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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 10th December, 2021
Date of decision:21st January,2022

\+ **W.P.(C) 6819/2020 & CM APPL. 23588/2020**

MOHIT BANSAL ..... Petitioner

Through: Petitioner- in-person (M:9810550051)

versus

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ANR. ..... Respondents

Through: Mr. Ramji Srinivasan, Sr. Advocate with Ms. Pooja Saigal, Mr. Simrat S. Pasay, Mr. Chaitanya Pandey, Advocates (M: 9810137113) Mr. Farman Ali & Mr. Athar Raza Farooquei, Advocates for UOI.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The Petitioner- Mohit Bansal, is a qualified Chartered Accountant (*hereinafter "CA"*), enrolled with the Respondent No. 1 – Institute of Chartered Accountants of India (*hereinafter, "ICAI"*) since 25th January 2008.

2. The ICAI issued a notice dated 25th June 2018, to show cause as to why action under Section 8 of the Chartered Accountants Act, 1949 (*hereinafter, "Act"*) should not be taken against the Petitioner in view of his conviction by the Delhi High Court under Sections 354 and 506-II of

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the Indian Penal Code 1860. The operative portion of the said notice reads as under:

> " *Please refer to your letter dated 27.01.2017 sending therewith a copy of the judgment dated 07.10.2013 of the Hon'ble Delhi High Court in the Cr.LA no. 828 of 2009 filed by you. Relying on the aforesaid judgment dated 07.10.2013, you have stated that the Hon'ble High Court of Delhi has acquitted you from the charge levelled under Section 376(2)(g) of the Indian Penal Code, 1860.*
>
> *However it has been noticed that vide the same judgment, the Hon'ble Delhi High Court has convicted you under another Section 354 of the Indian Penal Code, 1860, i.e., 'Assault or criminal force to woman with intent to outrage her modesty' and also maintained your earlier conviction under Section 506-II of the IPC* ***i.e.*** *'Punishment for criminal intimidation' (para 109, 110 and 113 of judgment).*
>
> *It has further been noticed that you had filed an application u/s 4 and 6 of the Probation of Offenders Act, 1958 read with Section 482 of the Code of Criminal Procedure Crl. M.A. No. 1117/3014 in Crl. Appeal No. 828/2009, seeking probation in terms of your conviction which was dismissed by the Hon'ble Delhi High Court vide its judgment dated 12.11.2014.*
>
> *In this connection, it is informed that the above matter along with your letter dated 27.01.2017 was considered by the Council. On perusal of the judgments passed by the Hon'ble Delhi High Court, it is clear that you have been convicted u/s 354 of the Indian Penal Code, 1860, for 'Assault or criminal force to woman with intent to outrage her modesty' which involves moral turpitude and attracts the provisions of Section 8 of the Chartered Accountants Act, 1949. Your*

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conviction under Section 506-II of the Indian Penal Code has also been upheld by the Hon'ble Delhi High Court. In your letter dated 27.01.2017, you have informed that neither you nor prosecution had moved before the Hon'ble Supreme Court of India against the judgment dated 07.10.2013. The Council, however, decided that before taking action in the matter, a copy each of the judgment be forwarded to you for your reference and you be also given an opportunity of being head before the Council. The copies of the judgments dated 07.10.2013 and 12.11.2014 are enclosed herewith for your reference.

You are hereby advised to appear before the Council at 11.00. A.M. on 7th August 2018 at Hotel Taj Swarna, Plot No. C-3, Outer Circular Road, Opp. Basant Avenue, Amritsar, Punjab-143001 to explain as to why action under Section 8 of the Chartered Accountants Act, 1949 should not be taken against you in view of your conviction under Section 354 and 506-II of the Indian Penal Code, 1860. You may also send your written submissions, if any, within 7 days of the receipt of this letter.

It may also be noted that if no response is received from you in the matter within the stipulated time and/or you do not appear before the Council in person for hearing on the date, time and venue as specified above, the matter will be considered and decided by the Council without any further reference to you in accordance with the provisions of Section 8 of the Chartered Accountants Act, 1949."

3. To this, a detailed reply was filed by the Petitioner on 26th October 2018. Post this, on 14th September 2020, notice to appear for hearing was issued to the Petitioner. The said notice for hearing reads as under:

" Please refer to our notice no. 1-CA(1)/Council Affairs- MB dated 25.06.2018

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affording an opportunity of being heard in the proceedings under Section 8(v) read with Section 20(1)(d) of the Chartered Accountants Act, 1949, against you, arising out of your conviction under Section 354 and 506-II of the Indian Penal Code, 1860 by the Hon'ble Delhi High Court, vide judgment dated 07.10.2013 the Cr. LA No. 828 of 2009.

In this connection, it is informed that the matter is now listed for hearing before the Council on 24th September 2020. You are hereby advised to appear before the Council on 24th September 2020 at 3:00 PM in the premises of the Institute located at ICAI Bhawan, Indraprastha Marg, New Delhi-110002 to explain as to why action under Section 8(v) read with 20(1)(d) of the Chartered Accountants Act, 1949 should not be taken against you in view of your conviction under Section 354 and 506-II of the Indian Penal Code, 1860.

Alternatively, you may also appear before the Council through Video Conference on the scheduled date and time for which separate link will be sent to you through Email at your request. You may also send your written submissions, if any, within 7 days of the receipt of this letter.

It may also be noted that if no response is received from you in the matter within the stipulated time and/or you do noy avail the opportunity of hearing before the Council on the date, time and venue as specified above, the matter will be considered and decided by the Council without any further reference to you in accordance with the provisions of the Chartered Accountants Act, 1949."

4. The prayer of the Petitioner is to quash this notice of hearing dated 14th September 2020, served upon him by the ICAI, and the entire

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proceedings under Section 8(v) read with Section 20(1)(d) of the Act initiated against him. The reliefs sought in the Petition are as under:

> *"A] Allow the present petition and Quash/Set-aside the impugned Notice dated 14.09.2020 for conducting proceedings under Section 8(v) read with Section 20(1)(d) of the Chartered Accountants Act, 1949 and the entire proceedings instituted against the Petitioner at the behest of Respondent No. 1; and*
>
> *B] Pass such other and further order[s] as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case in and in the interest of justice."*

Background of the Criminal proceedings against the Petitioner

5. FIR No. 646/2001 was lodged against the Petitioner on 7th September 2001, at PS Rohini for offences punishable under Sections 365/376/342/354/34 of the IPC. At that time, the Petitioner had cleared his CA Foundation and had received the certificate in respect thereof on 12th July 2001. Post the FIR having been registered against the Petitioner, investigation was conducted, and after the completion of investigation, charges under Section 366 IPC, Section 376(2)(g) IPC and Section 506-II IPC, were framed against him. In the meantime, he had appeared in the next level of examinations and qualified as a Chartered Accountant. He was enrolled on 25th January 2008.

6. After his enrolment, vide judgment dated 23rd September 2009, the Petitioner was convicted by the Trial Court for the offences punishable under Sections 376(2)(g) read with Explanation 1 and Section 506-II of the IPC. He was sentenced to seven years imprisonment with a fine of Rs.

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25,000/-. He appealed against the conviction and sentence vide ***Crl. A. 828/2009*** titled ***Mohit Bansal v. State of NCT of Delhi*** before this Court.

7. In the said appeal, initially, his sentence was suspended vide order dated 5th February 2010, and thereafter, vide judgment dated 7th October 2013, the Petitioner was acquitted for the offence punishable under Section 376(2)(g) IPC. However, he was convicted under Section 354 IPC and Section 506-II of the IPC. The sentence awarded to him was the period already undergone i.e., approximately 7 months, and a fine of Rs.25,000/-.

8. Thus, after his enrolment as a CA, he was convicted and sentenced. He underwent imprisonment until suspension, for approximately seven months. Thereafter, however, he has continued to render his services as a CA.

9. After the decision in his Appeal challenging the conviction, the Petitioner filed an application on 6th January 2014, before the High Court under Sections 4 and 6 of the Probation of Offenders Act, 1958 read with Section 482 of the CrPC. In the said application he sought benefit of probation on the ground that the sentence already undergone by him would cast a stigma on his profession and he would be disqualified by the ICAI. The said application was negatived by a ld. Single Judge of this Court, vide judgment dated 12th November 2014, on the ground that once the Criminal Appeal had been disposed of, the Court had no power to alter its judgment, except to correct a clerical or arithmetical error. Given the fact that the period of conviction was already undergone, the Court held that it had become *functus officio*. The relevant portion of the said order reads:

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> *"This Court notes that after the appeal had been disposed of by this Court on 07.10.2013 and while altering the conviction of the applicant from Section 376(2)(g) to Section 354 of the IPC and also modifying the sentence to the period already undergone by him, this Court has become functus officio. This Court, at this stage, has no power to alter its own judgment. This is clearly stipulated in Section 362 of the CrPC. There is a clear mandate in the language used in the said Section. It prohibits a criminal Court, after signing its judgment or final order, disposing of the case, to alter or review the same except to correct a clerical or arithmetical error. It is not the case of the applicant that by granting benefit of probation and altering the sentence from the period already undergone, it would not amount to correct a clerical or an arithmetical error."*

10. In the meantime, the Petitioner's wife who is also a Chartered Accountant is stated to have been elected as a member of the Northern India Regional Council. Certain disputes arose between the Petitioner's wife and the Respondent no.3, Mr. Atul Gupta, who was the Chairman of the NIRC, at that time, related to certain allegations levelled against him *qua* Provident Fund frauds. As per the Petitioner, matters appear to have taken an ugly turn when the Petitioner's wife sought to contest for the Central Council of ICAI, at which point, the issue about his conviction was raised in the ICAI leading to the show cause notice being issued against him.

Proceedings before the ICAI

11. The ICAI had in its 18th meeting of the Management Committee on 29th July 2017 and 9th August 2017, after due deliberations, observed that

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the offences *qua* which the Petitioner was convicted were involving '*moral turpitude'* and hence recommended his removal from the register under Section 8(v) of the Act. The Committee also observed that disciplinary proceedings under the Act could not have been opened against him, as the offence in question was committed prior to him having enrolled as a CA. Thereafter vide its 375th Meeting dated 13th June 2018 and 14th June 2018, the ICAI council decided to afford the Petitioner an opportunity of hearing prior to removing him from the Register under Section 8(v) of the Act.

12. Accordingly, show cause notice dated 25th June 2018 was issued to the Petitioner, asking him to appear before the Council to explain as to why action under Section 8 of the Act should not be taken against him. He was also given liberty to file a written response to the said notice. On 26th October 2018, the Petitioner filed his detailed written response to the said show cause notice. On 14th September 2020, the impugned notice was served upon the Petitioner intimating him of the next date of hearing in the matter being 24th September 2020, to explain as to why he should not be disqualified under Section 8 of the Act.

13. Upon receiving the said impugned notice, the Petitioner filed the present writ petition to quash the said notice, as also the proceedings against him, on the ground that Section 8(v) was not applicable in his case.

Proceedings in this writ petition:

14. Notice was issued in the present writ petition on 23rd September 2020, and Mr. Atul Kumar Gupta, the then President of ICAI, against whom allegations of *malafide* were raised, was impleaded in this petition

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as Respondent No. 3. On the said date, upon an assurance given on behalf of Respondent No. 1, the proceedings before the ICAI scheduled to be held on 24th September 2020 were postponed during the pendency of the present petition. In effect therefore, the proceedings pursuant to the impugned notice of hearing have remained stayed during the pendency of the present writ petition.

15. Thereafter, submissions have been heard by this Court, in this matter, from time to time. Initially, Mr. Manav Gupta, ld. Counsel made submissions on behalf of the Petitioner, however he requested for discharge on 6th September 2021. Since then, Mr. Bansal – Petitioner, has made submissions, in person.

Submissions on behalf of the Petitioner:

16. On behalf of the Petitioner it is, firstly, submitted that the wife of the Petitioner, who is a professional CA, had some disputes with one Mr. Atul Gupta- Respondent No.3, who later on went on to become the President of the ICAI. He submitted that it is at his behest that a decision was taken to debar the Petitioner from practising as a CA in view of the disability provided under Section 8(v) of the Act. It is thereafter, that the notice for hearing dated 14th September 2020 was served upon the Petitioner. Allegations of personal enmity and *malafide* on the part of the Respondent No. 3 is raised.

17. It is further submitted that the Petitioner and his wife are professionals, who are fully qualified CAs, and it is only in view of the personal enmity with Mr. Atul Gupta that the entire issue has been raised in the Institute, despite opposition from various members of the Committee. Reliance is placed upon the minutes of the meeting dated 13th-

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14th June 2018, to submit that a perusal of the said minutes would itself show that most of the members did not agree with the coercive action being taken by the ICAI in the present case.

18. On the issue of interpretation of Section 8(v) of the Act, it is urged that 'moral turpitude' under the said section, would only include such offences which are committed in professional capacity, or have a nexus with the profession, and not otherwise. In any event, since the incident *qua* which the Petitioner was convicted took place in 2001, i.e., much prior to him qualifying and being enrolled as a CA, the provisions of Section 8(v) of the Act would not apply to the case of the Petitioner.

19. Relying upon the letter dated 22nd October 2018, issued by the Ministry of Corporate Affairs, Union of India, which was sent in pursuance of the urgent email for clarification that was sent by Mr. Bansal, the Petitioner had sought a pardon from the Ministry. As per the Petitioner the Ministry has clearly opined in the said letter that the Petitioner's case does not fall within Section 8(v) of the Act, as the incident was not professional misconduct, and in fact took place prior to the Petitioner acquiring his professional qualification.

20. Appearing in person, Mr. Bansal, has relied upon the judgment of the Andhra Pradesh High Court in ***Ch. Ramakrishna Rao v. State (Crl.A.M.P.No.751 of 2014 and batch, decided on 20th October 2014)*** to submit that offences under Section 8(v) would only be applicable if the accountant has committed an offence in professional capacity. He submits that in his case the offence was during his student days, i.e., during the year 2001 and he only qualified as a CA in 2008. He, thus, submits that the disability under Section 8 would not be applicable to his case, as the

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words '*in professional capacity',* in the said provision, would have to be read along with its initial part, and there is no link to the offence committed by him with his services as a CA.

21. Mr. Bansal further relies upon the manual for members and students, which is circulated as part of the Background Material for orientation programs by the ICAI, to submit that on page 7 of the said manual, the ICAI has itself given a clear interpretation that a person is not eligible to be enrolled as a member of the ICAI if the offence committed, involving moral turpitude, is in professional capacity. Relying upon the said Background Material, as also the clarification issued by the Ministry of Corporate Affairs in its letter dated 22nd October 2018, he again submits that unless and until the conviction is due to an offence in his professional capacity, disqualification would be contrary to law.

22. Mr. Bansal further urges that principles of natural justice have been completely given a go by in the present case. Relying upon the transcripts of the meeting of the ICAI dated 13th-14th June 2018, he submits that a perusal of the said transcript would show that the members of the ICAI have emphasized on the compliance of the principles of natural justice and have raised apprehensions of the said procedures not being followed. He submits that it is also recorded in the said transcript that information regarding the said disciplinary proceedings was not given to Petitioner. He relies upon the letter received under the Right to Information Act, 2005, to argue that even in the reply under to his RTI request, it is not clear as to who sent the complaint against the Petitioner. He submits that the said reply clearly confirms that the complaint was received from an external source.

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23. He submits that the disciplinary proceedings against him are *ultra vires* as they are violative of Rule 7(3) of the The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, read with Section 21 of the Act. He submits that the information against the Petitioner was received on 16th January 2017, and on 29th July 2017, the recommendation was made to remove him from rolls of ICAI. However, before making the recommendation, the Petitioner was not called even once, to be heard.

Reliance is placed on the following decisions to argue that the procedures of the Disciplinary Directorate under the Act ought to be followed, however the same have clearly not been followed, and the same is a violation of natural justice:

(i) ICAI v. Vimal Kumar Surana and ors., (2011) 1 SCC 534;

(ii) ICAI v. L.K. Ratna and ors., (1986) 4 SCC 537;

(iii) Subramani Gopalkrishnan v. ICAI, 181 (2011) DLT 280;

(iv) Partha Ghosh and ors. v. ICAI, 2009 (111) BOMLR 1874;

(v) Manubhai v. Secretary, ICAI, 2020 GLH (2) 545.

24. Mr. Bansal, then relies upon the judgment dated 7th October 2013 by which he was convicted by this Court under Sections 354 IPC and Section 506-II IPC and was acquitted under Section 376(2)(g) IPC, to argue that his conviction was for the period of sentence already undergone, i.e., 7 months. No further sentence was levied on him, and the period undergone along with a fine of Rs. 25,000 was considered sufficient.

25. Finally, Mr. Bansal submits that the show cause notice issued

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claims to have been issued under Section 8(v) read with Section 20(1)(d) of the Act, and he has filed his detailed reply to the said notice. However, he has no confidence that he would be treated fairly by the ICAI. He does not accept the proceedings against him to be fair and non-arbitrary, inspite of the President of the ICAI having been changed.

Submissions on behalf of the Respondents:

26. Mr. Srinivasan, ld. Senior Counsel, appearing along with Ms. Pooja Sehgal, ld. counsel, for the ICAI, submits that a reading of Section 8(v) of the Act would clearly show that it covers an offence involving moral turpitude which could have taken place at the time when the name of the Petitioner was "*entered in or borne on the register*". Thus, according to him, at the time when the Petitioner's name was entered in the register itself, the Petitioner was guilty of committing an offence of 'moral turpitude', which became very clear when the conviction took place, and was also upheld by the Court. Since there is no pardon that has been granted to the Petitioner, the disability under Section 8(v) of the Act would clearly be applicable.

27. On the question of interpretation of Section 8(v), and the contention of the Petitioner that the offence must be conducted in '*professional capacity*' for it to be covered under the disability contemplated within this Section, it is the submission of Mr. Srinivasan, that there are two kinds of situations that are contemplated under this provision:

i) One covering offences of moral turpitude;

ii) Second covering offences of a non-technical nature, committed in professional capacity.

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He submits that the commission of offences in professional capacity cannot be linked with offences involving moral turpitude, and both of these are separate categories. He further submits that if the interpretation given by the Petitioner is accepted, the purport of the entire Section would itself become meaningless.

28. Reliance is also placed upon Section 20(1)(d) of the Act to argue that if there is a disability under Section 8, the name cannot be entered in/borne on the register, and therefore the disability could be attracted even if the offences are committed prior to the Petitioner enrolling as a CA. He further submits that the manner in which Section 8 of the Act is worded makes it clear that any disqualification set out in the said section would bar both the name of the person being entered into, or even continuing on the register. The fact that the words used in the Section are *entered in or borne in,* in his submission, shows that a conviction *qua* an offence involving moral turpitude, would be a disability even at the time when the name is being entered in the register, meaning thereby that if a person is convicted, even if they qualify the CA examination, their name would not be liable to be entered in the register. He, thus, submits that the wording of the said Section makes it clear that the offence need not be one committed in the professional capacity alone.

29. Reliance is then placed upon the judgment of the Madras High Court in ***P. Mohanasundaram vs. President, ICAI (W.A. No. 1662 of 2010, decided on 30th April 2013),*** which involved a CA who was alleged to have been guilty of bigamy. A division bench of the Madras High Court had interpreted the purport of Section 8(v) of the Act and held that the conviction for bigamy having been upheld, inspite of the sentence having

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reduced, the decision to remove the name of the person convicted from the register on the ground of 'moral turpitude' is valid.

30. On a query from the Court as to whether there can be a lifelong ban on any person who has been convicted of any offence involving moral turpitude from becoming a CA and whether the same would be violative of Article 19(1)(g), Mr. Srinivasan, drawing an analogy with the interpretation of a similar provision, relies upon Section 24A(1)(a) of the Advocates Act and the judgments of the Supreme Court in ***Mahipal Singh Rana v. State of UP (2016) 8 SCC 335***, as also of the Gujarat High Court in ***C v. Bar Council of Gujarat (1983) GLH 297***, to argue that both the High Court and the Supreme Court in the said cases were of the opinion that limiting the period of disqualification of a convicted person to only 2 years in the scheme of the Advocates Act has been rendered as insufficient, considering the nature of the duties performed by the lawyers.

31. He submits that the Supreme Court in ***Mahipal Singh Rana (supra)*** also directed that the Law Commission should take a look at the said provision. The Law Commission in its 266th Report, after perusing the said Section, has recommended that the bar to practice/ or be an advocate should operate fully post the enrolment, if an offence involving moral turpitude is committed. The Law Commission has suggested the said amendment to Section 24A of the Advocates Act and has forwarded the same to the Government.

32. Mr. Srinivasan further draws a parallel with various other statutes in which such disqualifications exist including- Section 8 of the Representation of People Act, 1951, Section 8 of the Cost and Works Accountants Act, 1959, Section 8 of the Company Secretaries Act, 1980,

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Ordinance 1 of the Delhi University Act, 1922, Section 67 of the UP State Universities Act, 1973, Section 3 of the Lokpal and Lokayutas Act 2013, Section 7 of the National Medical Commission Act, 2019, Section 14 of the Right to Information Act, 2005, Section 417 of the Companies Act, 2013 as well as Section 164 of the Companies Act, where any person who is convicted an offence involving moral turpitude or otherwise, would be disqualified from being appointed as a Director of the Company, and shall be removed from the position of a Director of the Company.

33. He submits that the profession of Chartered Accountancy requires high standards of integrity to be maintained, and the provision of Section 8(v), thus, ought to be interpreted in the manner that it is crafted, i.e., to include any person convicted on any offence involving moral turpitude. Finally, Mr. Srinivasan submits that there is no challenge to the constitutional validity of Section 8 of the Act that has been raised in the present petition.

Rejoinder submissions on behalf of the Petitioner:

34. In rejoinder, Mr. Bansal, appearing in person, has attempted to distinguish ***P. Mohanasundaram (supra)*** by arguing that the facts of the said case are completely distinct from the present case. He submits that in the said case, the CA in question was enrolled in 1975 and the offence was committed in 1984. However, in the present case the offence is 7 years prior to Mr. Bansal being enrolled as a CA. He further submits that in ***P. Mohansundaram (supra)***, the CA in question did not even respond to the notice of the ICAI, and therefore, an order was passed under Section 21 of the Act. He submits that the distinction in facts needs to be

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noticed in the said case.

35. He relies upon the following cases to canvass the submission that if the facts are different, the precedent cannot be squarely applied by this Court:

(i) Ranchoddas Atmarain v. Union of India and Ors., (1961) 3 SCR 718;

(ii) Ashwani Kumar Singh v. Union Public Services Commission and Ors., (2003)11 SCC 584;

(iii) Union of India v. Chajju Ram (Dead) by LRs, 2003(5) SCC 568.

36. Mr. Bansal further responds to the judgments placed on record by the ICAI by submitting that in all these cases the persons concerned were involved in misconduct committed in a professional capacity. Even the Law Commission's 266th report deals with only such situations involving offences in professional capacity. In his case, he submits that he had cleared the CA foundation exam prior to the date of offence, i.e., 7th September, 2001. He was finally enrolled as a CA on 25th January, 2008. The conviction for the offence that took place on 7th September, 2001, was issued by the court on 23rd September, 2009, post his enrolment as a CA.

37. He further submits that in the case of CAs, no disclosure requirements exist while being enrolled, as is required in the Delhi Police Service Rules. Further, distinguishing the facts in ***Mahipal Singh Rana (supra)***, he submits that none of the offences which are mentioned therein for the purposes of person holding public offices, apply in this case.

38. Mr. Bansal impresses upon the Court that he has no legal acumen and he accordingly approached the Ministry of Corporate Affairs, Union of India, seeking a clarification in respect of the applicability of provisions

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of Section 8 of the Act to him. The Ministry of Corporate Affairs has clarified to him that Section 8(v) has no application in this case as the offence was not committed in a professional capacity, and hence although his application for removal of disability was been rejected as premature and infructuous by the Central Government, the said disability would not even apply to him. He further submits that the application moved by him under the Probation of the Offenders Act, 1958, was dismissed on 12th November, 2014 by a ld. Single Judge of this court only on the ground that the court was *functus officio* after the conviction was upheld by this court, and thus on the question of probation, no decision was given on merits.

39. In conclusion, Mr. Bansal, relies upon Article 22 of the Constitution of India, to argue that double jeopardy is prohibited, inasmuch as, since he has already undergone his sentence in terms of the judgment of the High Court dated 7th October, 2013, not permitting him to continue in his profession as a CA would constitute double jeopardy, and cannot be permissible.

Analysis and Findings

40. Heard. The profession of Chartered Accountancy is regulated by the Chartered Accountants Act, 1949. The Regulatory Board is the Institute of Chartered Accountants of India *('ICAI')*, which maintains the Register of Chartered Accountants. As per Section 5 of the Act, there are two categories of members of the Institute - Associates and Fellows. The ICAI conducts examinations which have to be cleared for a person to be recognised as a CA. The ICAI also issues a certificate of practice to such

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persons who qualify the said exam. Unless and until a person obtains a certificate of practice, he or she cannot practice the profession of Chartered Accountancy in India.

41. Section 8 of the Act stipulates the disabilities- which are in the form of pre-conditions for a person to be able to qualify as a CA under the Act. Such conditions are worded as 'Disabilities' – i.e., in a negative manner in contrast with Eligibility Conditions usually prescribed, that are positive requirements. The section reads as under:

> ***"8. Disabilities***
>
> *Notwithstanding anything contained in Section 4, a person shall not be entitled to have his name entered in or borne on the Register if he –*
>
> *(i) has not attained the age of twenty-one years at the time of his application for the entry of his name in the Register; or*
> *(ii) is of unsound mind and stands so adjudged by a competent Court; or*
> *(iii) is an undischarged insolvent; or*
> *(iv) being a discharged insolvent, has not obtained from the Court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or*
> *(v) has been convicted by a competent Court whether within or without India, of an offence involving moral turpitude and punishable with transportation or imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an*

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application made by him in this behalf, the Central Government has, by an order in writing, removed the disability; or

(vi) has been removed from membership of the Institute on being found on inquiry

to have been guilty of professional or other misconduct:

Provided that a person who has been removed from membership for a specified period, shall not be entitled to have his name entered in the Register until the expiry of such period."

42. A perusal of the above provision reveals that the Act contemplates the following disabilities due to which a person cannot seek registration or continuation as a CA:

i) if the person has not attained the age of 21 years i.e., only a person above the age of 21 years can apply to be a CA;

ii) if the person is of unsound mind and has been held so by a competent Court of law;

iii) if the person is an undischarged insolvent i.e., a person who is insolvent and has also not been able to thereafter discharge all his debts;

iv) if the person is a discharged insolvent who has not been certified by a Court that the insolvency was due to misfortune and without any misconduct by the person.

43. The next two disabilities as stipulated under Sections 8 (v) & 8 (vi) of the Act, are the subject matter of the present petition.

44. A perusal of Section 8(v) shows that it is in two parts. It

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contemplates a disability from being enrolled as a CA, on being convicted in two classes of offences –

(i) The first class of offences are those that involve '*moral turpitude'* and are punishable with transportation or imprisonment,

(ii) The second class are offences that are committed by a person in their professional capacity, which are not of a technical nature.

45. The latter part of the Section beginning with *"unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order in writing, remove the disability"* provides for two exceptions. The first exception is if a person has been granted 'pardon' in respect of offences committed by him. The second exception is if the Central Government has removed the disability upon the application of the said person. The question is whether both these exceptions would apply to both classes of offences as set out above or not. The answer to this question would be in the negative. The said provision would have to be read in a manner where the first exception applies only to the first class of offence and the second exception applies only to the second class of offences. If the offence is one involving '*moral turpitude'*, a pardon can be granted under criminal law. If the offence is technical in nature, the Central Government can remove the disability. Reading the aforementioned section in any other manner would not be rational as the Central Government cannot be vested with the power to remove a disability which has its genesis in conviction for an offence involving moral turpitude.

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Further, if the offence is one committed in a professional capacity which is not of a technical nature, no pardon would be required. Thus, the two classes of offences contemplated under Section 8(v) would have to be read as under:

(i) The first class of offences are those that involve '*moral turpitude'* and are punishable with transportation or imprisonment, and no pardon has been granted in respect thereof;

(ii) The second class are offences that are committed by a person in their professional capacity, which are not of a technical nature, in respect of which the Central Government has not, by an order in writing, removed the disability.

46. Although, from a bare reading of sub-section 8(v), it may appear that the Central Government would have the power to remove the disability even in offences involving *'moral turpitude'*, however in the opinion of this Court, in case of an offence or a conviction involving '*moral turpitude'*, such power being vested with the Central Government would be contrary to the spirit of the statute as also contrary to the settled judicial precedents which are discussed below, to the effect that `*moral turpitude*' would be a complete disqualification.

47. The use of the expression **"entered in"** contained in Section 8, also shows that offences committed prior to the person qualifying to become a CA are also within the purview of the disabilities mentioned under Section 8 of the Act. The only condition upon which a person convicted can be entered into or can continue on the register of ICAI, would be if the person has been granted a pardon, or if the Central Government has

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removed the disability, as applicable, on an application filed by the said person.

48. Section 8 (vi) deals with 'professional' or 'other misconduct'. For this disability to be attracted, an inquiry would have to be held and the person would have to be found guilty of such professional or other misconduct. Professional and other misconduct are defined in the two Schedules to the Act, and the procedure to followed for inquiry in respect of the same is contemplated in Section 21.

49. The *proviso* to sub-section (vi) makes it clear that in the case of professional or other misconduct, the removal from membership can also be for a specified period, however, this *proviso* would not apply in the case of offences in sub-section (v) of the Act.

50. Thus, there are three categories of disabilities that are contemplated under Sections 8 (v) and 8 (vi), when read together:

(i) Conviction for an offence involving '*moral turpitude*';

(ii) Conviction for an offence committed in professional capacity which is not technical in nature;

(iii) Person held guilty of 'professional' or 'other misconduct' post an inquiry by the Disciplinary Committee, as per Section 21 of the Act.

51. If any of the disabilities as discussed above exist - either at inception or even after a person has qualified as a Chartered Accountant, and is a member of the ICAI, such person would not be entitled to have their name entered upon and would be liable to have their name removed from the register of the ICAI.

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52. The next relevant provision is Section 20 of the Act, which reads as under:

> ***"20. Removal from the Register***
>
> *(1) The Council may remove from the Register the name of any member of the Institute−*
>
> *(a) who is dead; or*
> *(b) from whom a request has been received to that effect; or*
> *(c) who has not paid any prescribed fee required to be paid by him; or*
> *(d) who is found to have been subject at the time when his name was entered in the Register, or who at any time thereafter has become subject, to any of the disabilities mentioned in Section 8, or who for any other reason has ceased to be entitled to have his name borne on the Register.*
>
> *(2) The Council shall remove from the Register the name of any member in respect of whom an order has been passed under this Act removing him from membership of the Institute.*
>
> *(3) If the name of any member has been removed from the Register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council which shall not exceed rupees two thousand:*
>
> *Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two*

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thousand, which shall not in any case exceed rupees four thousand."

53. A perusal of Section 20 above shows that removal of the name of a person from the register may be effected in cases where:

- the person is dead; or
- a request is received from such a person; or
- requisite fee has not been paid;
- if any of the disabilities mentioned in Section 8 are attracted;
- any other reason due to which the person is no longer entitled to have the name continued on the register. Such other reasons are not specified in Section 8 and are not the subject matter of this present petition.

54. Section 21 of the Act requires the Council to establish a Disciplinary Directorate for making investigations of any information or complaint qua a member. Section 21 reads:

"21. Disciplinary Directorate –

(1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.
(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.
(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and

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> *where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.*
> *(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.*
> *(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage."*

Thus, under Section 21, the Disciplinary Directorate of the ICAI has to take cognizance of any complaint made against a member of the Council, in respect of 'professional or other misconduct'. It also prescribes the procedure to be followed in such cases. Under Section 21(3) of the Act, the Disciplinary Directorate shall, upon a complaint being received, place the same before a Board of Discipline under Section 21A or the Disciplinary Committee under Section 21B, to take further action. Such action could include a reprimand of the member, removal from the register permanently or for a particular period, or imposition of a fine.

55. Section 22 defines 'professional or other misconduct', and reads as under:

> *"22* ***Professional or other misconduct defined.***
>
> *For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules, but nothing*

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> *in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances."*

56. The First and the Second Schedules to the Act deal with the various categories of 'professional misconduct' and 'other misconduct'. Under Section 21 of the Act, the power of the Disciplinary Directorate is differently exercised, depending upon whether the 'professional' or 'other misconduct' alleged, falls under the First Schedule or the Second Schedule.

57. As per Section 21(3), the initiation of investigation is at the level of Director (Discipline) which could be based on any information or complaint that is received. The Director (Discipline) has to then arrive at a *prima facie* opinion on the existence of the alleged misconduct. If the misconduct is one that is contained in the First Schedule, the matter would be referred to the `Board of Discipline' under Section 21A. If the misconduct alleged is one which falls within the scope of the Second Schedule or is overlapping and falls under entries in the both the Schedules, then the matter would be referred to `Disciplinary Committee' under Section 21B. The First Schedule deals with professional misconduct as well as other misconduct, in respect of CAs and has four parts. The Second Schedule deals with graver misconduct, either professional or otherwise, and has three parts.

58. In the context of the present case, it is relevant to note that Part 4 of the First Schedule deals with misconduct which involves conviction for an

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offence punishable for a term not exceeding 6 months. On the other hand, Part 3 of the Second Schedule deals with misconduct which involves convictions for an offence, civil or criminal, with imprisonment for a term exceeding six months. The said two relevant extracts of the Schedules read:

> ***"THE FIRST SCHEDULE [See Sections 21(3), 21A(3) and 22]***
>
> ***....***
>
> ***PART IV***
>
> ***Other misconduct in relation to members of the Institute generally***
>
> *A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he−*
>
> *(1) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;*
>
> *(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.*
>
> ***THE SECOND SCHEDULE [See Sections 21(3), 21B(3) and 22]***
>
> *...*
>
> ***PART III :***
>
> ***Other misconduct in relation to members of the Institute generally***
>
> *A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months."*

59. At this stage, it is trite to mention that this Court is discussing the

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Scheme of the Act in detail, because the Petitioner has, apart from raising a question of interpretation of Section 8, also raised a procedural issue as to the manner in which the enquiry has emanated and is being conducted against him, in the facts of the present case.

60. Accordingly, a perusal and conjoint reading of the above-mentioned provisions along with the Schedules to the Act and the scheme contained therein, leads this Court to the following conclusions:

a. There are, broadly, two categories of misconduct contemplated under the Act – *'professional misconduct'* and *'other misconduct'*. These two types of misconduct are covered under Section 8 (vi) read with Section 22 and the Schedules to the Act.

b. However, a conviction for an offence involving '*moral turpitude*' punishable with imprisonment- is a third and higher class of offence under Section 8(v) of the Act and is stipulated as a separate class of disabilities which bars a person's name from being entered or borne in/continued in the register of the ICAI. This is a graver offence, in terms of the scheme of the Act, juxtaposed to what is contemplated under the third part of the Second Schedule or the fourth part of the First Schedule to the Act.

c. In the case of an offence involving '*moral turpitude*', for which no pardon has been granted, by a strict interpretation of the Act, the matter need not even be referred to the Board of Discipline or to the Disciplinary Committee for an inquiry. In such cases dealing with conviction for offences involving

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'moral turpitude' covered under Section 8(v) the same would straight away fall within the jurisdiction of the ICAI Council, and even an inquiry, as contemplated in Section 21, would not be strictly required. The ICAI Council, may however, for the purposes of complying with the Principles of Natural Justice, and for the purposes of fairness, still decide to provide a hearing to the person concerned.

d. A reading of Sections 20, 21 & 22 would show that the discretion vested in the Council and the Director (Discipline) are vast. Inquiry can be conducted in respect of professional or other misconduct as also under any other circumstances.

e. In the case of offences under Section 8(vi) read with Section 22 and the Schedules, the ICAI is the final authority empowered to accept the recommendation of the Board of Discipline, in the case of misconduct specified in the First Schedule, and of the Disciplinary Committee in cases of misconduct specified in the Second Schedule, or a combination of both the Schedules.

f. It is further clear that if a person has been convicted for an offence involving '*moral turpitude*', such a person's name cannot be entered into the register or cannot continue in the register, and has to be removed from the register, unless a pardon in respect thereof is granted.

g. Although, from a bare reading of sub-section 8(v), it may appear that the Central Government would have the power to remove the disability even in offences involving *'moral*

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turpitude', in the opinion of this Court, in case of an offence or a conviction involving '*moral turpitude'*, such power being vested with the Central Government would be contrary to the spirit of the statute as also contrary to the settled judicial precedents, to the effect that `*moral turpitude*' would be a complete disqualification. The use of the expression **"entered in"** contained in Section 8, also shows that offences committed prior to the person qualifying as a CA are also within the purview of the disabilities mentioned under Section 8 of the Act. The only condition upon which a person convicted can be entered into or can continue on the register of ICAI, would be if the person has been granted a pardon.

61. In the context of the above discussed scheme, the issues raised by the Petitioner are to be considered by this Court, as applicable to the facts. However, before doing so, this Court deems it appropriate to consider the judicial precedents in respect of the issues raised.

Legal position and judgments

- ***Disqualification due to statutory bar arising out of conviction for offences involving moral turpitude:***

62. In ***Rama Narang vs. Ramesh Narang (1995)2 SCC 513***, the Supreme Court was examining the question as to whether a person who was convicted for offences punishable under Sections 120B, 420 and 114 of IPC and was sentenced to rigorous imprisonment for 3 months on one count, and 2.5 years along with fine on the second count, could continue as the Director of a company. The then Section 267 of the Companies Act,

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1956, stipulated a disqualification for appointment, employment or continuance of appointment or employment of any person as a Managing or whole time Director, who is or has at any time been convicted by a Court of an offence involving moral turpitude. The Supreme Court held that the section is couched in a mandatory manner and the use of the word *shall* makes it imperative. The Court held that the initial appointment itself was an infraction of the provision. It also expects discontinuance or employment already made prior to his conviction. In the case of a Director who incurs any conviction for an offence involving moral turpitude, the Central Government could remove such disqualification qua the Director. However, such an exemption does not exist for a Managing Director. Thus, in the case of a Managing Director, the conditions are much more stringent. The Supreme Court's observations read:

> *"The law considers it unwise to appoint or continue the appointment of a person guilty of an offence involving moral turpitude to be entrusted or continued to be entrusted with the affairs of any company as that would not be in the interests of the share-holders or for that matter even in public interest. As a matter of public policy the law bars the entry of such a person as Managing Director of a company and insists that if he is already in position he should forthwith be removed from the position. The purpose of Section 267 is to protect the interest of the shareholders and to ensure that the management of the affairs of the company and is control is not in the hands of a person who has been found by a competent court to be guilty of an offence involving moral turpitude and has been sentenced to suffer imprisonment for the said crime. In the case of a Director, who is generally not in-charge of the day to day management of the*

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> *company affairs, the law is not as strict as in the case of a Managing Director who runs the affairs of the company and remains in overall charge of the business carried on by the company. Such a person must be above board and beyond suspicion."*

63. The Supreme Court further held that though the conviction of the said person was stayed, the said stay was not meant for the purpose avoiding the disqualification under the then Section 267 of the Companies Act.

64. In ***BSES Rajdhani Power Limited vs. Union of India***, ***ILR (2011) VI DELHI 429***, the Division Bench of the Delhi High Court was dealing with a case of a person who was convicted under Sections 148, 302, 323 and 149 of the IPC and was sentenced to undergo life imprisonment. The charges under Section 302 IPC were not proven. He was, however, convicted under the other provisions. When he was released on bail, he joined the services of the Delhi Vidyut Board, but was re-arrested. Upon his re-arrest, he was terminated on the ground that he had been convicted for offences which involved moral turpitude. The Division Bench of this Court upheld the termination by observing as under:

> *"35. In the case at hand, when the offence committed by the respondent is in the realm or sphere of moral turpitude and there is imposition of sentence of rigorous imprisonment for a period of six months on two counts (although with a stipulation that the sentences would run concurrently), the punishment of termination cannot be said to be shocking to the judicial conscience. We are disposed to think that the punishment is not excessive or shockingly disproportionate. An employee, who has been involved in an offence of moral turpitude, has no right to continue in service.*

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> *A lesser punishment would be contrary to the norms. It is difficult to hold that such a punishment shocks the judicial conscience or is totally unreasonable."*

65. In ***Mahipal Singh Rana vs. State of U.P., 2016 (8) SCC 335***, the Supreme Court was concerned with a case of an Advocate who had indulged in misbehaviour before a Civil Judge in Etah, U.P. Due to his misbehaviour and misconduct with the Court, proceedings had been initiated against him. The question that came for consideration before the Supreme Court was in respect of Section 24A of the Advocates Act, 1961, which provided for disqualification from enrolment. As per the said provision, a person would not be entitled to be admitted as an Advocate on a State roll, if he is convicted of an offence involving moral turpitude. However, the *proviso* to Section 24A stipulates that the said disqualification would cease to have effect after a period of two years having elapsed from the release of the person or dismissal or removal, as the case may be.

66. The Supreme Court, in the said case, approved the reasoning of the Division Bench of the Gujarat High Court in ***C vs. Bar Council of Gujarat, 1983 GLH 297***, where the High Court had directed that Section 24A of the Advocates Act, 1961 ought to be examined closely to take steps to preserve the image of the legal profession. The Supreme Court held that despite the said observations of the Gujarat High Court, no action was taken at any level. The observations of the Supreme Court are as under:

> *"39. Section 24A of the Advocates Act is as follows:*

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24A. Disqualification for enrolment. -

(1) No person shall be admitted as an advocate on a State roll—

(a) if he is convicted of an offence involving moral turpitude;

(b) if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955); 2[(c) if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude.

Explanation - In this clause, the expression "State" shall have the meaning assigned to it Under Article 12 of the Constitution:

Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his release or dismissal or, as the case may be, removal.

(2) Nothing contained in Sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958 (20 of 1958).

40. Dealing with the above provision, the Division Bench of the Gujarat High Court in C. v. Bar Council (1982) 2 GLR 706 observed:

2. ... . We, however, wish to avail of this opportunity to place on record our feeling of distress and dismay at the fact that a public servant who is found guilty of an offence of

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

3. A corrupt apple cannot become a good apple with passage of time. It is for the legal profession to consider whether it would like such a provision to continue to remain on the Statute Book and would like to continue to adroit persons who have been convicted for offences involving moral turpitude and persons who have been found guilty of acceptance of illegal gratification, rape, dacoits, forgery, misappropriation of public funds, relating to counter felt currency and coins and other offences of like nature to be enrolled as members merely because two years have elapsed after the date of their release from imprisonment. Does passage of 2 years cleanse such a person of the corrupt character trait, purify his mind and transform him into a person fit for being enrolled as a member of this noble profession? Enrolled so that widows can go to him, matters pertaining to properties of

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minors and matters on behalf of workers pitted against rich and influential persons can be entrusted to him without qualms. Court records can be placed at his disposal, his word at the Bar should be accepted? Should a character certificate in the form of a Black Gown be given to him so that a promise of probity and trustworthiness is held out to the unwary litigants seeking justice? A copy of this order may, therefore, be sent to the appropriate authorities concerned with the administration of the Bar Council of India and the State Bar Council, Ministry of Law of the Government of India and Law Commission in order that the matter maybe examined fully and closely with the end in view to preserve the image of the profession and protect the seekers for justice from dangers inherent in admitting such persons on the rolls of the Bar Council.

41. Inspite of the above observations no action appears to have been taken at any level. The result is that a person convicted of even a most heinous offence is eligible to be enrolled as an advocate after expiry of two years from expiry of his sentence. This aspect needs urgent attention of all concerned.

42. Apart from the above, we do not find any reason to hold that the bar applicable at the entry level is wiped out after the enrolment. Having regard to the object of the provision, the said bar certainly operates post enrolment also. However, till a suitable amendment is made, the bar is operative only for two years in terms of the statutory provision."

67. In conclusion, the Court observed as under:

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> *"51. In a recent judgment of this Court in Modern Dental College and Research Centre v. State of M.P. in Civil Appeal No. 4060 of 2009 dated 2nd May, 2016, while directing review of regulatory mechanism for the medical profession, this Court observed that there is need to review of the regulatory mechanism of the other professions as well. The relevant observations are:*
>
> > *There is perhaps urgent need to review the regulatory mechanism for other service-oriented professions also. We do hope this issue will receive attention of concerned authorities, including the Law Commission, in due course.*
>
> *52. In view of above, we request the Law Commission of India to go into all relevant aspects relating to Regulation of legal profession in consultation with all concerned at an early date. We hope the Government of India will consider taking further appropriate steps in the light of report of the Law Commission within six months thereafter. The Central Government may file an appropriate affidavit in this regard within one month after expiry of one year."*

68. Pursuant to the directions given by the Supreme Court in ***Mahipal Singh Rana (supra)***, the Law Commission of India in its 226th Report submitted in March, 2017, referred to both the judgments in ***Mahipal Singh Rana (supra)*** and ***C v. Bar Council of Gujarat (supra)*** and observed as under:

> *"10.2. The Law Commission is of the view that wiping out the bar after enrolment, in case of conviction of an advocate after two years in the nature of cases mentioned in section 24A, does not render the person in any way desirable to plead on*

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> *behalf of a person seeking redressal of his grievance through the justice delivery system. The legal profession, as such, has been placed on a very high pedestal acknowledging advocates' legal status and authority to plead on behalf of a person in court of law. Similarly, there can be hardly any justification for wiping out such disqualification, which is otherwise applicable for enrolment, after the enrolment is made. Having regard to the broader objective of the provision, the said bar should certainly operate post enrolment. With this in view, the Commission recommends the substitution of section 24A and 26A with new provisions to take care of the objectives of undesirability of a convicted person being allowed to perform important public functions."*

69. Pursuant to the above recommendation, an amendment was suggested by the Law Commission for removal of the *proviso* as also Section 24(A)(2) of the Advocates Act, completely. Therefore, the two-year period was recommended to be removed, which in effect would result in a permanent debarment of any advocate who may have been convicted for an offence of moral turpitude. As per these recommendations, even the protection under the provisions of the Probation of Offenders Act is to be deleted. The said recommendations of the Law Commission is yet to be implemented.

70. In ***State Bank of India and Ors. vs. P. Soupramaniane, (2019) 18 SCC 135,*** the employee in question was working with the Bank as a messenger. He was convicted under Section 324 IPC and was sentenced to imprisonment of three months. The Supreme Court was considering Section 10(1)(b)(i) of the Banking Regulation Act, 1949 which provided

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that conviction by criminal Court of an offence involving moral turpitude, would disentitle a person from continuing to be employed with a banking company. The High Court had released the employee under probation, set aside the order of discharge and also had directed his reinstatement.

71. On appeal, the Supreme Court, in its judgment, held that the release under probation would not be binding on the employer. It held that if an offence involving moral turpitude committed by the employee, comes to the notice of the employer, the employer is under an obligation to discontinue the service of an employee under the said provision of the Banking Regulation Act. The Supreme Court held:

> *"4. Section 10(1)(b)(i) of the Banking Regulation Act, 1949 provides that conviction by a criminal court of an offence involving moral turpitude shall disentitle a person from continuing in employment of a banking company. The Writ Appeal filed by the Respondent was allowed by a Division Bench of the High Court on the ground that the criminal court released the Respondent under probation in exercise of its power Under Section 360 Code of Criminal Procedure to enable the Respondent to continue in service. The High Court was of the opinion that the purpose of the order of the criminal court would be defeated if the Respondent is discharged from service. Another reason given by the High Court is that the provision of law under which the bank discharged the Respondent from service was not mentioned and no reasons were assigned by the bank in the order of discharge.*
>
> *5. We do not agree with the reasons given by the High Court for setting aside the order of discharge and directing the reinstatement of the Respondent in service. A show-cause notice was issued to the Respondent in which it was categorically mentioned*

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> *that the Respondent cannot continue in service after his conviction in a criminal case involving moral turpitude in view of Section 10(1)(b)(i) of the Banking Regulation Act, 1949. After considering the explanation of the Respondent, an order of discharge was passed. The High Court is not right in holding that no reasons had been given by the bank for discontinuing the Respondent from service. The High Court committed an error in holding that the order of discharge should be set aside on the ground that the provision of law under which the Respondent was discharged was not mentioned in the order. Yet another reason given by the High Court for interference with the order of discharge is that the criminal court released the Respondent on probation only to permit him to continue in service. The release under probation does not entitle an employee to claim a right to continue in service. In fact the employer is under an obligation to discontinue the services of an employee convicted of an offence involving moral turpitude. The observations made by a criminal court are not binding on the employer who has the liberty of dealing with his employees suitably."*

72. Upon further examining as to what constitutes 'moral turpitude', the Court held as under:

> *"7. Moral Turpitude' as defined in the* ***Black's Law Dictionary (6th ed.)*** *is as follows:*
>
> > *The Act of baseness, vileness, or the depravity in the private and social duties which man owes to his follow man, or to society in general, contrary to accepted and customary Rule of right and duty between man and man.*
> >
> > *"implies something immoral in itself regardless of it being punishable by law"; "restricted to the gravest offences, consisting*

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> *of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind."*

According to ***Bouvier's Law Dictionary,*** *'Moral Turpitude' is:*

> *An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary Rule of right and duty between man and man.*

Burton Legal Thesaurus *defines 'Moral Turpitude' as:*

> *Bad faith, bad repute, corruption, defilement, delinquency, discredit, dishonor, shame, guilt, knavery, misdoing, perversion, shame, ice, wrong.*

8. There is no doubt that there is an obligation on the Management of the Bank to discontinue the services of an employee who has been convicted by a criminal court for an offence involving moral turpitude. Though every offence is a crime against the society, discontinuance from service according to the Banking Regulation Act can be only for committing an offence involving moral turpitude. Acts which disclose depravity and wickedness of character can be categorized as offences involving moral turpitude. Whether an offence involves moral turpitude or not depends upon the facts and the circumstances of the case. Ordinarily, the tests that can be applied for judging an offence involving moral turpitude are:

> *a) Whether the act leading to a conviction was such as could shock the moral conscience or society in general;*

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> *b) Whether the motive which led to the act was a base one, and*
> *c) Whether on account of the act having been committed the perpetrators could be considered to be of a depraved character or a person who was to be looked down upon by the society.*
>
> *The other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are: the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society. According to the National Incident-Based Reporting System (NIBRS), a crime data collection system used in the United States of America, each offence belongs to one of the three categories which are: crimes against persons, crimes against property, and crimes against society. Crimes against persons include murder, rape, and assault where the victims are always individuals. The object of crimes against property, for example, robbery and burglary is to obtain money, property, or some other benefits. Crimes against society for example gambling, prostitution, and drug violations, represent society's prohibition against engaging in certain types of activities. Conviction of any alien of a crime involving moral turpitude is a ground for deportation under the Immigration Law in the United States of America. To qualify as a crime involving moral turpitude for such purpose, it requires both reprehensible conduct and scienter, whether with specific intent, deliberateness, willfulness or recklessness."*

73. Since in the said case, the conviction was for assault, the Supreme Court observed that every assault may not be an offence involving moral

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turpitude. Since the injuries which were caused to the victim were simple, and in the overall facts which involved a dispute between the two groups belonging to separate political parties, the Supreme Court held that the Respondent was not guilty of moral turpitude.

74. In the case of ***Govt. of NCT of Delhi & Anr. vs. Robin Singh (2010) 171 DLT 705 (DB)*** the respondent had been provisionally selected for the post of Sub-inspector (Executive) which was to be followed by verification of his character and antecedents. He was subsequently required to fill a form stating whether he had been arrested/prosecuted for an offence or whether any FIR was registered against him. Answering these in the negative, the Respondent subsequently informed the Petitioner that there was a private complaint filed against him under Section 323, 504, 506 of IPC but he had been acquitted. The Respondent was subsequently served with a show cause notice and after receiving a detailed reply, the Petitioner cancelled the candidature of the Respondent without affording any reasons. This order was set aside by Ld. Central Administrative Tribunal against which the Petitioner filed a Writ Petition before this Court. While upholding the decision of CAT, the Division Bench of this Court held that a person should be denied public employment only in cases of grave offences as denial of public employment for commission of trivial offences would be a violation of a citizen's constitutional right to be treated fairly. The Court took notice of the "All India Seminar on Correctional Service" held at New Delhi in March 1969 wherein the State of Haryana categorized certain offences to be grave and involving moral turpitude, and the common thread which bound them was that the most of them were offences against women and

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others punishable with imprisonment for 3 or more years. The Court explained moral turpitude to mean something that shocks the conscience of the society which has to be seen in relation to the motive of the offender and held as follows:

> *"As generically understood, offences involving moral turpitude can be classified with reference to the act being one which shocks the moral conscience of the society in general and this can be determined with reference to the motive of the offender i.e. whether the motive which led to the act was a base one or alternatively whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society*
>
> *...*
>
> *In a growing democracy, where systems are failing and the weak and the downtrodden are hardly given the opportunity to sharpen their intellect thereby diminishing the ability of their consciousness to act as a mirror to their acts and actions, it is high time that the executive brings to place a policy where summary/ordinary conviction should not be treated as a conviction for entry and retention in Government Service".*

75. The Division Bench thus held that it is only the grave offences where public employment should be denied, which are offences involving moral turpitude in its true essence. Every trivial offence should not attract denial of a chance to attain public employment even if it is of a nature of Sub-Inspector. Further, the Court also recommended formulation of a policy where convictions for petty offences should not be treated as such which would bar entry into public employment.

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76. In ***Ram Het Meena v Union of India 2011 SCC Online Del 1323*** the Petitioner was found to be an unsuitable candidate for service in CISF by the Respondents as he had been convicted under Section 326, IPC and was subsequently let off on probation. This Court based on the finding in ***Robin Singh (supra)*** directed the Respondent to reconsider its decision.

77. Post the decision in ***Robin Singh (supra)***, the principle that the gravity of offence ought to be looked at, was considered in the judgment in ***Manoj v. Union of India***, ***(2016) 232 DLT 311,*** by a ld. Division Bench of this Court. The Court in ***Manoj (supra)*** distinguished between ordinary offences such as over speeding or parking tickets, etc, as compared to the offences of murder or theft. In the latter situation, the Court confirmed that there may be a justification for exclusion of a person from public offices, and hence the gravity ought to be considered.

78. Recently, in ***Commissioner of Police vs. Raj Kumar (Civil Appeal No. 4960/2021, decided on 25th August 2021,*** the eligibility conditions for appointment to the post of Constable in Delhi Police was under consideration by the Supreme Court. The Supreme Court was dealing with *Standing Order No. 398/2010*, issued by the Delhi Police in respect of such candidates who are either facing trial or have been acquitted. The said Standing Order had the following condition:

> *"STANDING ORDER NO. 398/2010 POLICY FOR DECIDING CASES OF CANDIDATES PROVISIONALLY SELECTED IN DELHI POLICE INVOLVED IN CRIMINAL CASES (FACING TRIAL OR ACQUITTED). xxx*
>
> *6). Such candidates against whom charge-sheet in any criminal case has been filed in the court and*

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> *the charges fall in the category of serious offences or moral turpitude, though later acquitted or acquitted by extending benefit of doubt or the witnesses have turned hostile due to fear of reprisal by the accused person, he/she will generally not be considered suitable for government service. However, all such cases will be judged by the Screening Committee of PHQ to assess their suitability for the government job. The details of criminal cases which involve moral turpitude may kindly be perused at Annexure 'A'. xxx"*

79. The offences involving moral turpitude in terms of the clause above included the following:

> *"11. Annexure A to the above policy which refers to offences involving moral turpitude is extracted below:*
>
> *"1. Criminal Conspiracy (Section 120-B, Indian Penal Code)*
> *2. Offences against the State (Sections 121, 130, Indian Penal Code)*
> *3. Offences relating to Army, Navy and Air Force (Sections 131-134, Indian Penal Code)*
> *4. Offence against Public Tranquility (Section 153-A & 153-B, Indian Penal Code).*
> *5. False evidence and offences against Public Justice (Sections 193-216A, Indian Penal Code)*
> *6. Offences relating to coin and government stamps (Section 231-263A, Indian Penal Code).*
> *7. Offences relating to Religion (Section 29 297, Indian Penal Code)*
> *8. Offences affecting Human Body (Sections 302-304, 304B, 305-308, 311-317, 325-*

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333, 335, 347, 348, 354, 363-373, 376-376-A, 376-B, 376-C, 376-D, 377, Indian Penal Code)

9. *Offences against Property (Section 379-462, Indian Penal Code)*
10. *Offences relating to Documents and Property Marks (Section 465-489, Indian Penal Code)*
11. *Offences relating to Marriage and Dowry Prohibition Act (Section 498-A, Indian Penal Code)""*

80. The High Court had, on the basis of the material on record, including the allegations in the charge sheet and the compromise of the dispute, quashed the rejection of the candidature of the Respondents. However, the Supreme Court held that the Court cannot second guess the suitability of a candidate for a public office or post, and generalised observations have to be avoided in such situations. The conclusion of the Supreme Court is as under:

> *"30. The High Court's approach, evident from its observations about the youth and age of the candidates, appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should not be taken seriously, given the age of the youth and the rural setting. This court is of opinion that such generalizations, leading to condonation of the offender's conduct, should not enter the judicial verdict and should be avoided. Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be*

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> *scrutinized by the concerned public employer, through its designated officials- more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security."*

81. The above judgments relate to the provisions for appointments/ disqualifications for conviction of an offence relating to 'moral turpitude' in the context of Advocates, Police Forces, Director/Managing Director, Bank Listed employees etc., The conclusion on the basis of the above judgments would be that if a person is convicted of an offence involving moral turpitude, the discretion of the employer is narrow. The employer may only examine the nature of the offence for which the person is convicted and the treatment to be accorded.

- ***Disqualification of Chartered Accountants:***

82. Coming to the profession of Chartered Accountants, in ***Council of the ICAI vs. B. Mukherjea AIR 1958 SC 72,*** the CA in question concerned was enrolled as a member of the ICAI. He was appointed as a Liquidator of three companies, however when some refunds were received by him, he did not report about the same. Therefore, misconduct was alleged in his role as a liquidator. A new liquidator was appointed. He was held guilty of gross negligence in the conduct of his professional duty.

83. In this fact situation, the Supreme Court considered the scheme of the Act. The Calcutta High Court had held that the CA in question could not have been held to be guilty of professional misconduct, as it was in his capacity as a liquidator - which is not in *"professional capacity*". The challenge before the Supreme Court was that professional misconduct

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cannot be narrowly construed. Section 8 was interpreted by the Supreme Court in this case. The Supreme Court held:

> *"8. This would really dispose of the appeal before us, because once it is held that the respondent is guilty of professional misconduct it would be obviously necessary to deal with him on that basis and make an appropriate order under s. 21, sub-s. (3) of the Act. However, since the learned Attorney-General has alternatively urged before us that in confining the exercise of disciplinary jurisdiction only to cases of professional misconduct, technically so-called, the learned Judges of the Calcutta High Court have misconstrued the relevant provisions of the Act, we propose to deal very briefly with that question also.*
>
> *9. Section 21, sub-s. (1), deals with two categories of cases in which the alleged misconduct of members of the Institute can be inquired into. If information is received or complaint is made to the Institute against the conduct of any chartered accountant the Council is not bound to hold an inquiry straightaway. The Council is required. to examine the nature of the information or complaint made and decide whether, if the facts alleged against the member are proved, they would render the member unfit to be a member of the Institute. In other words, in the case of a private complaint made against members, it is only where the Council is satisfied prima facie that facts alleged against the member, if proved, would justify the exercise of disciplinary jurisdiction against the member that the Council is required to hold an inquiry. The conduct alleged must be such as, if proved, would render the member unfit to be a member of the Institute. The other class of cases has reference to the complaint received by the Council from the Central Government. In regard to this class of*

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cases, the Council is not required, and indeed has no jurisdiction to apply the prima facie test-before holding an inquiry. The Council is required to cause an inquiry to be held on such complaint straightaway. In both the cases when the inquiry is concluded, the findings of the Council are to be forwarded to the High Court. Section 22 purports to define the expression "conduct which, if proved, will render a person unfit to be a member of the Institute". It is an inclusive definition; it includes any act or omission specified in the schedule but the latter portion of s. 22 clearly lays down that nothing contained in this section shall be construed to limit or abridge in any way the power conferred on the Council under sub-s. (1) of s. 21. The position thus appears to be that though the definition of the Material expression used in s. 21, sub-s. (1), refers to the acts and omissions specified in the schedule, the list of the said acts and omissions is not exhaustive; and, in any event, the said list does not purport to limit the powers of the Council under s. 21, sub-s. (1), which may otherwise flow from the words used in the said sub-s. itself. The schedule to which s. 22 refers has enumerated in cls. (a) to (v) several acts and omissions and it provides that, if any of these acts or omissions is proved against a chartered accountant, he shall be deemed to be guilty of professional misconduct which renders him unfit to be member of the Institute. Clause (v) is rather general in terms since it provides for cases where the accountant is guilty of such other act or omission in his professional capacity as may be specified by the Council in this behalf by notification in the Gazette of India. It must be conceded that the conduct of the respondent in the present case cannot attract any of the provisions in the schedule and may not therefore be regarded as falling within the first part of s. 22; but if the

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definition given by s. 22 itself purports to be an inclusive definition and if the section itself in its latter portion specifically preserves the larger powers and jurisdiction conferred upon the Council to hold inquiries by s. 21, sub-s. (1), it would not be right to hold that such disciplinary jurisdiction can be invoked only in respect of conduct falling specifically and expressly within the inclusive definition given by s. 22. In this connection it would be relevant to mention s. 8 which deals with disabilities. Section 8, sub-ss. (v) and (vi), support the argument that disciplinary jurisdiction can be exercised against chartered accountants even in respect of conduct which may not fall expressly within the inclusive definition contained in s. 22. We, therefore, take the view that, if a member of the Institute is found, prima facie, guilty of conduct which, in the opinion of the Council, renders him unfit to be a member of the Institute, even though such conduct may not attract any of the provisions of the schedule, it would still be open to the Council to hold an inquiry against the member in respect of such conduct and a finding against him in such an inquiry would justify appropriate action. being taken by the High Court under s. 21, sub-s. (3). It is true that the High Court would take action against the offending member only if the High Court accepts the finding made by the Council and not otherwise. This conclusion is strengthened if we bear in mind the extended meaning of the expression "to be in practice" given in s. 2, sub-s. (2), which we have already dealt with. In this view of the matter we must reverse the conclusion of the learned Judges of the Calcutta High Court that the conduct proved against the respondent does not fall within as. 21 and 22 because it is not conduct connected with the exercise of his profession as a chartered accountant in the narrow sense of that

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term."

84. Thus, the Supreme Court concluded that misconduct cannot be narrowly construed, and any conduct which in the opinion of the Council renders a person unfit to be a member of the ICAI, even though such conduct may not be set out in the schedule, would justify action by the Disciplinary Committee.

85. In ***Council of the Institute of Chartered Accountants of India vs P.C. Parekh (Chartered Accountant Reference No. 1 of 1991, decided on 14th February 2003)***, the Division Bench of the Gujarat High Court was dealing with a case where the CA in question had authored a book titled "Tax planning for Secret Income (Black Money)." The charge of misconduct levelled against him was that the said book creates an impression that Chartered Accountants are experts in creation of black money and its conversion into white money, and the said impression would lower the image of the profession in the public eyes. The Disciplinary Committee held an inquiry and observed that Chartered Accountants are expected to observe high standards of integrity and professional ethics. The intention of the book was to educate the public as to how to evade tax and create unaccounted money. The Committee held the Respondent guilty of misconduct. The Committee's recommendation was placed before the ICAI and the same was accepted by the it. The Gujarat High Court, in a reference under Section 21(5) of the Act, held as under:

> *"9. The historical development of the organized profession of Chartered Accountants shows that, having regard to the functions of the public accountants which were of great and increasing*

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importance, a number of societies came to be constituted of accountants aiming at "the elevation of the profession of public accountants as a whole and the promotion of their efficiency and usefulness by compelling observance of strict rules of conduct as a condition of membership and by setting up a high standard of professional and general education and knowledge and otherwise". (See Royal Chartered of the 11th may 1880 incorporating the Institute of Chartered Accountants in England and Wales having regard to its laudable intention).

9.1 The International Federation of Accountants, of which Institute of Chartered Accountants of India and Institute of Cost & Works Accountants of India are members, "recognizing the responsibilities of the accountancy profession as such, and considering its own role to be that of providing guidance, encouraging continuity of efforts, and promoting harmonization, has deemed it essential to establish an international Code of Ethics for Professional Accountants to be the basis on which the ethical requirements (code of ethics, detailed rules, standards of conduct etc.), for professional accountants in each country should be founded." The International Code is intended to serve as a model on which to base the national ethical guidance. It sets standards of conduct for professional accountants and states the fundamental principles that should be observed by them. The International Code of Ethics for professional accountants is established on the basis of that the objectives and fundamental principles are equally valid for all professional accountants, whether they be in public practice, industry, commerce, public sector or education.

9.2 A hallmark of any noble profession is adherence

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by its members to a common code of values and conduct established by its administrative body, including maintaining an outlook which is essentially objective and acceptance of a duty to the society as a whole. Acceptance of its responsibility to public is a distinguishing mark of a procession. A large section of public relies on the objectivity and integrity of professional accountants to maintain the orderly functioning of commerce. Such reliance imposes a public interest responsibility on the accounting profession. Professional accountants have an important role to play in the society. Investors, creditors, employees and other sectors of the business community as well as the government and the public at large rely on professional accountants for sound financial accounting and reporting, effective financial management and competent advice on a variety of business and taxation matters. The attitude and behaviour of the professional accountants in providing such services have an impact on the economic well-being of their community and the country.

xxx

9.4 Thus, the universally recognized objectives of accountancy profession are to work to the highest standards of professionalism, to attain the highest levels of performance and generally to meet the public interest requirement. These objectives require four basic needs to be met, namely, (i) credibility in information and information systems, (ii) professionalism, (iii) quality of services and confidence of users of professional service of professional accountants; and, (iv) a framework of professional ethics which governs the provision of those services.

10. In order to achieve the objectives of the accountancy profession, professional accountants

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> *have to observe a number of prerequisites or fundamental principles, which are, integrity, objectivity, professional competence and due care, respect confidentiality of information, good professional behaviour and observance of high technical and professional standards. Professional integrity implies not mere honesty but fair dealing and truthfulness. The principle of objectivity imposes an obligation on all professional accountant to be fair, intellectually honest and free of conflicts of interest. Professional accountants should therefore protect the integrity of their professional services and maintain objectivity in their judgement. A professional accountant should act in a manner consistent with the good reputation of the profession and refrain from any conduct which might bring discredit to the profession. xxxx"*

86. The High Court also analysed the Code of Conduct prescribed for Chartered Accountants and on the interpretation of Section 8(vi), it held as under:

> *"13.1 Under section 8 of the said Act, a person shall not be entitled to have his name entered in or borne on the Register if he has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct. Thus, not only for the professional misconduct specified in the Schedule but also for any other misconduct not so specified, the member guilty of such other misconduct can be removed by the Institute after due inquiry."*

87. The Court then held as under:

> *"15. The High Court has been entrusted important function in context of the behaviour of the members of this noble profession in the disciplinary matters*

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which come up before it. It has wide powers extending to removal from membership of the institute either permanently or for a specified period. It may direct the proceedings to be filed or dismiss the complaint. This enables the court to examine the nature of misconduct alleged and the facts and circumstances brought on record in connection therewith against the delinquent. There is a serious responsibility on the Court - a duty to itself, to the profession, and to the whole of the community to be careful not to accredit any person as worthy of the public confidence who cannot establish his right to that credential. However, when an important statutory body like the Council finds a member of the institute guilty of the misconduct and forwards the case to the High Court with its recommendation under Section 21(5) of the Act, its findings based on the material on record would ordinarily not be disturbed unless found to be unjust, unwarranted or contrary to law."

xxx

21.3 The statutory power to take action in respect of misconduct is not meant to curtail freedom of speech and expression, but to ensure proper conduct of the members of the institute and to protect the interest and prestige of the profession of Chartered Accountants. If the member commits misconduct by committing breach of the Code of Conduct and does anything detrimental to the interest and prestige of the profession, he is liable to disciplinary action under Section 21 which is not designed to restrict in any way the freedom of speech or expression. It is primarily designed to regulate the profession of the Chartered Accountants. It cannot, therefore, be called in question as violating of Article 19(1)(g) of the

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Constitution. Misconduct may consist of writing an offensive article or delivering a foul speech which are not in the interest of general public or are contrary to decency or morality or amount to inciting an offence or any other unlawful activity. Any action which is detrimental to the interest or prestige of the profession of Chartered Accountants, clearly undermines disciplinary standards set up by the norms of ethical conduct. The provisions of disciplinary action against the members can be better looked at from the point of view of the fundamental right guaranteed by Article 19(1)(g) read with restrictions that can be imposed under Clause (6) of Article 19 as reasonable restrictions in the interests of general public. The statutory provisions which are directly linked with and are essential for the regulation of the profession of the Chartered Accountants would be protected by Clause (6) of Article 19 of the Constitution as being in the interest of general public. If such provisions are alleged to violate other freedoms under Article 19(1) such as, freedom of speech or expression, the freedoms have to be read harmoniously so that the statutory provisions including the rules and regulations which are reasonably required in furtherance of one freedom are not struck down as violating the other freedoms (See M.H. Devendrappa v/s Karnataka State Small Industries Corporation (1998) 3 SCC 732).

21.4……. To put it straight - a member of the profession of Chartered Accountants, behaving contrary to the Code of Conduct and therefore, found guilty of misconduct by the Council and facing removal from membership, that would affect his right to carry on his profession as Chartered Accountant cannot cry halt on a spacious plea that he has a freedom to commit such misconduct when

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> *it comes to be done through writing or speech. The answer to him would be if your speech and expression are foul, go ahead at your risk, but cease to be a member of this profession first. Everything we do has a consequence, that is a plain and simple matter of physics. The doer of a deed has a responsibility for the consequences of his thought, words and deeds. There is, thus, no substance in the contention raised on behalf of the respondent on the ground that his fundamental right to speech and expression would be violated by imposing punishment of removal of his name from the Register of members of the Institute which has a bearing on the freedom of profession rather than freedom of speech and expression.*
>
> *xxx"*

88. In conclusion, the High Court considering the age and the health condition of the Respondent directed that he would be removed from the membership of the institute for 5 years and not perpetually. The Court held:

> *"23. Having regard to the old age of the respondent, ailments that he is suffering from, repentance that he has shown in the Court and the time-lag that has elapsed, as also his statement that he has never published any such writing after the publication of the said book, in our opinion, interest of justice will be met if the respondent is removed forthwith from the membership of the institute for a period of five years. We, accordingly, while upholding the finding of the Council holding the respondent guilty of misconduct, direct that the respondent be removed forthwith from the membership of the institute for a period of five years. The Reference stands disposed of accordingly, with no order as to costs."*

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89. In ***Council of ICAI vs. Shri Gurvinder Singh & Others (Civil Appeal No. 11034 of 2018, decided on 16th November 2018***), the allegation against the CA in question was that some 100 shares were transferred by him into his own name. The Disciplinary Committee held that he was guilty of misconduct under Section 21 of the Act. The High Court, however, concluded that the said sale was a commercial sale transaction of the CA concerned and it was not in his role as a CA.

90. This was reversed by the Supreme Court on the ground that any act which in the opinion of the Council brings disrepute of the profession, whether or not related to his professional work, shall be liable to be taken action upon. The High Court order was accordingly reversed and the matter was remanded back to the High Court. The Court held:

> *"The High Court, by the impugned judgment dated 16.08.2016, after setting out Sections 21 and 22 of the Act, arrived at the conclusion that:*
>
> > *"14. In the instant case the respondent was acting as an individual in his dealings with the complainant which were purely commercial. While selling the shares held by him the respondent was not acting as a Chartered Accountant. He was not discharging any function in relation to his practice as a Chartered Accountant.*
> >
> > *15. The Reference is accordingly answered by declaring the law as above and not inflicting any penalty upon the respondent."*
>
> *5) We are afraid that the High Court has not correctly appreciated Section 21(3) of the Chartered Accountants Act, 1949 which states as follows:-*

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"(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee."

Schedule-I Part-IV reads as follows:-

"Other Misconduct in Relation to Members of the Institute Generally A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-

(1) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."

6) The Disciplinary Committee has, on facts, found the Chartered Accountant guilty of a practice which was not in the Chartered Accountant's professional capacity. This, it was entitled to do under Schedule I Part-IV sub clause (2) if, in the opinion of the Council, such act brings disrepute to the profession whether or not related to his professional work.

7) This being the case, it is clear that the impugned judgment is incorrect and must, therefore, be set aside. We thus remand the matter to the High Court to be decided afresh leaving all contentions open to

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both parties."

91. In ***Lalit Aggarwal vs. the ICAI, (WP(C) 10020/2016, decided on 11th February 2019)*** by a Ld. Single Judge of this Court, there were allegations against the Petitioner that he had outraged the modesty of the complainant's daughter. The Petitioner was registered as a CA. A complaint was lodged against him in the Police Station and certain undertakings were given by him. Further criminal complaints were also lodged against him as he had continued to harass the girl in question. The complainant then lodged a complaint with the ICAI for initiating disciplinary proceedings against him. It was held that the issue involved inter-personal relationships between the Petitioner and the girl in question and did not constitute misconduct. This finding of the Director (Discipline) was challenged by the ICAI. The Board considered the report of the Director (Discipline) and concluded that the allegations against the Petitioner were grave and did not agree that it did not constitute misconduct. The reply of the Petitioner was then called for. The Petitioner alleged that the Board of the ICAI had no jurisdiction as the concerned offences were being tried by the relevant criminal Courts.

92. On this, a ld. Single Judge of this Court analysed the scheme of the Act and held that the Board of Discipline had the concerned jurisdiction in the said case. The observations of the Court are as under:

> *"22. In view of the above, this Court is unable to accept the contention that the Board of Discipline does not have the jurisdiction to examine the alleged misconduct on the part of the petitioner. Clause (2) of Part-IV of the First Schedule to the Act is wide, and would include within its scope, any conduct that would tend to bring disrepute to the*

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> *profession or the Institute. If a Chartered Accountant is found to have been guilty in outraging the modesty of a woman and/or other offences involving moral turpitude, it would not be inapposite for the Board of Discipline to also conclude that the conduct did, in fact, lower the dignity of the profession. In this view, this Court is not able to accept that the proceedings before the Board of Discipline are without jurisdiction."*

93. In ***P. Mohanasundaram v. The President, ICAI and Ors. (supra)***, the Division Bench of the Madras High Court was dealing with the question whether by virtue of the conviction of the Appellant for bigamous marriage, the Appellant was hit by the disabilities under Section 8 of the Act. The Appellant was already enrolled as a CA, prior to the offence of bigamy being alleged against him. His conviction for the offence was upheld, although reduced, by the Supreme Court in its order dated 14th November 2003. Upon becoming aware of the said conviction, the ICAI issued a notice to the Appellant to show cause, and for an opportunity of hearing before the Council. The Appellant filed his reply to the said notice, however did not appear for the hearing. The Council thereafter, on 13th January 2009 resolved to remove his name from the register of Members, under Section 20(1)(d) of the Act.

94. The Madras High Court, after analysing the provisions of Section 8(v) read with Section 20(1)(d) of the Act stipulated that for the disqualification of persons involved in an offence of moral turpitude, either to become a member, or to continue as a Member of the ICAI. The Court also analysed the meaning of 'moral turpitude and held as under:

> *"24. In Pawan Kumar v. State of Haryana (1996) 4*

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SCC 17) this Court has observed as under: (SCC p. 21, para 12)

> *12. 'Moral turpitude' is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity.*
>
> *The aforesaid judgment in Pawan Kumar (1996) 4 SCC 17) has been considered by this Court again in Allahabad Bank v. Deepak Kumar Bhola and placed reliance on Baleshwar Singh v. District Magistrate and Collector, AIR 1959 All 71) wherein it has been held as under:*
>
> *The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.*

25. *In view of the above, it is evident that moral*

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> *turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked and base activities."*

95. The Court concluded that, since bigamy constitutes an offence involving 'moral turpitude' and the conviction stands even today, the disqualification under Section 8 of the Act is valid. The Court finally held:

> *"18. From the above referred judgments and having regard to the fact that the appellant married another woman, while the first marriage was subsisting, and had acted contrary to the law and to his "estranged wife", we are of the view that the offence of bigamy is coming within the meaning of "moral turpitude". The conviction recorded against the appellant for bigamy stands even today though sentence was reduced to the period already undergone. Hence, the decision taken by the first respondent to remove the name of the appellant from the register maintained by the Chartered Accountants Council in its 284th meeting held on 13.2.2010, which was published in the official gazette dated 19.2.2010 communicated to the appellant on 16.4.2010, which was upheld by the learned single Judge is valid and no interference is required as the appellant has attracted disqualification by operation of law viz., Section 8 of the Chartered Accountants Act, 1949, due to his involvement in an offence involving moral turpitude.."*

96. In ***Ramakrishna Rao v. State (supra)***, a ld. Single Judge of the Andhra Pradesh High Court was dealing with the case of a Petitioner- a CA who was seeking suspension of conviction passed against him by an Additional Special Judge in Vishakhapatnam. The main contention of the

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Petitioner was that if his conviction is not suspended, he would be debarred from the rolls of he ICAI under section 8, and would lose valuable years in the profession. The key aspect in this case is that the Petitioner herein had primarily contended that he had appealed against his conviction and had a strong case in his favour, and hence if his plea of suspension was not granted by the Court, he would have been disqualified from the ICAI, irrespective of the outcome of his appeal to the conviction, thus losing valuable years in the profession. The Court, upon analysing the provisions of Section 8 and Section 20 of the Act held as under:

> *"6……So, a conjunctive study of the above provisions would show that a person who is guilty of an offence committed in his professional capacity attains disqualification to be entered or borne out in the Register maintained by the Institute. Apart from it, it appears, if a person is held guilty by any civil or criminal Court for an offence punishable with imprisonment for a term exceeding six months, in such cases also, under Second Schedule (Part III) of the Act, hewill be liable for disciplinary proceedings for misconduct.*
> *d) In the instant case as already stated supra, the petitioner/A2 was sentenced with a highest substantive sentence of three years and therefore naturally threat of invocation of disciplinary proceedings is looming large at him. Therefore, I find force in the submission of learned counsel for petitioner that if by virtue of impugned judgment he were to be removed from the rolls of the Register pending appeal, it would cause irretrievable loss to him even if he succeeds in the appeal, since he would loose not only professional income but most importantly his goodwill and the clients. Hence, his case has to be considered sympathetically.*

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> *7. In this regard, a distinction has to be drawn between a public servant and a professional. In similar circumstances, there will be a threat of initiation of disciplinary proceedings and consequent loosing of job to a public servant also. However, he stands on a different footing than a professional. Though a public servant looses his job pending appeal, if he ultimately succeeds in the appeal he can claim all his consequential benefits. So, no loss will be occasioned to him. As such, in similar circumstances, a public servant cannot seek for suspension of conviction on the sole ground of loosing his job. This point was made clear in a catena of decisions and recent one being in the case of State of Maharashtra v. Balakrishna Dattatrya Kumbhar.*
>
> *xxx*
>
> *8. In view of the above legal position, the petitioners case stands on different pedestal. Further, it must be noted that the petitioner/A2 was punished not for the offences under Prevention of Corruption Act, 1988 but for the offences under IPC which are not grave ones to turn down his request.*
>
> *9. In the result, Crl. A.M.P. No. 751 of 2014 is allowed and conviction passed against the petitioner/A2 Ch. Ramakrishna Rao by the trial Court in C.C. No. 4/2009 is suspended pending disposal of the appeal.*"

International Position

97. The jurisprudence, in respect of the applicability of principles of moral turpitude in respect of persons practising as Chartered Accountants is similar, internationally.

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98. In some jurisdictions like the UK, in general, the law appears to be that once a person is convicted of an offence and has served conviction, the said person ought not be barred permanently from holding office or practising his profession or occupation. The law also provides that such persons also ought not to be made to answer questions about the previous conviction or the offence. This is with an intention to provide an opportunity to persons who may have committed crimes and have already been convicted for the same, to rehabilitate themselves and lead normal lives as individuals. The UK, Rehabilitation of Offenders Act, 1974 was enacted with this purpose and as per Section 4 of the said Act, a person who has served conviction for an offence has been given various kinds of protection. The said provision reads as under:

> "*4 Effect of [rehabilitation] [becoming a protected person.]*
>
> *(1) Subject to sections 7 and 8 below, a person who has become a rehabilitated protected person for the purposes of this Act in respect of a conviction shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction; and, notwithstanding the provisions of any other enactment or rule of law to the contrary, but subject as aforesaid—*
>
> *(a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales Scotland to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was*

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the subject of a spent conviction; and

(b)a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.

(2) Subject to the provisions of any order made under subsection (4) below, where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority—

(a) the question shall be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions, and the answer thereto may be framed accordingly; and

(b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction or any circumstances ancillary to a spent conviction in his answer to the question.

(3) Subject to the provisions of any order made under subsection (4) below,—

(a) any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him to disclose a spent conviction or any circumstances ancillary to a spent conviction (whether the conviction is his own or another's); and

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> *(b) a conviction which has become spent or any circumstances ancillary thereto, or any failure to disclose a spent conviction or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment."*

99. However, even under this Act, exceptions have been carved out which clarify that the protections given to rehabilitated persons under Section 4(2) would not however apply to certain professions, which are considered as noble professions or those which require higher levels of integrity such as Barristers, Chartered Accountants, Medical Practitioners, Veterinary Doctors, Chemists, among others. The said exceptions are contained in The Rehabilitation of Offenders Act, 1974 (Exceptions) Order 1975, which reads:

> *"3. None of the provisions of section 4(2) of the Act shall apply in relation to—*
>
> *(a) any question asked by or on behalf of any person, in the course of the duties of his office or employment, in order to assess the suitability—*
>
> *(i) of the person to whom the question relates for admission to any of the professions specified in Part I of Schedule 1 to this Order; or*
>
> *xxx*
>
> *4. Paragraph (b) of section 4(3) of the Act shall not apply in relation to—*
>
> *(a) the dismissal or exclusion of any person from any profession specified in Part I of Schedule 1 to this Order;*
>
> *xxx*

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SCHEDULE 1
EXCEPTED PROFESSIONS, OFFICES, EMPLOYMENTS AND OCCUPATIONS
PART I
Professions

1. *Medical practitioner.*
2. *Barrister (in England and Wales), advocate (in Scotland), solicitor.*
3. ***Chartered accountant, certified accountant.***
4. *Dentist, dental hygienist, dental auxiliary.*
5. *Veterinary surgeon.*
6. *Nurse, midwife.*
7. *Ophthalmic optician, dispensing optician.*
8. *Pharmaceutical chemist.*
9. *Registered teacher (in Scotland).*
10. *Any profession to which the Professions Supplementary to Medicine Act 1960 applies and which is undertaken following registration under that Act."*

100. Accordingly, Section 4 which provides for rehabilitation under the Rehabilitation of Offenders Act, 1974 of the UK are not applicable to members who are admitted/seek to be admitted in these professions.

101. In the case titled ***Thlimmenos v. Greece (Appl. No. 34369/97, decided on 6th April 2000)***, the Grand Chamber of the European Court of Human Rights *(`ECtHR')* also had an occasion to consider the question as to whether a convicted person can practice as a Chartered Accountant. It was a case involving a Greek national, who had been convicted on a charge of insubordination while serving in the army because, being a *Jehovas' Witness,* he refused to wear the military uniform at the time of general mobilization. The Athens Tribunal found him guilty in 1983 under the applicable Military Criminal Code and the other applicable codes, and sentenced him to four years imprisonment. He was released on parole

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after two years. Five years later, he took the public examination for appointment as a Chartered Accountant, which was considered as a liberal profession in Greece. He stood second in the said examination. However, the executive board of the Greece Institute of Chartered Accountants (*"GICA"*) refused to appoint him on the ground that he was convicted for a serious crime. The case of the officer was that he was not convicted of a crime but of a less serious offence. The Third Chamber Supreme Administrative Court held that he had committed a criminal offence and upheld the decision of the Board refusing to appoint him.

102. The ECtHR was approached in this matter invoking Articles 9 & 14 which are extracted herein below:

"

ARTICLE 9

Freedom of thought, conscience and religion

1. *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
2. *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

……

ARTICLE 14

Prohibition of discrimination

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> *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*

103. The ECtHR held:

> "*47. The Court considers that, as a matter of principle, States have a legitimate interest to exclude some offenders from the profession of chartered accountant. However, the Court also considers that, unlike other convictions for serious criminal offences, a conviction for refusing on religious or philosophical grounds to wear the military uniform cannot imply any dishonesty or moral turpitude likely to undermine the offender's ability to exercise this profession. Excluding the applicant on the ground that he was an unfit person was not, therefore, justified. The Court takes note of the Government's argument that persons who refuse to serve their country must be appropriately punished. However, it also notes that the applicant did serve a prison sentence for his refusal to wear the military uniform. In these circumstances, the Court considers that imposing a further sanction on the applicant was disproportionate. It follows that the applicant's exclusion from the profession of chartered accountants did not pursue a legitimate aim. As a result, the Court finds that there existed no objective and reasonable justification for not treating the applicant differently from other persons convicted of a serious crime."*

A perusal of the above shows that the ECtHR concluded that the officer had refused to wear the military uniform due to religious beliefs. Thus,

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the Officer, in this case, was permitted to practice as a Chartered Accountant and the decision of the Board was quashed. The ECtHR also awarded compensation and costs in his favour. However, the above observations of the ECtHR also make it clear that if a person is convicted for a serious criminal offence, dishonesty or moral turpitude, debarment of such person from practicing as a chartered accountant could be justified.

Applicability to the facts of the case

104. The sum total of the scheme of the Act, read along with the judgments leads to the conclusion that in the case of Chartered Accountants the ICAI has the power and discretion to enter into or remove from the Register, the name of any person who suffers from any disabilities under Section 8 or is guilty of professional or other misconduct or any other circumstances, which as per the Council would disentitle the person from continuing on the Register. The nature of the offence or conduct may vary in degree. The Council would take a decision as to whether the removal ought to be permanent or for a particular period. The discretion is to be exercised in a non-arbitrary and reasonable manner.

105. The facts of the present case need to be considered in this backdrop. The incident leading to the conviction of the Petitioner emanates from the FIR dated 7th September 2001, registered for offences punishable under Sections 365/376/342/354/34 of the IPC. On the date when the incident leading to the conviction is stated to have occurred i.e., on 7th September 2001, the Petitioner was pursuing his graduate studies i.e., B. Com. (Hons.) and had already cleared the CA Foundation examination, as a step towards qualifying as a Chartered Accountant. He was, thus, aware that he was to pursue his career as a Chartered Accountant, which is governed by

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the provisions of the Chartered Accountants Act 1949, and the Rules framed thereunder. Charges were framed against him under Section 366 IPC, Section 376(2)(g) IPC and Section 506-II IPC, and during pendency of the trial, he cleared his remaining exams for qualifying as a CA. Upon passing his final exam, he was enrolled as a CA by the ICAI on 25th January 2008, and started rendering services as a CA. At the time when his name was entered as a member of the ICAI, admittedly, no disclosure was sought from him as to whether a civil or criminal case was pending against him. In fact, this Court was informed, during the proceedings, that such a disclosure is not sought from any person. Mr. Bansal was, thereafter, convicted and held guilty of offences under Sections 376(2)(g) IPC, read with *Explanation 1*, and Section 506-II of the IPC, by the Sessions Court vide judgment dated 23rd September 2009. He was sentenced to seven years imprisonment and a fine of Rs. 25,000/-. He had then surrendered and filed a Criminal Appeal, before the Delhi High Court, challenging his conviction. Vide order dated 5th February 2010, his sentence was suspended. By then he had already undergone seven months of imprisonment. Vide the final judgment in the Criminal Appeal bearing ***Crl. A. 828/2009***, dated 7th October 2013 the Petitioner was acquitted of offence under Sections 376(2)(g) of IPC, however, he was convicted under Sections 354 and 506-II of IPC. His sentence was accordingly modified, and reduced to the period of seven months, i.e., the period already undergone, along with fine of Rs. 25,000/. He then filed an application before the High Court under the Probation of Offenders Act, 1958 seeking pardon and benefit of probation on the ground that the sentence already undergone would create a stigma on his practice of his

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profession, however the same was dismissed by a ld. Single judge, vide judgment dated 12th November 2014, holding that as the period of conviction had already been undergone, the Court had become *functus officio*.

106. Clearly the offences for which he has been convicted, initially under Section 376(2)(g) IPC vide order dated 23rd September 2009, thereafter, reduced to Section 354 IPC vide order dated 7th October 2013, are serious offences and would attract the rigours of Section 8(v) of the Chartered Accountants Act, 1949. This is clear from a reading of the judgments of Supreme Court in ***State Bank of India and ors. v. P. Soupramamiane (supra)***, and in ***Commissioner of Police vs. Raj Kumar (supra)*** and the judgment of a ld. Division Bench of this Court in ***Govt. of NCT of Delhi & Anr. vs. Robin Singh (supra)***. Admittedly the Petitioner has not been granted any pardon. He has primarily relied upon the letter issued to him by the Under Secretary to the Government of India, Ministry of Corporate Affairs on 22nd October 2018, which reads as under:

> *"I am directed to refer to your letter dated 04.10.2018 seeking status of Office Memorandum No. 17/1/2019- Judl. Cell-II dated 29.6.2018 from Ministry of Home Affairs on the subject of removing disability under Section 8(v) of the Chartered Accountants Act, 1949.*
>
> *2. In this regard, it is stated that the matter has been examined by the Ministry. It has been prima facie found that that the disability under Section 8(v) of the Chartered Accountants Act 1949, has not arisen yet against the applicant Shri Mohit Bansal, because Section 8(v) of the Chartered Accountants Act 1949,*

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> *deals with professional misconduct whereas the incident took place prior to his acquiring to the professional qualification. Therefore the application is premature and infructuous."*

107. On the strength of this letter, the Petitioner has urged that the offence of '*moral turpitude'* under Section 8 (v) of the Act, would be qualified by the words "*committed by him in his professional capacity*".

This Court does not agree with this interpretation, which is a purported *'prima facie'* view. The said letter, in any case, is not binding on this Court. A reading of Section 8 (v) of the Act makes it clear that in cases of conviction for offences involving '*moral turpitude*', the removal of the disability cannot be within the discretion of the Central Government inasmuch as even in less grave criminal offences, power has been vested under the Act, only with the Council through the Board of Discipline or the Disciplinary Directorate. Thus, in the case of a higher offence, i.e., an offence of a grave nature, the removal of the disability contemplated under Section 8 by the Central Government would be impermissible, except by law. In offences which may be of a technical nature, there may be power in the Central Government to remove the disability. This power would however not be exercisable in case of offences involving '*moral turpitude*'.

108. The Petitioner has also vehemently urged that the offence *qua* which he has been convicted was in his college days, and was much prior to him having been enrolled as a CA. He has argued that the Act cannot be expected to ban him from being a CA, for such offences which were committed much earlier before him qualifying as a CA.

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109. In the opinion of this Court, Section 8 is very clear, as the expression that is used to attract the disability in Section 8 is "entered in" or "borne on the register". The disability is contemplated at the entry level itself, which also means that the offence involving '*moral turpitude*' may not, in such a situation, be one in professional capacity. Given that the disability is at the stage of entry to the register, the clear purport of the language is that it is inclusive of all convictions for offences/acts involving *'moral turpitude'*, irrespective of when the same was committed. Thus, the interpretation being canvassed by the Petitioner is liable to be rejected.

110. The further issue that arises in the mind of this Court, is as to whether in the case of a conviction for an offence involving '*moral turpitude*', should the said person be barred forever from practicing as Chartered Accountant?

111. In the present case, the Petitioner was, admittedly, a college student, when the said offence was committed. He, thereafter, qualified all the levels of his CA examinations. On the date when he was admitted as a member of the ICAI, the criminal charges against him were already pending trial, and no due diligence was undertaken by the ICAI on the said date. He began practicing as a CA from 2008 onwards and continues to do so till date. He has also undergone the sentence and the punishment which was awarded to him in ***Crl. A. 828/2009***. Thus, the Petitioner raises the question- "Can I be punished twice?"

112. This question appears attractive at first blush, inasmuch as in the case of criminal offences, the punishment can only be imposed once. However, the discussion would not end here. There are certain professions

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and services which are considered to be those that require a very high standard of integrity, some of which are also considered as *noble professions*. Such professions, as has been held by the Supreme Court in various decisions discussed above, include Doctors, Lawyers and Chartered Accountants. A higher standard is also expected in case of appointments to public offices. Even in the case of Managing Directors or Directors in companies' similar disqualifications exist.

113. A perusal of the case law on this would show that, for instance, in the case of Advocates admitted for practice, the disability under the existing provision under Section 24A of the Advocates Act, 1961, is applicable only for a period of two years. However, the Supreme Court in the case of ***Mahipal Singh Rana (supra)*** and the Gujarat High Court in the case of ***C v. Bar Council of Gujarat (supra)*** recommended for more stringent measures. Even the Law Commission of India, in its 266th Report, has suggested removal of the two-year period and, in fact, recommended for a total ban in the cases of those persons who are convicted of offences involving "*moral turpitude*" from being enrolled in the profession or from practicing as advocates.

114. Similar would be the case for persons who intend to join police forces or other public offices. In these cases, as well, even pending allegations are sufficient to constitute disqualification, as has been recognized by the Supreme Court in ***Commissioner of Police vs. Raj Kumar (supra)***. The Supreme Court in ***Council of the Institute of Chartered Accountants of India vs P.C. Parekh (supra)*** has clearly recognised the extension of the same logic to the case of Chartered Accountants, and more so because of it having been held to be a *noble*

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profession.

115. Even in ***P. Mohanasundaram (supra),*** the Madras HC has held that a Petitioner who had committed an offence of bigamy, which of course is not an offence in professional capacity, upon conviction could not have been entered on the register under Section 8(v) of the Act.

116. Mr. Mohit Bansal has cited various cases, including, ***ICAI v. Vimal Kumar Surana and ors. (supra), ICAI v. L.K. Ratna and ors. (supra)*** etc., in support of his contention that the due disciplinary process contemplated under Section 21 of the Act was not followed by the ICAI in his case. The Petitioner has also relied upon the judgment of the Andhra Pradesh High Court in ***Ramakrishna Rao (supra)***. However, in the opinion of this Court, the said judgment is not applicable to the present case, as the said judgment was rendered on the premise of an appeal to the conviction having been pending, and the Petitioner in the said case having portrayed the fact that he had a strong case in the appeal, and hence he should not be subject of stigma, in case his conviction is overturned on appeal. No such appeal has been filed in the present case or is pending. These cases are irrelevant to the present dispute, inasmuch as such an inquiry does not arise, in the case of a person who is sought to be removed due to a conviction of an offence involving '*moral turpitude'* under Section 8(v) of the Act. It is only when there are allegations of professional or other misconduct under Section 8(vi) of the Act, read with the Schedules to the Act, that the occasion to conduct an inquiry under Section 21 of the Act, before the Disciplinary Directorate, arises. When concerned with offences involving '*moral turpitude*', the said section does not apply. That is not to say that principles of natural justice need not be

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followed. A notice ought to be issued and a fair hearing afforded to the person concerned.

117. Accordingly, under such circumstances, the question as to whether the Petitioner can be held to be suffering from the disability under Section 8(v). The answer is a clear yes, although the consequences of the same could be far reaching, not only on the Petitioner but also his family.

118. The Petitioner, in this case, having been convicted for offences under Section 354 and 506-II of IPC, is clearly attracted by the disability under Section 8(v) of the Act. He has already practiced for almost 12 years by the time the notice was issued by ICAI. Ideally, ICAI ought to have had adequate checks at the time of registration itself. However, the fact that the conviction of the Petitioner may have not come to the attention of the ICAI for more than 10 years would not, in any manner, bar ICAI from taking action, especially, when the offence involved is one of such a grave and serious nature.

119. The ICAI is well within its power under Section 15(2)(p) of the Act to issue the show cause notice and the notice of hearing which is under challenge. During the course of hearing in this petition, the Petitioner was given an option of appearing before the ICAI in pursuance of the notice for hearing, and thereafter for challenging any final order that may be passed by ICAI. However, the response of the Petitioner was that the legal issue involving interpretation of Section 8 would have a bearing on the enquiry, and hence he insisted on pressing the present petition.

120. It is, accordingly, held that in the case of offences involving '*moral turpitude*' under Section 8(v) and persons who may have been convicted of such offences and sentenced for imprisonment, the disability would be

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squarely attracted.

121. It is surprising to note, as per the submissions made, that the institute- ICAI in India does not have any checks at the entry level and disclosure requirements, specifically asking an applicant as to whether there is any criminal case/FIR instituted against the said applicant or whether he has been convicted in the past for any offence. The said disclosure ought to be sought at the initial stage itself, i.e., when the person signs up to take the first examination as a chartered accountant and at the stage of registration, so that the person is conscious of the disqualification which could apply *qua* him and bar such person from practicing as a CA. There also appears to be no continuing disclosure requirement from members.

122. Instead of having such a disclosure requirement at the initial stage, the ICAI has published a manual wherein the impression given is to the contrary in the portion determining the eligibility criteria. The said portion of the manual reads as under:

> *"Manual for Members*
>
> ***1. Enrolment as Member***
>
> *(Sections 4 & 8 Regulation 4)*
>
> ***Eligibility Criteria***
>
> *The applicant should have:*
>
> *(A) (a) Completed the prescribed period of 3 years/3 years and 6 months articled training or 4 Years and 6 months audit training as applicable;*
> *(b) Passed the C.A. Final Examination Both Groups;*
> *(c) Undergone course on General Management and Communication skills. (Applicable to candidates passing of Both Groups of Final C.A.*

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Examination held in May 2003 and thereafter.)

(d) Should not possess any of the following disabilities:

(i) Not attained the age of 21 years.

(ii) Unsound mind and stands so adjudged by a Competent Court.

(iii) Undischarged insolvent.

(iv) Being discharged insolvent, has not obtained from the Court a certificate that his insolvency was caused by misfortune without any misconduct on his part.

(v) Convicted by a Competent Court, of an offence involving moral turpitude committed by him in his professional capacity unless pardoned or the Central Government has removed the disability."

123. The said manual has been relied upon by the Petitioner to support the plea that unless and until the offence is committed in a professional capacity the said disability would not be applicable to him. However, in the light of the legal position discussed above, there is a clear need to modify the Manual and for the ICAI to bring in a framework which includes disclosure requirements for every candidate who seeks to become a Chartered Accountant, right at the inception itself. There should also be a requirement of disclosure on a periodic basis, annually for members to inform the ICAI if there are any criminal cases/conviction etc., against them.

124. Thus, in the case of convictions, the factum of the said conviction and the offences *qua* which the applicant was convicted ought to be disclosed, and in the case of an FIR or a Criminal Complaint having been filed, there ought to be an obligation upon the applicant to keep the ICAI informed and updated, at least on an annual basis, as to the progress in the

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said Complaint/Case.

125. It is also noteworthy that no statute or law such as the Rehabilitation of Offenders Act, 1974 exists in India. This Court, however, cannot but observe that the question as to whether the rehabilitation ought to be considered in case of persons who may have either juvenile or at a younger age committed some offences and have undergone convictions, is an important one. In ***Union of India v. Ramesh Bishnoi, (2019) 19 SCC 710,*** the Supreme Court observed, in the context of Juvenile Justice Act, 2015 Act, that the *principle of fresh start* ought to be applied. There is no doubt that such a principle would squarely be applicable for juveniles, however, for other persons, who have undergone conviction for offences committed by them and the question as to whether the rehabilitation ought not be permitted and if so in what manner, is yet to be considered. The question as to whether such persons and professionals can be barred forever for practicing either as Chartered Accountants, Lawyers etc., would be subject matter of the debate in the realm of policy. In the present case, however, no such question arises for consideration or interpretation, as the Petitioner was clearly convicted of a serious offence involving moral turpitude which directly attracts the disability contemplated under Section 8(v) of the Act.

126. ***Conclusions:***

A. **On the scheme of the Act:** This Court concludes as under:

a. There are, broadly, two categories of misconduct contemplated under the Act – *'professional misconduct'* and *'other misconduct'*. These two types of misconduct are covered under Section 8 (vi) read with Section 22 and the Schedules to the

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Act.

b. However, a conviction for an offence involving '*moral turpitude*' punishable with imprisonment- is a third and higher class of offence under Section 8(v) of the Act and is stipulated as a separate class of disabilities which bars a person's name from being entered or borne in/continued in the register of the ICAI. This is a graver offence, in terms of the scheme of the Act, juxtaposed to what is contemplated under the third part of the Second Schedule or the fourth part of the First Schedule to the Act.

c. In the case of an offence involving '*moral turpitude*', for which no pardon has been granted, by a strict interpretation of the Act, the matter need not even be referred to the Board of Discipline or to the Disciplinary Committee for an inquiry. In such cases dealing with conviction for offences involving *'moral turpitude'* covered under Section 8(v) the same would straight away fall within the jurisdiction of the ICAI Council, and even an inquiry, as contemplated in Section 21, would not be strictly required. The ICAI Council, may however, for the purposes of complying with the Principles of Natural Justice, and for the purposes of fairness, still decide to provide a hearing to the person concerned.

d. A reading of Sections 20, 21 & 22 would show that the discretion vested in the Council and the Director (Discipline) are vast. Inquiry can be conducted in respect of professional or other misconduct as also under any other circumstances.

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e. In the case of offences under Section 8(vi) read with Section 22 and the Schedules, the ICAI is the final authority empowered to accept the recommendation of the Board of Discipline, in the case of misconduct specified in the First Schedule, and of the Disciplinary Committee in cases of misconduct specified in the Second Schedule, or a combination of both the Schedules.

f. It is further clear that if a person has been convicted for an offence involving '*moral turpitude*', such a person's name cannot be entered into the register or cannot continue in the register, and has to be removed from the register, unless a pardon in respect thereof is granted.

g. Although, from a bare reading of sub-section 8(v), it may appear that the Central Government would have the power to remove the disability even in offences involving *'moral turpitude'*, in the opinion of this Court, in case of an offence or a conviction involving '*moral turpitude'*, such power being vested with the Central Government would be contrary to the spirit of the statute as also contrary to the settled judicial precedents, to the effect that `*moral turpitude*' would be a complete disqualification. The use of the expression **"entered in"** contained in Section 8, also shows that offences committed prior to the person qualifying as a CA are also within the purview of the disabilities mentioned under Section 8 of the Act. The only condition upon which a person convicted can be entered into or can continue on the register of ICAI, would be

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if the person has been granted a pardon.

B. **On the facts of the present case:** The Petitioner's conviction would be attracted by the disability of *'moral turpitude'* as contemplated under Section 8(v) of the Act. The ICAI shall award reasonable time for the Petitioner to file a fresh reply to the impugned notices, and for him to be heard by the ICAI in accordance with the principles of natural justice. Upon the said hearing being concluded, ICAI shall proceed in accordance with law.

C. **Directions to ICAI:** As is evident from the facts of the present case, the Petitioner, despite a criminal case being pending at the time of his enrolment as a Chartered Account and thereafter his conviction, was enrolled and was permitted to practice as a CA. This Court has not been shown any policy or disclosure requirements that are asked for from candidates or CAs either at inception or thereafter. There is a clear need for the ICAI to create a framework wherein there is proper disclosure by candidates who apply to become Chartered Accountants, at the inception itself. There is also a need for a continuing disclosure, may be on an annual basis for members to inform the ICAI if there are any criminal cases / conviction etc., against them, so that the ICAI is not kept in the dark. The power, discretion and duty of ensuring the purity of the Register of Members is upon the ICAI. Thus, in the case of convictions, the factum of the said conviction and the offences *qua* which the applicant was convicted ought to be disclosed.

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In the case of an FIR or a Criminal Complaint having been filed, there ought to be an obligation upon the applicant to keep the ICAI informed and updated, as to the progress in the said Complaint/Case. ICAI shall accordingly frame a policy and a mechanism, if not already in existence, for disclosure by members both at the inception as also on a periodic basis thereafter, of any criminal cases or convictions so that the spirit and intent of the statute is given effect to and the ICAI is not in the dark about the same until it is notified by some information or complaint.

127. This writ petition seeking quashing of the show cause notice and the proceedings emanating therefrom is, accordingly, dismissed. All pending applications are also disposed of. No order as to costs.

PRATHIBA M. SINGH
JUDGE

JANUARY 21, 2022
mw/Ak