

I n d e x

Sr. No.	Name of the Experiment	Page No.	Date of Experiment	Date of Submission	Remarks
1	Importance of legal Profess- -ion				
2	Enrolment Advocates Applying for enrolment Removal of Names from Roll Certificate of Enrolment				
3)	Establishment & Organisat- -ion of State Bar Council				
4	Establiishment & Organisation Powers & function of State Bar Council				
a)	Admission of Advocates of State Roll				
b)	Maintenance of Roll of Advocates				
c)	Rule Making Power				
d)	Power of Appointment of Committee & Staff Members				
e)	Maintenance of Account etc.				
4)	Advocates Act for Organisation of Bar Council of India				

CS

IMPORTANCE OF LEGAL PROFESSION

Importance of Legal Profession :-

The legal profession has a great importance in the administration of justice. In a case of *Hemraj L. Chulani V/S Bar Council of Maharashtra And Goa*, A.I.R. 1996, S.C. 1708, regarding the importance of legal profession the Supreme Court has observed that legal profession is profession of great honour. It has been created not for private gain but for public good. It is not a money-making occupation but a branch of administration of justice. Since it is not a business, a lawyer cannot solicit, work or advertise either directly or indirectly. An Advocate is an officer of the Court and required to maintain towards the Court a respectful attitude. Bearing in mind that the dignity of the judicial office is essential for the survival of the society.

According to the views of Supreme Court the legal profession is a business with the judiciary in the administration of justice. Actually the Court arrives at a correct judgement on the basis of legal assistance of a lawyer. All legal materials relating to the case are collected by the advocates and thereby helps the Court or Judge to arrive at a correct judgement. Justice P.N. Sanyal has stated that the justification for the existence of counsel is that each side to the controversy should be in a position to present its case before an impartial tribunal in the best and most effective

manner possible.

In case it has rightly been observed that a sound system of the administration of justice should possess three ingredients, namely a well planned body of laws based on wise concepts of social justice, a judicial hierarchy comprised of the Bench and the Bar, seasoned in the law and inspired by high principles of professional conduct and existence of suitable generation to ensure fair trial. It has been made also clear that the lawyers are not supposed to be dictated by their clients, where matters of good faith and honourable conduct are concerned. They are responsible to the Court for the fair and honest conduct of a case. They are agents, not of man who pays them but are acting in the administration of justice. The lawyer plays an important role in the maintenance of peace and order in the society. The peace and order are very necessary elements for the existence of the society. The lawyers also play an important role in the law reform also. By reason of the experience gained in the daily application and interpretation of laws, lawyers are best aware of the imperfection of the legal system and constitute the most competent class of men to advise on law reform and to promote popular enthusiasm and support for it. The most difficult part of the process of legislation is the drafting of its provisions and no one is better fitted to give guidance on this than the lawyer.

Actually the law is very complicated. The language of acts and Regulations is often found very complicated and confusing and not easy to be understood. The citizens of the country require the advice of the advocate to understand the exact meaning of the provisions of the acts

and Regulations. In the matter of Madhav Singh, A.I.R. 1923, Pat 185 it has been observed by the Court that advocates and pleaders were enrolled not only for the purpose of rendering assistance to the Courts in the administration of justice but also for giving professional advice for which they are entitled to be paid by those members of the public who require their services.

Admitted As Advocate On A State Roll:

The provision with regard to the admission of a person as advocate on a State Roll have been made under Section 24 of the Advocate Act, 1961. Sub-section (1) of Section 24 provides that subject to the provisions of the Advocate Act and the Rules made thereunder, a person shall be qualified to be admitted as an advocate on a State Roll, if he fulfills the following conditions, namely -

a) he is a citizen of India;

Provided that subject to the other provisions contained in this Act a national of any other country may be admitted as an advocate on a State Roll if citizen of India, duly qualified, are permitted to practice law in that other country;

b) he has completed the age of twenty-one years;

c) he has obtained a degree of law -

i) before 12-3-1967 from any university in the territory of India; or

ii) before 15-8-1947, from any university in any area which was comprised before that date within India as defined by the Government of

India Act, 1935, or

- ii) after 12-3-1967, same as provided in sub-clause (iii a), after undergoing a three-year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or
- iv) after understanding a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India, or he is a Barrister and is called to the bar on or before 31-12-1967 or has passed the vicarious clerkship examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act;
- v) in any other case, from any University outside the territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India; or
- vi) he fulfils such other condition as may be specified in the rules made by the State Bar Council for this purpose, he has paid, in respect of the enrolment stamp duty, if any, chargeable under the Indian Stamp Act and prescribed enrolment fee.

For this purpose a person shall be deemed to have obtained a degree in law from a University in India on the date on which the

results of the examination for that degree are published by the University on its notice-board or otherwise declaring them to have passed that examination.

Sub-section (2) of Section 24 of the Act makes it clear that a vakil or pleader who is a law graduate may be admitted as an advocate on a State Roll if he -
a) makes an application for such enrolment in accordance with provisions of this Act, not later than two years from the appointed day; and

b) fulfills the conditions specified in Clauses (a) (b) (d) and (e) as stated above;

Sub-section (3) of Section 24 makes it clear that notwithstanding anything contained in Sub-section (1), as stated above a person who -

a) has for at least three years, been a vakil or a Pleader or a Mukhtar or was entitled at any time to be enrolled under any law as an advocate of a High Court including a High Court of a State or of a State or of a Court of Judicial Commissioners in any Union Territory; or

b) before 1-12-1961, was entitled otherwise than an advocate to practice the profession of law (whether by way of pleading or arbitration or both) by virtue of the provisions of any law or who would have been so entitled had he not been in public service on the said date; or

c) before 1-4-1937, has been an advocate of any High Court in any

area which was comprised within Burma as defined in the Government of India Act, 1935; or

is entitled to be enrolled as an advocate under the rule made by the Bar Council of India in this behalf, may be admitted as an advocate on a State Roll if he -

- i) makes an application for such enrolment in accordance with the provisions of this Act; and

- ii) fulfills the conditions specified in Clauses (a), (d) and (e) of Sub-section (1) of Section 24 as stated above.

In the case of *L. M. Mahurkar Vs Bar Council of Maharashtra*,
A.I.R. 1996, S.C. 1602.

The Supreme Court has held that person practising as sales tax practitioner before enforcement of the Advocates Act 1961 by virtue of the provisions of the Bombay Sales Tax Act, 1959 but not possessing the educational qualifications required for enrolment as advocate under the Advocates Act is not entitled to be enrolled by the State Bar Council under the Advocates Act.

In the case of *Hemraj L. Chaurani Vs Bar Council of Maharashtra and Goa*, A.I.R. 1996, S.C. 1708

The Supreme Court has held that the rule made by the Bar Council restricting the entry of person already carrying on other profession is not arbitrary and, therefore, not against Article 14 of the Constitution. It does not impose unreasonable restriction and as a result it is not violative of Article 19(1)(g) which guarantees all citizens

right to practice any profession or to carry on any profession, trade or business. The Court has observed that Article 19(1)(g) does not provide an absolute right to practice any profession or carry on any occupation trade or business. It is subject to Clause (6) of Article 19 which provides that nothing in Sub-section (g) of Clause (1) of Article 19 shall affect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

No doubt, a citizen of India having obtained the qualification required for being enrolled as an advocate, can legitimately be enrolled as an advocate, but the aforesaid right is fettered by the rule framed by the State Bar Council. The rule imposes reasonable restriction and valid. The legal profession requires full time attention. Besides, the rule is not violative of Article 14. The rule carries out a well-defined class of professions carrying on other professions and denies to members of the well-defined class entry to the legal profession so long as they visit or carrying on any other profession simultaneously with the legal profession. The said classification has a reasonable nexus to the object sought to be achieved, namely, the efficiency of advocates belonging to the legal profession and the better administration of justice in which the legal professional is partners with the judiciary. The rule is not unreasonable and arbitrary and, therefore, not violative of Article 14 of the Constitution.

Further, the Court has held that the rule is not violative of Article 21 of the Constitution. No doubt right to live includes right to livelihood. But if a person carrying on another profession especially like medical profession is denied the enrolment as an advocate it cannot be said that he has been denied his right to livelihood. The rule requires that unless he gives up that other practice and joins whole-heartedly the legal profession he cannot be permitted to enter the legal profession. The rule cannot be said to be laying down procedure not established by law. On the contrary that procedure has been found to be well sustained under Article 19(1)(g) read with Article 19(6). Once that conclusion is reached, the absolute requirement of Article 21 would be out of the way. It cannot be said that the applicant has been deprived of his right to livelihood by pursuing two professions, contrary to any established procedure of law.

In Indian Council of Legal Aid and Advice V/S Bar Council of India,
A.I.R. 1995, S.C. 691

The Supreme Court has made it clear that the rule depriving a person who have completed the age of forty-five years is beyond the rule making power of the Bar Council of India.

Disqualification for Enrolment :-

Disqualifications for enrolment as an advocate have been provided under Section 24-A of the Advocates Act, 1961. It provides that 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 Unlawful Offences Act, 1955:

Provided that the disqualification for enrolment as a person shall cease to have effect after a period of two years has elapsed since his release.

It has been made clear that the provisions of this section shall not apply to a person who having found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958.

M. J. V. /

ENROLMENT

Advocates Applying for Enrolment :-

An application for enrolment as an advocate may be made under Section 25 of the Advocates Act. It provides that an application of admission as an advocate shall be made in the prescribed form to the State Bar Council within whose jurisdiction the application proposes to practice.

Disposal of Applications for Admission As An Advocate :-

The provisions for disposal of applications for admission as an advocate have been made under Section 26 of the Advocates Act, 1961. It provides that a State Bar Council shall refer every application for admission as an advocate to its Enrolment Committee and subject to any direction that may be given in writing by the State Bar Council in this behalf, such committee shall dispose of the application in the prescribed manner. However, the Bar Council of India may, if satisfied, either on a reference made to it in this behalf or otherwise that any person has got his name entered on the roll of advocates by the misrepresentation as to an essential fact or by fraud or undue influence, remove the name of such person from the roll of advocates after giving him an opportunity of being heard.

Where the Enrolment Committee of State Bar Council proposes to refuse any such application, it shall refer the application for opinion to the Bar Council of India and every such reference shall be accompanied by a statement of the grounds in support

of the refusal of the applications. The Enrolment Committee of a State Bar Council shall dispose of any application so referred to the Bar Council of India in conformity with the opinion of the Bar Council of India.

Where the Enrolment Committee of a State Bar Council has refused any application for admission as an advocate on its roll, the State Bar Council shall, as soon as may be, send intimation to all other State Bar Councils about such refusal stating the name and qualifications of the person whose application was refused and grounds for the refusal.

Section 27 of the Advocates Act provides that where a State Bar Council has refused the application of any person for admission as an advocate on its roll, no other State Bar Council shall entertain an application for admission for such person as an advocate on its roll except with the previous consent in writing of the State Bar Council which refused the application and the Bar Council of India.

Removal of Names from Roll:

According to Section 26 - A of the Advocates Act, 1961, a State Bar Council may remove, from the State Roll, the name of any advocate who is dead or from whom a request has been received to that effect.

Special Provision for Enrolment of Certain Advocates of Supreme Court:

Section 20 of the Advocates Act, 1961 makes special provisions for enrolment of certain advocates of Supreme Court. It provides that every advocate who was entitled as of right to practice in the Supreme Court immediately before the appointed day and whose name is not entered in any State Roll may, within the prescribed period, express his intention in the prescribed form to the Bar Council of India for the entry of his name in the roll of a State Bar Council and on receipt thereof, the Bar Council of India shall direct that the name of such advocate without payment of any fee, be entered in the roll of that State Bar Council and the State Bar Council concerned shall comply with such direction.

Any entry in the State Roll made in the compliance with the direction of Bar Council of India issued under this section shall be made in order to seniority determined with the provisions of Section 17(3) of the Act. Where the advocate referred to in this section omits or fails to express his intention within the prescribed time, his name shall be entered in the roll of the State Bar Council of Delhi.

Section 21 of the Advocates Act provides that where the date of seniority of two or more persons is the same, the one senior in age shall be reckoned as senior to the other. If any dispute arises with respect to the seniority of any person, it shall be referred to the State Bar Council concerned for decision.

Certificate of Enrolment:

Section 22 make provisions regarding issuing of Enrolment Certificate. It provides that there shall be issued a

certificate of enrolment in the prescribed form by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this act. Every person whose name is so entered in the State Roll shall notify any change in the place of his permanent residence to the State Bar Council concerned within thirty days of such change.

Senior Advocates Practice Under Advocates Act, 1961 :-

The Advocates Act, 1961 provides for two classes of advocates, senior advocates and other advocates. Section 16(1) of the Act says that there shall be two classes of advocates, namely, senior advocates and other advocates. Sub-section (2) of Section 16 provides that an advocate may, with his consent, be designated as senior advocate if the Supreme Court on that Court is of opinion that by virtue of his ability, standing at the Bar or special knowledge or experience in law, he is deserving of such distinction. Section 16(3) lays down that senior advocate shall, in the matter of their practice, be subject of such restrictions as Bar Council of India may in the interest of legal profession prescribe. An advocate of the Supreme Court who is a senior advocate of that Court immediately before the appointed day shall, for this purpose, be deemed to be senior advocate.

Provided that where any such senior advocates makes an application before the 31st December, 1965, to the Bar Council, maintaining the roll in which his name has been entered that he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly.

In exercise of its powers given under Section 49(1)(g) of the Advocates Act, 1961 the Bar Council of India has framed Rules under Chapter I of Part VI of the Rules of Bar Council of India regarding the practice of senior advocates under which some restrictions have been imposed on the practice of a senior advocate which follows as :

1) Regarding Filing of Vakalatnama :

In the matter of their practice, a senior advocate shall not file a Vakalatnama or act in any court, Tribunal or before any person or authority mentioned in Section 30 of the Advocates Act. Explanation to the Rules makes it clear that 'to act' means to file an appearance or any pleading or application in any court or Tribunal or before any person or authority mentioned under Section 30 of the Advocates Act or to do any act other than pleading required or authorised by law to be done by a party in such court or Tribunal or before any person or other authority mentioned in the said section either in person or by his recognised agent or by an advocate or an attorney on his behalf.

2) Regarding Appearance :

In the matter of their practice, a senior advocate shall not appear without an advocate on record in the Supreme Court or without an advocate in Part II of the State Roll in any Court or Tribunal or before any person or other authorities mentioned under Section 30 of the Act. Where a senior advocate has been ~~admitted~~ engaged prior to the coming in the force of the Rules in this Chapter, he shall not continue thereafter, unless an advocate in Part II of the

State Roll is engaged along with him, provided that a senior advocate may continue to appear without an advocate in Part II of the State Roll in case which he had been briefed to appear for the prosecution or the defence in criminal case, if he was so briefed before he is designated as a senior advocate or before coming in the operation of the Rules in this Chapter, as the case may be.

3)

Regarding Instructions to Draft Pleadings or Affidavits and Briefs:-

The Rules provide that a senior advocate shall not accept instructions to draft pleadings or affidavits, advice on evidence or to do any drafting work of an analogous kind in any Court or Tribunal or before any person or other authority mentioned under Section 30 of the Advocates Act or undertake corresponding work of any kind whatsoever but this restriction shall not extend to settle any such matter as aforesaid in consultation with another advocate in Part II of the State Roll. It has also been provided in the Rules that a senior advocate shall not accept directly from a client any brief or instructions to appear in any Court or Tribunal or before any person or other authority in India.

Provided that a senior advocate, he free to make concessions

or give undertakings in the course of argument on behalf of his clients on instructions from the junior advocates. A senior advocate may in recognition of the services rendered by an advocate in Part II of the State Roll appearing in any matter pay him a fee which he considers reasonable.

4)

Regarding Advice:

The Rules provide that a senior advocate shall not advise ~~not~~ on evidence. A senior advocate who had acted as an advocate (junior) in a case, cannot, after he has been designated as a senior advocate advise on grounds of appeal in a Court of appeal or in the Supreme Court, except with an advocate in Part II of the State Roll.

ESTABLISHMENT OF RESIDENTS OR STATE BAR COUNCILS

1. Establishment and Organisation :-

Section 3 of the Statutes Act provides that it shall be a Bar Council :-

- a) for each of the States of Andhra Pradesh, Bihar, Gujarat, Jammu & Kashmir, Madhya Pradesh, Karnataka, Orissa, Rajasthan and Uttar Pradesh to be known as the Bar Council of that State
- b) for the States of Assam, Arunachal Pradesh, Assam, Manipur, Meghalam, Nagaland and Tripura to be known as the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh.
- c) for the States of Kerala and the Union Territory of Laccadive, Minicoy and Amindive Islands, to be known as the Bar Council of Kerala.
- d) for the States of Tamil Nadu and the Union Territory of Pondicherry to be known as the Bar Council of Madras.
- e) for the States of Maharashtra and Goa and the Union Territory of Dadra and Nagar Haveli and Daman and Diu to be known as the Bar Council of Maharashtra and Goa.
- f) for the State of Punjab and Haryana and the Union Territory of Chandigarh to be known as the Bar Council of Punjab and Haryana.
- g) for the State of Himachal Pradesh, to be known as the Bar Council

of Himachal Pradesh

8) for the State of West Bengal and the Union Territories of Chandernagore and Nicobar Islands, to be known as the Bar Council of West Bengal; and

i) for the Union Territory of Delhi, to be known as the Bar Council of Delhi;

Section 3 of the Act makes provisions in respect of the organization of the Bar Council. It provides that a State Bar Council shall consist of the following members, namely:-

(i) in the case of the State Bar Council of Delhi, the additional Solicitor-General of India, ex-officio, in the case of the State Bar Council of Assam, Meghalaya, Mizoram, Manipur, and Tripura, the advocate-General of each of the State of Assam, Meghalaya, Nagaland and Tripura, ex-officio, in the case of the State Bar Council of Punjab and Haryana the advocate-General of each of the State of Punjab and Haryana, ex-officio and in the case of any other State Bar Council, the advocate-General of the State, ex-officio;

(ii) in the case of a State Bar Council with an electorate not exceeding five thousand, fifteen members in the case of State Bar Council with an electorate exceeding five thousand but not exceeding ten thousand, twenty members and in the case of a State Bar Council with an electorate exceeding ten thousand, twenty five members, elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the electoral roll of the State Bar Council;

Provided that as near as possible one-half of such elector members shall, subject to any rules that may be made in the behalf of the Bar Council of India, be persons who have for at least ten years been advocates on a State Roll and in computing the said period of ten years in relation to any such person, there shall be included any period during which the person has been an advocate enrolled under the Indian Bar Council Act, 1926.

The aforesaid proviso does not affect the term of office of any member elected by commencement shall be held in accordance with the provisions of the rule made by Bar Council of India to give effect to the said proviso.

It has also been made clear that nothing in Clause (1) of Sub-section (2) stated above, shall effect the representation of elected members in any State Bar Council as constituted immediately before the commencement of Advocate Amendment Act, 1973, until that State Bar Council is reconstituted in accordance with the provisions of this Act.

Sub-section (4) of Section 3 of the Act provides that an advocate shall be disqualified from voting at an election under Sub-section (2) of this section, stated above on being shown as such on being a member of a State Bar Council, unless he possesses such qualifications or satisfies such conditions as may be prescribed in this behalf by the Bar Council of India and subject to any such rules that may be made, an electoral roll shall be prepared and revised from time to time by each Bar Council.

In addition to the members, the State Bar Council shall have a chairman and vice-chairman elected by the Council in such manner as may be prescribed. Sub-section (3-24) of Section 3 of the Act makes it clear that every person holding office as Chairman or as Vice-Chairman of any State Bar Council immediately before the commencement of the Advocates (Amendment) Act, 1977, or if such commencement cease to hold office as Chairman or Vice-Chairman, as the case may be.

Provided that every such person shall continue to carry on the duties of his office until the Chairman or Vice-Chairman, as the case may be, of each State Bar Council, elected after the commencement of the Advocates (Amendment) Act, 1977, assumes charge of the office.

Section 10-B of the Advocates Act makes it clear that an elected member of a Bar Council shall be deemed to have vacated his office if he is declared by Bar Council of which he is a member to have been absent, without sufficient cause, from three consecutive meetings of such Council in his name is, for any cause removed from the roll of advocates or if he is otherwise disqualified under any rule made by the Bar Council of India.

Section 13 of the Advocates Act provides that no act done by a Bar Council or any Committee thereof shall be called in question on the ground merely of the existence of any vacancy in or any defect in the Constitution of, the Council or Committee, as the case may be. Section 14 of the Advocates Act makes it clear that no election of a member

to a Bar Council shall be called in question on the ground merely that due notice thereof has not been given to persons entitled to vote thereat, if notice of the date has, not less than 30 days before that date, been published in the official Gazette.

Powers and Functions of the State Bar Council :-

Every Bar Council is a body corporate having perpetual succession and a common seal with power to acquire and hold property, both movable and immovable and to contract and may by the name by which it is known sue and be sued.

Section 6 of the Advocates Act makes provision

in respect of the functions of the State Bar Council. It provides that the functions of the State Bar Council shall be -

- a) to admit persons as advocates on its rolls;
- b) to prepare and maintain such rolls;
- c) to entertain and determine cases of misconduct against advocates on its rolls;
- d) to safeguard the rights, privileges and interests of advocates on its rolls;
- e) to promote and support law reform;
- 2e) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest;
- 3e) to organise legal aid to the poor in the prescribed manner;
- 4) to manage and invest the funds of the Bar Council;

- g) to provide for the election of its members;
- h) to perform all other functions conferred on it by or under this Act;
- i) to do all other things necessary for discharging the aforesaid functions.

According to Section 2(2) of the Advocates Act there shall be issued a certificate of enrolment in the prescribed form by the State Bar Council to every person whose name is entered in the Roll of Advocates maintained by it under this Act. Every person whose name is so entered in the State Roll shall notify any change in the place of his permanent residence to the State Bar Council concerned within ninety days of such change.

- a) In addition to aforesaid, or sub-section (2) of Section 6 provides, a State Bar Council may constitute one or more funds in the prescribed manner for the purpose of:-
 - giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates;
 - giving legal aid or advice in accordance with the rules made in this behalf.

According to Section 6(3) State Bar Council may receive any grants, donations, gifts or bequests for all or any of these purposes and it shall be entitled to the appropriate fund constituted for this purpose under this sub-section.

Section 48 of the Advocates Act makes provisions in respect of immunity against the legal proceedings. It lays down that no

suit or other legal proceedings shall lie against any Bar Council or any Committee thereof or a member of a Bar Council or any Committee thereof for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rules made thereunder.

The following are the important powers and functions of the State Bar Councils:

1) Admission of Advocates On A State Roll: If a person fulfills the conditions required for admission as advocate, he may be enrolled as an advocate by the State Bar Council. The conditions to be fulfilled for being enrolled as an advocate have been stated in Section 24 of the Advocates Act. According to Section 25, an application for admission as an advocate shall be made in the prescribed form to the State Bar Council within whose jurisdiction the applicant proposes to practice.

A State Bar Council is required to refer every application for admission as an advocate to its enrollment committee which shall dispose of the application in the prescribed manner. Where the enrollment committee of a State Bar Council proposes to refuse any such application, it shall refer the application for opinion of the Bar Council of India and every such reference shall be accompanied by a statement of the grounds in support of the refusal of the application. The enrollment committee of the State Bar Council is required to dispose of the application so referred to the Bar Council of India in conformity with the provisions of the Act.

-ivity with the opinion of the Bar Council of India where the existing -ent committee of the State Bar Council has refused any applica -tion for admission as an advocate on its roll, the State Bar Councils ~~cannot~~ shall, as soon as may be, send intimation to all other State Bar Councils about such refusal stating the name, address and qualifications of the person whose application was refused and grounds for the refusal.

It is to be noted that the Bar Council of India may, if satisfied, either on a reference made to it in this behalf or otherwise upon any person has got his name entered on the roll of advocates by misrepresentation: as to an essential fact or by fraud or undue influence, remove the name of such person from the roll of advocates after giving him an opportunity of being heard.

Section 26 - 24 of the Advocate Act empowers a State Bar Council to remove from the State roll the name of any advocate who is dead or from whom a request has been received to that effect.

Section 27 of the Act provides that where a State Bar Council has refused the application of any person for admission as an advocate on its roll, no other State Bar Council shall entertain an application for admission of such person as an advocate on its roll even if with the previous consent in writing of the State Bar Council which refused the application and of the Bar Council of India.

The State Bar Council is required to issue a Certificate

of Enrolment in the prescribed form to every person.

2) Maintenance of Roll of Advocates:

Section 17 of the Advocates Act provides that every

State Bar Council shall prepare and maintain a Roll of Advocates in which shall be entered the name and address of -

a) all persons who were entered as advocates on the roll of any High Court under the Indian Bar Council Act, 1935 immediately before 15-8-1947, were ~~enrolled~~ enrolled as advocates under the said Act in any area which before the said date was comprised within India as defined in the Government of India Act, 1935 and who, at any time, he expresses an intention in the prescribed manner to practice within the jurisdiction of the Bar Council.

b) all other persons who are admitted to be advocates on the roll of the State Bar Council under this Act on or after the appointed date. Each such Roll of Advocates shall consist of two parts, the first part containing the names of senior advocates and the second part, the names of other advocates.

Entries in each part of the Roll of Advocates prepared and maintained by a State Bar Council under this section shall be in the order of seniority and subject to any rule that may be made by the Bar Council of India in this behalf, such seniority shall be determined as follows:

i) The seniority of an advocate referred to in Clause (a) (stated above) shall be determined in accordance with the date of enrolment and

- as the Indian Bar Councils Act 1926;

ii) the seniority of any person who was a senior advocate of the Supreme Court immediately before the appointment day shall, for the first part of the State roll, be determined in accordance with such principles as the Bar Council of India may specify;

iii) the seniority of any other person who, on or after the appointed day, is enrolled as a senior advocate or is admitted as an advocate shall - all for the first part of the State roll, be determined in accordance with such principles as the Bar Council of

iii) the seniority of any other person who, on or after the appointed day, is enrolled as a senior advocate or is admitted as an advocate shall be determined by the date of such enrolment or admission, as the case may be;

iv) notwithstanding anything contained in clause (1), the seniority of an attorney enrolled, whether before or after the commencement of the Advocates (Amendment) Act, 1950 as an advocate shall be determined in accordance with the date of his enrolment as an attorney.

This section makes it clear that no person shall be enrolled as an advocate on the roll of more than one State Bar Council.

Section 18 of the Advocates Act requires the State Bar Council to send copies of rolls of advocates to the Bar

Council of India. It provides that every State Bar Council shall send to the Bar Council of India authenticated copy of the roll of advocates prepared by it for the first time under this Act and shall thereafter communication to the Bar Council of India all alterations in and addition to, any such roll as soon as the same have been made.

3) Rule - Making Power :-

(The State Bar Council has been empowered to make rules to carry out the purposes of Section 16 to 27 of the Act - rates Act dealing with the admission and enrolment of the advocates. According to sub-section (1) of Section 28 of the Act a State Bar Council may make rules to carry out the purposes of sub-section III (Sections 16 to 28) of the Act. Section 28(2) provides that in particular and without prejudice to the generality of the foregoing power, such rules may provide for -

- a) the time within which and form in which an advocate shall explain his intention for the entry of his name in the roll of a State Bar Council under Section 20;
- b) the form in which an application shall be made to the Bar Council for admission as an advocate on its roll and the manner in which such application shall be disposed of by the enrolment committee of the Bar Council;
- c) the conditions subject to which a person may be admitted as an advocate on any such roll; and
- d) the instalments in which the enrolment fee may be paid.

Sub-section (3) of Section 38 of the Act makes it clear that the rules so made shall not have effect, unless they have been approved by the Bar Council of India.

2) Power To Punish For Professional Or Other Misconduct :-

The State Bar Council has power to punish an advocate for professional or other misconduct. Section 35 of the advocates Act provides that where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee and thereafter the disciplinary committee shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and the Advocate-General of the State. The disciplinary committee after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders -

- a) dismiss the complaint on which the proceedings were initiated or the initiative of the State Bar Council, direct that the proceedings be filed;
- b) admonish the advocates;
- c) suspend the advocate from practice for such period as it may deem fit;
- d) remove the name of the advocates from the State Roll of advocates.

(Where an advocate is suspended from practice under Clause (c) stated above, he shall, during the period of suspension, be debarred from practicing in any Court, or before any authority or person in India.

du

According to Section 35-B of the Advocates Act the disciplinary committee of a State Bar Council shall dispose of the complaints received expeditiously and in each case the proceedings shall be concluded within a period of one year from the date of the receipt of the complaint on the date of initiation of the proceedings at the instance of the State Bar Council, as the case may be failing which such proceedings shall stand transferred to the Bar Council of India for disposal. However, where on the commencement of the Advocates (Amendment) Act, 1973, any proceedings in respect of any disciplinary matter against an advocate is pending before the disciplinary committee of a State Bar Council that disciplinary committee of a State Bar Council shall dispose of the same within a period of 6 months from the date of such commencement or within a period of one year from the date the receipt of the complaint or, as the case may be, the date of initiation of the proceedings at the instance of the State Bar Council, whichever is later, failing which such proceedings shall stand transferred to the Bar Council of India for disposal.

Any person aggrieved by an order of the disciplinary committee of a State Bar Council or the Advocate-General of the State may, within sixty days of the date of communication of the order to him, prefer an appeal to the Bar Council of India.

Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such orders including an order varying the punishment awarded by the disciplinary committee of the State Bar Council thereon as it deems fit.

Provided that no order of the disciplinary committee of the State Bar Council shall be voided by the disciplinary committee of the Bar Council of India nor shall it be judicially voided by the person aggrieved without giving him reasonable opportunity of being heard.

The person aggrieved by an order made by the Disciplinary Committee of the Bar Council of India or the State Bar Council of India or the State Bar Council, as the case may be, may appeal to the High Court under Section 38 of the Advocates Act.

The provisions regarding review of orders passed by the Disciplinary Committee have been made under Section 44 of the Advocates Act which provides that the Disciplinary Committee of a Bar Council may, if it is in motion or otherwise receive any order within sixty days of the date of that order passed by it. However, no such order of review of the Disciplinary Committee of a State Bar Council shall have effect unless it has been approved by the Bar Council of India.

5

Power of Appointment of Committee and Staff Members:

A Bar Council establishes several committees. According to Section 9 of Advocates Act a Bar Council shall consist of one or more Disciplinary Committees, each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and one, the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to Section 2(a) of the Act and who have not members of the Council and the provision most adequate amongst the members of a Disciplinary Committee shall

du

-all see the Chairman thereof.

Section 9-21 of the advocates Act provides that in addition to above a Bar Council may constitute one or more legal aid committees each of which shall consist of such number of members not exceeding nine, but not less than five, as may be prescribed, qualifications, the method of selection and the term of the office of the members of a legal aid committee shall be such as may be prescribed.

Besides a State Bar Council shall constitute the following Standing Committees, namely -

- a) an executive committee consisting of five members elected by the Council from amongst its members; and
- b) an enforcement committee consisting of three members elected by the Council from amongst its members.

Section 10(3) of the Advocates Act makes it clear that a State Bar Council, may constitute from amongst its members such other committees as it may deem necessary for the purpose of carrying out the provisions of the Advocates Act.

Section 11 of the Advocates Act empowers the Bar Council to appoint staff-members. It provides that every Bar Council shall appoint a Secretary and may appoint an accountant and such number of other persons on its staff as it may deem necessary. The secretary and accountant shall possess such qualifications as may be prescribed.

2) Maintenance of statement, etc. :-

Section 12(1) of the Companies Act provides that every Board Council shall cause to be maintained such books of accounts and other books in such form and in such manner as may be prescribed. Section 12(2) of the Act lays down that the account of Board Council is required to be audited by the auditors duly qualified to act as auditors of companies under Companies Act, 1956 at such times and in such manner as may be prescribed. Section 12(3) provides that as soon as may be practicable at the end of each financial year but not later than the 31st day of December of the year next following, a State Board Council shall send a copy of its statement together with a copy of report of the auditors thereof to the Board Council of India, which shall cause same to be published in the official Gazette.

Sub-section (4) of Section 12 provides that as soon as may be practicable at the end of the financial year but not later than the 31st December of the year next following, the Board Council of India shall send a copy of its accounts together with a copy of the report of the auditors thereof to the Central Government and shall cause the same to be published in the Gazette of India.

div

Advocates Act for Organisation of Bar Council of India:

- Section 4(1) of the Advocates Act lays down that there shall be the Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members, namely -
- (a) the Attorney-General of India, ex-officio
 - (b) the Solicitor-General of India, ex-officio
 - (c) One member elected by each State Bar Council from amongst its members.

Section 4(1-a) of the Act provides that no person shall be eligible for being elected as a member of the Bar Council of India, unless he possess the qualifications specified in the proviso to sub-section (2) of Section 3 of the Advocates Act. Section 4(2) of the Act provides that the Bar Council of India shall have a Chairman and a Vice-Chairman elected by the Council in such manner as may be prescribed.

Section 4(2-a) of the Advocates Act makes it clear that a person holding office as Chairman or Vice-Chairman of the Bar Council of India, immediately before the commencement of the Advocates (Amendment) Act, 1977, shall on such commencement, cease to hold office as Chairman or Vice-Chairman, as the case may be.

Provided that such person shall continue to carry on the duties of his office until the Chairman or Vice-Chairman

- may, was the case may be, of the Council, elected after commencement of the Statutes (Amendment) Act, 1972 assume charge of the office.

Section 4(3) of the Act provides that the term of office of a member of the Bar Council of India elected by the State Bar Council, who -
- 11 -

- (i) in case of a member of a State Bar Council who holds office ex-officio, he two years from the date of his election or till he ceases to be a member of the State Bar Council, whichever is earlier; and
- (ii) in any other case before the period for which he holds office as a member of the State Bar Council.

Provided that every such member shall continue to hold his office as a member of the Bar Council of India, until his successor is elected.

Section 10-B of the Statutes set law down that an elected member of a Bar Council shall be deemed to have vacated his office if he is declared by Bar Council of which he is a member to have been absent without sufficient excuse from three consecutive meetings of such Council or it has, his name, for any reason, removed from the roll of advocates or if he is otherwise disqualified under any rule made by the Bar Council of India.

Section 10-A of the Statutes set law down that Bar Council of India shall meet at New Delhi or at such other place as it may for reason to be recorded in writing, determine. It also provides that the committee other than disciplinary committees constituted by

du

The Bar Council shall meet at the headquarters of the respective Bar Council and its committee except the disciplinary committee shall observe such rules a procedure in regard to the transaction of business at their meetings as may be prescribed. The disciplinary committees shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at their meetings as may be prescribed.

Section 14 of the Advocates Act lays down that no election of a member to a Bar Council or any committee thereof shall be called in question on the ground merely that due notice thereof has not been given to any person entitled to vote thereof, if notice of the date not less than thirty days, before that date, been published in the official Gazette.

Power and Functions of Bar Council of India :-

Section 5 of the Advocates Act lays down that Bar Council of India is a body corporate having perpetual succession and common seal with power to acquire and hold property both movable and immovable and the contract and may by the name by which it is known, sue and be sued. Section 13 of the Act makes it clear that no act done by a Bar Council or Committee thereof shall be called in question on the ground merely of the existence of any vacancy in or any defect in constitution of the Council or Committee, as the case may be.

Section 7 of the Advocates Act lays down the functions of the Bar Council of India according to which the functions of

The Bar Council of India shall be :-

- (i) To lay down the standards of professional conduct and etiquette for advocates;
- (ii) To lay down the procedure to be followed by its Disciplinary Committee and Disciplinary Committee of each of the State Bar Council.
- (iii) To safeguard the rights, privileges and interests of advocates.
- (iv) To promote and support law reform.
- (v) To deal with the discipline of any matter arising under this act which may be referred to it by a State Bar Council.
- (vi) To exercise general supervision and control over State Bar Council.
- (vii) To promote legal education and to lay down standard of such education in consultation with the Universities in India imparting such education and the State Bar Councils;
- (viii) To recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Council to visit and inspect Universities in accordance with such directions as it may give in this behalf;
- (ix) To conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest;
- (x) To organise legal aid to the poor in the prescribed manner;
- (xi) To recognise on a reciprocal basis foreign qualifications in law obtain

-ed outside India for the purpose of admission as an advocate in
-der this Act;

xii) To manage and invest the funds of the Bar Council;

xiii) To provide for election of its members;

xiv) To perform all other functions conferred on it by or under this Act;

xv) To do all other things necessary for discharging the aforesaid functions.
-ns.

Section 7-2 of the Advocates Act makes it clear that the Bar Council of India may become a member of international legal bodies, such as the International Bar Association or the International legal Aid Association, contribute such sums as it thinks fit to such bodies by way of subscription or otherwise and authorise or expenditure on the participation of its representatives in any international legal conference or seminar.

-or
Section 7(2) of the Advocates Act lays down that the Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of -

a) giving financial assistance to organise welfare schemes for indigent disabled or other advocates;

b) giving legal aid or advise in accordance with rules made in this behalf;

c) establishing law libraries.

The Bar Council of India may receive grants, donations,

gifts or benefactions for all or any of the purposes specified above such grants, donations, etc. shall be credited to the appropriate fund or fund as constituted under the sub-section.

The important powers and functions of the Bar Council of India are follows as:

1) Power To Admit Persons As Advocate :-

In this regard Section 20 of the Advocates Act lays down that every advocate who was entitled as of right to practice in the Supreme Court immediately before the appointed day and whose name is not entered in any State roll may, within the prescribed time, express his intention in the prescribed form to Bar Council of India for the entry of his name in the roll of the State Bar Council and on receipt thereof the Bar Council of India shall direct that the name of such advocate shall, without payment of any fee, be entered in the roll of that State Bar Council and the State Bar Council concerned shall comply with such directions. The entry in the State roll made in the compliance of such directions shall be made in the order of seniority determined in accordance with the provisions of Section 17(3). Where an advocate omits or fails to express his intention within the prescribed time, his name shall be entered in the roll of the State Bar Council of Delhi.

Section 19 of the Advocates Act provides that every State Bar Council shall send to the Bar Council of India an authenticated copy of the roll of advocates prepared by it for the first time under this Act, and subsequent rolls and shall, thereafter, communication to the Bar

Council of India all alterations in and additional to, any rule or bye-law, as soon as the same have been made.

In respect of the transfer the name from one State Bar Council to another Section 18 of the Advocates Act makes provision according to which any person whose name is entered as an advocate on the roll of any State Bar Council may make an application in the prescribed form to the Bar Council of India for the transfer of his name from the roll of that State Bar Council to the roll of any other State Bar Council and on receipt of any such application the Bar Council of India shall direct that the name of such person shall without the payment of any fee, be removed from the roll of the first mentioned State Bar Council and entered in the roll of that State Bar Council and the State Bar Council concerned shall comply with such direction.

Provided that where any such application for transfer is made by a person against whom any disciplinary proceedings are pending or where for any other reason it appears to the Bar Council of India that the application for transfer has not been made bona fide and that the transfer should not be made, the Bar Council of India may, after giving the person making the application an opportunity of making a representation in this behalf, reject the application. It has been made clear that where on the application made by an advocate under this section, his name is transferred from the roll of one State Bar Council to that of another, he shall retain the same seniority of in the latter roll to which he was entitled in the former roll.

2) Power To Appoint Committees And Staff. Members -

Section 9 of the Advocates Act gives power to the Bar Council of India to appoint Disciplinary Committees. It shall constitute one or more Disciplinary Committees each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to Sub-section (2) of Section 17 of the Act and who are not members of the Council and the senior most advocate amongst the members of a Disciplinary Committee shall be the Chairman thereof.

The Bar Council of India is empowered by Section 9-A of the Advocate Act to appoint one or more legal Aid Committees. Each of the committee shall consist of such number of members not exceeding nine but not less than five as may be prescribed. The qualifications, the method of selection and the term of office of the members of such committee shall be such as may be prescribed.

Besides, Section 10(2) of the Advocates Act requires the Bar

- Council of India to constitute the following committees:-
- (i) an executive committee consisting of nine members elected by the Council from amongst its members;
 - (ii) a legal education committee consisting of ten members of whom five shall be persons elected by the Council from amongst its members and five shall be persons co-opted by the Council who are not members thereof.

Section 11 of the Advocates requires the Bar Council to appoint a Secretary. It also empowers the Bar Council to -
-mt an accountant and such number of other persons on, as it may deem necessary. The Secretary and the accountants shall possess such qualifications as may be prescribed.

3) To Maintain Accounts, Etc. :-

Section 12 of the Statutes Act requires that Council of India shall cause to be maintained such books, accounts and other books in such forms and in such manner as may be prescribed, the accounts shall be audited by auditors duly appointed to act as auditors of companies under Companies Act, 1913 in such times and in such manner as may be prescribed. Section 12(3) makes it clear that as soon as may be practicable at the end of each financial year but not later than the 31st day of December the year next following, in State Bar Council shall send a copy of account together with a copy of the report of the auditors thereon to the Bar Council of India and shall cause the same to be published in the official Gazette and, as Section 12(4) lays down that as soon as may be practicable at the end of each financial year but not later than 31st day of December of the year next following, Bar Council of India shall send a copy of its account together with a copy of the report of the auditors thereon to the Central Government and shall cause the same to be published in the official Gazette, India.

4) Power To Make Rules :-

The Bar Council of India is empowered to make

Rule under Section 15 of the Advocates Act. Section 15(2) provides that in particular and without prejudice to the generality of the foregoing power, such rules may provide for —

- (a) the election of the members of Bar Council by secret ballot including the conditions subject to which the persons can exercise the right to vote by postal ballot, the preparation and revision of electoral rolls and the manner in which the results of election shall be published.
- (b) the manner of the election of Chairman and the Vice Chairman of the Bar Council
- (c) the manner in which and the authority by which, doubts and disputes as to the validity of an election to the Bar Council or to the office of the Chairman or Vice-Chairman shall be finally decided
- (d) the filling of casual vacancies in the Bar Council
- (e) the powers and duties of the Chairman and the Vice Chairman of the Bar Council;
- (f) the constitution of one more funds by a Bar Council for the purpose of giving financial assistance or giving legal aid or advice referred to in Section 6(2) and Section 7(1) of the Advocates Act;
- (g) Organisation of legal aid and advice to the poor, constitution and functions of committees and sub-committees for that purpose and description of proceedings in connection with which legal aid or advice may be given;
- (h) the summoning and holding of meetings of the Bar Council, the conduct of business thereof and the number of members necessary to constitute a quorum;

- i) the constitution and function of any committee of the Bar Council and the terms of office of members of any such committees;
- j) the summoning and holding of meetings, the conduct of business of any such committee and the number of members necessary to constitute a quorum;
- k) the qualifications and the conditions of service of the secretary, the accountant and other employees of the Bar Council;
- l) the maintenance of books of accounts and other books by the Bar Council;
- m) the appointment of auditors and the audit of the accounts of the Bar Council;
- n) the management and investment of the funds of Bar Council.

Section 15(3) makes it clear that no rules made under this section by a State Bar Council shall have effect, unless they have been approved by the Bar Council of India.

The general powers to make rules have been conferred on the Bar Council by Section 49 of the Advocates Act which provides that the Bar Council of India may make rules for discharging its functions under this Act and in particular, such rules may prescribe -

- a) the conditions subject to which an advocate may be entitled to note of election to the State Bar Council including the qualifications or disqualifications of voters and the manner in which electoral roll of voters may be prepared and revised by a State Bar Council;

- b) qualifications for membership of a Bar Council and the disqualification for such membership;
- c) the time within which and the manner in which effect may be given to the proviso to Section 3(2) of the Act;
- d) the manner in which the name of any advocate may be prevented from being entered in more than one State roll;
- e) the manner in which the seniority among advocates may be determined;
- f) the minimum qualifications required for admission to a course of degree in law in any recognised University;
- g) the class or category of persons entitled to enrol as advocates;
- h) the conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practice as an advocate in a Court;
- i) the form in which an application shall be made for the transfer of the name of an advocate from one State roll to another;
- j) the standard of professional conduct and etiquette to be observed by advocates;
- k) the standard of legal education to be observed by Universities in India and the inspection of Universities for the purpose;
- l) the foreign qualifications in law obtained by persons other than citizens of India which shall be recognised for the purpose of admission as an advocate under this Act;

- m) the procedure to be followed by the Disciplinary Committee of a State Bar Council and by its own Disciplinary Committee;
- n) the restrictions in the matter of practice to which senior advocates shall be subject;
- o) the form of dresses or robes to be worn by advocates having regard to the climate conditions appearing before any Court or Tribunal;
- p) the fee which may be levied in respect of any matter under the Act;
- q) general principles for guidance of State Bar Councils and the manner in which Directions issued or orders made by the Council of India may be enforced;
- r) any other matter which may be prescribed;

5) Power To Punish For Professional Or Other Misconduct

Section 36 of the Advocate Act empowers the Bar Council of India to punish an advocate for professional or other misconduct. It lays down that where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any advocate whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee. The Disciplinary Committee of the Bar Council of India may, either on its own motion or on a report by any State Bar Council or an application made to it by any person

interested, withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the Disciplinary Committee of any State Bar Council and dispose of the same.

The Disciplinary Committee of Bar Council of India in disposing of any case of professional or other misconduct of advocate shall observe, so far as may be, the procedure laid down in Section 35 of the Act. In other words in disposing of such case, it shall fix a date for its hearing, cause a notice thereof to be given to the advocate concerned and Attorney-General of India and after giving opportunity of being heard the parties concerned it will dispose of the case and may make any order which the Disciplinary Committee of a State Bar Council can make under Section 35(3) of the Advocates Act. In disposing the case it may dismiss the complaint, reprimand the advocate, suspend the advocate from practice for such period as it may deem fit and remove the name of the advocate from the State roll of advocates.

6) Power To Hear Appeals :-

Section 37 of the Advocates Act makes provisions in respect of hearing of appeals by Bar Council of India against the orders passed by the Disciplinary Committee under Section 35 of the Act. This section lays down that any person aggrieved by an order passed by the Disciplinary Committee of a State Bar Council under Section 35 for punishing an advocate for professional or other misconduct or the Advocate-General of the State may, within sixty days of the date of communication of the order to him, prefer an appeal ~~to~~ ~~order~~ to the Bar Council of India. Every such appeal shall be

heard by the Disciplinary Committee of Bar Council of India may pass such order including an order varying the punishment awarded by the Disciplinary Committee of the State Bar Council thereon as it deems fit. But no order of the Disciplinary Committee of State Bar Council shall be varied by the Disciplinary Committee of Bar Council of India so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.

Section 38 lays down that any person aggrieved by an order made by Disciplinary Committee of the Bar Council of India under Section 36 or Section 37 of the Advocates Act or the Attorney-General of India or Advocate-General of State concerned, as the case may be, may within sixty days of the date on which the order is communicated to him, file an appeal to the Supreme Court and the Supreme Court may pass such order including an order varying the punishment awarded by the Disciplinary Committee of Bar Council of India thereon as it deems fit. But no order of the Disciplinary Committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.

Section 39 of the Act lays down that Sections 5 and 12 of the Limitation Act shall, so far as may be, apply to the appeals to the Bar Council of India under Section 37 of the Supreme Court under Section 38.

7

Other Powers And Functions :-

The other powers and functions of the Bar Council of India may be discussed as -

- i) According to the provisions of Section 46-A of the Advocates Act the Bar Council of India may, if it is satisfied that any State Bar Council is in need of funds for the purpose of performing its functions under the Advocates Act, give such financial assistance as it deems fit to that Bar Council by way of grant or otherwise.
- ii) Section 47 provides that where any country specified by the Central Government in this behalf by notification in the official Gazette, prevents citizens of India from practising the profession of law or subjects them to unfair discrimination in that country no subject of any such country shall be entitled to practice the profession of law in India. Subject to these provisions, the Bar Council of India may prescribe the conditions, if any, subject to which foreign qualification in law obtained by persons as an advocate under the Advocates Act.
- iii) Section 48-A of the Advocates Act lays down that the Bar Council of India may, at any time, call for the record of any proceeding up on this Act which has been disposed of by a State Bar Council or a Committee thereof and from which no appeal lies for the purposes of satisfying itself as to the legality or propriety of such disposal and may pass such orders in relation thereto as it may think fit. It has been made clear that no order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

iv) Section 48-A of the Advocates Act has made it clear that the Bar Council of India or any of its committees other than its Disciplinary Committee, may of its own motion or otherwise review any order within sixty days of the date of that order passed by it under the Advocates Act.

v) Section 48-B of the Advocates Act gives power to the Bar Council of India to give directions to a State Bar Council or any committee thereof. This section lays down that for the proper and efficient discharge of the functions of a State Bar Council or any committee thereof, the Bar Council of India may, in the exercise of its powers of general supervision and control, give such directions to the State Bar Council or any committee thereof as may be appear to it to be necessary and the State Bar Council or the committee shall comply with such directions. Where a State Bar Council is unable to perform its functions for any reason whatsoever, the Bar Council of India may, without prejudice to the generality of the foregoing power, give such directions to the ex-officio member thereof as it may appear to it to be necessary and such directions shall have effect notwithstanding anything contained in the rules made by the State Bar Council.

vi) Section 48 of the Advocates Act provides that no suit or other legal proceeding shall lie against any Bar Council or any committee thereof or a member of the Bar Council or any committee thereof for any act done in good faith or intended to be done in pursuance of the provisions of the Advocates Act or any rules made thereunder.

Pleading

Pleadings are the backbone of a litigation. The Code defines the pleading as meaning a 'plaint' or written statement. (Order 6, Rule 1). Pleadings are the statements of the parties in writing, setting out their contentions and claims or counter claims giving details, so that the opposite party may know what case he has to meet or what is the reply to his case. According to P.C. Moha, "Pleadings are statements written, drawn up and filed by each party to a case, stating what his contentions will be at the trial and giving all such details as his opponent need to know in order to prepare his case in answer". A look at Order 10, Rule 1 of the Code makes it manifest that the purpose therein is to find out the real points in controversy between parties by way of clearing up the pleadings and removing any ambiguity therein. Such an oral statement is not a substitute for a pleading as defined under Order 6, Rule 1.

Plaint is statement by the plaintiff and the written statement is statement by the defendant. In the written statement the defendant deals with the every material fact alleged by the plaintiff in the plaint and also states new facts which may be in his favour, adding such legal objections as he wishes to take to the claim.

Object of Pleadings:-

The object of the pleadings to narrow down the parties to define issues and thereby to diminish expense and delay, especially as regards the amount of testimony required from both the parties at

the hearing Lord Halsbury delivering the opinion of the Privy Council observed. "Whatever system of the pleading may exist, the sole object of it is that each side may be fully alive to the questions that are about to be argued in order that they may have an opportunity of bringing forward such evidence as may ~~have an opportunity of~~ be appropriate to the issues."

Contents of Pleadings - [Fundamental Rules] - (Order 6, Rules 13, 15 and Order 29, Rule 1) The Rules of Pleading may be summarised as :-

1) State And Facts And Not Law :-

A pleading must state facts and shall not contain
-w.

2) State Material Facts And Not Evidence :-

A statement of the material facts given in a concise form divided into consecutively numbered paragraphs and the dates, sums and numbers expressed in figures. [Order 6, Rule 13]

3) State Necessary Particulars :-

When misrepresentation, fraud, breach of trust, wilful default are relied on in the pleadings particulars of these things with dates and items, if necessary, shall be stated (Order 6, Rule 4, 5).

4) Precedent Condition :-

When the performance or ~~occurrence~~ occurrence of any condition precedent is intended to be contested, such

condition precedent shall be distinctly specified (Order 6, Rule 6).

5) Documents Not To Be Set Out:

When the contents of a document are material but not precise words thereof, it shall state the effect thereof briefly without setting out the documents. (Order 6, Rule 9).

6) Conditions Of The Mind To Be Alleged As A Fact:

When malice, fraudulent intention, knowledge, or other conditions of the mind of a person is material the pleading shall allege it only as a fact without setting out the circumstances from which it is to be inferred (Order 6, Rule 10).

7) Notice To Be Alleged As A Fact:

When it is material to allege notice to any person of any fact, matter or thing, pleading shall only allege the notice as a fact, unless the form or the precise terms of such notice is to be inferred as material (Order 6, Rule 11).

8) Implied Contract To Be Alleged As A Fact:

When any contract or any relation between persons is to be inferred from a series of letters or conversation or circumstances the pleading shall allege only such contract or relation as fact and refer generally to them without setting them in detail. (Order 6, Rule 12)

9) Facts To Be Presumed Not To Be Pleading:

Neither party is to allege any matter of facts which the law presume in his favour unless the same has first been

specifically denied. (e.g. consideration for a bill of exchange. Order 6, Rule 13).

10) Every Pleading To Be Signed And Verified :-

Signature by the party and his pleader or any person duly authorised by the party pleading to sign the same or to sue or to defend on his behalf, in case the party is unable to sign it for the absence or other good cause.

11) Suits By Or Against Corporation :-

In suits by or against a Corporation and pleading may be signed and verified on behalf of the corporation by the Secretary or any director, or other Principal Officer who is able to depose to the facts of the case. (Order 29, Rule 1).

Pleadings To Be Construed liberally :-

Pleadings should not be construed with strictness. A matter should not be thrown on mere technicality of pleadings.

Essentials of Pleadings :-

Rule 2 Order 6, is the fundamental Rule of pleading.

It requires these four things :-

- i) Every pleading must state facts and not law, and also not legal inferences.
- ii) It must State material facts, and material facts only. No relief can be granted in the absence of a specific plea on the point.
(Anu Sunder V/s Shiva Narain, A.I.R 1988 Pat, 216).

- iii) It must state only the facts on which the party pleading relies for his claim or defence, and not the evidence by which they are to be proved.
- iv) It must state such facts in a concise form.

Verification :-

- At the foot of the pleading there shall be a verification
- by the party or one of the parties pleading or some other person acquainted with the facts of the case;
 - specifying what paragraphs he verifies of his own knowledge and what paragraphs he verifies upon information received and believed to be true;
 - signed by the person verifying and;
 - stating the date and place of signature [Order 6, Rule 15]

SHORT NOTES

Examination-in-Chief :-

The party that calls the witness, the examination by it of the witness is known as Examination-in-Chief.

Scope :-

After swearing in the witness that is the right of the party which calls the witness. That party conducts the Examination-in-Chief of the witness. Its object is to make the witness speak out all those facts whereby he can prove his case. In this the witness can give the evidence of what he has in his knowledge or memory. Ordinarily leading questions are not asked in the Examination-in-Chief.

Cross-Examination :-

After the Chief-examination of the witness the adversary has the right to cross examine the witness. The examination of a witness, without giving the adversary the opportunity of cross examination is not accepted legally. This was laid down in *Motay Singh V/S Emperor*, 73, Indian Cases 339. In this leading questions can also be asked.

Scope Of The Subject :-

The sphere of cross-examination is considerably vast but in the question should be asked regarding relevant facts. In this any question can be asked from the witness, whose nature ought to be as —

- 1) To test his truthfulness
- 2) To find out as to who he is and what is his condition in life?
- 3) To show his character and impeach his reliability or credit.

Taylor remarks, "The exercise of this right (cross-examination) is justly regarded as one of the most efficacious tests which the law has devised for the discovery of truth, by means of it, the situation of the witness with respect to the parties and to the subject of litigation, his interest, his motives, his inclination and prejudices, his character, his means of obtaining a correct and certain knowledge of facts to which he bears testimony, the manner in which he has used those means, his power of discernment, memory and description are all fully investigated and ascertained."

In the case of Mian Sayad Ali Khan Dastab Zulfikaruddaula v/s Lala Kishunath

Justice Norman and Stunkas said that the list of examination is that by the advocate of a party through the witnesses called by his party either in the favour of the interest of case to get acceptance or to end the credit of that witness, cross-examination is the best means for the ascertainment of truth.

c) Re-Examination :

After the cross-examination by the same party which has called them to examine again is known as re-examination.

This right arises when the examination has been done and re-examination must be confined to the explanation of matters

arising in cross-examination. It resembles the Examination-in-Chief that in this also no leading question can be asked. Its object is to dispel the ambiguities which have risen during the cross-examination or if some new fact has come to light its clarification is the object of re-examination.

Normally, it is not the duty of the Court that it should examine the witnesses but if the lawyer of a party has not asked a fundamental question then the Court can ask the question or he should leave it in the hands of the advocate of the witnesses. But some elementary question by mistake has been missed from being asked in the Examination-in-Chief and its asking in the re-examination is not permitted by law. Because it does not arise from cross-examination, then the tradition is that on the prayer of the advocate it can be asked by the Court. The Court normally grants this prayer in the interests of justice.

Leading Questions :

According to Section 141 of the Indian Evidence Act it has been provided, "leading questions: Any question suggesting the answer which the person putting it wishes to receive is called a leading question."

Bentham says, "A question is a leading one when it indicates to the witness the real or supposed fact which the examiner expects and desires to have confirmed."

by the answer. Is your name so and so? Do you reside in such and such a place? Are you not in service of such and such person? Have you not lived so many years with him? It is clear that under this form every sort of information may be conveyed to the witness in disguise. It may be used to prepare him to give the desired answers to the question about to be put to him, the examinee while he pretends ignorance and is asking for information is in reality giving instead of receiving it." A leading question, in other words, is one which suggests to the witness the answer desired, or which embodying a material fact, admits of a conclusive answer negative or affirmative.

In the Case of Pagder V/S Emperor, 71, Indian Cases 117

It was held that a leading question is that question which directs the witness that how the fundamental issues are to be answered whereby the witness has to use those very words which are being spoken by the person asking the questions or whereby the witness is clearly suggested that answer which the party intends to get from him. In brief in the question which also includes the answer as well, is called a leading question. The witness before being declared as adverse the entire evidence acquired through leading questions should not ^{at} all be considered.

When Can the Leading Questions Not Be Asked :-

Section 142 of the Indian Evidence Act provides, "When they must not be asked: Leading questions must not, if objected to by the adverse party, be asked in an Examination-in-Chief or in a re-examination, except with the permission of the Court."

When Can the Leading Questions Be Asked?

Section 143 of the Indian Evidence Act lays down, "When they may ^{be} asked: leading questions may be asked in the cross-examination.

Leading questions can be asked only in the following conditions -

- 1) When the adverse party does not raise any objection.
- 2) It can be asked with the permission of the Court. The Court will grant the permission of asking leading questions in the following conditions -
 - a) Introductory
 - b) Undisputed
 - c) Cross-examination.

These questions cannot be asked in the examination-in-chief. The principle is based on the following reasons -

- i) The party which invites a witness that witness speaks only on behalf of that party, he gives evidence contrary to that of the adverse party.
- ii) The party that invites the witness, it has the right to examine first and he it is allowed to ask questions then he will ask such questions which are according to his case and the rest he shall omit in the dark.

Impeaching the Credit of A Witness :-

The witness is the source from whose lips evidence comes into the form of truth or falsehood and its help he has to ascertain the reliability of the witness. The object of cross-examination is to find out truth from falsehood. So it is necessary that regarding the character of the witness the party can give independent witness, it can be shown that the witness is unworthy of trust or reliance or otherwise (Mogi Lal V/S Insurance Company, 1928, Privy Council 54).

According to Section 155 of the Indian Evidence Act it has been enacted, Impeaching credit of witness: The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him -

- 1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
- 2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence.
- 3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;
- 4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation ÷

"A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reason for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence."

Questions By the Party From Its Own Witness:

The Court can give the permission of asking such questions from the witness, it calls which ought to be asked actually by the adverse party in cross-examination. The party calling the witness can impeach the credit of the witness with the permission of the Court. This permission can only be given when that party proves that its witness is not relevant to the previous declaration and thereby shall become adverse or contrary or hostile.

KINDS OF WRITS

i) Habeas Corpus :

Literally the term Habeas Corpus means "to have or bring the body". This meaning was valid in England under common law. It was a device by which a person was brought before the Court. The original meaning of the writ of Habeas Corpus is no more valid.

Nature :

Administration may detain a person illegally or without any legal justification. If there is such detention, writ of Habeas Corpus is appropriate remedy. By the issue of this writ of Habeas Corpus High Court (Article 226) or Supreme Court (Article 32) calling upon the person detaining to produce detained person before the Court. If the detention is not justified the detenu is freed. The object of the writ is not to punish the wrong doer. In the field of administrative law illegal detentions by the executive are nullified.

Scope :

In *Ikram V/S State of Uttar Pradesh*, A.I.R. 1964, S.C. 1665 it was held that the writ of Habeas Corpus is available against private detention also. The principle of res-judicata is not applicable in writ of Habeas Corpus so far as High Courts are concerned.

In *Bhagwati Bai V/S Yadava Krishan*, it was held that by the writ of Habeas Corpus custody of minor child may also be restored.

to his guardian.

When would Habeas Corpus lie?

Under following circumstances writ of Habeas Corpus lie -

- 1) If the person is illegally detained, the detenu will have to show that his detention is illegal. For the grant of writ of Habeas Corpus the petitioner must be in the custody.
- 2) In *G.S. Jha v/s State of Bihar*, A.I.R. 1972, S.C. 93 it was held by the Supreme Court that even a person who has been granted bail is entitled to apply for the writ of Habeas Corpus. In *Pohar v/s Suggi* it was held that the remedy of bail is no bar for Habeas Corpus.
- 3) A mala fide detention is also ground for relief.
- 4) On behalf of the detenu another person may ask for the writ of Habeas Corpus. Writ of Habeas Corpus would not lie in the following cases -
 - a) If a person is detained on some charge;
 - b) If a person is detained under the authority of law;
 - c) If the detention is done beyond the jurisdiction of High Court.

ii) Quo - Warranto :-

Literally 'quo-warranto' means 'by what authority' or 'show the authority'. The writ originated in England. It is a judicial remedy by which any person who occupies or usurps an independent substantive office or franchise or liberty is asked to show by what authority he holds it so that title to the subject matter may be settled. In England it has changed its fundamental character. If the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of Writ of Quo-warranto issues to him from the office. The procedure of Quo-warranto confers jurisdiction on judiciary to control the executive action in the matters making appointments to public offices against statutory provisions.

Conditions For the Issue Of the Writ :-

- The writ of Quo-warranto shall be issued if the following conditions are satisfied namely-
- 1) The office must be public office.
 - 2) The office must be substantive in character.
 - 3) The office must be created by law.
 - 4) The person is not authorised to hold that office.

In *University of Mysore V/S. Gorinda*, A.I.R. 1955, S.C. 491 it was held by the Supreme Court that the writ not lie if the office is of private character. In *Vitayanand V/S. Khalil*, Punjab High Court held that quo-warranto lies even to test the validity of election.

The writ of Quo-Warranto is discretionary remedy. Thus if there is alternative remedy at the disposal of the petitioner, no quo-warranto shall lie. In Venkatasaya vs Sivarama, A.I.R. 1961, A.P. 25 it was held that when the applicant challenges the validity of an appointment to public office, it is maintainable at the instance of any person. Hence a private relation may apply for Quo-warranto to challenge an appointment.

iii) Mandamus :-

Mandamus means command, this writ is directed towards person who is required under law to perform a specific duty. By this writ the authority is compelled to do the duty which it is under authority to do. It is judicial remedy in the form of an order. Following are the grounds for the issue of writ of mandamus:

- 1.) The petitioner must have legal right, but the authority has not performed its duty.
- 2.) The petitioner must have ~~achieved~~ demanded performance of that duty, but the authority refused.
- 3.) If any alternative remedy is available to the petitioner, the writ of mandamus shall not be issued.
- 4.) The duty to be performed by the authority must not be discretionary.

5) If there is illegal exercise of power by the authority.

6) The writ is issued against public authority

Mandamus Can Be Issued Against the Following:

#

The writ of mandamus can be issued against any public authority. It may be issued against Government, Semi-Government bodies, and administrative bodies, but it cannot be issued against the President or the Governor of a State for anything done by him in the exercise of his power and functions. A writ can not be issued to the state legislature to prevent it from considering a bill.

The writ cannot be issued to a private individual.

In *Kumkum V/S Principal Jesus and Mary College*, A.I.R. 1976, Delhi 35 a writ of mandamus was issued against the principle of a privately managed college affiliated to a university in the matter of exercise of his powers under the university ordinance. The Court observed that public law remedy mandamus can be availed against a person when he is acting in a public capacity as a holder of a public office and in the performance of a public duty.

Grounds For The Issue Of Writ Of Mandamus:

The writ of mandamus can be issued on the

following grounds -

i) That the petitioner has a legal right. If the petitioner cannot show any statutory or legal right, the writ cannot be issued.

- (ii) That there has been an infringement of the legal right of the petitioner.
- (iii) That the infringement has been owing to non-performance of the corresponding duty by the public authority.
- (iv) That the petitioner has demanded the performance of the legal duty by the public authority, and it has been refused.
- (v) That there is no effective alternative legal remedy.

The writ of mandamus is not available against the judicial act only. It is available against all kinds of administrative actions if they are effected illegally. When the authority is invested with the discretionary power, it has to be exercised on certain principles. In the exercise of its mandatory powers as well as discretionary powers, it should be guided by honest and legitimate consideration.

In *Bhopal Sugar Industries Ltd's V/S Income Tax Officer Bhopal*, A. I. R. 1961, S.C. 182. The Income Tax Officer refused to carry out the clear and unambiguous directions which a superior tribunal like the Income Tax Appellate Tribunal had given to him, the Court issued a writ of mandamus to compel the income tax officer to carry out the directions given to him by the Income Tax Appellate Tribunal.

If the authority exceeds its power, and injures

private interest, the writ can be issued directing the public authority to enforce the impugned law.

If the discretion is exercised in an unlawful manner, the Court can issue the writ mandamus. The Court does not generally interfere where discretionary power is exercised legally by the administrative authority. But the Court will interfere if there has been an illegal exercise of discretion.

If there is an abuse of power by the authority, then the writ of mandamus will be issued. Prof. A.T. Markose has summarised the concept of abuse of power containing the following elements --

- a) Firstly in this class, cases of official victimization or vindictive nature come, for example where a person was refused to get his licence renewed because the licensee had previously sought judicial help against the officer's illegal actions.
- b) Exercise of the power though not actuated by selfish or immoral considerations but still moved by undesirable ends.
- c) Exercise of power in such mode as to disclose callous or reckless indifference to private interests.
- d) A further and larger group where abuse of power occurs is where a discretion is exercised on consideration irrelevant to the statutory purposes.
- e) The last class of abuse of power is where the available powers are

used by the statutory authority for a collateral purpose deliberately and with the motive to further certain official policy which either the specific authority itself may have or the Government and its superior. In the above mentioned conditions of abuse of power, the Court may grant writ of mandamus.

If a power is coupled with a duty, and the non-performance of such duty may give rise to an illegality, the Court will issue the writ of mandamus in such conditions.

Grounds On Which The Writ Of Mandamus Will Be Refused :-

The relief of writ of mandamus can be refused on the following grounds :-

When the act against which the mandamus is sought has been completed and the writ, if issued, will be infructuous:

Where the application is premature

Where it appears that it would be futile in its results;

If the application suppresses or misstates the material facts;

Where the application is ~~unduly~~ submitted with unexplained delay;

Where the writ is not appropriate proceeding to decide the questions of title to property or complicated questions of facts.

The writ will not be issued to compel a person to institute legal proceedings, even in cases of contravention of a statute.

(vii) The writ can not be issued against a public servant to enforce a contract independently of any statutory duty or obligation to the applicant.

(viii) The Court will not sit as a Court of appeal so as to examine the facts or to substitute its own wisdom for the discretion vested by law in the person or body against whom the writ is sought.

(ix) A writ will not be issued to correct an irregularity which has not affected the jurisdiction or has not resulted in a failure of justice.

Person Who Can Apply For the Writ of Mandamus:

The person, whose right have been infringed, may apply for the writ of mandamus.

In *Chunjit Lal V/S Union of India*, (1950) S.C.R 809 it was held that in the case of an incorporated company, the application for writ can be made by the company itself. An individual shareholder may also apply only if infringement of the right of the company constitutes an infraction of the shareholder's individual rights as well.

The petitioner should have a legal right to enforce the performance of alleged duty. The right should subsist on the date of the petition. If the interest of the petitioner has lawfully been terminated before the filing of the petition, the petitioner is not entitled to any remedy.

In *Guru Swami V/S State of Mysore*, A.I.R. 1957, S.C. 592 the

Court held that in the case of violation of statutory duty or abuse of a statutory power, anybody who is affected by the illegal order is entitled to apply for mandamus to quash such order, even though he may not have a substantive enforceable right.

iv) Certiorari :

In *Bharat Bank V/S Employees of Bharat Bank*, A.I.R. 1950, S.C. 459 the Supreme Court held that the object of writ of certiorari is to keep judicial body and administrative tribunal within limits. Following are the conditions for the issue of the writ -

- 1) It is issued against judicial body or tribunal. In other words the writ is not available against executive authority.
- 2) It is issued against such authority which is bound to act judicially.
- 3) The writ of certiorari is issued if : (1) judicial authority has exceeded its power ; (2) abused powers ; (3) there is violation of principles of natural justice ; or (4) there is an error on the face of record.
- 4) If judicial authority has violated above mentioned principles, its decision is quashed by writ of certiorari.

Conditions For The Issues of Writ of Certiorari :

- i) The tribunal must have legal authority to issue the writ. The writ will not lie where the proceedings of the inferior tribunal

-al are not voidable but are absolutely null and void

(i) Such legal authority must be an authority to determine questions affecting rights of subjects. The determination of the authority must affect the rights of subjects.

(ii) The tribunal must have the duty to act judicially.

(iii) The judicial or quasi-judicial authority must have acted -
(a) without or in excess of its jurisdiction, or
(b) in contravention of the rules of natural justice; or
(c) committed an error apparent on the face of the record.

(iv) The tribunal whose order is sought to be quashed must be inferior to the Court before which certiorari has been applied for.

(v) The tribunal whose order is sought to be quashed or the authority from whose custody the record is called for, must be within the jurisdiction of the High Court.

Grounds of Writ of Certiorari :-

The writ can be issued on the following grounds:-
Want of jurisdiction, which includes the following :-

- (a) Excess of jurisdiction
- (b) Abuse of jurisdiction
- (c) Absence of jurisdiction

(d) Violation of Natural justice

3) Fraud

4) Error of law on the face of record.

1) Want of jurisdiction :-

The Supreme Court in *Ebrahim Abu Bakar V/S Custodian General of Evacuee Property*, 1922 S.C.J. 488 observed that the want of jurisdiction may arise from -

i) the nature of subject-matter

ii) from the abuse of some essential *preliminary*; or

ii) upon the existence of some facts collateral to the actual manner which the Court has to try and which are the conditions precedent to the assumption of jurisdiction by it.

The want of jurisdiction may arise from the nature of subject matter, so that the inferior Court had no authority to enter on its enquiry or some part of it. Want of jurisdiction may also arise from the absence of some preliminary proceedings or upon the existence of some particular facts which are necessary to the exercise of the Court's power and the Court wrongly assumes that particular condition exists.

The Court does not interfere in the cases, where the case is pure exercise of discretion, and which is not arbitrary if it is done in good faith.

2) Violation of Natural Justice :-

A writ will lie against a Court of Tribunal when it acts in violation of the principles of natural

- justice. The principles of natural justice are-
- i) Rules against bias i.e. nobody should be judge in his own cause
 - ii) Rule of audi alteram partem i.e. nobody should be condemned unheard.
 - iii) Reasonable opportunity to know the cause of condemnation.

It is one of the fundamental principles of natural justice that the person or persons who are entrusted with the duty of hearing a case judicially should be those who have no personal bias in the matter.

In *Gopalan v/s State of Madras*, A.I.R. 1951, S.C. 27 the Supreme Court held that the principle only means that party affected should be given sufficient opportunity to meet the case against him and that could be achieved by filing written representations and explanations.

3) Fraud :

There is no case in India where the writ is asked on account of fraud. In England, the Court has granted the writ of certiorari on the ground of fraud. The Court will quash the decision by the issue of certiorari if the inferior tribunal's decision has been procured by fraud or collusion.

4) Error of Law Apparent On the Face of Record :

An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceeding e.g. when it is based

on clear ignorance or disregard of the provisions of law.

In *Hari Vishnu V/S Ahmad Ishaque*, A.I.R. 1955, S.C. 233 the Supreme Court held that no error could be said to be error on the face of the record if it was not self-evident and if it required an examination or argument for its establishment. An error of law which is apparent on the face of the record can be corrected by a writ of certiorari but not an error of fact, however grave it may appear to be.

A Superior Court does not interfere on the mere ground of an error of fact or even of law, but if the error of law is apparent on the face of the record, or consists of a misconstruction of a law as to which assumption of jurisdiction is made which otherwise does not exist, a certiorari will be issued.

In *Parry And Co. V/S P.C. Dal*, A.I.R. 1970, S.C. 1401 the Court observed, "A mere wrong decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of appeal in disguise. But a manifest error apparent on the face of proceeding based on a clear ignorance or disregard of the provisions of law or absence of or excess of jurisdiction, when shown can be so corrected. When the tribunal having jurisdiction to decide a question comes to a finding of fact, such finding is not apparent open to question under Article 226, unless it could be shown to be wholly

unwarranted by the evidence where the tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case, or where its conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person can ever have arrived at that conclusion, interference under article 226 would be justified.

v) Prohibition :

Writs of prohibition and certiorari possess common characteristics. There is only one major difference between them. The writ of certiorari is issued when inferior Court or tribunal has pronounced its decision so that such decision may be quashed, while writ of prohibition is issued before the pronouncement of the judgement.

Grounds For The Issues Of Writ Of Prohibitions :

Jurisdictional Defects :

The writ is granted for protection from illegal acts of the public authorities. Generally the writ is used for the protection of public from the tax authorities.

Violation Of Judicial Procedure :

If the administrative authority does not exercise its discretion keeping in mind the fundamentals of justice and judicial procedure, the prohibition will prevent further proceeding of the authority.

SHORT NOTE

a Ombudsman :-

About three decades back, people in parliamentary democracies had firm convictions that the parliamentary process, press and public debates, along with the provisions for the redress by way of the petition to the Government and to the Parliament could adequately remedy the citizens grievances and control the arbitrariness of the Executive. Whenever a citizen feels aggrieved by an action of the Government, he could get remedies in the courts and where no action lay in the courts of law, he could ventilate his grievances through petitions through members of parliament and finally by voting down the Government in general election if it is not responsive to his grievances.

In past few decades there has been intensive increase in the Governmental activities wide discretionary powers have been given to them, which are susceptible to misuse. It has also multiplied the occasion of individual grievances. There are now more complaints of mal-administration, corruption nepotism, administrative inefficiency, delay, negligence, bias, unfair preferences or dishonesty.

It has been found that the existing democratic processes under the law are inadequate to deal with the complaints of citizens against the Government. The

present scope for judicial review of administrative action is also very meagre. There are no proper means of correcting an erroneous decision on facts or investigating into complaints of misconduct, inefficiency, delay or negligence.

The problems of citizens' grievance which have been germinated by a welfare state have caught the attention of the world for establishing an institution like Ombudsman. Prof. Rawat has rightly predicted that the "Ombudsman institution or its equivalent will become a standard part of the machinery of Government throughout democratic world." In recent years the enthusiasm for Ombudsman has been really sweeping through the democratic countries. The term Ombudsman which was unknown to every country till recently except Scandinavian countries has secured statutory place in a number of countries like New Zealand, Alberta, New Brunswick, Mauritius, Guyana, Canada and England.

In the words of Prof. S. K. Agarwal the term 'Ombudsman' refers only to institutions which have three basic and unique characteristics -

- a) The Ombudsman is an independent and non-partisan officer of the legislature who supervises the administration;
- b) He deals with the specific complaints from the public against administrative injustice and mal-administration, (or may proceed on his own information in similar circumstances);

c) He has the power to investigate criticise and report back to the legislature, but not to reverse administrative action.

The Lokpal (Indian) :-

Inspired by the idea that there is an effective procedure or mechanism to redress individual's grievances against administrative evils, through the institution of Ombudsman, the Administrative Reforms Commission recommended for the establishment of an office in India known as Lokpal. In its interim Report it gave the following reasons inter alia -

i) Since a democratic Government is a Government of the people by the people and for the people; it has an obligation to satisfy the citizen about its functioning and to offer them adequate means for the ventilation and redress of their grievances.

ii) The existing institutions of judicial review and parliamentary control are inadequate in view of ever expanding range of Government activities, most of which are discretionary.

The commission has formulated the following principles which should be borne in mind in setting up such institution in India -

a) He should be demonstrably independent and impartial.
b) His investigations and proceedings should be conducted in private and should be informal in character.

c) His appointment should, as far as possible, be non-political.

- d) His status should compare with the highest judicial functionary in the country.
- e) He should deal with matters in the discretionary field involving acts of injustice, corruption or favouritism.
- f) His proceedings should not be subject to judicial interference and he should have the maximum latitude and powers in obtaining information relevant to his duties.
- g) He should not look forward to any benefit or pecuniary advantage from the executive Government.

The Lokpal Bill, 1989 :-

Since the Lokpal Bill, 1985 has elapsed and a new Parliament led by the National Front Government has depicted a real sincere political will to adopt an institution on the pattern of Ombudsman, a fresh bill became necessary to be introduced in the Lok Sabha to effectuate the long felt objective. Accordingly the Lokpal Bill, 1989 has been introduced covering within its fold the complaints of corruption at higher political levels including the one against the Prime Minister also.

The Bill seeks to set up the institution of Lokpal consisting of a chairman and two members, who are either sitting or retired Supreme Court judges. He will hold the office for a term of five years.

The

4 pe

25.

du

-nal insult or interruption to the proceedings of the Lokpal or bringing him or any member to disrepute would be liable for punishment.

There is also a provision for punishment for making wilful or malicious complaints and for the bar of prosecution on allegation in cases where the Lokpal has held that any allegation made in the complaint has not been proved or substantiated.

It is also provided that the provision of the Bill shall not affect the constitution or the continuance of any Commission of Inquiry appointed under the Commission of Inquiry Act, 1952 before the coming into force of the provisions of the Bills.

The Lokpal may require a Public servant or any other person to give such information as may be desired or to produce such documents which are relevant to investigation. He will be given the powers of a Civil Court under the Civil Procedure Code, 1908 with respect to the following matters -

- a) to summon a person and to examine him on oath;
- b) to require a person to disclose and produce a document;
- c) to take evidence on oath;
- d) to require any public document or record to be placed before him;
- e) to issue commissions for the examination of evidence and documents;

1) any other matter was provided later on.

b) The Central Vigilance Commission:

In order to root out corruption amongst the Government servants, the Government of India created an institution in 1964, known as Central Vigilance Commission, on the recommendation of Santhanam Committee. The committee was commissioned with the task of making recommendation on measures of preventing corruption. The committee had recommended that the commission should be entrusted with two major problems to work and concerning the administration, namely (a) Prevention of corruption and maintenance of integrity amongst Government servants. (b) Ensuring just and fair exercise of administrative powers vested in various authorities by statutory rules or by non-statutory executive orders. The recommendations of the committee regarding measures of removing corruption and cases of mal-administration were accepted by the Government and hence the commission was accordingly established.

The commission is attached to the Ministry of Home Affairs but not subordinate to it or other department of the Government. It is an independent autonomous body like U.P.S.C.

The Central Government has envisaged the role and functions of the C.V.C in the following manner:

The C.V.C will have, in the sphere of vigilance status and

role broadly corresponding to those of U.P.S.C. It will have extensive functions designed to ensure that complaints of corruption or lack of integrity on the part of public servants are given prompt and effective attention, and that offenders are brought to book with loss or favour. In the constitutional and legal sense, its functions would be advisory. But in reality, they would be advisory in the same sense as those of U.P.S.C. The combined effect of the independence of the commission, the nature of its functions and the fact that its report would be placed before parliament, would be ~~to~~ make the commission a powerful force for eradication of corruption in the public services.

The jurisdiction of the commission and its powers were co-extensive with the executive powers of the centre. The government servants employed in the various ministries, and departments of the Government of India and the Union Territories, the employees of public sector undertaking's, and nationalised banks have been kept within its purview. The commission has confined itself to cases pertaining only: (i) to gazetted officers, and (ii) employees of public undertakings and nationalised banks, etc. at drawing a basic pay of Rs. 1,000 per month and above.

The Central Vigilance Commissioner is to be appointed by the President of India. He has the same security of tenure as a member of the Union Public Service Commission. Originally he used to hold office for six years but now as a result

of the resolution of the government in 1977, his term has been reduced to three years with proviso to extend his term in public interest for not more than two years. After the commissioner has ceased to hold office, he cannot accept any employment in the Union or State Government or any political, public office.

The commission mainly considers the complaints relating to corruption, misconduct, lack of integrity or some other kind of mal practice or misdeemeanour on the part of the public servants. It is only an advisory body. It has no adjudicatory functions as such in disciplinary proceedings against government servants. It cannot extend sanction for criminal prosecution for offences committed by public servants. It has no machinery to investigate or enquire into complaints of corruption except to a limited extent.

Whenever a complaint is received by the commission, it refers the same either to C.B.I or to the concerned ministry or department for investigation. The investigation report is sent to the commission for advice, in which case it may drop the complaint at initial stage itself on finding the contents vague or not verifiable. The commission is not authorised to investigate the complaint itself, it has to refer them to C.B.I or Ministry or Department for investigation. However the Chief Technical Examiner's Organisation attached to it conduct technical examination of public works including checking of bills of contractors, contacts and muster rolls. The commission advises as to the action to be taken in following cases -

1. Reports of investigation by the C.B.I., which involves departmental action or prosecution in the matter either referred to it by the com

-mission or otherwise.

ii) Reports of investigation by the Ministry or department involving the cases of disciplinary action in the matters either referred by the Commission or otherwise.

iii) Cases received direct from public sector undertakings and state-owned corporations, etc.

The Commission may require that oral enquiry in any departmental proceeding may be entrusted to one of the Commissioners.

All the chief vigilance officers are required to submit a Resume of the vigilance work done in their organisation with special emphasis on preventive vigilance to the Commission for its assessment.

The Commission may suggest to the Government changes in the procedure and practice where it appears that the existing procedure or practice affords scope for corruption or misconduct. The central vigilance Commission deals with the matters of corruption, misconduct, lack of integrity or other kinds of mal-practices or misdemeanours, on the part of Government servants. The work of the Commission is mainly advisory. It co-ordinates, supervises and advises the investigating authorities and ministries. It cannot decide cases against Government servants.

The Commission also discharges the functions of conduct

-ting orientation courses for vigilance officers and courses in the conduct of departmental proceedings. It also reviews the vigilance arrangements in ministries departments public undertakings It also renders advice in matters relating to the interpretation of laws and procedures governing departmental proceedings, etc.

The commission is required to submit an annual report to the Ministry of Home Affairs, stating the cases in which it recommends censure and action upon the competent authorities. A copy of the report together with Government Memo explaining the reasons for non acceptance of any recommendations made by the commission is laid before each House of Parliament.

DEVELOPMENT OF ADMINISTRATIVE TRIBUNALS

Development of Administrative Tribunals:

There have been a large number of laws which change the Executive with adjudicatory functions, and the distinction has so changed over, in the strict sense, administrative tribunals Administrative Tribunals are agencies created by specific enactments to adjudicate upon controversies that may arise in the course of the implementation of the substantive provisions of the relative enactment. Unlike that of the courts which are parts of the judicial system of a country, the jurisdiction of administrative tribunals is not general, but specific.

Tribunals are administrative bodies, set up solely with the idea of discharging quasi-judicial duties. Their determinations affect the rights of parties; they, therefore, have been held to be quasi-judicial bodies. They are required to observe principles of natural justice or fair hearing while determining issues before them. "To the politician they are part of the judicial system in that they enable the ordinary man to obtain a check, fair and impartial hearing when he is affected by administrative action; to the lawyer they are not fully within the legal fold since they are, in certain aspects, an upshot of bureaucratic procedure."