar Council of India Rules. We have already referred to the gist of these Rules earlier. However, it will be profitable to extract these Rules in extenso to highlight the scope and ambit of rule making power vested in the Bar Council of India under Section 49(1)(ah) as until now understood by the very same rule making authority.

Conditions for right to practise 1. Every Advocate shall be under an obligation to see that his name appears on the roll of the State Council within whose jurisdiction he ordinarily practices.

PROVIDED that if an advocate does not apply for transfer of his name to the roll of the State Bar Council within whose jurisdiction he is ordinarily practising within six months of the start of such practice, it shall be deemed that he is guilty of professional misconduct within the meaning of section 35 of the Advocates Act.

2. An Advocate shall not enter into a partnership or any other arrangement for sharing remuneration with any person or legal Practitioner who is not an Advocate.

3. Every Advocate shall keep informed the Bar Council on the roll of which his name stands, of every change of his address.

4. The Council or a State Council can call upon an advocate to furnish the name of the State Council on the roll of which his name is entered, and call for other particulars.

5. (1) An Advocate who voluntarily suspends his practice for any reason whatsoever, shall intimate by registered post to the State Bar Council on the rolls of which his name is entered, of such suspension together with his certificate of enrolment in original.

(2) Whenever any such advocate who has suspended his practice desires to resume his practice, he shall apply to the Secretary of the State Bar Council for resumption of practice, along with an affidavit stating whether he has incurred any of the disqualifications under Section 24A, Chapter III of the Act during the period of suspension.

(3) The Enrolment Committee of the State Bar Council may order the resumption of his practice and return the certificate to him with necessary endorsement. If the Enrolment Committee is of the view that the Advocate has incurred any of the disqualifications the Committee shall refer the matter under proviso to Section 26(1) of the Act.

(4) On suspension and resumption of practice the Secretary shall act in terms of Rule 24 of Part IX.

6. (1) An Advocate whose name has been removed by order of the Supreme Court or a High Court or the Bar Council as the case may be, shall not be entitled to practice the profession of Law either before the Court and authorities mentioned under Section 30 of the Act, or in chambers, or otherwise.

(2) An Advocate who is under suspension, shall be under same disability during the period of such suspension as an Advocate whose name has been removed from the roll.

7. An officer after his retirement or otherwise ceasing to be in service shall not practise for a period of two years in the area in which he exercised jurisdiction for a period of 3 years before his retirement or otherwise ceasing to be in service.

RESOLVED that nothing in these Rules shall prevent any such person from practising in any Court or tribunal or authority of superior jurisdiction to one in which he held office.

Explanation: Officer shall include a Judicial Officer, Additional Judge of the High Court and Presiding Officer or Member of the Tribunal or authority or such other Officer or authority as referred to in Section 30 of the Act.

Area shall mean area in which the person concerned exercising jurisdiction.

8. No Advocate shall be entitled to practice if in the opinion of the Council he is suffering from such contagious disease as makes the practice of Law a hazard to the health of others. This disqualification shall last for such period as the Council directs from time to time.

These rules show that subject to the conditions laid down in these rules an enrolled advocate can practise as a full-fledged advocate. His right once granted cannot be restricted qua his acting in the Court when remaining enrolled as an advocate on the State roll. It must,

therefore, be held that Section 49(1) (ah) cannot sustain the impugned rules. Shri Rao next contended that Section 34(1) of the Act which deals with the rule making power of the High Court enabling it to lay down conditions subject to which an advocate shall be permitted to practise in the High Court is pari materia with Section 49(1)(ah). It clearly shows that the High Court can by Rules restrict and impose conditions on practising advocates before it or before any subordinate Court. Similarly, the Bar Council of India can also in exercise of similar statutory rule making power under Section 49(1) of the Act, do so. We fail to appreciate how this analogy can be of any avail to Shri Rao for the respondent Bar Council of India. Once an advocate is already enrolled on the State roll conditions subject to which he can practise before the High Court or Court subordinate to it, can be laid down by the High Court by its rule making power under Section 34(1). This necessarily is a situation which is post enrolment. Similar situation would fall for consideration if the Bar Council of India seeks to exercise its power under pari materia rule making power under Section 49(1)(ah) but as the impugned rules travel backwards and seek to enter upon and monitor pre-enrolment situation, the said exercise obviously remains in a forbidden field for the Bar Council of India. It has also to be appreciated that the powers of the constitutional Courts like the High Courts which are Courts of record stand on an entirely different footing as compared to powers of statutory authority like the Bar Council of India which has to justify exercise of its powers within the four corners of the Statute which has created it. It is also not the submission of any learned counsel before us that any of the High Courts has framed any rule requiring the State Bar Councils not to enrol any advocate on its roll if he has not undertaken any pre-enrolment training by resorting to its rule making power under Section 34(1). It is only the Bar Council of India which has tried to do so by enacting the impugned rules. Consequently, any assistance sought to be received by Shri Rao for the Bar Council of India from Section 34(1) on the analogy of the High Courts rule making power also cannot be any avail to him. These were the only contentions canvassed by learned senior counsel Shri Rao for the respondent Bar Council of India for sustaining the impugned rules and as we have found that none of these contentions can be sustained, the inevitable result is that the impugned rules fail and must be held to be still born being beyond the rule making power of the Bar Council of India. Point No.1, therefore, has to be answered in affirmative in favour of the writ petitioners and the appellant in appeal arising out of SLP (C) No.13755 of 1996 and against the respondent Bar Council of India in the writ petitions and which is also the appellant in appeal arising out of SLP (C)No.12989 of 1998.

Point Nos.2 & 3: In view of our findings on point no.1, it is not necessary to consider these two points and, therefore, were not answered. Before parting with these matters, it is necessary to note that in the light of the experience of various Courts in which advocates are practising 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 Court rooms. 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 No.16 in the last Conference of the Chief Justices held in December, 1993. The Conference resolved that Honble the Chief Justice of India be requested to constitute a Committee consisting of Honble Mr.Justice A.M.Ahmadi as its Chairman, and two other members to be nominated by Honble 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 practise in the courts. The said High Power 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 suggestion nos.1, 12, 13, 15, 16 which are required to be noted. They read as under : 1. In laying down the standards of Legal Education, the Bar Councils Legal Education Committee constituted under Rule 4 of Chapter III of the Bar Council of India Rules, 1965 must reflect the participation of representatives of (1) the Judiciary, (2) the Bar Council and (3) the U.G.C. It is proposed that the Rules be amended and the Legal Education Committee be restructured to involve the bodies above-mentioned. Xx xx xx 12. Rule 21 of the Bar Council Rules directing that every University shall endeavour to supplement the lecture method with case method, tutorials and other modern techniques of imparting Legal Education must be amended in a mandatory form and it should include problem method, moot courts, mock trials and other aspects and make them compulsory. 13. (i) Participation in moot courts, mock trials, and debates must be made compulsory and marks awarded, (ii) Practical training in drafting pleadings, contracts can be developed in the last year of the study, and (i ii) Students visits at various levels to the Courts must be exposu re. ma de compulsory so as to provide a greater Xx xxxx 15. Entrance into the Bar after 12 months@@ II 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 students diary must reflect his attendance for three months in the grass root level in a civil court and for three months in a Magistrates 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 (sic) be permitted to sit for the Bar Council Examination. Xx xx xx

It is true that these suggestions of the High Power 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 Power Committee could have been put into practice by following appropriate methods and adopting appropriate modalities by the Bar Council of India. Unfortunately, the attempt made by the Bar Council of India by enacting the impugned rules has resulted into firing at the wrong end though backed up by a very laudable purpose. We may in this connection usefully refer to what the High Power Committee itself observed at page 30 of the Report in connection with Entrance into the Bar after 12 months or 18 months of Apprenticeship with Entry Examination : Section 28(2) (b) of the Advocates Act, 1961 as it stood in 1961, empowered the State Bar Councils to make Rules for practical training in Law Courts and for a Bar Council Examination. In exercise thereof Rules were framed by Bar Councils in the States prescribing the training and Bar Council Examination. Unfortunately the same was omitted later on in the Act by amendment and this has been the second major factor responsible for the deterioration of standards in the legal profession. Now that the Bar Council of India is wanting the reintroduction of Section 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 the Bar Council of India. So far as the percentage of marks to be obtained for purposes of receiving a licence/sanad from the 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. So far the training under a senior Lawyer during the period of one year or 18 months of apprenticeship, the Act or Rules must stipulate that the senior must have at least 10 or 15 years standing at a District Court/High Court and that the students diary must reflect his attendance for three months in the grassroot level in a Civil Court and for three months in a Magistrates Court and at least six months in a District Court/High 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 above-mentioned.

These observations of the High Power Committee clearly indicate that it was the stand of the representative of the Bar Council of India before them that Section 28(2)(b) which was earlier on the statute book and was deleted by the Parliament, was required to be reintroduced. In other words, it was felt by the Bar Council of India itself before the High Power Committee that for providing pre-enrolment training to prospective advocates relevant amendments to the

Act were required to be effected. It is easy to visualise that appropriate amendments in 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 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 practise 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 visualise 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 requisite law degree to get enrolment as the 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 practise 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 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.

We may also mention that till the 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 atleast 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 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.

We may also mention that all learned counsel for the

petitioners and the appellant, Bar Council of Maharashtra readily agreed to framing of such a rule by the Bar Council of India. This would remove the infirmity in the impugned rules in so far as they tried to create an entirely new and truncated class of trainee advocates who can only ask for adjournment and may mention the matters in the courts. It would make them full-fledged advocates entitled to practise law with full vigour in the very first year of their entry in the profession if they are entrusted with the task of arguing matters either by their seniors or by their guides or by their clients who may impose confidence in them. This would also avoid unnecessary complications of deemed seniority and subsequent retrospective grant of seniority on successful completion of training. This will also guarantee them proper training in the chamber of senior advocates as their guides. Successful completion of training by advocates who are new entrants to the profession of law and the corresponding obligation of their guides would make them liable to disciplinary action by the State Bar Councils on the ground of misconduct if they do not discharge their obligations either as stipendiary or non-stipendiary junior advocates on the one hand and their guides on the other. As they would be full-fledged advocates the disciplinary jurisdiction of the State Bar Council can also get effectively attracted in connection with their alleged misconduct if any. This type of in-practice training would remove all the unnecessary hardship and can be well sustained under the statutory scheme of the Act and the rule making power of the Bar Council of India. We recommend the Bar Council of India to look into this aspect for the benefit of legal profession as a whole so that the void that will be created by our striking down of the impugned rules and till future statutory amendment, if any, is carried out by the Parliament as recommended by us in this judgment, can be effectively filled in by exercise of rule making power by the Bar Council of India, as aforesaid.

Before parting with this aspect of the matter, we may also mention that in the present proceedings at an earlier stage a bench of this court which was then seized of this matter after listening to arguments of the parties for some time had observed that the Legal Education Committee and the Bar Council of India should once again consider the recommendations of the Honble Three Judges Committee, the Law Ministers Conference and the recommendations made in the Fourteenth Law Commission Report at pages 548 to 550. The Court also gave appropriate suggestions. The said suggestions have been brought on the record of this case by way of copy of a letter addressed by advocate Shri Sanjeev Sachdeva dated 24th September, 1977 to the Chairman, Bar Council of India. The said suggestions read as under :- a. Only graduates should be allowed to take the degree course in law.

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

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

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

e. The Bar Councils should arrange lectures for the benefit of apprentices undergoing this professional course.

f. Attendance by the apprentice of a certain minimum number of lectures should be made compulsory.

g. Those who wish to enter the legal profession should be required to work in the chambers of an experienced lawyer and maintain diaries showing the work done by them.

h. The apprentice course should be of one years duration.

i. The apprentices should be subjected to a very stiff practical test.

These suggestions were communicated to the Bar Council of India by its advocate Shri Sanjeev Sachdeva in the said letter. It is profitable to extract what was sought to be conveyed to the Bar Council of India as recommendations from this Court : It also fell from their Lordships that the training should be part of the curriculum of the University and should not extend the period of study beyond the existing three years or five years as the case may be. It also fell from their lordships that the Training could be under the supervision of the respective High Courts of the State and the State Bar Councils.

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

It is also to be considered whether post enrolment training for one year or less is at all required for those entrants to the profession who have already worked as solicitors article trainees for a number of years before they apply for being enrolled as advocates. The nature of the training which they have already undertaken while working in the firms of solicitors may pose the question whether any duplication of training or any additional training is required for them for entering the legal profession as advocates. Another aspect which requires consideration by the Bar Council of India is as to whether the corporate lawyers meaning those who have already acquired sufficient legal training while working in the corporate offices as law officers should be subjected to such post enrolment training either wholly or even partially. The Bar Council of India may do well to consider all these relevant aspects before taking any decision on this vexed question. We hope and trust that at least now the Bar Council of India may do well to look into these suggestions as well as the observations made by us in the present judgment for salvaging the situation for the entire legal profession in India and for putting young entrants at the bar on right track so that after appropriate in-practice training which they get from senior advocates and their guides they can turn out to be efficient advocates for serving the suffering humanity having legal problems to be redressed through them and for helping the cause of justice

more effectively. [Before concluding these proceedings, we must mention that it would be necessary to direct that the present judgment will operate only prospectively to avoid unnecessary confusion and complications. It is, therefore, made clear that because of the quashing of the impugned rules, only applicants who apply for the first time for enrolment after the date of the present judgment, will not have to undergo pre-enrolment training. However, those applicants who have already applied for such enrolment during the time the impugned rules were in operation and have completed their pre-enrolment training or are in the process of completion of their training and have still not been enrolled will not get the benefit of the present judgment.]

A copy of this judgment is directed to be sent to the Chairman, Law Commission of India, Secretary, Department of Law and Justice, Government of India for considering what appropriate steps can be taken in this connection.

In the result, these writ petitions are allowed. The impugned rules are struck down. Appeal arising out of the S.L.P. filed by the Bar Council of Maharashtra & Goa is allowed. The impugned judgment of the High Court is set aside. The writ petition filed by the Bar Council of Maharashtra & Goa is accordingly, allowed. The appeal filed by the Bar Council of India arising out of SLP (C)No.12989 of 1998 is dismissed on the ground that the question 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 these cases.

J. [S.B. Majmudar]

...J. [S.N.Phukan] New Delhi, March 12, 1999.

After this judgment was pronounced on 12th March, 1999 and before it could be signed by both of us, at the request of learned counsel for the parties, this matter was fixed today for further directions in connection with the retrospective operation of this judgment as mentioned in the last paragraph of page 79. The said paragraph put in bracket after hearing the parties, will stand substituted as under :

Before concluding these proceedings, we must mention that it would be necessary to direct that the present judgment will operate only prospectively to avoid unnecessary confusion and complications. It is clarified that this judgment will have no retrospective effect in the sense that it will not apply to those applicants for

enrolment who have earlier applied for enrolment and have successfully completed their pre-enrolment training as per the impugned rules. However, all those who apply for enrolment after this judgment will not have to undergo pre-enrolment training. This will be irrespective of the fact whether they had earlier applied for enrolment and have not completed their pre-enrolment training under the impugned rules till the date of this judgment or whether they had not earlier applied for enrolment despite getting their law degrees prior to the date of this judgment.