

Adi Pheroazshah Gandhi

Vs

H. M. Seervai, Advocate General of Maharashtra, Bombay

Civil Appeal No. 2259 of 1969

(CJI M. Hidayatullah, J. M. Shelat, C. A. Vaidialingam, G. K. Mitter, A. N. Ray JJ)

21.08.1970

JUDGMENT

HIDAYATULLAH, C.J. -

1. I agree with the judgment delivered by my brother Mitter but in view of the importance of the question and the difference between my brethren I have chosen to express myself separately.
2. We heard this appeal on a preliminary point raised by the appellant that the appeal of the Advocate-General of Maharashtra filed before the Bar Council of India was incompetent as the Advocate-General did not fall within the expression 'person aggrieved' to whom along is given the right of the appeal under Section 37 of the Advocate Act of 1961, against the orders of the disciplinary committee of the Bar Council of the State.
3. The facts necessary to bring out the controversy may be briefly stated. The appellant is an advocate from Maharashtra. The Bar Council of the State of Maharashtra had called upon him suo motu to show cause why he should not be guilty of misconduct. It appears that the appellant was convicted before a Summary Court in London on a charge of pilfering some articles from departmental stores and sentenced to a fine. The record of the proceedings in London was not before the Bar Council of the State and action was taken on the basis of a brief report of the incident in a newspaper. The appellant explained before the disciplinary committee of the Bar Council of the State that he was the victim of a misunderstanding but as he had no means of defending himself effectively, he was found guilty and received a light sentence of fine. He explained how he had fallen into this unfortunate predicament and did not know how to extricate himself. The order of the Summary Court was not a speaking order and the proceedings were summary. The disciplinary committee were satisfied that there was no reason to hold him guilty of professional or other misconduct. They, therefore, ordered that the proceedings be filed.
4. The Advocate-General of the State, who was sent a notice of the proceedings, as is required by the second sub-section of Section 35, and had appeared before the committee, purporting to act under Section 37 of the Act filed an appeal before the Bar Council of India. The Advocate objected that the Advocate-General had no locus standi to file the appeal. The objection was overruled and the appeal was accepted. The Advocate was held guilty of misconduct and suspended for a year from practice. The advocate now appeals under Section 38 of the Act to this Court. His appeal raises questions of merit but he contends at the threshold that the Advocate-General was not competent to file the appeal under Section 37 of the Act.
5. The point in controversy before the disciplinary committee of the Bar Council of India and now

before us, is a short one. It is, whether the Advocate-General can be said to be a 'person aggrieved' by the order of the disciplinary committee of the Bar Council of the State ? Having heard this point in detail we took time to consider. I am of the opinion that it must be held in favour of the advocate and the order of the disciplinary committee of the Bar Council of India, now under appeal before us, must be set aside on this short ground without going into the merits of the case.

Section 37 of the Advocates Act, 1961 reads :

"37. Appeal to the Bar Council of India.

(1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made under Section 35 may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.

(2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order thereon as it deems fit."

6. The expression 'person aggrieved' is not new, nor has it occurred for the first time in the Advocates' Act. In fact it occurs in several Indian Acts and in British Statutes for more than hundred years. In the latter a right of appeal to a 'person aggrieved' is conferred in diverse contexts. It occurs in the Ale House Act, the Bankruptcy Acts, Copyright Act, Highway Act, Licensing Acts, Milk and Dairies (Amendment) Act, rating and Valuation Act, Summary Jurisdiction Act, Union Committee Act, Local Acts, in certiorari proceedings and the Defence of Realm Regulations to mention only a few. The list of Indian Acts is equally long.

7. As a result of the frequent use of this rather vague phrase, which practice, as Lord Parker pointed out in *Ealing Corporation v. Jones* (LR (1959) 1 QBD 384) has not been avoided, in spite of the confusion it causes, selections from the observations of judges expounding the phrase in the context of these varied statutes were cited before us for our acceptance. The observations often conflict since they were made in different contexts and involved the special standing of the partly claiming the right of appeal. Yet these definitions are not entirely without value for they disclose a certain unanimity on the essential features of this phrase, even in the diversity of the contexts. The font and origo of the discussion is the well-known definition of the phrase by James L.J. in *Re Sidebotham Ex p. Sidebotham* ((1880) 14 Ch D 458 CA). It was observed that the words 'persons aggrieved' in Section 71 of the Bankruptcy Act of 1986 meant :

"not really a person who is disappointed of a benefit which he might have received if some order had been made. A 'person aggrieved' must be a man who had suffered a legal grievance, a man against whom a decision has been pronounced which had wrongfully deprived him of something, or wrongfully refused him something or wrongfully affected his title to something."

The important words in this definition are 'a benefit which he might have received' and 'a legal grievance' against the decision which wrongfully deprives him of something or affects 'his title to something'.

8. The definition was held in later cases to be not exhaustive and several other features of the phrase were pointed out. Thus under the Bankruptcy Acts, where the Board of Trade summoned to support the validity of the appointment of a trustee, went before the judge, and failed, it was considered a 'person aggrieved' on the principle that a person who is brought before the Court to submit to its

decision, but not a person who is heard in a dispute between others must be treated as a 'person aggrieved' (see *In Re Lamb, Ex p. Board of Trade* ((1894) 2 QBD 805 at 812) per Lord Esher). Here again the words to notice are 'brought before the court to submit to its decision', that is to say, a person who is in the nature of a party as contra-distinguished from a person who is next described as 'a person who is heard in a dispute between others'. To distinguish between these two positions I may refer to a few more decision. In *Re Kitson, Ex p. Sugden (Thomas) and Sons Ltd.* ((1911) 2 KB 109 at 112-114), it was further explained that

"the mere fact that an order is wrongly made does not of itself give a grievance to a person not otherwise aggrieved."

(per Phillimore, J.)

It was added that a person deprived of the fruits of litigation which he had instituted in the hope of them, is a 'person aggrieved'. Similarly, a creditor who did not wish an adjudication order to be made was held not to be a 'person aggrieved' - See *In Re Brown Ex. p. Debtor v. Official Receiver.* ((1943) ch D 177) The utmost that this series of cases goes is to be found in the observations of the James, L.J. in *Ellis Ex. p. Ellis* ((1876) 2 ch D 797) that even a person not bound by the order of adjudication must be treated as a 'person aggrieved' if the order embarrasses him. In a latter case (*In Re Woods Ex. p. Ditton* ((1879) 40 LT 297 CA)) Cotton, L.J., held that even so the person must be aggrieved by the very order and not by any of the consequences that ensue. This was clarified in *R. v. London County Keepers of the Peace and Justices* ((1890) 20 QBD 357 at 361), by Lord Coleridge, C.J., while dealing with the Highway Act, denying the right of appeal in these words :

"Is a person who cannot succeed in getting a conviction against another a 'person aggrieved' ? He may be annoyed at finding that what he thought was a breach of the law is not a breach of law' but is he aggrieved because some one is held not to have done wrong ? It is difficult to see that section meant anything of the kind. The section does not give an appeal to anybody but a person who is by the direct act of the Magistrate 'aggrieved' - that is who has had something done or determined against him by the Magistrate."

These observations again show that the person must himself suffer a grievance, or must be aggrieved by the very order because it affects him.

9. Two cases which may usefully be seen in the same context may next be mentioned. In *Jennings v. Kelly* ((1914) AC 206) in relation to the Government of Ireland Act, 1920, Lord Wright did say that if a person was treated in certiorari proceedings as a competent party and notice was served on him as being a proper party he would be a 'person aggrieved'. The point to bear in mind is that the person must be treated as a party. However the force of the observation was considerably weakened because the party there was ordered to pay costs and the right of appeal was held to be available on that limited ground. Further qualification is to be found in *In Re Riviere*, (1884) 26 Ch D 48 where Lord Selborne observed :

"..... it must be a legal grievance; it must not be a *stet pro ratione voluntas*; the applicant must not come merely saying 'I do not like this thing to be done', it must be shown that it tends to his injury, or to his damage, in the legal sense of the word."

The locus standi of the person aggrieved must be found from his position in the in the first

proceedings and his grievance must arise from that standing taken with the effect of the order on him.

10. These cases are of course far removed from the one before me and as Bramwell, L.J., observed in *Robinson v. Gurrey* ((1881) 7 QBD 465 CA at 470) the expression is nowhere defined and, therefore, must be construed by reference to the context of the enactment in which it appears and all the circumstances. He pointed out that "the words are ordinary English words, which are to have the ordinary meaning put upon them".

11. From these cases it is apparent that any person who feels disappointed with the result of the case is not a 'person aggrieved'. He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material matters but his legal grievance must be a tendency to injure him. That the order is wrong or that it acquits some one who he thinks ought to be convicted does not by itself give rise to a legal grievance. These principles are gathered from cases cited and do not, as I shall show later, do violence to the context in which the phrase occurs in the Advocates' Act. Although I am aware that in *Seven Oaks Urban District Council v. Twyanam* ((1929) 2 KB 440 at 443) Lord Hewart, C.J., uttered words of caution, again emphasised by Lord Parker, C.J., in *Ealing Corporation v. Jones* (supra), in applying too readily the definitions given in relation to other statutes but I do not think I am going beyond what Lord Hewart, C.J., said and what Lord Parker, C.J., did in the case. Lord Parker observed :

".... As Lord Hewart, C.J., pointed out in *Seven oaks Urban District Council v. Twyanam* : 'But as has been again and again there is often little utility in seeking to interpret particular expressions in one statute by reference to decision given upon similar expressions in different statutes which have been enacted alin intuitu. The problem with which we are concerned is not, what is the meaning of the expression 'aggrieved' in any one of a dozen other statutes, but what is its meaning in this part of this statute ? Accordingly, I only look at the cases to which we have been referred to see if there are general principles which can be extracted which will guide the court in approaching the question as to what the words 'person aggrieved' mean in any particular statute."

If I may say respectfully I fully endorse this approach. I am now in a position to examine the Advocates' Act but before I do so I must refer to a case near in point to this case, than any considered before.

12. The case is reported in *Attorney-General of the Gambia v. Pierre Saar N'Jie* (1961 CA 617). A legal practitioner was held guilty of professional misconduct but was acquitted on appeal and an appeal was taken to the Judicial Committee against the decision of the West African Court of appeal. This involved consideration of whether the Attorney-General could be said to be a 'person aggrieved'. The facts need to be stated a little fully as both sides rely upon the observation of Lord Denning and they need to be explained carefully.

13. A barrister (a member of the English Bar) and also a Solicitor (the two professions appear to be united in the Gambia) practising in the Supreme Court of the Gambia was charged with professional misconduct and an order was made, September 22, 1958, by the Deputy Judge (Abbot, J.) striking off his name from the roll of that Court, and directing that the matter be reported to the Masters of

the Bench of his Inn. On June 5, 1959, the West African Court of Appeal (Bairamian, Ag. P. Hurley Ag. J.A. and Ames Ag. J.A.) set aside the order on the ground that the Deputy Judge had no jurisdiction. The attorney-General of the Gambia thereupon sought leave to appeal to Her Majesty in Council but this was refused. Then a petition was made for special leave. Special leave was granted subject to the preliminary objection by the respondent that no appeal lay at the instance of the Attorney-General. The preliminary objection was rejected.

14. Section 31 of the West African (Appeal to Privy Council) Order in Council 1949 under which special leave was asked reads :

"Nothing in this order continued shall be deemed to interfere with the right of His Majesty upon the humble petition of any person aggrieved by any judgment of the court, to admit his appeal therefrom upon such conditions His Majesty in Council shall think fit to impose."

Then there is the West African Court of Appeal and it hears appeals from the 'Supreme Court' in Civil and criminal matters. In an earlier case in which a certain Mr. Macauley was struck off the roll of the Supreme Court of Sierra Leone and Mr. Macauley sought to appeal to the Full Court of West African it was ruled by the Full Court that the decision of the Chief Justice was not a decision of the 'Supreme Court' and was, therefore, not appellable and that the only remedy was to obtain special leave to appeal to the Privy Council (see *W. E. A. Macauley v. Judges of the Supreme Court of Sierra Leone and Another* (LR 1928 AC 344)). The Legislature then added Section 14 which provided :

"An appeal shall lie to the Court of Appeal from any order of the Deputy Judge held that a Deputy Judge could not deal with any matter which was not a proceeding in the court in the exercise of judicial power. The Judicial Committee held that this was exercise of judicial power. Then the preliminary objection was considered. The objection was considered. The objection was that the Attorney-General had no locus standi not being a 'person aggrieved'. This was overruled by the Judicial Committee.

16. Lord Denning referred to the definition of James, L.J. in *In Re Sidebotham Ex. p. Sidebotham* (supra) and said that if the definition were to be regarded as exhaustive and were held applicable, an 'aggrieved person' would be only a person who was a party to a lis, a controversy inter partes and had a decision given against him. The Attorney-General would not come within this restricted definition as there was no suit between two parties when disciplinary proceedings were started ex mero motu by the court or at the instance of the Attorney-General or some one against a legal practitioner. But the definition of James, L.J., was not exhaustive and the words 'person aggrieved' were of wide import and should not be subjected to a restricted interpretation. They included not a busy body but certainly one who had a genuine grievance because an order had been made which prejudicially affected his interests. Posing the question did the Attorney-General have a sufficient interest', the Judicial Committee answered he had. The Attorney-General in a Colony represented the Crown as the guardian of public interest and it was his duty to bring before the Judge a case of misconduct to warrant action. Then Lord Denning proceeded to distinguish two kinds of cases to determine if the Attorney-General would be a 'person aggrieved'. The first was a case where the judge acquitted the practitioner. In such a case no appeal was open to the Attorney-General under the Supreme Court

Ordinance, and Lord Denning added "He has done his duty and is not aggrieved". In other words, he did not come within the words of the 31st Section of the Order in Council. The Attorney-General could not, therefore, ask for special leave as a 'person aggrieved'. But the case was different if the judge found the practitioner guilty and a Court of Appeal reversed the decision on a ground which went to the root of the jurisdiction of the judge or was otherwise a point in which the public interest was involved. In that case the Attorney-General was a 'person aggrieved'.

17. The observations of Lord Denning clearly meant that the Attorney-General could not pose as a 'person aggrieved' to seek to bring a simple case of acquittal for reversal by the Judicial Committee under the 31st Section of the Order in Council for he could not be regarded as a 'person aggrieved'. The remark was made perhaps to repel an argument that every case of acquittal would make the attorney-General an 'aggrieved person'. Lord Denning said that this was not the true position. The Attorney-General could only move the judge and there his duty ended. The law gave him to express right of appeal and he could not claim to be a person aggrieved. He could only invoke the 31st Section if he could make out his grievance and it was found to be as a person representing the Crown and the guardian of public interest seeking to get reversed decision which struck at the root of the jurisdiction of the disciplinary judge by denying that the Deputy Judge was exercising judicial power under Section 7 of the Supreme Court Ordinance. The Crown was aggrieved by this decision and the Attorney-General representing the Crown was an aggrieved person.

18. The scheme of the law under which the disciplinary action was taken and the appeal to the Privy Council was brought gave the true connotation of the expression 'person aggrieved'. In those cases in which no question of public interest was involved the Attorney-General even if he had, moved the judge and got an adverse decision could not be regarded as aggrieved but in a case in which no question of public importance was involved, the Attorney-General representing the Crown could be regarded as 'person aggrieved'. It was presumably after reading this case and understanding it as I have done, that the Advocate-General set about making out a question of public importance. He did not seem only to get the decision overturned on facts. This is what he said :

"The appellant has filed this appeal as the Advocate-General of Maharashtra. Under the Advocates Act, 1961 (as under the Indian Bar Councils Act, 1926), the Advocate-General represents the public interest in every disciplinary inquiry. Under Section 35 of the Advocate Act, 1961, the Advocate-General is entitled to notice in respect of every disciplinary committee passes any order. This appeal raises very important questions of principle as regards the effect of a conviction of an Indian Advocate of an offence recognised by all civilised countries as an offence involving moral turpitude. The question raised also related to the requirement of natural justice in a criminal court, and the effect of the judgments of the Supreme Court on the subject. It raises the further question whether an Indian Advocate convicted of an offence involving moral turpitude by a Court outside India is immune from disciplinary action because of minor differences of procedure in such countries where such trial has been held in complete accord with principles of natural justice. The profession of an Advocate is an honourable profession and the disciplinary provisions of the Advocates Act are designed to secure that persons guilty of offences involving moral turpitude are subject to appropriate disciplinary action."

19. It is obvious that the Advocate-General has attempted to use the observations of Lord Denning in the Gambia case and wishes to plead that he enjoys a special position in the Bar and under the

Advocates Act and therefore is entitled to appeal as a 'person aggrieved'. This was the line adopted by Mr. M. C. Setalvad, counsel for the Bar Council of India. On the other hand, Mr. V. S. Desai appearing for the Advocate-General argued that the Advocate-General having notice of disciplinary proceedings, in any event, must be treated as a 'person aggrieved' within Sections 35 and 38 of the Advocates' Act. I shall consider the narrow presented by Mr. Setalvad later. I shall first take up for consideration the larger question and the more general application of the expression 'person aggrieved'.

20. In support of his contention Mr. V. S. Desai cited three cases from this Court, one from the Judicial Committee and one from the Bombay High Court. They all relate to disciplinary proceedings and I may begin by considering them.

21. The case of the Privy Council reported in *Advocate-General of Bombay and Others v. Phiroz Rustomji Bharucha* was next cited. It was an application for special leave by the Advocate-General of Bombay in a proceeding relating to professional misconduct of an advocate. The standing of the Advocate-General was questioned. The report in the Bombay Law Reporter Series (37 Bom LR 722) reproduced more fully the arguments than the official report and we were referred to the arguments. The point was not debated and there does not appear to be a pronouncement on this point either during the course of argument or in the judgment since special leave was refused on another ground. Mr. Desai says that if the Judicial Committee had found substance in this objection they would have ruled out the Advocate-General on this ground alone. There is no reason to think that the objection was considered at all. I cannot derive any assistance from this ruling because the prerogative of the Crown to grant special leave as of grace in case was always there irrespective of the standing of the Advocate-General. The Privy Council often granted special leave and even heard appeals on certificates wrongly granted. See *Sevak Jeranchod Bhogilal v. Dakore Temple Committee* (AIR 1925 PC 155) and the cases collected in *Halsbury Law of England* (3rd Edn. Vol. 9, p. 380, Paragraph 886, note (h)). This prerogative the Judicial Committee was exercised on behalf of the Crown particularly in cases of general interest [See *ibid.*, p. 379, Section 885, note (s)]. The provisions of the former Section 112 of the Code of Civil Procedure show the extent of the prerogative. Therefore because the Privy Council refused special leave on one ground rather than another cannot import a rejection of the objection as to the standing of the Advocate-General.

22. Next we have an unreported decision of a Division Bench of this Court reported in *B. M. Madani v. Commissioner of Workmen's Compensation, Bombay*. (CA 877 of 1968, decided on 10-10-1968) In that case the Appeal was taken by the Commissioner for enhancement of penalties against the delinquent advocate and the penalty was in fact interested. This Court held that he was entitled to do so as a 'person aggrieved'. The particular misconduct was committed in relation to a claimant before the Commissioner. The advocate had pocketed the travelling allowance granted by the Commissioner to the widow of a deceased workman. There may be some doubt whether the commissioner was a 'person aggrieved' by the penalty imposed in the first instance but I do not pursue this matter. The case can be justified on the dictum in some cases that a party which moves the court or a person brought before the court of the Official Receiver in *Re Payne Ex. p. Castle Mail Packets Co.* ((1866) 18 QBD 154 CA) and *In Re Lamb Ex. p Board of Trade* already considered by me. Madani's case does not help to resolve the dispute centering round the Advocate-General.

23. The next case is reported in *Bhataraju Nageshwara Rao v. The Hon'ble Judges of the Madras High Court and Others* ((1955) 1 SCR 1055). That case arose under the Bar Councils act, 1926, when the Judges exercised disciplinary power. In the case before the Supreme Court the Judges of

the Madras High Court were shown as respondents. This Court observed at page 1064 as follows:

"Before parting with this appeal we desire to say that it appears to us that it was wholly wrong and inappropriate for the appellant to have made the Honourable Judges of the Madras High Court respondents to this appeal. It appears that in some cases involving contempt of Court the Honourable Judges have been made parties. It is not necessary for us to express any opinion on this occasion as to the propriety of that procedure in contempt cases but we are clearly of the opinion that in an appeal arising out of a proceeding under the Bar Councils Act the appropriate parties should be the advocate concerned, the complainant, if any, the Bar Council or the secretary thereof and the Advocate-General of the State concerned to whom notice have to be issued under Section 12 (3) of the Indian Bar Councils Act."

This does not advance the case of the Advocate-General of Maharashtra any further.

24. The last case of this Court is *Municipal Corporation of the City of Bombay v. Chandulal Shamaldas Patel and Others*. (C.A. No. 1716 of 1967, decided on 1-8-1970) In land acquisition cases started for the benefit of the Municipal Corporation certain notifications issued under the Land Acquisition Act were set aside by the High Court, and the Municipal Corporation sought to appeal. It was held not to be a 'person aggrieved'. This case, even if I were to accept it as correctly decided, does not assist us in relation to our Act passed with a different intent and purpose and using the words in another context.

25. The last case is from Bombay but it did discuss the point and cannot be held to have laid down a precedent. It is useless to refer to it.

26. I now proceed to examine the larger question whether by reason of the provisions of the Advocates Act the Advocate-General of the State enjoins such position that he must necessarily be treated as a 'person aggrieved' entitling him to file an appeal. For this purpose we have to examine critically the provisions of the Act to discover if the claim can be entertained.

27. The Advocates Act was passed to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Council and an All India Bar. It replaced the earlier Acts governing the legal profession particularly the Indian Bar Councils Act, 1926. Prior to the passing of the hands of the courts and in the case of the advocates the High Court entertained and determined case of misconduct against them. Now this jurisdiction is completely transferred to the Bar Councils of the States and the Bar Council of India. In the Bar Councils of the States (except Delhi) the Advocate-General of the states is an ex officio member. In Delhi the Additional Solicitor-General takes the place of the Advocate-General. Other members are elected. In the Bar Council of India, the Attorney-General and the Solicitor-General are ex officio members and the other members are elected one each by the State Bar Councils. In the Union Territory of Delhi the Additional Solicitor-General is ex officio member. The functions of the Advocate-General are not different from those of the other members in so far as the affairs of the Bar Council are concerned. The only matters where the Advocate-General, the Attorney-General and the Solicitor-General and the Additional Solicitor-General are mentioned are these. The Act gives a right of pre-audience over other advocates to the Attorney-General, the Solicitor-General, the Additional Solicitor-General and the Advocate-General. The right of pre-audience gives them a standing for hearing of cases but does not confer on them any other rights. The Magniloquent phrases such as Leader of the Bar, keeper of the Conscience of the Bar have no meaning neither now, nor before under the Bar Councils Act of

1926. They are just honorific titles given by courtesy but are not grounded on law. Indeed the keepers of the Conscience of the Bar are the Bar Councils and the Leader of the Bar may be someone who may even have refused to accept Advocate-Generalship.

28. The functions of the Bar Council of the States and the Bar Council of India throw some light on the remaining functions of the Advocate-General and may first be seen. Section 6 of the Act lays down the functions of the State Bar Council and Section 7 those of the Bar Council of India. Apart from certain administrative functions which these councils, which are bodies corporate, perform, their functions in relation to the Bar are somewhat different. Both have their own rolls and they prepare and maintain the rolls. The State Bar Council entertains and determines cases of misconduct of advocates on its roll and safeguards the rights, privileges and interests of advocates on its roll. The Bar Council of India lays down the standards of professional conduct and etiquette of advocates, the procedure to be followed, by its disciplinary committee and the disciplinary committee of each of the State Bar Councils. The Bar Council of India also safeguards the rights and privileges and interests of advocates and exercises general supervision and control over State Councils. It also deals with and disposes of any matter arising under the Advocates Act which relate to the education, etc., of those who wish to join the legal profession. The Bar Council of India maintains a common roll of advocates. The Bar Councils also decide in relation to the rolls all questions of seniority. The State Bar Councils and the Bar Council of India constitute one or more disciplinary committees and under Chapter V questions of the conduct of advocates on their respective rolls are referred to them. The disciplinary committee of the Bar Council of India exercises superior powers inasmuch as it hears appeals from the orders of the disciplinary committees of the State Bar Councils and may even of its own motion withdraw for inquiry before itself for disposal, any proceedings for disciplinary action against an advocate pending before the disciplinary committee of any State Bar Council.

29. The disciplinary proceedings commence both before the State Bar Council and the Bar Council of India on a complaint or otherwise made respectively to the State Bar Council or the Bar Council of India. The Bar Councils in either case refer them for disposal to their respective disciplinary committees. The disciplinary committee in each case can reject the complaint summarily, but if it proceeds to hear the matter further it causes a notice thereof to be sent to the advocate concerned and to the Advocate-General of the State or the Attorney-General of India, as the case may be. The disciplinary committee after giving the advocate concerned and the Advocate-General or the Attorney-General, as the case may be, an opportunity to be heard, makes an order either dismissing the complaint or where the proceedings are found to be not fit for consideration and are started at the instance of the Bar Council ordering that they may be filed. The committee may, if the advocate is found guilty, reprimand him or suspend him from practice for such period as it deems fit, or may remove him altogether from the roll of advocates. The Advocate-General or the Attorney-General, as the case may be, need not appear personally but may appear through an advocate.

30. From the decision of the disciplinary committee of the State Bar Council an appeal lies to the Bar Council of India which is heard by the disciplinary committee of the Bar Council of India which may pass such orders thereon as it deems fit. From the decision of the disciplinary committee of the Bar Council of India an appeal lies to this Court. The appeals can be taken by a 'person aggrieved' by the order of the disciplinary committee of the State Bar Council or the Bar Council of India, as the case may be. It is in this context that we have to determine whether the Advocate-General can be regarded as a 'person aggrieved'.

31. In view of the common roll maintained by the Bar Council of India it appears to me that if anybody represents the Bar it would be the Bar Council of India and in the case of the States, the Bar Council of the State. The Advocate-General has no right to speak on behalf of the body of the advocates as if he represented them and their interests. Neither is this privilege expressly conferred on him, nor can it be implied from any of the provisions of the Act. The question, therefore, arises : in what capacity does the Advocate-General appear before a disciplinary committee ? It is obvious that he is not a prosecutor on behalf of the Bar Council because if he was one, his presence would be more necessary at the stage at which the disciplinary committee considers in limine to decide whether the matter should be proceeded with at all. The next question is : why is he summoned at all ? In my opinion, the Advocate-General is not noticed and brought before the court because he is a prosecutor or is to be bound by the order of the disciplinary committee. He represents no interest there and is heard merely because he is the chief counsel of the State and therefore his assistance at the hearing is useful. The fact that he need not appear by himself and may appear through an advocate renders his position a little weaker in the matter of his grievance. If he is to be treated as a 'person aggrieved' he must argue the case himself. The fact that he appears through a counsel shows that the intention is merely to have the opinion of a person who is neither siding with the complainant nor with the advocate and who will thus have unbiased and impartial approach to the case. The Advocate-General is generally a lawyer of some standing having made a mark in the profession and his contribution to the deliberations of the disciplinary committee is welcome because thus the disciplinary committee is helped to reach a proper conclusion.

32. If he is not a person summoned to be bound by the order but a person who is heard in a dispute between others merely to be of assistance in reaching the right conclusion he can hardly have a grievance. The Advocate-General must after he has done his duty leave the matter further if they choose. In no event the Advocate-General is in the nature of a party having independent rights which he can claim are injured by the decision. The decision does not deny him anything nor does it ask him to do anything. It is thus that Lord Denning says that in these disciplinary proceedings the Attorney-General is not a party as in a *lis* and after the decision, his duty ends. Lord Denning points this out clearly by saying that the Advocate-General in that case could not have been aggrieved by the order of the Deputy Judge if he had acquitted the delinquent advocate in that case. The Attorney-General's interest was found by Lord Denning in relation to the Crown and the Colony and that too for the special reason that appeal court had denied that the Deputy Judge possessed jurisdiction to hear the case. In our country the Advocate-General does not represent the Executive or the Legislature or the Judiciary in disciplinary proceedings before the disciplinary committee. His function is advisory and more akin to an *amicus curiae*. He is not to take sides except in so far his arguments lend weight to the case of the one side or that of the other. Beyond that he is not interested in the dispute either in his personal capacity or in his capacity as an Advocate-General. He does not represent the Government in these. In other statutes, whether the Central Government is vitally interested, as for example, in the Chartered Accountant's Act, the notice does not go to the Advocate-General but to Government and the Government appears through the Advocate-General. The Advocate-General under the Act finishes his duty when the hearing is over and he cannot be considered to be a party interested or a 'person aggrieved'. I do not find anything in the Act which indicates that the Advocate-General is to be treated as 'person aggrieved' by a decision whether in favour of the advocate or against him. Indeed it would have been the easiest thing to give a right of appeal to the Advocate-General of *nomine* without including him in the compendious phrase 'person aggrieved'. If he is not noticed, the order would be held to deny him something which the law entitled him to. That is quite different. The larger proposition contended for by Mr. Desai is therefore not acceptable to me.

33. This brings me to the narrow ground on which Mr. Setalvad very properly rested the case of the Bar Council of India. That narrow ground is that in this case there were several points of general public interest which needed to be solved and therefore, if the decision of the disciplinary committee of the State Bar Council was wrong, the Advocate-General in the public interest could taken the matter further. I do not think that I can subscribe to this approach either in this case. The Advocate-General presented his views that a conviction in England showed moral turpitude in the advocate. I do not think that this inference necessarily follows. The advocate explained that he was held guilty in a summary court and received a small fine because he was not in a position to prove his innocence before the Magistrate.

34. Now in disciplinary proceedings the advocate was not estopped from questioning the charge that he was guilty of corrupt practice. In a civil proceeding the decision of a criminal court is not res judicata. To give an example, if a person is involved in a traffic offence in which some one is injured he may in the criminal court receive a light sentence but if he is sued in a civil court for heavy damages he can plead and proved that he was not negligent or that accident was due to the contributory negligence of the defendant. The decision of the criminal court would not preclude him from raising this issue before the civil court.

35. The advocate here explained that he was held guilty before the Magistrate in the circumstances in which he was placed. The fact of his conviction as well as his full statement bearing on his conduct were before the disciplinary committee of the State Bar Council. They had to choose between the two, that is to say, the result of a summary trial without going into merits and proof of the misconduct. Having examined the advocate and seen the record, the disciplinary committee of the State Bar Council chose to accept the plea of the advocate and held that he was not guilty. They were also satisfied that the summary proceedings in the criminal trial in England offended against the principles of natural justice. They were entitled to this view on which much can be said on both sides. If the Advocate-General's view of the case was not accepted by the disciplinary committee he could not have any grievance. He could not make this into his own cause or a cause on behalf of persons he did not represent. He had done his duty and the matter should have rested there. For this reason I am of the view that in this case the Advocate-General was not a 'person aggrieved' within the meaning of Section 37 of the Advocates' Act even on the narrow ground and the appeal filed by him before the disciplinary committee of the Bar Council of India was incompetent.

36. The conclusion which I have reached does not mean that I have gone into the merits of the advocate's plea. Nor does it indicate that I, sitting as a judge, would have accepted the plea of the advocate, if I were to decide the case on facts. That is a matter quite beside the point. I refer to the plea because it was raised and was accepted by his peers on the disciplinary committee.

37. I would, therefore, allow the appeal and set aside the order of the disciplinary committee of the Bar Council of India.

The Judgment of Shelat and Mitter, JJ. was delivered by

MITTER, J. -

On the basis of a news item in the "Times of India" of August 27, 1966, the Bar Council of Maharashtra in exercise of its power under Section 35 of the Advocates Act, 1961, issued a notice to the appellant to face an inquiry into his conduct by its disciplinary committee. The said committee exonerated the appellant of the charge levelled against him and held that he was not guilty of any

misconduct, professional or otherwise. Relying on the provisions of Section 37 of the said Act the Advocate-General of Maharashtra who had appeared before the said Committee preferred an appeal to the Bar Council of India. The Disciplinary Committee of the Bar Council of India disagreed with the finding of the disciplinary committee of the Bar Council of Maharashtra observing that the conduct of the appellant which was investigated into before the State Bar Council was quite undeserving of an advocate and directed his suspension from practice for a period of one year. The appellant has come up in appeal to this Court and has urged a preliminary point that the appeal by the Advocate-General to the Bar Council of India was incompetent and the finding and order of the disciplinary committee of the said body ought to be set aside on that ground alone without our going into the facts of the case.

2. Notice of this hearing was given to the Advocate-General and the Bar Councils of all the States as also the Attorney-General of India and we have had the benefit of arguments advanced before us not only on behalf of the Advocate-General for the State of Maharashtra but also on behalf of the Bar Council of India, the Attorney-General of India and some of the Advocate-General States.

3. The determination of this question depends on the interpretation of Section 37 of the Advocates Act, 1961 (hereinafter referred to as the 'Act') :

"(1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made under Section 35 may, within sixty days of the date of the communication of the order to him, prefer an appeal in the Bar Council of India.

(2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order thereon as it deems fit."

To put the matter in a nut-shell the question is, "Is the Advocate-General of a State who appears before the disciplinary committee of a State Bar Council in pursuance of a notice given to him under Section 35(2) of the Act 'a person aggrieved' within the meaning of the words used in Section 37 ?"

4. To decide this question we have to look into the Act to find out the role of the Advocate-General of a State in proceedings of this kind. The object of the Act is to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. All the States and the Union territories are to be under the jurisdiction of named State Bar Councils and there is also to be a Bar Council of India for the territories to which the Act is extended. Generally speaking a State Bar Council is to consist of a number of members including the Advocate-General of the State ex officio, while the Attorney-General of India ex officio is to be a member of the Bar Council of India. The other members of the Bar Council are to be elected in terms of the Act. Under Section 6 the functions of a State Bar Council are to be inter alia :

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

(b) to prepare and maintain such roll;

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

Section 7 lays down the functions of the Bar Council of India which are to be inter alia :

(a) to prepare and maintain a common roll of advocates;

- (b) to lay down standards of professional conduct and etiquette for advocates; and
- (c) to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council.

5. Under Section 9 a Bar Council has to constitute one or more disciplinary committees each of which is to consist of three persons of whom two are to be persons elected by the Council from amongst its members and the third is to be a person co-opted by the Council from amongst advocates possessing the qualifications specified in the proviso to sub-section (2) of Section 3 but is not a member of the council. Section 15 empowers Bar Councils to make rules to carry out the purposes of the Act. Chapter III of the Act containing Section 16 to 28 provides for admission and enrolment of advocates, the determination of their seniority etc. The right of an advocate to practice is dealt with in Chapter IV. Chapter V which contains Sections 35 to 44 deals with the conduct of advocates. The relevant provisions thereof are set out as under -

"35(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(2) The disciplinary committee of a State Bar Council, if it does not summarily reject the complaint, shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make of the following orders, namely :-

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) reprimand the advocate;

(c) suspend the advocate from practice for such period as it may deem fit;

(d) remove the name of the advocate from the State roll of advocates.

#(4) x x x x##

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

# x x x x##

37. Supra.

38. Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under Section 36 or Section 37 may, within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such

order thereon as it deems fit."

Section 42 gives the disciplinary committee of a Bar Council the same powers as are vested in a civil court under the Code of Civil Procedure in respect of various matters including the summoning and enforcing the attendance, of any person and examining him on oath, requiring disciplinary committee of a Bar Council are to be deemed judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal code. Section 43 empowers the disciplinary committee of a Bar Council to make such order as to costs of any proceedings before it as it may deem fit. Section 44 gives the disciplinary committee power to review any order passed by it of its own motion or otherwise.

6. The above provisions of the Act make it clear that subject to a right of appeal to this Court under Section 38 the inquiry into charges of misconduct against an advocate are to be in the exclusive jurisdiction of the Bar Councils. Any complaint against the conduct of an advocate on its roll has been guilty of professional or other misconduct, it has to refer the case for disposal to its disciplinary committee. The Council can take such a step of its own motion. Section 35(1) shows that it is not obligatory on the State Bar Council to refer each and every complaint to the disciplinary committee. It has to be satisfied that there is a prima facie case for investigation. It can throw out a complaint if the same appears to be frivolous. Sub-section (2) of Section 35 shows that it is not incumbent on the disciplinary committee of a State Bar Council to proceed further with the matter if it takes the view that the complaint is without substance. It is not obliged to call upon the advocate concerned to explain his conduct or to inform the Advocate-General that it has rejected the complaint summarily. It is only when the disciplinary committee is satisfied that the complaint ought not to be rejected out of hand that it has to fix a date for the hearing of the case and give notice thereof to the advocate concerned and to the Advocate-General of the State. It is mandatory on the disciplinary committee to give such a notice to both. Sub-sections (3) and (5) of Section 35 go to show that it is not incumbent on the Advocate-General to appear at the hearing and that it is within his discretion to appear either by himself or through another advocate of his choice and place his view point before the disciplinary committee. He is not a party to the proceedings but he has a right to appear and to make submissions both on questions of fact and questions of law.

7. Section 37 does not in terms lay down who can prefer an appeal from the order of the disciplinary committee of the State Bar Council, There can be not doubt that the advocate against whom an order is made would be a person aggrieved. The State Bar Council cannot be such a person as the order is made by itself acting through its disciplinary committee. A member of the public may make a complaint to the State Bar Council against an advocate on the ground of loss or damage or any serious prejudice caused to him by the advocate, be it negligence or fraud e.g. collusion with the opponent or misappropriation of any moneys belonging to him and there does not seem to be any justifying cause for holding that he is not a person aggrieved by an order which dismisses his complaint.

8. The question arises as to whether the Advocate-General is a person aggrieved because the disciplinary committee does not take the same view of the matter as himself, be it for or against the advocate. To place the Advocate-General in the category of "person aggrieved" one must be able to say that the disciplinary committee committed an error which it was his duty to attempt to set right because of some function attributable to him as the Advocate-General or some obligation cast upon him by the Act or the general law of the land to safeguard and maintain standards of conduct of advocates laid down by the Bar Council of India.

9. Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or other. A person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him. But it has been held in a number of cases that a person who is not a party to a suit may prefer an appeal with the leave of the appellate court and such leave would not be refused where the judgment would be binding on him under Explanation 6 to Section 11 of the Code of Civil Procedure. We find ourselves unable to take the view that because a person has been given notice of some proceedings wherein he is given a right of appeal from an order rejecting his contentions or submission. An appeal is a creature of statute and if a statute expressly gives a person a right to appeal, the matter rests there.

10. Innumerable statutes both in England and in India give the right of appeal to "a person aggrieved" by an order made and the provisions of such statutes have to be construed in each case to find out whether the person preferring an appeal falls within that expression. As was observed in *Robinson v. Currey* (7 QBD 465) the words "person aggrieved" are 'ordinary English words which are to have the ordinary meaning put upon them'. According to Halsbury's Laws of England (Third Edition, Vol. 25), page 293, footnote "h" :

"the expression is nowhere defined and must be construed by reference to the context of the enactment in which it appears and all the circumstances."

Attempts have however from time to time been made to define the expression in various cases. In *Ex parte Sidebotham In re Sidebotham* (14 Ch D 458 at 465) it was observed by James, L.J. :

"But the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something."

11. The above definition of James, L.J., was described by Esher, M.R., in *Ex Parte Official Receiver In re Reed, Bowen and Co.* (19 QBD 174 at 178) as not "an exhaustive definition". His Lordship added :

"It is an affirmative definition of a person who may appeal, and at all events it includes a person who has asked for a decision for which he had a right to ask, and has been wrongfully refused."

12. *The Queen v. The Keepers of the Peace and Justices of the County of London* (25 QBD 357, 361) was a case of an appeal by an informant against the judgment of a justice of the peace upon the hearing of an information or complaint by the vestry of the parish against a person for unlawfully and wilfully obstructing the free passage of a certain highway. The relevant section provided :

"If any person shall think himself aggrieved by ..... any order, conviction, judgment, or determination made, or by any matter of thing done by any justice or other person in pursuance of this Act ..... such person may appeal to quarter sessions."

In holding that an informant had no right of appeal Lord Coleridge, C.J., said :

"Is a person who cannot succeed in getting a conviction against another a person

aggrieved' ? He may be annoyed at finding that what he thought was a breach of law is not a breach of law; but is he 'aggrieved' because some one is held not to have done wrong ? It is difficult to see that the section meant anything of that kind."

In *Rex v. London Quarter Sessions Ex parte Westminster Corporation* (1951 (2) KB 508) a borough council whose cancellation of the registration of a street trader had been reversed by a Magistrate on appeal by the trader concerned under Section 25 of the London County Council (General Powers) Act, 1947, was held not to be a person aggrieved by an order of a court of summary jurisdiction within the meaning of Section 64 of the Act. The argument advanced on behalf of the corporation was that it had a public administrative duty to perform in the regulation of the streets and having been interfered with in the execution of that duty by the decision of the magistrate, they were persons aggrieved by his order. One of the grounds for refusal of the application by Lord Goddard, C.J., was that the order made did not directly affect the borough council in such a way as to make them "a person aggrieved" within the meaning of the section. According to the learned Chief Justice what the statute did was "to submit the opinion of the magistrate for the opinion of a borough council". It was said that the court of summary jurisdiction had to take into account the same matters as the borough council had to take into account, and if the court thinks that the cancellation of the licence is not justified, it can restore the licence to the street trader. If the court of summary jurisdiction refuses to grant a licence, then the street trader is a person aggrieved, because his livelihood is affected, or an order is made directly affecting him.

13. The case of *Sevenoaks Urban District Council v. Twyman* (1929 (2) KB 440 at 444) was relied upon by counsel appearing for the Advocate-General of Maharashtra to support his argument that even a person who had a no proprietary or pecuniary interest in the subject-matter of the litigation might be a person aggrieved so as to give him a right to appeal. The statute in this case was however worded very differently from the statutes which came up for consideration in the cases noted earlier. Section 68(1) of the Public Health Act, 1925, laid down that :

"Where for the purpose of relieving or preventing congestion of traffic it appears to the local authority to be necessary to provide within their district suitable parking places for vehicles."

Then that authority may, subject to certain conditions, provide those parking places and might acquire land suitable for use as a parking place. The proviso to the section however laid down that no such order shall authorise the use of any part of a street so as unreasonably to prevent access to any premises adjoining the street, or the use of the street by any person entitled to the use thereof, or so as to be a nuisance, or be made in respect of any part of a street without the consent of the authority or person responsible for the maintenance of the street. Sub-section (2) of the section provided that where a local authority proposes to acquire land for the purpose of using it as a parking place they are to give notice of the proposal specifying the land and notify the date within which any objection is to be sent to them and the notice is to state that a right of appeal was conferred by the section. Sub-section (3) provided that before carrying into effect any proposal of which notice was required to be given the local authority shall consider any objection which was sent to them in writing. There was no limit there as to the kind of person making the objection or the kind of objection which might be raised. The respondent, a rate payer, duly gave notice under sub-section (3) on various grounds but he did not allege the infringement of any personal legal right and he objected in his capacity as a rate-payer and as a member of the public on grounds common to them all. The urban council considered the objection and informed him of their decision to proceed with the scheme. The respondent appealed to petty sessions which allowed his objection. The

appellant appealed to quarter sessions and took the preliminary objection that the respondent was not a person aggrieved because he had alleged no infringement of any legal right personal to him.

14. Referring to the dicta of James, L.J., Esher, M.R. and Lopes, L.J., in the above cases Lord Hewart, C.J., observed :

"I think this respondent did ask for a decision for which he had a right to ask. He did give notice of an objection of which he was entitled to give notice, ..... but the person making the objection is not to have an appeal unless he satisfies two conditions : (1) that he is the author of the objection, and (2) that he is aggrieved by the refusal in the sense that he has a special and individual right infringed. It seems to me that upon the fair construction of this sub-section, which is by no means a common kind of statutory provision, what is meant is that a person may make an objection and is entitled to a decision upon it, and if the decision is adverse to him, he may, if he thinks fit and subject to the usual consequences, appeal from it to a petty sessional court, and so appealing, may, in consequence of other statutory provisions, appeal, if need be, to the court of quarter sessions."

According to Avory, J. :

"There is no limit there [in sub-section (3)] of the kind of person or the kind of objection which may be made. It proceeds, that after so considering the objection, they are to give notice of their decision to the person by whom the objection was made, and any person who is aggrieved by such decision may appeal. I cannot help thinking that on the plain words of that statute it was intended to give a right of appeal to any person who has made an objection to the proposal and has received notices that the objection has been overruled."

15. In *Ealing Corporation v. Jones*, (1959 (1) QB 384 at 390) Lord Parker, C.J., remarked that it was easier to say what will not constitute a person aggrieved than it was to say what "person aggrieved" included. He observed that a person was not aggrieved when being a public body it had been frustrated in the performance of one of its public duties. He amplified this by saying that:

"If costs have been awarded in a case against a local authority, it is clear on the authorities that the local authority would be an aggrieved person. Equally, if the result of the decision has been to put some legal burden on the public body concerned, that has been held to make it a person aggrieved."

According to Donovan, J., in the same case :

"The word 'aggrieved' connotes some legal grievance, for example, a deprivation of something, an adverse effect on the title to something, and so on, and I cannot see that this is so here. The local planning authority has simply been told that it must enforce the discontinuance of the present use of this land by the appellant by means of an enforcement notice under Section 23."

16. If one is to be guided merely by the provisions of the Advocates Act it is difficult to see how the Advocate-General can be a person aggrieved because the State Bar Council takes the view, whatever be its reasoning, that an advocate on its roll has not been guilty of any misconduct. The entertaining of complaints, the inquiry into them and the punishment to be meted out to the advocate are all

concerns of the Bar Council. The Advocate-general no doubt is entitled to a hearing if the complaint is not rejected summarily. The statute expects him to take a fair and impartial attitude. He has to render all assistance to the Bar Council so that a proper decision may be arrived at. His role is not that of a prosecutor : nor is he a defence counsel on behalf of the advocate. He is not interested in getting the advocate punished any more than he is interested in seeing that the character of a fellow member of the Bar is cleared even if his conduct be unworthy of an advocate. The Act does not make it obligatory on him to take part that his assistance is not called for. It is only when he feels that a case requires a careful investigation and proper elucidation of the facts or the exposition of the law on the subject that he is called upon to render all assistance in the proceedings. When he chooses to do so, he does his duty by appearing at the hearing and putting before the disciplinary committee the facts in their proper perspective and advancing the proper inference to be drawn therefrom. Once he does so there is an end of the matter so far as he is concerned. He cannot have any grievance because the decision of the Bar Council is against his submission or not to his liking.

17. The question then arises as to whether any duty is cast on the Advocate-General by reason of his position to question the decision of the Bar Council if he feels it in the general interest of the members of the Bar or a wider public to do so. Article 165(2) of the Constitution epitomizes the functions and duties of the Advocate-General in the following words :

"It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor and to discharge the functions conferred upon him by or under the Constitution or any other law for the time being in force."

A notable instance of his statutory duties is furnished by Order XXVII-A of the Code of Civil Procedure. By the provisions of Section 91 of the Code of Civil Procedure no suit for a declaration and injunction in the case of a public nuisance can be instituted except by him or with his consent. Similar powers are given and duties cast on him by Section 92, C.P.C., in the case of trusts created for public purposes. Section 526-A of the Code of Criminal Procedure gives an Advocate-General power to apply to the Court for the committal or transfer of a case to the High Court where any person subject to the Naval Discipline Act or to the Army Act or to the Air Force Act is accused of any of the offences specified therein. It is not open to the Advocate-General to intervene in any suit or legal proceedings apart from the provisions of the Code of Civil Procedure because he thinks public interest is involved in the matter.

18. Treating the matter historically, it may be said that in many respects the position of an Advocate-General before 1950 was very similar to that of the Attorney-General in England. Sections 100 and 111 of a statute of 1813, 53 George III, C. 155, enabled the Advocate-General to exhibit to the respective Supreme Courts of Judicature at any of Presidencies or to the Recorder's Court at Bombay any information or informations for breaches of Revenue laws, etc. as might be taken by the Attorney-General in the Court of Exchequer in England or in the nature of action or actions at law or of a bill or bills in enquiry as occasion might require against any person or persons residing within such jurisdiction as His Majesty's Attorney-General for the time being was by law authorised to exhibit. The wording of Section 111 shows that its object was to dispel doubts which had arisen about the competency of the Advocate-General or Principal Law Officer of the East India Company to take such action. Section 114 of the Government of India Act, 1915, empowered the Advocate-General for any Presidency to take on behalf of His Majesty such proceedings as might be taken by His Majesty's Attorney-General in England. Section 65(2) of the Government of India Act,

1935, laid down that it was the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters and to perform such other duties of a legal character as may from time to time be referred or assigned to him by the Governor.

19. The position of the Attorney-General in England is stated by Hood Phillips on Constitutional and Administrative Law (Fourth Edition) at p. 316 to be as follows :

"The Law Officers consist of the Attorney-General and Solicitor-General for England, and the Lord Advocate and Solicitor-General for Scotland. They are regarded as the heads of the Bar in their respective countries, and as such are referees on points of professional etiquette."

The learned author goes on to note at p. 317 :

"The Advocate-General represents the Crown in civil proceedings in which it is specially concerned. His consent is necessary for the prosecution of certain offences, e.g. under the Official Secrets Acts. In criminal proceedings he or the Solicitor-General, or their deputies, prosecutor in important cases. It is the practice for the Attorney-General to lead in treason and important constitutional cases. He may also file ex officio criminal informations, though this procedure is now rarely used. He may stop the trial of an indictment by entering a nolle prosequi. He may also take over certain proceedings on the relation of private individuals (relator actions), e.g. public nuisance etc. .... The Attorney-General's procedural privileges include the right to demand a trial at Bar (i.e. now, before a Divisional Court), and the right to choose the venue for any civil or criminal proceedings in which the Crown is concerned."

Anson in his treatise on Law and Custom of the Constitution, Volume II, Part I (4th Edition, 1935), describes the Attorney-General, the Solicitor-General and the Lord Advocate and the Solicitor-General for Scotland as the chiefs of the legal profession in their respective countries and states that in England and Northern Ireland they represent the Bar when the Bar takes collective action. So far as England is concerned neither the Attorney-General nor the Solicitor-General appears to have had for a very long time any function to discharge or any duty to perform when the conduct of a barrister or a solicitor was called in question. The power of inquiry was delegated by the Judges to the Inns of Court so far as barristers were concerned and as regards solicitors the matter has for some time been delegated to the Law Society.

20. It may not also be out of place to note the history of the legislation in India with regard to enquiries against members of the legal profession prior to the Act of 1961. Under Clause 10 of the Letters Patent of the High Court of Calcutta of the year 1865 the High Court was to have power to make rules for the qualification and admission of proper persons to be advocates, vakils and attorneys at law and was to be empowered to remove or suspend them from practice on reasonable cause. The Letters Patents of other High Court contained provisions. The Legal Practitioner Act, 1879, appears to have been the earliest Indian statute on the subject. Under Section 13 of this Act the High Court was empowered after such enquiry as it thought fit, to suspend or dismiss any pleader or Muktyar who was guilty of fraudulent or grossly improper conduct in the discharge of his professional duty. The Bar Councils came into existence for the first time under the Bar Councils Act, 1926. But even under this Act the power to reprimand, suspend or remove from practice any advocate of the High Court charged with professional or other misconduct was left with the High

Court under Section 10(1). Section 10(2) laid down the procedure to be adopted by the High Court when a complaint was made to it by any Court or by the Bar Council or by any other person that an advocate had been guilty of misconduct. The High Court could summarily reject the complaint or refer the case for enquiry to the Bar Council or after consultation with the Bar Council any case where it had reason to believe that any advocate had been so guilty. Under Section 11 it was the duty of a committee of the Bar Council to inquire into a complaint made under Section 10. Under Section 12(2) of the Act the finding of the Tribunal on an inquiry referred to the Bar Council was to be forwarded to the High Court through the Bar Council and the finding of a District Court on such inquiry was to be forwarded to the High Court direct with a copy to the Bar Council. Section 12(3) of the Act contained a provision somewhat similar to Section 35(3) of the Act of 1961. The hearing was however to take place before the High Court, which had to give notice of the date fixed for the purpose to the advocate concerned, to the Bar Council and to the Advocate-General and to afford them an opportunity of being heard before orders were passed in the case. Under the Act of 1926 the Advocate-General appeared on the scene only after the Bar Council had recorded its finding. The significant departure in the Act of 1961 from the analogous provision of the Act of 1926 is that the Advocate-General is given notice of hearing of the case. By itself this cannot affect any change in his position as regards an inquiry into the conduct of an advocate. It would be reasonable to hold that while passing the statutes of 1926 and 1961 the Legislature thought that the Advocate-General should be heard inasmuch as he occupied the position of a general referee on points of professional etiquette very much like the Attorney-General in England.

21. However that may be, once he does the duty enjoined upon him by the statute of making such submissions as he thinks proper at the hearing his functions qua the enquiry come to an end. As a referee he has no further interest in the matter. If the disciplinary committee of the Bar Council makes an order against the advocate which the Advocate-General considers harsh and unreasonable in the circumstances of the case, he is not called upon to file an appeal to protect the interests of the advocate. Neither is he interested in prosecuting the matter further if he takes the view that the punishment meted is not commensurate with the misconduct of the advocate.

22. Elaborate reference was made at the Bar to the decision of the Privy Council in *Attorney-General of the Gambia v. Pierre Sarr N' Jie* (1961 AC 617, 630). In that case the conduct of the respondent, a member of the English Bar admitted to practice as a barrister and solicitor of the Supreme Court of the Gambia was found to be dishonourable and as such an order striking his name off the roll of the Court was made by the deputy Judge with a direction that it should be reported to the Masters of the Bench of the Inn to which he belonged. That the Chief Justice of the Supreme Court of the Gambia had criticised the conduct of the barrister severely in the course of a trial held before him and had sent a copy of his judgment to the Attorney-General of the Gambia. The Attorney-General served a notice of motion on the barrister for an enquiry to be made by the Chief Justice but as the Chief Justice was the only Judge of that Court he recommended that some one other than himself should be appointed as a deputy Judge to hold the inquiry. The Deputy Judge ordered his name to be struck off the roll. His order was however set aside by the West African Court of Appeal not on merits but on the ground that a Deputy Judge had only jurisdiction to represent the Chief Justice in the exercise of his judicial powers and according to the Court of Appeals the power to strike the name of a legal practitioner off the roll was not a judicial power. The Attorney-General of the Gambia appealed to Her Majesty in Council. The question of the maintainability of the appeal was also canvassed before the Board. With regard to inquiries into the conduct of barristers and solicitors in the Crown colonies Lord Denning, who delivered the judgment of the Privy Council, said :-

"by the common law of England the Judges have the right to determine who shall be admitted to practice as barrister and solicitors, and as incidental thereto the judges have the right to suspend or prohibit from practice. In England this power has for a very long time been delegated, so far as barristers are concerned, to the Inns of Court; and, for a much shorter time, so far as solicitors are concerned, to the Law Society. In the colonies the Judges have retained the power in their own hands, ....."

His Lordship went on to remark at p. 631 :

"When the judges exercise this power to suspend or expel, they do not decide a suit between the parties. There is no prosecutor as in a criminal case, nor any plaintiff as in a civil suit. The judges usually act on their own initiative, *ex mero motu*, on information which has come to their notice, or to the notice of one or other of them in the course of their duties."

Further,

"When a legal practitioner is suspended or struck off by the judges of a colony, he has always been at liberty to petition Her Majesty in Council to restore him."

Rejecting the argument that the Attorney-General had no *locus standi* to petition for special leave to appeal as he was not a person aggrieved, the Board referred to Section 31 of the Order in Council, 1949, which gave very wide powers to His Majesty in Council, to entertain the petition of any person aggrieved by any judgment of the court and to admit his appeal upon such conditions as His Majesty in Council would think fit to impose. On the facts of the case the Board held that the Attorney-General had a sufficient interest in the matter because the order made by the West African Court of Appeal prejudicially affected his interests.

The reasoning of the Board was as follows :

"The Attorney-General in a colony represents the Crown as the guardian of the public interest. It is his duty to bring before the Judge any misconduct of a barrister or solicitor which is of sufficient gravity to warrant disciplinary action. True it is that if the judge acquits the petitioner of misconduct, no appeal is open to the Attorney-General. He has done his duty and is not aggrieved. But if the Judge finds the practitioner guilty of professional misconduct and a Court of Appeal reverses the decision on a ground which goes to the jurisdiction of the judge, or is otherwise a point on which the public interest is concerned the Attorney-General is a "person aggrieved" by the decision and can properly petition Her Majesty for special leave to appeal."

It is clear that Lord Denning considered the denial of jurisdiction of the deputy Judge to be a matter of public interest and therefore held the Attorney-General, as the Crown's representative, to be a person sufficiently interested as to be a person aggrieved. That surely is not the position here, nor is an Advocate-General the representation of the Government. Neither the Constitutions nor the Advocates Act, 1961, holds him as the representative of the Government or as a person representing the public interest. Whatever may be the position of the Attorney-General in a colony as a representative of the Crown, he is not the guardian of the public interest in India in any matter except as provided for in the statutes. He like any other person may draw the attention of the Bar

Council to any misconduct of an advocate which according to him merits disciplinary action. The Act of 1961 provides for notice to be given to him of all such proceedings and gives him a right to appear at the hearing but once the hearing is over and a finding recorded he has done his duty and cannot be said to be aggrieved within the meaning of the expression used in Section 37. It is only because the Attorney-General for the Gambia had an interest in seeing that the Court of Appeal did not reverse the decision of the Deputy Judge on a ground which went to the jurisdiction of the Judge or was otherwise a point in which the public interest was concerned that the Board held that he was a person aggrieved.

23. Our attention was drawn to a decision of the Judicial Committee in *Advocate-General, Bombay v. Phiroz Bharucha*, (37 BLR 722 : AIR 1935 Pc 168 : 62 IA 235) where the Privy Council entertained an appeal by the Advocate-General of Bombay against an advocate who had been found by the High Court of Bombay to have been guilty of misconduct but against whom no disciplinary action had been taken by the Judges. Although there was a good deal of discussion at the Bar about the maintainability of the appeal which was sought for by special leave, the Board remarked that the circumstances were not such as to justify it in advising His Majesty to grant such special leave principally on the ground that the question was one of the exercise of statutory discretion by the Judges as to whether the circumstances of the case as established before the High Court called for any disciplinary action and the Board felt that the action of the High Court in exercising their discretion in the way they had done was not such as His Majesty would be advised further to consider.

24. This decision does not help the Advocate-General of Maharashtra because it did not decide the point as to the maintainability of the appeal. It is well known that the Judicial Committee was never chary in granting special leave to appeal when it felt that the justice of the case demanded a further hearing.

25. Mr. Daphtary appearing for the appellant very fairly drew our attention to an observation of this Court in *Bhataraju Nageshwara Rao v. The Hon'ble Judges of the Madras High Court* (1955 (1) SCR 1055, 1064 : AIR 1955 SC 223), which was a case of an appeal by special leave from an order of the High Court at Madras under Section 12 of the Indian Bar Council Act debaring the advocate for a period of five years on charges of misconduct which were held by the High Court as proved. In the ultimate paragraph of the judgment this Court recorded its strong disapproval of the frame of the appeal in that the Judges of the High Court had been made respondent to it. They however went to observe that -

"in an appeal arising out of a proceeding under the Bar Councils Act the appropriate parties should be the advocate concerned, the complainant, if any, the Bar Council or the secretary thereof and the Advocate-General of the State concerned to whom notices have to be issued under Section 12(3) of the Indian Bar Councils Act."

With great respect, we find ourselves unable to concur in the above so far as the Advocate-General is concerned. It does not appear that any argument was advanced about the proper parties to the appeal before this Court and the point as to whether the Advocate-General was a person aggrieved was neither raised nor argued. The only party to appear before this Court was "the Judges of the High Court".

26. It appears that the Advocate-General of Maharashtra felt in this case that the disciplinary committee of the Maharashtra Bar Council had gone wrong and that there was a question of

principle involved as regards the effect of a conviction of an Indian advocate of an offence recognised by all civilised countries as an offence involving moral turpitude and that the question also related to the requirements of natural justice in criminal court. Every day courts of law are called upon to decide questions of law inter-partes which may be of general importance to the public. The Advocate-General cannot prefer an appeal merely because the question is one of considerable importance to the public inasmuch as he is not a party to it and he has no locus standi to do so even in a case where the statute only gives him an opportunity of appearing at a hearing and making his submissions.

27. A decision by the disciplinary committee cannot necessarily be said to raise a point of public interest merely because the Advocate-General feels that it is erroneous or that he himself would have arrived at a different conclusion. That at best is his personal opinion as regards the conduct of an advocate who has to deal with the public and the non-acceptance thereof does not make him a person aggrieved. An Advocate-General in India is not the guardian angel of the Bar, nor is he the champion of public interest in any matter save as specified in a statute.

28. In conclusion we hold that the appeal by the Advocate-General of Maharashtra to the Bar Council of India was incompetent and this appeal should be allowed and the finding of the Bar Council of India set aside.

VAIDIALINGAM, J. ♦

With respect, I am not able to agree with the views expressed by My Lord and Mr. Justice Mitter that the appeal filed by the Advocate-General of Maharashtra before the Bar Council of India was competent.

2. The preliminary point that has been argued before us in this appeal relates to the maintainability of the appeal by the Advocate-General of Maharashtra before the Bar Council of India under Section 37(1) of the Advocates Act, 1961 (Act 25 of 1961) (hereinafter referred to as the Act), against the order of the Disciplinary Committee of the Bar Council of Maharashtra (hereinafter referred as the Committee), dated October 19, 1968, holding the appellant not guilty of an professional misconduct. It is not necessary to refer to the allegations of professional misconduct made against the appellant as this appeal has yet to be heard on merits.

3. Against the order of the Committee, acquitting the appellant, the Advocate-General of Maharashtra Sri H. M. Several, filed under Section 37(1) D.C. Appeal No. 18 of 1968, before the Bar Council of India. The said appeal was heard by the Disciplinary Committee of Bar Council of India (hereinafter referred to as Appellate Committee) as required by Section 37(2) of the Act. A preliminary objection was raised on behalf of the appellant that the Advocate-General was not competent to prefer the appeal as he was not the complainant nor were the proceedings for taking disciplinary action initiated at his instance and he is not "any person aggrieved" under Section 37(1). The State Bar Council, which initiated the proceedings was apparently satisfied with the decision of its Committee and did not take any further action. In short, according to the appellant, the Advocate-General was not 'any person aggrieved', under Section 37(1) of the Act. The appeal was also contested by the appellant on merits. The Appellate Committee by its order, dated October 26, 1969, overruled the preliminary objection and held that the Advocate-General was competent to maintain the appeal under Section 37(1). By the same order the Appellate Committee disagreed with the findings of the Committee and found the appellant guilty of professional misconduct and ordered his suspension from practice for a period of one year. The appellant was also directed to pay

the costs of the proceedings. It is this order of the Appellate Committee that is the subject of the appeal before us.

4. As stated earlier, we have heard arguments only on the question of the maintainability of the appeal at the instance of the Advocate-General of Maharashtra before the Bar Council of India. As the question raised was a fairly important one, notice had been issued to the Attorney-General of India, the Bar Council of India, the Advocate-General and the Bar Council of the States. Advocates-General of most of the States were represented by counsel. The Attorney-General of India, the Bar Council of India as well as the Bar Council of Maharashtra were also represented counsel before us.

5. The question posed for our consideration is whether the Advocate-General of the State comes within the expression "any person aggrieved" in Section 37(1) of the Act.

6. Mr. Daphtary, learned counsel for the appellant, drew our attention to the various provisions of the Act and pointed out that matters concerning the legal profession have now been entrusted to the State Bar Council and the Bar Council of India and the powers to take disciplinary action have also been vested in them. Whatever may have been the position once occupied by the Advocate-General vis-a-vis, the legal profession, that has now been changed by the Act. His appearance in disciplinary matters is only to assist the Committee and he has no further interest in those proceedings. Whether an Advocate is acquitted or convicted is no concern of the Advocate-General, because he is not interested in the actual decision of the Committee. Hence the Advocate-General cannot be considered to be "any person aggrieved" by an order of the Committee so as to be eligible to file an appeal under Section 37 of the Act. In this connection Mr. Daphtary referred us to several English decisions where the expression 'person aggrieved' has been considered and interpreted with references to the statutes in which those expressions occur. Relying on the principles laid down in those decisions, to which reference will be made later, Mr. Daphtary pointed out that the expression 'person aggrieved' should not be interpreted as covering ever person who is disappointed or dissatisfied with a decision rendered by a Committee. On the other hand, the counsel urged, that in order to be considered as a 'person aggrieved' that person must be one who has suffered a legal grievance, a man against whom a decision has been pronounced and which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something. An appeal must be by the party who has endeavoured to maintain the contrary of that which has taken place. The counsel further pointed out that the Advocate-General a public officer and cannot be considered to be a party to the proceedings before the Committee. The Advocate-General may be even annoyed with the decision of the Committee acquitting an advocate, but that will make him a 'person aggrieved'.

7. Considerable reliance was placed by Mr. Daphtary on the observations of Lord Denning in *Attorney-General of the Gambia v. Pierre Sarr. N' Jie* (1961 Appeal Cases 617) to the effect that Attorney-General in a colony represents the Crown as the guardian of the public interest and that is his duty to bring before the Judge any misconduct of a barrister or solicitor which is of sufficient gravity to warrant disciplinary action and that if the Judge acquits the practitioner of misconduct, no appeal is open to the Attorney-General, who has done his duty and is not aggrieved. But if, on the other hand, a Court of Appeal reverses the decision holding a practitioner guilty of professional misconduct, on a ground which goes to the jurisdiction of the Judge or is otherwise a point in which the public interest is concerned, the Attorney-General is a 'person aggrieved' by the decision and can properly petition Her Majesty for special leave to appeal. Drawing support from these observations Mr. Daphtary urged that in this case, the Committee had acquitted the appellant and the Advocate-General having appeared through counsel before the Committee has done his duty, and as such he

cannot be considered to be aggrieved. No question of jurisdiction of the Committee or any point in which the public interest is concerned arose for decision in the appeal filed by the Advocate-General, so as to make the appeal competent even within the limited rule laid down by Lord Denning.

8. Mr. V. S. Desai, learned counsel appearing for the Advocate-General of Maharashtra and Mr. M. C. Setalvad, learned Counsel appearing for the Bar Council of India have supported the decision of the Appellant Committee holding in favour of the competency of the appeal filed by the Advocate-General as "any person aggrieved" under Section 37 of the Act. The counsel appearing for the Attorney-General, the Bar Council of Maharashtra and the Advocate-General represented before us have supported this view.

9. Mr. V. S. Desai pointed out that the Act is a self-contained Code, and that the various decisions where the expression 'person aggrieved' has been interpreted must be appreciated in the particular or context in which those expressions occur in the statutes which were before the Courts. The reasoning in those decisions may furnish a guide but cannot be applied ipso facto when interpreting Section 37 of the Act. The expression "any person aggrieved" in Section 37 of the Act will have to be understood and interpreted in the context in which it appears, having due regard to the scheme of the Act. The counsel also referred us to certain decisions bearing on this matter, to which we shall refer in due course.

10. Mr. M. C. Setalvad, learned Counsel, appearing for the Bar Council of India urged in particular that the Advocate-General is a responsible person and is the highest Law Officer of the State. The legal profession is very closely associated with the admission of justice by the Courts. The Bar, in that context has to come into contact with the public to assist them in legal matters. This responsible position occupied by the legal profession has to be properly safeguarded and that could be done only by insisting that its member are persons of high character and integrity and who observe rules of professional etiquette. The Act has made it obligatory to give notice in the disciplinary proceedings to the Advocate-General and give him an opportunity of being heard. The purpose for which the highest Law Officer of the State, the Advocate-General, is brought in not only in the Act, but also in the Indian Bar Councils Act of 1926 (Act 38 of 1926) (hereinafter referred to as the Bar Councils Act) is to subserve the public interest, namely, of seeing that the integrity and honesty of legal profession are maintained and that proper decisions are given in disciplinary proceedings. There may be cases of inadequate punishment or even harsh punishment being awarded by the Committee. The Advocate-General in proper cases can bring up such matters before the Bar Council of India. Mr. Setalvad further pointed out that there is no restriction placed in Section 37 denying the right of the Advocate-General to file an appeal against the orders of the Committee. Having due regard to the scheme of the Act and particularly of Section 35 and 27, the Advocate-General comes within "any person aggrieved" and hence he was competent to file the appeal.

11. I have given careful consideration to the various aspects placed before us by all the learned counsel and I am of the view that the decision of the Appellate Committee holding that the appeal filed by the Advocate-General of Maharashtra was competent is correct. I am further of the view that the expression "any person aggrieved" in Section 37 will have to be interpreted in the context in which it appears, having due regard to the provisions of the Act and its scheme. Considered in this manner, it has to be held that the Advocate-General comes within "any person aggrieved" in Section 37. The decisions relied on by Mr. Daphtary have, no doubt, interpreted the expressions 'person aggrieved' occurring in the particular statutes which came up for consideration in those decision, but in my opinion it will not be safe to adopt in to the interpretation so placed, no doubt on the identical

expression occurring in different statutes when construing the said expression in the Act before us. As pointed out by Lord Parker, C.J., in *Ealing Corporation v. Jones* ((1959) 1 QBD 384) cases which have interpreted similar expressions, can be looked into "to see if there are general principles which can be extracted which will guide the court in approaching the question as to what the words 'person aggrieved' mean in any particular statute". I will make a brief reference to the decision cited for the appellant later. But before doing so, it is desirable to refer to some of the provisions of the Act itself, so that the scheme of the Act will become evident, and that will throw considerable light on the interpretation of Section 37.

12. Before I refer to the Act, I think it desirable to advert to some of the provisions of the Bar Council Act. Even at the outset I may point out that the scheme of the Bar Councils Act was different. In the Bar Councils Act, the disciplinary jurisdiction over Advocates was vested in the High Court [vide Section 10(1)]. Under Section 10(2) the High Court, if the complaint is not summarily rejected by it, had to refer the case for inquiry either to the Bar Council or after consultation with the Bar Council to the Court of a District Judge. When a case is referred for inquiry to the Bar Council under Section 11, the case was to be inquired into by the Committee of the Bar Council, referred to as the Tribunal, and that Tribunal consisted of the particular number of persons mentioned in Section 11(2) appointed for the purpose, by the Chief Justice. The High Court had power to make rules under Section 12(1) prescribing the procedure to be followed in the conduct of inquiries. The finding of the inquiry by the Tribunal had to be forwarded to the High Court. On receipt of the finding, the High Court had to fix a date for hearing of the case. Under Section 12(3) it was obligatory to give notice, amongst other persons, to the Advocate-General of the day fixed for hearing; and it was also further obligatory to give the Advocate-General an opportunity of being heard before the orders of refer the case back for further inquiry. Under sub-section (5) the High Court had also power, when passing final orders to give directions regarding payment of costs. I am only refereeing to the material provisions of the Bar Councils Act to show that the High Court was then the disciplinary authority and the function of the Committee of the Bar Council was only to submit a finding after conducting an inquiry as directed by the High Court. It is however to be noted that the Advocate-General then was not associated in the inquiry proceedings before the Tribunal of the Bar Council; but he was entitled to be given notice of the date fixed for hearing and also to be heard in the proceedings before the High Court after receipt of the finding submitted by the Committee of the Bar Council. Those provisions clearly establish the important position occupied by the Advocate-General and recognised by the Bar Councils Act.

13. The scheme is slightly different when we come to the Act. The State Bar Councils and the Bar Council of India have been made autonomous units and various functions regarding the legal profession have been entrusted to them. Taking disciplinary action against the delinquent members of the Bar and conducting inquiries are all part of their functions. Barring a provision of a right to appeal to the Supreme Court under Section 38 of the Act, the Courts are completely out of picture so far as the legal profession is concerned. The Act was one to amend and consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Council of India. Section 3 makes provisions for the State Bar Councils. Under sub-section (2) the Advocate-General of the State is an ex officio member. Similarly the Additional Solicitor-General of India is an ex officio member of the State Bar Council of Delhi. Section 6(1) enumerates the functions of the State Bar Councils. One of the functions under clause (c) relates to entertaining and determining cases of misconduct against advocates on the roll of the State Bar Council. Section 7 similarly enumerates the functions of the Bar Council of India. Under clause (c) the Bar Council of India has got the power to lay down the procedure to be followed by its Disciplinary Committee and the Disciplinary Committee, of each State Bar Councils. Section 9 deals with the Bar Council constituting one or

more Disciplinary Committees in the manner indicates therein. Section 23 gives a right of pre-audience to the Attorney-General of India, the Solicitor-General of India, the Additional Solicitor-General of India and the Advocate-General of the States, as mentioned of in sub-section (1) to (4) respectively.

14. Chapter V deals with the "conduct of Advocates and contains the group of Section 35 to 44. Section 35 deals with the punishment of advocates for misconduct and is as follows :

"Section 35 - Punishment of advocates for misconduct :

- (1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.
- (2) The disciplinary committee of a State Bar Council, if it does not summarily reject the complaint, shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.
- (3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders namely :-
  - (a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings to be filed;
  - (b) reprimand the advocate;
  - (c) suspend the advocate from practice for such period as it may deem fit;
  - (d) remove the name of the advocate from the State roll of advocates.
- (4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspending, be debarred from practising in any court or before any authority or person in India.
- (5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf."

15. Similarly Section 36(1) deals with the disciplinary powers of the Bar Council of India. Sub-section (2) confers powers on the Appellate Committee of its own motion to withdraw for inquiry for itself any disciplinary action against an advocate pending before the Committee and dispose of the same. Sub-section (3) provides for the Appellate committee when disposing of a case under Section 36 observing, so far as may be, the procedure laid down in Section 35. It further provides that references to the Advocate-General in Section 35 are to be construed as references to the Attorney-General of India.

16. Sections 37 and 39 which provide for an appeal to the Bar Council of India and to the Supreme Court respectively run as follows :

"Section 37. - Appeal to the Bar Council of India :

(1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council (under Section 35) may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.

(2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order thereon as it deems fit."

"Section 38. - Appeal to the Supreme Court :

Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under Section 36 or Section 37 may, within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order thereon as it deems fit.

17. Section 42(1) deals with the powers of the disciplinary committee of a Bar Council with regard to the various matters provided for in clauses (a) to (f). Section 43 provides for making of orders as to costs by the disciplinary committee of a Bar Council. Section 44 gives powers of review to the disciplinary committee of a Bar Council. Section 48-A, in Chapter VI, deals with the revisional powers of the Bar Council of India.

18. It will be seen from Sections 3(2)(a), 23(4) and 35 that the Advocate-General of the State is given by the Act a very important and responsible position. Some discussion took place before us whether the Advocate-General can be considered to be the person who is charged with the duty of safeguarding the professional integrity of the members of the Bar, when powers and duties in that regard have been conferred under the Act on the State Bar Councils. I do not think it necessary to go into that aspect as I think an inquiry in that regard is not relevant for the present purpose of construing Section 37. Nor can the analogy of the Attorney-General in a colony representing the Crown, being the guardian of public interest, as stated by Lord Denning in *Attorney-General of the Gambia v. Pierr Sarr N' Jie* (supra) be brought in for interpreting Section 37 of the Act, as we are only concerned to find out the right given to the Advocate-General by the Act. So far as that is concerned, I am satisfied that the Act has given due recognition to his status by virtue of his being the highest Law Officer in the State, as the Advocate-General and who may be trusted to place a disinterested and dispassionate view before the Committee to enable it to come to a proper legal profession to which he belongs. Apart from his being being under Section 3(2)(a) an ex officio member of the State Bar Council, Section 23(4) gives him a right of pre-audience over all other advocates.

19. Coming to Section 35, read with Section 37, which has been extracted earlier, the main features that emerge therefrom are as follows :

(1) The State Bar Council can suo motu or on receipt of a complaint, when it has reason to believe that an advocate has been guilty of professional or other misconduct refer the case to its committee.

(2) If the Committee does not summarily reject the complaint, it is bound to fix a date for hearing the case, and it is also further bound to give notice of the date of hearing, apart from the advocate concerned, to the Advocate-General of the State.

(3) The Committee is bound in the inquiry to give an opportunity of being heard both to the advocate concerned and the Advocate-General. After such an inquiry the Committee can pass one or other of the orders enumerated in clause (a) to (d) of Section 35.

(4) The Advocate-General may appear before the Committee in person or through an advocate appearing on his behalf.

(5) The orders of the Committee have to be communicated to the Advocate-General and the Advocate concerned.

(6) Against the orders passed under Section 35, any person aggrieved is entitled to file an appeal under Section 37, to the Bar Council of India.

20. While under the Bar Councils Act, the Advocate-General was associated with the disciplinary proceedings only when the matter was being decided by the High Court, after receipt of the findings submitted by the Tribunal of the Bar Council, it is significant to note that under the Act, Advocate-General is associated with the disciplinary proceedings right from the stage of inquiry by the Committee. Under sub-section (2) of Section 35 the Committee is bound to give notice of the date of hearing not only to the Advocate concerned but also to the Advocate-General of the State. It will be noted that disciplinary proceedings may have been occasioned because of a complaint made by a third party or may have been initiated suo motu by the State Bar Council. In whatever manner the proceedings may have been initiated, the Advocate-General is entitled to be given notice of the date of hearing. It cannot be a formal and empty notice to the Advocate-General should be given an opportunity of being heard. It is significant to note that sub-section (3) of Section 35 which deals with the giving of an opportunity of being heard both to the advocate concerned and the Advocate-General does not make any distinction in the opportunity so afforded to both to the advocate concerned and the Advocate-General does not make any distinction in the opportunity so afforded to both of them. The same opportunity that the Advocate concerned has under sub-section (3) is also afforded to the Advocate-General. It is not necessary to go to the extent of holding that there is a 'lis' before the Committee and that the Advocate-General, is a "party" in the sense that expression is ordinarily understood in law. The advocate concerned will be interested in disputing the allegations made or charges levelled against him and he will be entitled to lead evidence to support his case. The Advocate-General, on the other hand, is also entitled to peace before the Committee all aspects of the matter including facts that may be in favour of the advocate whose conduct is under inquiry. This is because of the important position occupied by him. It may be that the Advocate-General may not be able to appear personally and participate in all the disciplinary proceedings and that is why provision has been made in Section 35(5) enabling the Advocate-General or the counsel appearing on his behalf will also have a right of cross-examining the witnesses produced in the case so as to elicit information about the charge of professional misconduct levelled against the advocate concerned. The Advocate-General need not be vindictive and take sides as a party to a litigation and see that the advocate is found guilty. On the other hand, by virtue of the special and dispassionate role occupied by him, he will be able during the inquiry to place such material or evidence which will enable the Committee to come to a proper and correct finding in the interest of both the legal practitioner and the legal profession to which he belongs.

21. It is in this context of the close association of the Advocate-General with the disciplinary proceedings that the expression 'person aggrieved' in Section 37 has to be interpreted. There can be no controversy that an appeal will lie against the various orders that the Committee may pass as

enumerated in clauses (a) to (d) of Section 35(3). The question is at whose instance the appeal will lie. If the complaint is dismissed, the complainant will be a 'person aggrieved who can file an appeal under Section 37. In fact it has been held by this Court in *B. M. Madani v. Commissioner of Workmen's Compensation, Bombay* (Civil Appeal No. 877 of 1968, decided on 8-10-1968) that when proceedings are initiated on a complaint by a party and the Committee after finding the advocate guilty of the charges, passed an order reprimanding with a warning, an appeal filed by such a complainant before the Appellate Committee only on the question of sentence imposed, was competent as the complainant was a 'person aggrieved'. Similarly, an order adverse to the advocate concerned, can be the subject of appeal at his instance.

22. There is no controversy that the order passed by the Committee was communicated to the Advocate-General. As already pointed out a series of steps is contemplated under Section 35; reference to the Committee, of a case of professional misconduct; notice of the date of hearing to be given to the Advocate-General; Advocate-General being given an opportunity of being heard at the hearing; the Advocate-General being entitled to appear before the Committee either in person or through an Advocate; his being entitled to be communicated with a copy of the order passed by the Committee. It is in that context and for these purposes that I have considered the meaning of the expression "any person aggrieved" in Section 37(1). The fact that the Advocate-General does not allege an infringement of any legal rights of his own is of no consequence. The particular proceedings in which the Advocate-General is given a right to participate relates to an inquiry into the allegations of misconduct against an advocate. Upon a fair construction of Section 37(1) against the order passed by the Committee. The same reasoning will apply to the Attorney-General of India under Section 38.

23. It may be that in a particular case the Advocate-General may feel that the finding arrived at in favour of the advocate by the Committee is not justified by the evidence and that decision will have to be reconsidered by the Appellate Committee; or it may even be that in a particular case the sentence imposed by the Committee may not be commensurate with the guilt of the advocate; or it may also be that the sentence imposed on an advocate by the Committee is very harsh or the finding of guilt is not correct. Under such and similar circumstances in the interest of the Advocate and the legal profession, the Advocate-General will be competent to bring up the matter before the Appellate Committee so that justice may be done.

24. In this context the observations of Lord Hewart, C.J., in *Sevenoaks Urban District Council v. Twyanam* (1929-2 KB 440) are apposite. The question before the Court in that decision was whether an objector to a proposal made by a local authority to acquire land in order to provide parking place for vehicles and whose objections were overruled was a 'person aggrieved' under Section 68(3) of the Public Health Act, 1925, and as such entitled to appeal. It was found that the objector that such an objector was a 'person aggrieved' and entitled to appeal. Lord Hewart, C.J., at page 443 states :

"The question therefore is : Is it true that in these circumstances and within the meaning of this part of this statute this respondent was a 'person ..... aggrieved' ? Now undoubtedly those words, "a person aggrieved", have very often been considered, and, if one looked at the mere terms apart from their context and apart from the particular circumstances, it would have been quite easy to marshal decision of contradictory import. But as has been said again and again there is often little utility in seeking to interpret particular expressions in one statute by reference to decisions given upon similar expressions in different statutes which have been enacted alio intuitu. The problem with which we are concerned is not, what is the

meaning of the expression 'aggrieved' in any one of a dozen other statutes, but what is its meaning in this part of this statute ? It is a little important to see what this part of this statute is dealing with."

25. The above extract has been quoted with approval by Lord Parker, C.J., in *Ealing Corporation v. Jones* (supra).

26. I have already indicated earlier that the problem before us whether the Advocate-General is a 'person aggrieved' under Section 37 of the Act will have to be tackled with reference to the scheme and provisions of the Act and that is exactly what I have done and arrived at the conclusion that he is a person aggrieved.

27. Mr. Daphtary argued that when the Committee consisting of member of the legal profession, has decided in favour of the Advocate, the Advocate-General can have no grievance. This in my view, is really begging the question. Why did the Legislature then bring in the Advocate-General at all and why has it associated him in disciplinary proceedings from the very beginning of the inquiry ? That and other circumstances, already pointed out by me, bring him under Section 37 as "any person aggrieved".

28. Mr. Daphtary then urged that if the Advocate-General was expected to safeguard the interest of the Advocate and the legal profession by seeing that proper decisions are given by the Committee, that purpose is not served when powers have been given to the Committee under Section 35(2) to summarily reject a complaint and the Advocate-General will have no remedy against such rejection. The short answer to this contention is that a right of appeal must be specifically conferred by statute. Section 37(1) gives a right of appeal after hearing the case are enumerated in clauses (a) to (d) of Section 35(3). It is not necessary for me to express any opinion whether an order summarily rejecting a complaint can also be the subject of an appeal under Section 37(1) as that section is in very wide terms. In any event, Mr. Daphtary's contentions will only amount to this viz., that the Advocate-General is not association at the stage of summary rejection of complaint. That circumstance does not militate against the view already expressed by me. Probably the Legislature may have felt that if there is any wrongful summary rejection of a complaint it could be set right by the Bar Council of India under Section 48-A. But once the Committee decides to hear the case and passes an order under Section 35, the Advocate-General gets a right of appeal under Section 37(1).

29. Mr. V. S. Desai referred us to the decision of the Judicial Committee in *Advocate-General of Bombay and Others v. Pittamberdas Gokuldas Mehta and Others*, (62 Indian Appeals 235) wherein, according to him, an appeal by the Advocate-General of Bombay against the decision of the High Court of Bombay Pleaders Act was entertained by the Judicial Committee. He has also referred us to the discussion between the Court and counsel in the said decision reported in *Advocate-General of Bombay v. Phiroz Rustomji Bharucha* (37 Bombay Law Reporter 722) which, according to him, will show that though an objection was raised, about the locus standi of the Advocate-General to file an appeal under such circumstances but was not accepted by the Judicial Committee. I have gone through both the reports and there is no indication that the question of maintainability of an appeal by the Advocate-General was decided one way or the other by the Judicial Committee.

30. Mr. Daphtary has referred us to the decisions in *Re. Sidebotham*, (14 Chancery Division 458) in *Re. Reed, Bowen & Co.*, (19 QB 174) *The Queen v. The Keepers of the Peace and Justices of the Country of London*, (25 QB 357) *Rex v. London Quarter Sessions* (1951-2 KBD 508) and *Ealing Corporation v. Jones* (supra), wherein the expression "person aggrieved" occurring in different

statutes came up for interpretation. The principles that emerge from those decisions appear to be that a "person aggrieved" must be a person who has suffered a legal grievance or who has claimed a title to something and his claim has been negated or who has maintained to the contrary in the proceedings or litigation. It has been further held in some of those decisions that the said expression. It has been further held in some of those decisions does not take in any person who may be affected by the order or who may feel disappointed or even annoyed at the decision. In the view that I take that the expression "person aggrieved" in Section 37 of the Act has to be interpreted in the light of the provisions and scheme of the Act as well as the context in which those expressions appear, I did not think it necessary to consider in great detail those decisions which have been rendered on different statutes.

31. The decision in *The Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel and Others*, (Civil Appeal No. 1716 of 1967, decided on 1-8-1970) referred to by Mr. Daphtary, in my opinion, does not assist the appellant. In that decision it was held that when certain notifications issued under the Land Acquisition Act were set aside by the High Court, the Municipal Corporation, on whose behalf the acquisition was being made by the Government, cannot be considered to be a "person aggrieved" entitled to challenge the order of the High Court. An additional reason has also been given against the competency of the appeal that even an order for costs has not been passed against the Municipal Corporation. That decision was rendered on the scheme of the Land Acquisition Act, and so does not help the appellant.

32. It was urged on behalf of the appellant that if the Advocate-General was really intended to be given a right of appeal under Section 37(1), the Legislature should have used the expression "any person including the Advocate-General aggrieved by an order ....." I am of the view that it was unnecessary to make any such provisions because the expression as it stands clearly takes within its fold the Advocate-General also.

33. This leaves me with the decision in *Attorney-General of the Gambia v. Pierre Sarr N' Jie* (supra), which has been very strongly relied on by Mr. Daphtary. One Mr. X a member of the English Bar was admitted to practice as a barrister and solicitor of the Supreme Court of Gambia. The Deputy Judge made an order striking his name off the Roll of the Court. This decision was reversed by the West African Court of Appeal on the ground that the Deputy Judge had no jurisdiction in the matter. The Attorney-General of Gambia sought leave to appeal to Her Majesty in Council; but the West African Court of Appeal declined to grant him leave on the ground that notice had not been given in due time to Mr. X. The Attorney-General then made a petition to Her Majesty for special leave to appeal from the judgment of the West African Court of Appeal, setting aside the order of the Deputy Judge as well as refusing to grant leave to appeal. The Attorney-General's petition was granted; but liberty was reserved to Mr. X to raise the preliminary point that no appeal lay at the instance of the Attorney-General. During the course of arguments the Judicial Committee rejected the preliminary objection.

34. It is to be noticed that against the decision of the Deputy Judge striking his name off the roll Mr. X filed an appeal to the West African Court of Appeal under Section 14 which was as follows :

"An appeal shall lie to the Court of Appeal from any order of the Judge suspending a barrister or solicitor of the Supreme Court from practice or striking his name off the Roll and for the purposes of any such appeal any such order shall be deemed to be an order of the Supreme Court."

35. I am particularly referring to this decision because certain observations of Lord Denning on which reliance has been placed by Mr. Daphtary will have to be understood with reference to this provision of law. Exercising jurisdiction under this section. In the first instance the Attorney-General sought leave to appeal to Her Majesty in Council from the West African Court of Order in Council, 1949, which is as follows :

"Applications to the Court for leave to appeal shall be made by motion or petition within 21 days from the date of the judgment to be appealed from, and the applicant shall give the opposite party notice of his intended application."

36. The West African Court of Appeal declined to grant leave to appeal to the Attorney-General on the ground that notice had not been given within the time mentioned in the above order to Mr. X. The Attorney-General made an application to the Judicial Committee for special leave to appeal from the two orders mentioned above of the West African Court of Appeal. That petition was filed under Section 31 of the West African (Appeal to Privy Council) Order in Council, 1949, which runs as follows :

"Nothing in this order contained shall be deemed to interfere with the right of His Majesty upon the humble petition of any person aggrieved by the judgment of the Court to admit his appeal therefrom upon such conditions as His Majesty in Council shall think fit to impose."

37. The question that arose before their Lordships was whether the Attorney-General was "person aggrieved" under the above order.

38. In discussing this question Lord Denning at page 634 observes :

"..... the words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering the thing which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests. Has the Attorney-General a sufficient interest for this purpose ? Their Lordships think that he has. The Attorney-General in a colony represents the Crown as the guardian of the public interest. It is his duty to bring before the judge any misconduct of a barrister or solicitor which is of sufficient gravity to warrant disciplinary action. True it is that if the judge acquits the practitioner of misconduct, no appeal is open to the Attorney-General. He has done his duty and is not aggrieved. But if the Judge finds the practitioner guilty of professional misconduct, and a Court of Appeal reverses the decision on a ground which goes to the jurisdiction of the judge or is otherwise a point in which the public interest is concerned, the Attorney-General is a "person aggrieved" by the decision and can properly petition Her Majesty for special leave to appeal. It was for these reasons that their Lordships rejected the preliminary objection and held that the Attorney-General was a 'person aggrieved' by the decision of the West African Court of Appeal."

39. The observations made in the above extract, in my opinion, have to be related to the particular provision of the order in Council which the Judicial Committee was considering. In the case before the Judicial Committee, the Attorney-General had initiated the disciplinary proceedings against the Barrister. Under Section 14, there was only a very limited right of appeal and that too in favour of

the barrister or solicitor in respect of the orders mentioned therein. The Attorney-General, though he may have been the complainant under Section 14 had no right of appeal if the barrister was acquitted. That it why Lord Denning states that it is true that if the Judge acquits the practitioner of misconduct no appeal is open to the Attorney-General. This view, with respect, is correct because Section 14 does not give a right of appeal to the Attorney-General. Lord Denning, no doubt, has further stated that the Judicial Committee has rejected the preliminary objection in view of the fact that it was of the opinion that in the case before it a question of jurisdiction or a point of public interest is involved and therefore, the Attorney-General is a "person aggrieved".

40. I have already indicated that there are no restrictions or limitations imposed in Section 37 of the Act giving a right of appeal only to the Advocate who may have been found guilty. On the other hand the words "any person aggrieved" in Section 37 are very wide, and as observed by Lord Denning in the opening part of the above extract these words should not be subjected to a restrictive interpretation. In the view that I take that the Advocate-General has an unqualified right of appeal under Section 37(1) I do not think it necessary either to refer to Article 165 of the Constitution nor do I think it necessary to consider the further question whether the appeal filed by the Advocate-General before the Bar Council of India relates to any question of jurisdiction or a point of public interest.

41. To conclude the appeal filed by the Advocate-General of Maharashtra before the Appellate Committee was competent and this point has to be held against the appellant. The result will be that the appeal before us will have to be heard on merits.

RAY, J. ♦

I agree with Vaidialingam, J. I desire to express my separate opinion in view of the importance of the question raised in this appeal.

2. This is an appeal from the order, dated October 26, 1969, of the Disciplinary Committee of the Bar Council of India suspending the appellant from practice for a period of one year.

3. An appeal to the Disciplinary Committee of the Bar Council of India was referred by Shri H. M. Seervai, Advocate-General of Maharashtra against the order, dated October 17, 1968, of the Bar Council of Maharashtra holding that the appellant was not guilty of professional misconduct or otherwise.

4. Before the Disciplinary Committee of the Bar Council of India a preliminary objection was taken by Adi Pherozshah Gandhi as to the maintainability of the appeal preferred by the Advocate-General of Maharashtra.

5. The appellant pressed the same preliminary objection in this Court, namely, that the Advocate-General of the State of Maharashtra could not prefer an appeal against an order of the Disciplinary Committee of the State Bar Council.

6. The relevant provision for appeal to the Bar Council of India is to be found in Section 37 of the Advocates Act, 1961 (hereinafter referred to as the Act). There are two sub-sections of Section 37. The first sub-section enacts that any person aggrieved by an order of the Disciplinary Committee of the State Bar Council made under Section 35 may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India. Sub-section (2) of

Section 37 states that ever such appeal shall be heard by the Disciplinary Committee of the Bar Council of India.

7. The present appeal is under Section 38 of the Act which confers right of appeal to the Supreme Court by any person aggrieved by an order made by the Disciplinary Committee of the Bar Council of India.

8. The entire controversy in this appeal centres on the meaning of the words "any person aggrieved by an order of the Disciplinary Committee of the State Bar Council" occurring in sub-section (1) of Section 37 of the Act. The same words also occur in Section 38 of the Act.

9. Mr. Daphtary on behalf of the appellant contended first that the Advocate-General did not represent public interest and could not therefore be said to be a person aggrieved by an order of the Disciplinary Committee. Secondly, that the provisions in Section 35 of the Act that the Advocate-General was entitled to a notice from the Disciplinary Committee of the date of hearing by the Disciplinary Committee could not have the effect of making the Advocate-General a party, and, thirdly, the Advocate-General was an impartial person and his duty would end by making submissions, if any, before the Disciplinary Committee and he would not be a person aggrieved either by an order of dismissal of a complaint against the Advocate or by any order passed against the Advocate. Notices were given to the Attorney-General and the Advocate-General of different States in view of the importance of the question involved in this appeal Mr. V. S. Desai on behalf of the Advocate-General of Maharashtra, Mr. Setalvad on behalf of the Bar Council of India, Dr. Seyied Muhammed on behalf of the Attorney-General, Mr. Datar counsel for the Maharashtra State Bar Council and other counsel appearing for Advocate-General of other States all contended that the Advocate-General would have the right under the Act to prefer an appeal as a person aggrieved by an order of the Disciplinary Committee of a State Bar Council.

10. Various decisions were cited at the Bar to illustrate the meaning of the words "person aggrieved". One group of decisions is based on the Locus classicus in *Re. Ex parte Sidebotham*, 14 Ch D 458. The other line of decisions is to be found in *Ex parte Official Receiver, In Re, Reed, bowen & Co.*, 19 QBD 174 and *Sevenoaks Urban District Council v. Twyanam*, (1929) 2 KB 404, James. L.J., in the case of *Ex parte Sidebotham* said that "a 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something". Lord Esher M.R., on the other hand in *Ex parte Officer Receiver, In Re. Reed, Bowen & Co.*, said that the meaning given by James, L.J., to words "persons aggrieved" would not be an exhaustive definition and the words would include a person who has asked for a decision for which he had a right to ask, and has been wrongfully refused. In the *Sevenoaks* case, Lord Hewart, C.J., said "that when a person might make an objection and was entitled to a decision upon it he would, if the decision was adverse to him, be able to appeal".

11. These decisions indicate that the word "person aggrieved" would have different shades of meaning in accordance with the tenor of the relevant statute. The observations of James, L.J., in the case of *Ex parte sidebotham* turn on the meaning of the words 'person aggrieved' occurring in the English Bankruptcy Act, 1914, which, inter alia, provided that the orders of the Court in bankruptcy matters except in cases specially excluded were subject to appeal at the instance of any person aggrieved even if he had not appeared in the Court below. It is in the context of the English Bankruptcy Act that creditors, trustees, administrators of a debtor or bankrupt would have a legal grievance against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.

12. Lord Hewart, C.J., on Sevenoaks case said "the problem is not what is the meaning of the expression "person aggrieved" in one or dozen statutes but what is its meaning in this part of the statute". In that case the relevant provision of the Public Health Act conferred a power on a local authority to provide within that district suitable parking place for vehicles. The statute further in that case contemplated a notice of the proposal to acquire land for using it as a parking place and objections, if any, to such proposal. When objections were made, the local authority would have to consider them. In the Sevenoaks case the Urban Council considered the objection of a rate payer and thereafter proceeded with the scheme of the parking place. Lord Hewart, C.J., in giving meaning to the words "person aggrieved" in that case said that first a person was an author of an objection, and, secondly, he was aggrieved by the refusal of his objection. It was held that a special individual right was infringed. In the Sevenoaks case there was neither a pecuniary nor a proprietary grievance. The action of the local authority in providing a parking place invited objections. It is the refusal of that objection which constituted a grievance and it was a grievance sustainable in law.

13. Mr. Daphtary relied on the observations of James, L.J., in *Re. Sidebotham* that "a disappointed person would not be a persona grieved" and also on the observations of Lord Coleridge in *Queen v. Keepers of the Peace and Justices of the County of London*, 25 QBD 357, that one would not be an aggrieved person because someone was held to have done wrong. In other words, it was said that the Advocate-General would make submission or advance contentions and the non-acceptance by the Disciplinary Committee of such submissions would not constitute either a legal grievance or rejection of a remedy asked for.

14. Mr. Daphtary also learned heavily on the decision of the Judicial Committee in *Attorney-General of Gambia v. Pierre Sarr N' Jie* 1961 AC 617 in support of two propositions. First, that the Judicial Committee found in the Gambia case that in the colonies the Attorney-General represented the Crown and was therefore the guardian of the public interest. Mr. Daphtary submitted that the Advocate-General did not represent public interest in our country and therefore could not be said to be a guardian of public interest. Secondly, the Judicial Committee in the Gambia case said that in relation to disciplinary proceedings if a legal practitioner was acquitted of misconduct no appeal was open to the Attorney-General because he had done his duty and was not aggrieved. Extracting that proposition from the Gambia case Mr. Daphtary submitted that similarly the Advocate-General could not have any grievance where an advocate was acquitted.

15. The purpose and the provisions of the Advocate Act, 1967, will determine whether the Advocate-General is a person aggrieved within the meaning of the relevant section in the Act, It may not be out of place to refer to the Bar Councils Act, 1926, which dealt with disciplinary conduct of practitioner. Prior to the Advocates Act the High Court under the Bar Councils Act, 1926, had power to suspend any advocate from practice whom it found guilty of professional or other misconduct. Under the said 1926 Act upon receipt of a complaint made to it by any Court or by Bar Council or by any other person that any Advocate had been guilty of misconduct, the High Court if it did not summarily reject the complaint referred the case for enquiry either to the Bar Council or after consultation with the Bar Council to the Court of a District Judge and the High Court might of its own motion refer any case in which it had reason to believe that any such Advocate had been so guilty. If any case was referred under the Bar Councils Act, 1926, for enquiry, the case was to be enquired into by the Committee of the Bar Council which was called the Tribunal. The tribunal consisted of not less than three and not more than five members of the Bar council appointed for that purpose by the Chief Justice or Chief Justice of the High Court and one of the members so appointed was the President of the Tribunal. The finding of a Tribunal was forwarded to the High Court through the Bar Council and the finding of a District Court was to be

forwarded direct to the High Court with a copy to the Bar Council. On receipt of the finding the High Court was to fix a date for the hearing of there case and notice of the date so fixed was to be given to the Advocate concerned and to the Bar Council and to the Advocates-General. The High Court was also required under the statute to afford the Advocate concerned and the Bar Council and the Advocate-General an opportunity of being heard before orders were passed in that case.

16. Mr. Desai relied on the provisions of the Bar Councils, Act, 1926 to show that under the said Act notice was to be given to the Advocate-General and that the Advocate-General was entitled to be heard and he relied on a decision of the Judicial Committee in Advocate-General of Bombay v. Phiroz Bharucha, 62 IA 235 and 37 Bom LR 722 and the decision of this Court in Bhataraju Nageshwara Rao v. The Hon'ble Judges of the Madras High Court and Others, (1955) 1 SCR 1055 in support of the two propositions namely that the Advocate-General could prefer an appeal and in an appeal preferred by the Advocate-General would be a respondent to such an appeal. In Bharucha's case certain Advocates were members of Associations declared unlawful by Government and they were convicted of offences punishable under Section 17(i) of the Criminal Law Amendment Act, 1908. The High Court did not take any steps against the Advocates on the ground that it did not consider that membership of an unlawful association would render the Advocates unfit for the exercise of the profession. The Advocate-General of Bombay made applications for special leave before the Judicial Committee to appeal against the decision of the High Court. The Judicial Committee did not grant any special leave and agreed with the view of the High Court. No question was raised in the applications before the Judicial Committee as to the maintainability of the applications for special leave. It should be noticed that under the Bar Councils Act there was no provisions for any appeal. Mr. Desai rightly relied on the decision of the Judicial Committee not for an actual decision that the Advocate-General had a right of appeal but for the purpose of showing that the Advocate-General had not only locus standi to make an application for leave but also could be said to have been aggrieved by an order in relation to professional misconduct of an Advocate. The Judicial Committee would not have entered into the merits of the case if the Advocate-General had no right to apply for leave to appeal.

17. The decision of this Court in Bhataraju's case was to the effect that in an appeal preferred to the Supreme Court by an Advocate against whom an order of suspension was passed by the High Court under Section 12 of the Bar Councils Act, the proper respondents would be the complainant, if any, the Bar Council and the Advocate-General of the State concerned and not the High Court. The appeal to this Court in Bhataraju's case was by special leave. This Court held that the Advocate-General, the Bar Council and the complainant would be parties to the appeal on the ground that notices under the Bar Councils Act had been issued to those persons. The decisions of this Court and the Judicial Committee Act both indicate that the Advocate-General under the Bar Councils Act had locus standi in making an application for leave to appeal and being a respondent to an appeal preferred by the Advocate.

18. The position held by the High Court under the Bar Councils Act, 1926, is now occupied by the Bar council under the Advocates Act. There are State Bar Councils and there is also a Bar Council of India. Every Bar Council is a body corporate. The functions of the State Bar Council are inter alia to admit persons as advocates, on its roll; to prepare and maintain such roll' to entertain and determine cases of misconduct against advocates on its roll' to safeguard the rights, privileges and interest of advocates on its roll. The functions of the Bar Council of India are to lay down standards of professional conduct and etiquette for advocates, to lay down the procedure to be followed by the Disciplinary Committee of the Bar Councils, to safeguard the rights, privileges and interest of advocates. A Bar Council is empowered under the Act to constitute one or more Disciplinary

Committees.

19. Sections 35 to 44 deal with conduct of Advocates and powers of the Disciplinary Committees of the State Bar Councils as also of the Bar Council of India. Under Section 35 of the Act where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee. The Disciplinary Committee of a State Bar Council, if it does not summarily reject the complaint, shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned to the Advocate-General of the State. The Disciplinary Committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may dismiss the complaint or reprimand the advocate, suspend the advocate from practice for such period as it may deem fit, or remove the name of the advocate from the State Roll of Advocates. Where any notice is issued to the Advocate-General, the Advocate-General may appear before the Disciplinary Committee of the State Bar Council either in person or through any advocate appearing on his behalf. These provisions establish first that the Advocate-General is entitled to a notice of the date of hearing, secondly, that no order can be made by the Disciplinary Committee without giving an opportunity to the Advocate-General of being heard, and, thirdly, that the Advocate-General may appear in person or through any advocate. It cannot be said that the Advocate-General is appearing as a friend of the Court. The right of the Advocate-General to appear is based on statute. The word 'may' is used to indicate the choice of the Advocate-General to appear in person or through any advocate. He may choose not to appear at all. But when the Advocate-General does appear, he does so by virtue of the statutory rights and power conferred on him. It is, therefore, necessary to know as to why notice under the Act is given to the Advocate-General and why he is to be heard before an order is made by the Disciplinary Committee.

20. The Judicial Committee in the Gambian case found that the name of N' Jie was struck off the roll of barristers and solicitors of the Supreme Court of Gambia by an order of Abbott, J., Deputy Judge of the Supreme Court in the Colony of the Gambia. The Deputy Judge had jurisdiction to represent the Chief Justice in the exercise of his Judicial powers. The power to strike the name of the legal practitioner off the roll was held by the Judicial Committee not to be a judicial power but an administrative one of the Chief Justice of the Supreme Court of Gambia. Therefore, the order of Abbott, J., was without jurisdiction. The West African Court of Appeal under those circumstances set aside the order of Abbott, J. The Attorney-General of Gambia thereupon preferred an appeal to the Judicial Committee. An appeal to the Privy Council lay under Section 31 of the West African (Appeal to Privy Council) Order in Council, 1949. Broadly stated, the provision was to the effect that any person aggrieved by any judgment of the Court could prefer an appeal any person aggrieved by any judgment of the Court could prefer an appeal to His Majesty. The Judicial Committee construed the words "person aggrieved" occurring in Section 31 of the West African Order in Council, 1949, not to be subjected to a restrictive interpretation but to include a person who has a genuine grievance because an order has been made which prejudicially affected his interest for the purpose and the interest was held to be a public one which the Attorney-General represented. The Judicial Committee also said that if the Judge found the practitioner guilty of misconduct and the West African Court of Appeal of Gambia reversed the decision which went to the jurisdiction of the Judge, or was otherwise a point in which public interest was concerned, the Attorney-General would be a person aggrieved by the decision. The Judicial Committee construed the words "person aggrieved" to include the Attorney-General of Gambia as representing the public interest.

21. The most significant feature in Section 35 and 36 of the Act is that the Disciplinary Committee does not either give any notice to or hear the complainant. On the contrary notice is given under Section 36 to the Attorney-General and under Section 35 to the Advocate-General. The Disciplinary Committee without giving the Attorney-General in one case and the Advocate-General in another case an opportunity of being heard cannot pass any order against the Advocate concerned. The Attorney-General under Article 76 of the Constitution and the Advocate-General under Article 165 of the Constitution have to discharge the functions conferred on them by or under the Constitution or any other law for the time being in force. The Advocate Act concerns the Advocate and it is in the fitness of things that the Attorney-General and the Advocate-General of a State are heard as persons representing the profession which assists the litigant public and the courts in the administration of justice. The Attorney-General and the Advocates-General of States are persons of high standing and with long experience in the profession and it is indisputable that they will ever adopt any partisan attitude in proceedings before the Disciplinary Committee. The Advocate Act gives special pre-eminence to the Attorney-General and the Advocate-General in disciplinary proceedings because it is not an attempt of the Disciplinary Committee to redress the grievance of an individual complainant but to find out whether there is any breach of professional standard and conduct. The high tradition, dignity and purity of the Bar is to be maintained. The Attorney-General and the Advocate-General are heard because they are heads of their respective Bar and the proceedings effect discipline and dignity of the Bar and touch the professional conduct of an Advocate.

22. They are not parties to a 'lis'. They have no personal pecuniary or proprietary interest in the matter. It is manifest that their locus standi and interest is based on profession code of conduct and for the purpose of upholding the purity of the Bar and preservation of correct standards and norms in the profession. The Attorney-General and the Advocates-General will uphold the professional discipline, dignity and decorum and that is why no order is made by the Disciplinary Committee without giving them an opportunity of being heard.

23. The issue before the Disciplinary Committee is whether there has been professional misconduct and the question has to be looked at purely from point of view of profession. The profession touches the public on the one hand and the courts on the other. On no other basis could the presence of the Advocate General be explained.

24. In a recent decision of this Court in *B. M. Madnani v. Commissioner of Workmen's Compensation, Bombay*, Civil Appeal No. 877 of 1968, decided on October 10, 1968, the Commissioner of Workmen's Compensation preferred an appeal for enhancement of penalties against the Advocate concerned. This Court held that the Commissioner was entitled to maintain the appeal as a person aggrieved. Mr. Daphtary at one stage contended that a complainant would not be a person aggrieved within the meaning of the relevant section of the Advocates Act to prefer an appeal. The decision of this Court repels that submission.

25. It may not be out of place to notice that the Act uses the words "person aggrieved" and not the words "party aggrieved". First in disciplinary proceedings there is no party. It is a matter touching the professional conduct of the Advocate. The enquiry is by the Disciplinary Committee. The Advocate is heard. The Attorney-General in one case and the Advocates-General in other cases are heard. They are heard not because they are parties but because they represent the interest of the profession. They represent the standards to be maintained in the profession. Suppose, the Disciplinary Committee held proceedings without giving notice to the Advocate-General or made an order without giving the Advocate-General an opportunity of being heard. In either case the

Advocate-General would be a person aggrieved. Would the participation by the Advocate-General in the proceedings before the disciplinary Committee alter the position ? Neither on logic nor on principle could it be said that the Attorney-General and the Advocate-General who have the right to be heard could not be persons aggrieved by the decision. If they have the right to be heard they may have grievance as to the result of the hearing.

26. The Attorney-General and the Advocates-General receive notice and are entitled to be heard by virtue of the provisions in the statute. They are performing statutory duties. They are not contemplated in the statute as ordinary counsel. It was not the intention of the statute that they would be merely neutral observers before the Disciplinary Committee and they would have no duty to perform. They would have to express their views on way or the other. It is true that they would be completely free from personal favour or before the Disciplinary Committee and they would have no duty to perform. They would be completely free from personal favour or disfavour in these matters touching the professional conduct. Their presence before the Disciplinary Committee is explicable only on the ground of adhering to the correct professional code. It would therefore be open to the Attorney-General and the Advocate-General to take the view that in a matter of sufficient gravity a completely inadequate punishment would not be in public interest of the profession. Similarly, if the punishment is severe in a case which did not merit such action, the Attorney-General and the Advocate-General would be persons aggrieved to have it corrected.

27. To accede to the contention of Mr. Daphtary that the words "person aggrieved" refer only to Advocate would be misreading the provisions. The words "person aggrieved" will be referable to the Advocate-General as the case may be. The Attorney-General and the Advocate-General will be persons aggrieved because they are interested in the maintaining the professional rectitude. The Attorney-General and the Advocate-General have the right of pre-audience. Such right determines that they are leaders of the profession in their respective fields. They will ask for maintaining the proper standards of profession ethics. It is from that point of view that the Attorney-General and the Advocate-General will be aggrieved persons when they will find that the interest of the Bar and the public interest have not been properly safeguarded by decisions of the Disciplinary Committee of the Bar Council.

28. For these reasons I am of opinion that the Advocate-General of the State of Maharashtra is competent to appeal as a person aggrieved under Section 376 of the Advocates Act, 1961.

29. Order. - In accordance with the opinion of the majority, the appeal is allowed and the order of the Bar Council of India is set aside. There shall be no order as to costs.

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