CHAPTER 19

FORMS OF JUDICIAL REVIEW

Particular Modes of Judicial Review.

Having discussed the foundations of judicial review of administrative action and the general principles relating thereto, we shall now consider the modes in which the judicial control operates and the remedies available in a court of law to an individual who is aggrieved by some administrative act.

The modes of judicial review of administrative acts are either statutory or non-statutory (or common law).

(A) *England.*

I. *Statutory remedy:* The chief forms of statutory review are—

(i) Appeal to the High Court on points of law,[1] or on points of both facts and law.[2]

England.

(ii) The administrative authority may be required to state a case to the High Court on a point of law.[3]

(iii) Appeal to the ordinary Court with a further appeal to the Court of appeal,[4] on specified *grounds.*

II. *Non-statutory remedies :*

A. Prior to 1978, at common law, the following remedies were available to a person affected by an administrative action :

(a) The 'prerogative writs' of *habeas corpus, mandamus, certiorari, prohibition and quo warranto.* Of these, *certiorari* and *prohibition* are available only if the act which is challenged is *'quasi-judicial'* in nature (see *post*).

(b) A declaratory action (see *post*).

(c) Injunction, except against the Crown or its servants (see *post*).

(d) Action for damages for an unlawful act committed by an administrative authority, as gives rise to an action in tort (see *post*).

(e) Defence to enforcement proceedings.

B. Of the several remedies mentioned above, the prerogative writs appertained to Public Law, and they were available only against the administrative authorities and not against private persons.

The other remedies, e.g., declaration, injunction and damages, had their origin in Private Law, applicable to litigation as between private individuals.

Owing to this difference in origin, there were procedural formalities and shortcomings[5] attached to each of these remedies.

In 1978, in order to remove these technical shortcomings and to simplify the procedure for obtaining all the reliefs required against an

1. Cf. Pensions Appeal Tribunals Act, 1943, s. 6(2).
2. Cf. *Stepney B.C.* v. *Jotte,* (1949) 1 All E.R. 256.
3. Local Government Superannuation Act, 1937, s. 35.
4. Cf. Tribunals and Inquiries Act, 1971.
5. Thus, damages could not be claimed in a petition for a prerogative writ.

administrative authority in one application for 'judicial review', Or. 53 was inserted in the Supreme Court Rules. In such application, the Court may grant such redress as it may deem appropriate on the facts of a particular case.

The provisions of this Order have subsequenntly been codified, with modifications in the Supreme Court Act, 1981.

In *India,* we are concerned with the English Common Law relating to the prerogative writs inasmuch as in Arts. 32(2) and 226(1), the Constitution has adopted the writs in the nature of *habeas corpus, mandamus, prohibition, certiorari* and *quo warranto,* in appropriate cases, for the enforcement of the Fundamental Rights (under Art. 32) as well as for other legal rights (under Art. 226).

In this Chapter, it will be seen how far the English common law principles have been applied by *our* Supreme Court as well as High Courts.

(B) *India.*

India.

Our Constitution makes various constitutional provisions to bring administrative authorities and tribunals under the control and supervision of the superior Courts, which will be noticed at proper places: (a) the directions or orders or writs enumerated in Art. 32(2)(3); 226(1); (b) superintendence of the High Court [Art 227(1)]; (c) appeal to the Supreme Court by special leave [Art. 136(1)].[6]

Besides these, there is the general remedy by suit under the ordinary law. The scope of the these remedies will now be analysed.

I. Constitutional Remedies.

A. *Prerogative Writs.*[6]

It has already been stated that, in India, these writs may be issued by the Supreme Court (Art. 32) as well as the High Courts, but the jurisdiction of the Supreme Court is circumscribed by the fact that it can directly issue these writs only where a *fundamental right* has been infringed by the State act complained of. As against administrative action, therefore, the resort to the High Court is bound to be more frequent than to the Supreme Court, but the party aggrieved by the order of the High Court may bring it before the Supreme Court on appeal.

The scope and nature of the several writs are different, and they will be discussed in detail under 'writs in particular', *post.* But we should, in the present context, note the distinguishing features of each of these writs in relation to administrative action.

(i) *Habeas corpus.*

Habeas corpus is available to determine the legality of executive action against the person.

It may be used to set at liberty the person detained on the ground—

(a) that the order of detention is not authorised by law;[7-8] (or, in *India, unconstitutional*);[9]

6. For a fuller treatment of Arts. 32, 136, 226, 227 of the Constitution, see Author's *Shorter Constitution of India,* 11th Ed., 1992 (P.H.I.); *Constitutional Remedies and Writs* (1994, K.L.H).

7. Ex parte *O'Brien,* (1923) 2 K.B. 361.

8. *Ram Kishan* v. *State of Delhi,* (1953) S.C.R. 708 (713).

9. *Purshottam* v. *Desai,* (1955) 2 S.C.R. 887.

(b) that an order of deportation[10] or extradition[11] is *ultra vires*;

(c) that the order of a court martial[12] or other tribunal[13] is without jurisdiction; or that the proceedings before the court martial violated the rules of natural justice.[14]

An additional ground for *habeas corpus* in India,[15] is—

That the law under which the order of arrest or detention has been made is unconstitutional.

(ii) *Mandamus.*

Mandamus is available to command any authority to carry out its *public duty,* imposed upon it either by statute or by common law.

Since it is available both against administrative and *quasi-judicial* authorities, it would be expedient to keep the two areas separate :

A. *Against adminstrative authorities.*

While a detailed discussion of this remedy must be postponed, the different classes of cases where the writ is used to review an administrative decision may be enumerated here, in order to demonstrate the wide sweep of this remedy.

(a) To compel public officials or bodies to perform their public duties,[16] whether imposed by statute or common law; or to direct them not to enforce an *ultra vires*[17] (or unconstitutional, in India), order[18] or bye-law[19] or notification[20] or to hold an election on the basis of an *ultra vires* electoral roll,[21] or the recovery of an illegal demand.[22]

(b) To direct a public authority to hold a fresh election where there has been an election which is void or colourable.[23]

(c) While in *England mandamus* was not available against the Crown or a Crown servant performing a duty on behalf of the Crown,[24] that immunity of the Government has been expressly taken away by Arts. 226 and 361(1), Proviso 2, of *our* Constitution. Hence, *mandamus* is available in India, against the Government of India or of a State, where the act of such Government is *ultra vires*[25] or unconstitutional.

B. *Against quasi-judicial authorities and tribunals.*

"Where a tribunal has refused to exercise a jurisdiction vested in it,

10. *Eshugbayi* v. *Govt. of Nigeria,* A. 1931 P.C. 248.
11. *R.* v. *Brixton Prison,* (1926) 1 K.B. 127.
12. *R.* v. *Wormwood Scrubs Prison,* (1948) All E.R. 438 (see, further, under Art, 34, *post*).
13. Cf. *State of Punjab* v. *Ajaib Singh,* (1954) S.C.R. 254.
14. *Mohyuddin* v. *K.E.,* (1946) 81 C.L.J. 263 (F.C.).
15. *Gopalan* v. *State of Madras,* (1950) S.C.R. 88; *Ram Narain* v. *State of Delhi,* (1953) S.C.R. 652.
16. *Commr. of Police* v. *Gordhandas,* (1952) S.C.R. 135 (148).
17. *Sheriff* v. *S.T.A.,* (1960) S.C.J. 402 (409).
18. *Rashid Ahmad* v. *Municipal Board,* (1950) S.C.R. 566; *State of Bombay* v. *Bombay Education Society,* (1955) 1 S.C.R. 568.
19. *Yasin* v. *Town Area Committee,* (1952) S.C.R. 572 (581); *Tahir* v. *Dt. Board,* A. 1954 S.C. 630.
20. *State of Bihar* v. *Ganguly,* A. 1958 S.C. 1018 (1026).
21. *Chief Commr.* v. *Radhey Shyam,* (1957) S.C.R. 67 (77).
22. *State of M.P.* v. *Champalal,* A. 1965 S.C. 124.
23. *Sohan Lal* v. *Union of India,* A. 1957 S.C. 529.
24. *R.* v. *Lord Commrs.,* (1872) 7 Q.B. 387.
25. *Venkataramana* v. *State of Madras,* A. 1951 S.C. 229.

it can be compelled to exercise it,[26] e.g., to determine an appeal, after a hearing.[27]

(ii) *Prohibition and Certiorari.*[6]

Both *prohibition* and *certiorari* are available only against judicial and *quasi-judicial* bodies and are not, *accordingly,* available against *purely administrative* acts.[20,28] The difference between two writs lies primarily in the fact that they are available at different stages.

While *prohibition* will issue only so long as there is something pending in the proceedings which the court can prohibit,[29] *certiorari* will not lie until there is an order or decision of the inferior tribunal, which the superior tribunal can quash.

In the present context we may only note, in brief, the grounds upon which *prohibition* and *certiorari* may be available against the decision of a *quasi-judicial* tribunal :

(a) That the tribunal has acted without or in excess of jurisdiction,[30] so that its decision is *ultra vires.*[26]

(b) That the tribunal has violated any of the principles of natural justice.[26,31]

(c) That the decision of the tribunal is vitiated by an 'error apparent on the face of the record' (as distinguished from a mere erroneous decision).[32]

(d) That, in *India,* the proceedings violated the Constitution;[33] or the law which gave jurisdiction to the tribunal was *ultra vires* or unconstitutional.[34]

B. *Appeal to Supreme Court by special leave.*[6]

1. Since special leave to appeal under Art. 136 can be granted by the Supreme Court only against the decision of a 'court' or a 'tribunal', it is clear that this remedy is *not available against purely administrative action,* even though the authority may be called a 'tribunal'.[35]

2. The word 'tribunal' in this Article was interpreted by the Supreme Court in the *Bharat Bank case*[35] as referring to tribunals which have the 'trappings of a court' and against whose decision the writs of *prohibition* or *certiorari* might lie. The scope of Art. 136 is thus confined to *quasi-judicial* authorities, such as an Industrial Tribunal constituted under the Industrial

26. *Veerappa* v. *Raman,* A. 1952 S.C. 192 (195-96); *Bharat Bank* v. *Employees,* A. 1950 S.C. 188.

27. *R.* v. *Housing Tribunal,* (1920) 3 K.B. 334.

28. But in India, these writs or orders in the nature thereof have been issued in some cases even in administrative proceedings [e.g., *Calcutta Discount Co.* v. *I.T.O.,* A. 1961 S.C. 213 (219); *Kraipak* v. *Union of India,* A. 1970 S.C. 150 (154); *Kapoor* v. *Jagmohan,* A. 1981 S.C. 136 (para. 7); *Mohinder* v. *Chief Election Commr.,* A. 1978 S.C. 851 (para. 75) [see *post*].

29. *R.* v. *Minister of Health,* (1929) 1 K.B. 619 [against *ultra vires* scheme].

30. *R.* v. *Electricity Commrs.,* (1924) 1 K.B. 171 (205).

31. *Cooper* v. *Wandsworth Board,* (1863) 132 E.R. 414 (420).

32. *Nagendra* v. *Commr.,* A. 1958 S.C. 398; *R.* v. *Northumberland Compensation Tribunal,* (1952) 1 Q.B. 338.

33. *Venkataraman* v. *Union of India,* (1954) S.C.R. 1150.

34. *Rajamundry E.S.C.* v. *State of Andhra,* (1954) S.C.R. 779; *Bengal Immunity Co.* v. *State of Bihar,* (1955) 2 S.C.R. 603 (619); *Ujjam Bai* v. *State of U.P.,* A. 1962 S.C. 1621 (1627-29).

35. *Durgashankar* v. *Raghuraj,* (1955) 1 S.C.R. 267; *Jaswant* v. *Lakshmi Chand,* A. 1963 S.C. 677; *Engineering Mazdoor Sabha* v. *Hind Cycles,* A. 1963 S.C. 874.

Disputes Act, 1947;[36-37] the High Court determining a case under s. 12(4) of the Bar Councils Act;[38] an Income-tax Tribunal;[39] a Labour Appellate Tribunal;[40] Custodian-General acting under s. 27 of the Administration of Evacuee Property Act.[40]

3. Even though the jurisdiction under Art. 136 is discretionary, once the special leave is granted, the ambit of the powers of the Supreme Court is much wider than under a writ proceeding, inasmuch as the power under Art. 136 is an appellate power, upon which the Constitution itself has placed no limitations (see under Art. 136, *post*). Thus, where a Legislature has conferred final jurisdiction upon a tribunal to decide a fact, a High Court cannot interfere with such a decision under Art. 226, but there is nothing to bar the Supreme Court, under Art. 136, from quashing a wrong decision even on this point. As the Court observed in the *D.C. Mills case*[39]—

"....when the court reaches the conclusion that a person has been dealt with arbitrarily or that a court or tribunal within the territory of India has not given a fair deal to a litigant, then no technical hurdles of any kind like the finality of findings of facts or otherwise can stand in the way of the exercise of this power becuase the whole intent and purpose of this article is that it is the duty of this court to see that injustice is not perpetuated or perpetrated by decisions of courts and tribunals because certain laws have made the decisions of these courts or tribunals final and conclusive."

4. The following broad proposition may be culled out of the plethora of cases relating to this special appellate jurisdiction of the Supreme Court, to interfere with the decision of an inferior tribunal :

A. The court will set aside the decision of an inferior administrative tribunal—

(i) Where grave injustice or miscarriage of justice[41] has been caused, so as to touch the conscience of the Court, e.g., where the tribunal has acted in violation of the principles of natural justice;[42-43]

(ii) Where the decision of the tribunal is vitiated by a defect of *jurisdiction*.[44]

On the other hand, even where there is some doubt as to the jurisdiction of the tribunal, the Supreme Court may refuse to interfere if the order complained of has effected equitable[45] and substantial justice[46] between the parties.

(iii) Where it has ostensibly failed to exercise a patent jurisdiction;[47] or to perform its duty under the law;[48] or declined to exercise its jurisdiction upon an erroneous view of the law;[49]

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36. *Bharat Bank* v. *Employees of Bharat Bank*, (1950) S.C.R. 459.
37. *Muir Mills* v. *Suit Mills*, (1955) S.C.A. .321.
38. *Bhattaraju* v. *Judges of the Madras High Court*, A. 1955 S.C. 223; *Manak Lal* v. *Prem Chand*, A. 1957 S.C. 425.
39. *D.C. Mills* v. *Commr. of I.T.*, (1955) 1 S.C.R. 941 (949).
40. Cf. *Indira Sohanlal* v. *Custodian*, A. 1956 S.C. 76.
41. *Bharat Bank* v. *Employees*, A. 1950 S.C. 188 (194); *State of U.P.* v. *D.J.*, A. 1984 S.C. 1401.
42. *Bishambhar* v. *State of U.P.*, A. 1966 S.C. 573 (580).
43. *D.C. Mills* v. *Commr. of I.T.*, (1955) 1 S.C.R. 941.
44. *Harish Chandra* v. *Triloki*, A. 1957 S.C. 444 (455).
45. *Rashpal* v. *Satya*, A. 1987 S.C. 2235 (1238).
46. *Balvantrai* v. *Nagrashna*, A. 1960 S.C. 407 (409).
47. *Clerks of C.T. Co.* v. *C.T. Co.*, A. 1957 S.C. 78 (81).
48. *Rajkrishna* v. *Binod*, (1954) S.C.R. 913.
49. *D.C. Works* v. *Dhrangadhara Municipality*, A. 1959 S.C. 1271 (1276).

(iv) Where it has committed an error of *law* apparent on the face of the record;[50]

(v) Where the statute on which the decision is founded is unconstitutional, e.g., for violation of Art. 14 of the Constitution.[51]

B. On the other hand, the Supreme Court would not exercise this discretionary jurisdiction—

(a) To review findings of fact except where they are perverse[52] or shocking to the judicial conscience or the like;[52-53] or

where the finding is not based on any legal evidence and is wholly inconsistent with the material on the record;[54] or is based on conjectures;[55] or

where the finding of fact is based on a consideration of material which is irrelevant to the inquiry, or partly on relevant and partly on irrelevant material and it is impossible to say to what extent the mind of the court was affected by the irrelevant material;[55-56] or

Where relevant considerations have been ignored.[57]

(b) In particular—

The Supreme Court would be slow to interfere with the assessment made by educational authorities, which is not glaringly unconscionable.[58]

Compensation, whether can be awarded in writ proceedings.

I. As a rule, damages are not available in a proceeding under Art. 32, e.g., for humiliation by remarks made in a judgment.[59]

II. But it has also come to be established that since the power under Art. 32 or 226 is not confined to common law prerogative writs, the Supreme Court[60] (or the High Court[61]) is competent to award compensation to do justice to an aggrieved party, when that is called for by the circumstances of a case. Thus,

1. In cases of deprivation of the right to life and liberty, the Court may, in a proceeding *for habeas corpus* under Art. 32, award compensation to the petitioner, where it is evident that he would have succeeded had be brought a suit for the purpose,[62] without prejudice to the petitioner's right to sue for damages;[60] e.g., where a convict was kept in jail long after his acquittal;[60] or a person was detained in a lunatic asylum long after his certificate of discharge;[63] or where there was an unjustifiable delay or failure in producing the person directed to be produced before the Court in a proceeding for *habeas corpus.*

50. *Hindustan Antibiotics* v. *Workmen.* A. 1967 S.C. 948.
51. *Sudhir* v. *TISCO,* A. 1984 S.C. 1064.
52. *Ganga* v. *Jai Narain,* A. 1986 S.C. 441.
53. *Kishanchand* v. *S.T.A.A.,* A. 1968 S.C. 1461 (1464); *Concord of India* v. *Nirmala,* A. 1979 S.C. 1666 (para. 8).
54. *Macropollo* v. *Macropollo,* A. 1958 S.C. 1012.
55. *Omar Salay* v. *Commr. of I.T.,* A. 1959 S.C. 1238 (1246); *Dhirajlal* v. *Commr. of I.T.,* A. 1955 S.C. 271.
56. *Kalinga Tubes* v. *Workmen,* A. 1969 S.C. 90 (98).
57. *Ratan* v. *C.I.T.,* A 1985 S.C. 1572.
58. *Bhushan* v. *Dean,* A 1992 S.C. 917 (para. 8).
59. *Jiwan Mal* v. *Union of India,* A. 1983 S.C. 1107 (para. 2).
60. *Rudul* v. *State of Bihar,* A. 1983 S.C. 1086 (paras 10,12).
61. Cf. *Kumari* v. *State of T.N.,* (1992) 1 U.J.S.C. 527; *Jaram* v. *State of H.P.,* A. 1988 H.P. 13; *Padma* v. *O.S.E.B.,* A. 1992 Ori. 68 (para 9).
62. *Sebastian* v. *India,* A. 1984 S.C. 1026.
63. *Oraon* v. *State of Bihar,* reported in *The Hindustan Times,* dt. 13-8-83, quoted in Jain, *Administrative Law,* 1986, p. 781.

2. In a petition for *mandamus* against the State Government and local authorities for causing death to a child by keeping open the lid of a sewerage tank, the Division Bench of the Supreme Court allowed appeal by special leave from the order of the High Court dismissing the claim for compensation and directed the State Government to pay heavy compensation to the father of the child, keeping it open for the State Government to take appropriate proceedings to recover the amount from some other party, if any, which might be responsible for keeping the sewerage tank open.[61]

3. In a petition for *mandamus* against certain orders of the Inspector of Factories,[64] in the *Bhopal Gas Leak case*, the Constitution Bench[65] upon a reference by the 3-Judge Bench,[64] laid down the following propositions—

(i) The power to award compensation under Art. 32 extends to the violation of *any* fundamental right, whenever the violation is gross, patent and incontrovertible [para. 7], though every case of infringement of a fundamental right is not a fit case for awarding compensation, thereby supplanting the ordinary remedy of a suit in the civil court [para. 7].[65]

(ii) Another condition for awarding compensation in a petition under Art. 32 is that (a) either such infringement of a fundamental right shall be on a *large scale,* affecting the fundamental rights of a number of persons, or (b) it should appear unduly harsh or oppressive on account of their poverty or social or economic disability or disadvantage [para. 6].[65]

(iii) Where an enterprise is engaged in a hazardous or inherently dangerous activity (e.g., in the escape of toxic gas) and harm results to *anyone* (i.e., not merely to its workmen), the enterprise is *strictly* and *absolutely* liable to compensate all those who are affected by the accident [para. 31].[65]

Such liability is *not* subject to any of the exceptions (such as *vis major*) which operate *vis-a-vis* the common law principle of strict liability for torts [para. 31].[65]

Further, in such cases, the measure of compensation should be *deterrent* and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous activity by the enterprise [para. 32].[65]

C. In cases of acute distress, the Court may award compensation as an *interim* measure,[60,63] as a palliative.[61]

D. In some cases, the Supreme Court has expressed its indignation by awarding *exemplary costs* against the State Government.[66]

C. *Supervisory jurisdiction by High Court under Art. 227.*[6]

As to the extent of this jurisdiction, it is evident that since the word 'tribunal' occurs both in Arts. 136 and 227, the latter provision shall apply to the same class of tribunals as would come under Art. 136, according to the *Bharat Bank decision*;[36] i.e., any statutory authority exercising *quasi-judicial* power, whether labelled as a tribunal' or not[67]—excepting an administrative tribunal set up under the Administrative Tribunals Act, 1985 [s. 28].[68]

64. *Mehta* v. *Union of India* (I), A. 1987 S.C. 965 (para. 20)—3 Judges.
65. *Mehta* v. *Union of India* (II), A. 1987 S.C. 1086 (paras 3, 7) (C.B.).
66. Cf. *Devki* v. *State of Bihar*, A. 1983 S.C. 1134.
67. *Manmohan* v. *Commr.*, A. 1985 S.C. 364 (para 7).
68. Cf. *Chopra* v. *Union of India*, A. 1987 S.C. 357 (para. 2); *Sampat* v. *Union of India*, A. 1987 S.C. 386.

A. The High Court may quash the order or decision of an inferior tribunal on the following grounds—

(a) That the impugned order or decision is without jurisdiction,[69] or against the principles of natural justice,[70-72] or involves a non-exercise of jurisdiction,[69] or a grave dereliction of duty or flagrant violation of the law[73] as distinguished from a merely erroneous decision of fact or law[70-73] or patent irregularity in procedure[74] or an error of law apparent on the face of the record,[65,75] or that the finding is 'preverse', being founded on no material whatever.[76-77]

(b) That the exercise of the jurisdiction under Art. 227 does not amount to exercising the power of appeal[65] or revision on question of fact or of law, not affecting jurisdiction.[74]

B. 1. On the other hand, the power under Art. 227 will *not* be exercised in cases like the following :

(i) Where the only question involved is one of interpretation of a deed:[78]

(ii) On question of admission or rejection of a particular piece of evidence, even though the question may be of everyday recurrence;[79]

(iii) To correct an *erroneous* exercise of jurisdiction, as a Court of revision;[70]

(iv) To set aside an *intra vires* finding of fact,[77] except where it is founded on no material whatsoever,[76] or peverse;[80]

(v) To correct an error of law, not being an error apparent on the face of the record;[81]

(vi) To interfere with the *intra vires* exercise of a discretionary power,[74] unless it is violative of the principles of natural justice;[72]

(vii) To interfere with the decision of an Industrial Court on a merely technical ground which would not advance substantial social justice.[82]

2. The power under Art. 227 would *not* be exercised—

(a) Where there is an alternative remedy, such as appeal and revision[83] which is speedy and effective;[84]

(b) Under Act. 227, the High Court cannot substitute the award of the

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69. *Waman* v. *Sri Krishna,* (1962) S.C. [C.A. 56/61]; *Jalaluddin* v. *Jalaluddin,* (1962) S.C. [C.A. 602/61].
70. *Waryam* v. *Amarnath,* (1954) S.C.R. 565; *Yunus* v. *Mustaquin,* A 1984 S.C. 38.
71. *Dahya Lal* v. *State of Maharashtra,* A. 1964 S.C. 1320.
72. *Santosh* v. *Mool Singh,* A. 1958 S.C. 321.
73. *D.N. Banerjee* v. *P.R. Mukherjee,* A. 1954 S.C. 58 (59).
74. *Rajkamal* v. *Indian Motion Pictures Union,* (1963) 1 L.L.J. 318 (S.C.); *Surendra* v. *Stephen Court,* A. 1966 S.C. 1361; *Bhutnath* v. *State of W.B.,* (1969) 3 S.C.C. 675; *Nivarti* v. *Dadarao,* (1969) 1 S.C.W.R. 779.
75. *Prov. Transport Service* v. *State Industrial Court,* A. 1963 S.C. 114.
76. *Nibaran* v. *Mahendra,* A. 1963 S.C. 1895.
77. *State of Orissa* v. *Murlidhar,* A. 1963 S.C. 404.
78. *N.G.C. Mills* v. *L.A. Tribunal,* A. 1957 Bom. 111 (115).
79. *Basant* v. *Arjundas,* A. 1952 V.P. 4.
80. *Chandravarkar* v. *Ashalata,* A. 1987 S.C. 117 (para. 16).
81. *Umarsaheb* v. *Kadalaskar,* A. 1970 S.C. 61 (65).
82. *Babulal* v. *Shree Synthetics,* (1984) Supp. S.C.C. 128 (paras. 18-19).
83. *Yunus* v. *Mustaqim,* (1983) 4 S.C.C. 566.
84. *Maneck* v. *Sarfarazali,* A. 1976 S.C. 2446 (2450).

tribunal, as if sitting in appeal; what it can do is to quash the award and then remit it to the tribunal for fresh disposal according to law.[85]

II. Remedies under the ordinary law.

(A) DECLARATORY ACTION

In a declaratory action, the plaintiff seeks a declaration as to what his legal rights are. Such declaration does not immediately compel the other party to the litigation to do anything, but, by settling any doubt or dispute as to the legal situation, it entitles the plaintiff to other reliefs, either as a consequential relief in the declaratory action itself, or by a separate proceeding.

(A) *England.*

Having originated in private law, e.g., to settle a disputed question as to status, succession, legitimacy, contract and the like, in the present century, it has not only entered into the arena of public law, but even excelled the prerogative writs[86] in the matter of testing the legality or justifiability of governmental action[87] by virtue of the simplicity[88] or inexpensiveness of its procedure.

1. In *England,* the equitable remedy of 'declaration' is now governed entirely by statute. While prior to 1852, the Court of Chancery could grant a declaration only as an ancillary to the grant of some present substantial relief, by a statute of 1852, the Court of Chancery was empowered to grant a binding declaration, without any consequential relief, provided the plaintiff was entitled to some *equitable* relief, even though he had not asked for it. The Judicature Acts extended this jurisdiction to all Divisions of the High Court, and by the Rules of Court, this condition has been eliminated,[89] and the condition now is that the declaration sought for by the plaintiff must relate to some legally enforceable right of his.[90] The present state of the law as to declaratory relief, in England, may best be summarised in the words of *Keeton*[91] :

> "No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed."

Of course, it still retains its discretionary character.[89]

Under the Supreme Court Act, 1981 (which codifies the Rules of Court[92] in this behalf), a declaration may now be asked for and obtained together with the erstwhile prerogative writs in one application for 'judicial review'. Of course, this does not change the substantive law[93] as to declaratory relief as stated below.

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85. *Jitendra* v. *Baidyanath,* A. 1984 S.C. 976.
86. *Pyx Granite Co.* v. *Min. of Housing,* (1960) A.C. 260.
87. *Dyson* v. *A.G.,* (1911) 1 K.B. 410: (1912) 1 Ch. 158 (168).
88. *Barnard* v. *National Dock Labour Bd.,* (1953) 2 Q.B. 18; Denning, *Freedom under the Law* (1949), p. 126.
89. Halsbury, 4th Ed., Vol. 1, para. 185; Vol. 11, para. 1414.
90. *Vine* v. *National Dock Labour Bd.,* (1956) 3 All E.R. 939 (H.L.); *Ridge* v. *Baldwin,* (1963) 2 All E.R. 66 (H.L.).
91. Keeton, *Equity* (1969), pp. 559-60; *I.R.C.* v. *Fed. of Self-Employed,* (1981) 2 All E.R. 93 (97) H.L.
92. (1977) R.S.C. O. 15, r. 16.
93. *O'Reilly* v. *Mackman,* (1982) 3 All E.R. 1124 (1126-28) H.L.

2. A suit for a declaration that an administrative action[94] or a *quasi-judicial* decision[95] is null and void[96] lies—

(i) Where a statutory authority has acted *ultra vires*, i.e., *without jurisdiction*,[94,96] even where the statute itself says that determination of the authority shall be 'final';[94,96]

(ii) Where the authority itself was *not properly constituted* and its decision was, accordingly, null and void, in the absence of a statutory provision to cure the irregularity in the manner of its constitution;[97]

(iii) Where a jurisdicton has been *wrongly* exercised, e.g., where a statutory power has been used for an object or purpose[98] other than that contemplated by the statute, however desirable that object may seem to be in the public interest.[94,99] The object of declaratory relief is to secure that an authority set up by Parliament makes its determination in accordance with the law.[100]

The purpose of the statute may not only be express but may also be implied[1] by the Court—

(iv) Where the exercise of a statutory authority or discretion is *mala fide* or guided by *extraneous* considerations;[2]

(v) Where a *quasi-judicial* tribunal acts in violation of the rules of *natural justice*;[3]

(vi) Where a judicial or *quasi-judicial* authority, *not being entitled to delegate* its function, has delegated that function and the decision of the delegate is, accordingly, without jurisdiction[4] (see *post*);

(vii) Where the statutory authority has violated a procedural requirement of the statute which is *mandatory*;[93]

(viii) Where a statutory tribunal, in coming to its decision, took into consideration a factory which they had no right to take into account[5] or omitted to take into consideration a factor which it was its duty to consider, so that its decision becomes *ultra vires*.[5]

(B) *India*.—A declaratory action, in India, is governed by s. 34 of the Specific Relief Act, read with s. 9 of the Code of Civil Procedure.

India.

These two provisions are—

S. 34 of the Specific Relief Act, 1963, says—

"Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :

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94. *Pyx Granite Co.* v. *Ministry of Housing*, (1959) 3 W.L.R. 346 (357) H.L.
95. *Vine* v. *National Dock Labour Bd.*, (1956) 3 All E.R. 939 (949) H.L.
96. *Anisminic* v. *Foreign Compensation Commn.*, (1969) 2 A.C. 147 (H.L.).
97. Cf. *Woollett* v. *Minister of Agriculture*, (1954) 3 All E.R. 529 (C.A.).
98. *Grice* v. *Dudley Corpn.*, (1958) 2 All E.R. 673.
99. *Smith* v. *E.E. Rural Dt. Council*, (1956) 1 All E.R. 855 (867) H.L.
100. *Taylor* v. *National Assistance Board*, (1957) 1 All E.R. 183 (185).
1. *R.* v. *Paddington Rent Tribunal*, (1957) 1 All E.R. 720 (726).
2. *Associated Picture Houses* v. *Wednesbury Corpn.*, (1947) 2 All E.R. 680 (682); *Demetriades* v. *Glasgow Corpn.*, (1951) 1 All E.R. 457 (461) H.L.
3. *Cooper* v. *Wilson*, (1937) 2 K.B. 309.
4. *Vine* v. *National Dock Labour Board*, (1956) 3 All E.R. 939 (950) H.L.; *Barnard* v. *National Dock Labour Board*, (1953) 1 All E.R. 1113.
5. *Anisminic* v. *Foreign Compensation*, (1969) 1 All E.R. 208 (212, 217, 233, 239, 243, 249-50) H.L.; *Ridge* v. *Baldwin*, (1964) A.C. 40.

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

S. 9 of the C.P. Code provides—

"The Courts shall, subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

Limitations of declaratory action.

(A) *England.*—A declaratory action has certain distinctive advantages as a mode of judicial review against administrative action :

England.

(a) Unlike injunction or *mandamus*, a declaratory judgment is available against the Crown and its servants. This is made clear by s. 23(2)(b) of the Crown Proceedings Act, 1947.

(b) A bare declaration, without consequential relief, is maintainable [(1965) R.S.C.O. 15, r. 16], and even in cases where there is no cause of action.

(c) While *certiorari* is available only against a judicial or *quasi-judicial* act, an injunction or a declaratory action[4] lies against administrative,[6] legislative as well as judicial acts.[94] Hence, when a declaratory action is brought, it is not necessary for the court to determine whether the impugned act is administrative or *quasi-judicial.*[7]

(d) Being a regular action, investigation of facts[7] may be made in a declaratory action, while it is out of the scope of a writ proceeding.

(e) Public authorities themselves may obtain a declaration as to the limits of their powers.[8]

But—

(a) In a declaratory action against an administrative decision, the court cannot go beyond declaring the determination as null and void to correct the decision and lay down what the proper decision would be, according to the court.[9] It cannot act as an appellate authority to overrule the administrative decision.[10]

(b) A private individual may bring a declaratory action, without joining the Attorney-General as a party, only if (i) some private right of his own is interfered with by the administration, or (ii) he suffers special damage from interference with a public right.[11]

(c) A declaration is a discretionary remedy,[12] and will, accordingly, be refused—

(i) Where the relief claimed would be useless,[12] or is of a purely academic interest, or relates to a hypothetical question.[13] Though a declaration may be obtained while injury is merely threatened, it is not available where the question involved is fictitious,[14] or seeks advice.[13]

6. E.g., *Belcher* v. *Reading Corp.*, (1949) 2 All E.R. 969.
7. *Ruislip-Northwood U.D.C.* v. *Lee*, (1931) 145 L.T. 208.
8. *Att.-Gen.* v. *Smethwick Corpn.*, (1932) 1 Ch. 562; *Epsom & Ewell Corpn.* v. *Streatham Property Investment Trust*, (1949) Ch. 562.
9. *Healey* v. *Minister of Health*, (1954) 3 All E.R. 449 (454) C.A.
10. *Picture Houses* v. *Wednesbury Corp.*, (1947) 2 All E.R. 680.
11. *London Passenger Transport Board* v. *Moscrop*, (1942) A.C. 332 (345).
12. *Maerkle* v. *Br. & Continental Fur Co.*, (1954) 3 All E.R. 50 (C.A.); *Smeeton* v. *A.G.*, (1920) 1 Ch. 85; *Bennett* v. *Chappell*, (1965) 3 All E.R. 130 (133) C.A.
13. Re *Barnato*, (1949) 1 All E.R. 515 (C.A.); *Argosam Finance Co.* v. *Oxby*, (1964) 3 All E.R. 561 (565) C.A.
14. *Russian Commercial Bank* v. *British Bank*, (1921) A.C. 438 (453).

(ii) Where the action has been brought after considerable delay.[15]

(iii) Though under the R.S.C. a bare declaratory judgment is available, without asking for any consequential relief,[16] and whether there is a cause of action or not,[17] no declaration is available unless it relates to some legal right of the plaintiff,[18] as distinguished from a mere possibility,[19] and the declaration may be expected to bring some tangible benefit to the plaintiff.[19]

(iv) A declaration would not ordinarily be granted where the effect of it would be to deprive an administrative body of a jurisdiction expressly vested in it.[20]

(v) In general, declaratory relief may be refused where there is another alternative remedy,[21] or where an exclusive remedy is provided by statute,[22] but—

(a) Statutory remedy cannot exclude a declaration where the statutory remedy is in the nature of a penalty and does not serve the relief available by declaration,[23] nor is declaratory relief against an *ultra vires*[24] decision precluded by the word 'final' in the relevant statute which can give finality only in so far as the decision is in accordance with the law.[25]

(b) That *certiorari* is available is no ground for refusing a declaration.[26]

(vi) Where the property in relation to which the declaration is sought lies outside the jurisdiction of the court.[27]

India.

(B) *India.*—Prior to the Constitution, a suit for declaration, with or without injunction, was practically the only form of judicial review available against governmental action, inasmuch as the statutory forms of *mandamus* or *prohibition* as existed in s. 42[28] of the Specific Relief Act, 1877, were not available against the Government.

After the Constitution, notwithstanding the flexibility and other advantages of a declaratory action, its use against governmental action has been substantially replaced by the writs under Arts. 32 and 226[29] in view of the fact that in India relief may be had under the writ procedure more

15. *Hogg* v. *Scott*, (1947) 1 All E.R. 788 (792).
16. Re Lewis's *Declaration of Trust*.
17. *Thornhill* v. *Weeks*, (1913) 2 Ch. 464 (C.A.); *Guaranty Trust Co.* v. *Hannay*, (1915) 2 K.B. 536.
18. *Nixon* v. *A.G.*, (1931) A.C. 184 (193) H.L.
19. *Eastham* v. *Newcastle F.C.*, (1963) 3 All E.R. 139 (157).
20. *Barraclough* v. *Brown*, (1897) A.C. 615.
21. *Att-Gen.* v. *Dean & Chapter of Ripon*, (1945) 1 All/E.R. 479; *Watt* v. *Kesteven C.C.*, (1951) 1 All E.R. 473.
22. *Barraclough* v. *Brown*. (1897) A.C. 615 (H.L.); *Smeeton* v. *A.G.*, (1920) 1 Ch. 85.
23. *Simmonds* v. *Newport Steam Coal Co.*, (1921) 1 K.B. 616 (C.A.); *Barnard* v. *National Dock Labour Bd.*, (1953) 2 Q.B. 18.
24. *Pyx Granite Co.* v. *Ministry of Housing*, (1959) 3 W.L.R. 346 (360) H.L.
25. *Taylor* v. *National Assistance Bd.*, (1957) 1 All E.R. 183 (185) C.A.
26. *Vine* v. *National Dock Labour Bd.*, (1957) A.C. 488.
27. *Companhia de Mocambique* v. *Br. S. Africa*, (1892) 2 Q.B. 358.
28. This section has been omitted from the Specific Relief Act of 1963.
29. *Kochunni* v. *State of Madras*, A. 1959 S.C. 724 (734); *Abdul Kadir* v. *State of Kerala*, A. 1962 S.C. 922 (928, 932); *Merchants' Assocn.* v. *State of Bombay*, A. 1962 S.C. 486 (496); *State of M.P.* v. *Bhailal*, A. 1964 S.C. 1006 (1011); *Tewari* v. *Dt. Bd.*, A. 1964 S.C. 1680 (1683); see Author's *Commentary on the Constitution of India*, 6th Ed., Vol. I, pp. 45ff.

promptly and at a much lesser cost than in a declaratory suit. Nevertheless, the 'prerogative writs' have their limitations and in many a case the High Courts have refused to grant a writ because a suit lies or because disputed facts have to be determined on taking evidence.[30] A study of this branch of the law, therefore, still retains its utility in India.

1. The provisions of s. 34 of the Specific Relief Act, 1963, govern a declaratory suit. The remedy being, as in England, discretionary, it may be refused on the following grounds, *inter alia*,—

(i) That there has been no substantial injury;

(ii) A declaration cannot be given to a plaintiff whose conduct is fraudulent,[31] or where he really wants to evade the stamp law or the like under colour of a declaratory suit;[32]

(iii) No declaration should be made which will be infructuous or useless;[33]

(iv) No declaration would be granted where it could be rendered nugatory by the defendant[34] or where it would be contrary to the provisions of a statute.[35]

2. Apart from these a suit for declaration does not lie unless the matter is of a 'civil nature' within the meaning of s. 9 of the Code of Civil Procedure.[36]

Thus,

A suit for a declaration of religious honours or privileges will *not* lie, unless they are attached to an 'office' which renders the holder of the office to discharge some duties, for the non-performance of which he may be visited with penalties.[37]

Declaratory relief under Arts. 32, 226.

II. It is now settled that, apart from a suit, declaratory relief may be obtained, in appropriate cases, in a proceeding under Art. 32 or 226, even though such relief was not available in England in a proceeding for a prerogative writ.

A. In its earlier decisions, it was held by the Supreme Court that declaratory relief was inappropriate to a writ proceeding.[38]

B. But a declaration that the impugned Act was void was made in other cases[39] and in *Kochunni* v. *State of Madras*,[40] the Supreme Court, on a review of the previous authorities, laid down that the Court's powers under Art. 32 are wide enough to make even a declaratory order[40] (with consequential relief by way of injunction), where that is the proper relief to be given to the aggrieved party.

So far, a declaration in a writ proceeding has been given—

(a) To declare that an Act which offends (in whole or in part[41]) against

30. Cf. *Rajendran* v. *Govt. of T.N.*, A. 1985 Mad. 44 (para. 15).
31. *Narainbhai* v. *Narbada*, A. 1941 Nag. 357.
32. *Vejidali* v. *Dianatulla*, 8 All. 31; *Phulkumari* v. *Ghanshyam*, 35 Cal. 202 P.C.
33. *Biswanath* v. *Mytada*, A. 1941 Oudh 422; *Md. Israil* v. *Patna Municipality*, A. 1943 Pat. 34.
34. *Narain* v. *Sashi*, 37 All. 313.
35. *Ali Khan* v. *Bhagwan*. (1943) O.W.N. 134.
36. Cf. *Umrao Singh* v. *Bhagwan*, A. 1956 S.C. 15.
37. *Sinha Ramanuja* v. *Ranga*, A. 1961 S.C. 1720.
38. *Chiranjit Lal* v. *Union of India*, (1950) S.C.R. 869; *Umegh Singh* v. *State of Bombay*, (1955) 2 S.C.R. 164.
39. *Ebrahim* v. *State of Bombay*, A. 1954 S.C. 229; *Express Newspapers* v. *Union of India*, A. 1958 S.C. 578 (643).
40. *Kochunni* v. *State of Madras*, A. 1959 S.C. 725 (para. 11) C.B.; *Ebrahim* v. *State of Bombay*, A. 1959 S.C. 229.
41. Cf. *Hamdard Dawakhana* v. *Union of India*, (1960) 2 S.C.R. 810; *State of Kerala* v. *Peter*, A. 1980 S.C. 1438 (paras. 22-23).

a fundamental right, is unconstitutional and invalid with an injunction restraining the State from enforcing it.[40]

In some cases, the Court cuts short by striking down the offending Act, after holding it to be unconstitutional.[42] In such case, the declaration may be said to be implied in the finding of unconstitutionality.[43]

4. Though declaration would not ordinarily be granted to establish a right or title which is disputed, it may be granted as an ancillary relief by way of enforcement of an established right.[44]

5. But no declaration would be given where it would serve no useful purpose to the Petitioner.[45]

Some cases where declaratory relief has been granted against administrative action in England and India.

Administrative order.

A suit lies for a declaration that an order made by an administrative authority or Government[46] was invalid on the ground of *ultra vires*[47] or that it was made by an authority without proper delegation of power from the statutory authority.[48]

Citizenship.—A suit lies for a declaration that the plaintiff was a citizen of India at the commencement of the Constitution.[49]

Constitution, violation of.

Where a declaratory action is otherwise maintainable for a wrongful act done by an administrative authority, the plaintiff may challenge the validity of the act on the ground that it is unconstitutional.[50]

Court of Wards.—A suit lies against the Government for a declaration that an order under the Court of Wards Act vesting a property in the Court of Wards is *ultra vires.*[51]

Election to municipal and other local bodies.—While a declaratory action relating to Parliamentary election in India is barred by Art. 329(b) of the Constitution, *in the absence of a similar statutory bar,* suits of the following nature, *inter alia,* would be maintainable with respect to municipal elections :

1. To declare that the plaintiff's nomination paper has been illegally rejected and that the defendant has not been duly elected as a member of the Municipal Committee;[52]

2. To declare that the defendant's election has been void;[53]

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42. Cf. *State of Kerala* v. *Peter,* A 1980 S.C. 1438 (para. 22).
43. Cf. *Chandigarh Admn* v. *Manpreet,* A. 1992 S.C. 435 (para. 15).
44. *Gulam* v. *State of U.P.,* A. 1981 S.C. 2198 (paras. 7, 34).
45. *Katakis* v. *Union of India,* (1968) S.C. [W.P. 54/68, dt. 28-10-1968].
46. *Fischer* v. *Secy. of State,* 26 I.A. 16.
47. *Secy. of State* v. *Mask,* A. 1940 P.C. 105.
48. Cf. *State* v. *Shivbalak,* (1965) 1 S.C.R. 211.
49. *Akbar* v. *Union of India,* A. 1962 S.C. 70.
50. *Calcutta Dock Labour Bd.* v. *Bonomali,* (1967) 1 F.L.R. 14 (Cal.).
51. *Bhagwan* v. *Secy. of State,* A. 1937 All. 569.
52. *Sat Narain* v. *Hanuman,* A. 1946 Lah. 85.
53. *Nishi* v. *Gopeswar,* 30 C.W.N. 977: 53 Cal. 570; *Hussain* v. *Gajadhar,* A. 1937 All. 585.

3. To declare that a municipal election is invalid[54], or *ultra vires*;[55]

4. To declare that the plaintiff is a qualified voter and to have a mandatory injunction to have his name registered as a voter;[56]

5. To declare that the plaintiff's election is valid and has been wrongfully set aside by the District Magistrate;[57]

6. To declare that the plaintiff has a right to stand as a candidate.[58]

Where a special tribunal has been created and a special procedure has been provided by the statute to deal with election matters, the jurisdiction of the Civil Court would be barred. But the Civil Court has always jurisdiction where the tribunal acts beyond jurisdiction or declines jurisdiction.[59-60] Similarly, the jurisdiction of the Court is not ousted until the special tribunal is actually brought into existence.[61]

Local authority.—Action lies against a local authority for—

(a) *Ultra vires*[62] exercise or abuse of statutory powers,[63] e.g.—

(i) Assessment[64] of tax without jurisdiction;

(ii) Resolution[65] to collect charges at a certain rate;

(iii) Taking up an undertaking which was not within its powers;[66]

(iv) A sale of its property.[67]

(b) *Misapplication* or *ultra vires* use[62] of public *funds* (see separate head below).

(c) Issue of a *notice* against an individual for the application of statutory powers, where the notice is based on a wholly false basis of fact.[68]

Military service.—A person who has been called up for military service may obtain a declaration that he is not liable to be called up under the law.[69]

Misapplication of public funds.—A rate-payer may bring a suit for a declaration and injunction to restrain the misapplication of municipal funds,[70] particularly when the expenditure is sought to be made on a scheme which is *ultra vires*,[63] or the exercise of the discretionary power of the local authority is improper or *mala fide*.[63]

Municipal assessment.—Even where a statute prescribes that the assessment made by the statutory authority is *final*, a suit will lie in the Civil

54. *Audh Behari* v. *Kesri*, 63 I.C. 6.
55. *Shyam Chand* v. *Chairman*, 47 Cal. 524.
56. *Ataul Haq* v. *Chairman*, 24 C.W.N. 969.
57. *Maijuddin* v. *Janakiballav*, A. 1933 Cal. 492.
58. *Sabhapat* v. *Abdul Gaffar*, 24 Cal. 107.
59. *Bhuban Mohan Basak* v. *Chairman, Dacca Municipality*, A. 1927 S.C. 704; *Sarvothama* v. *Saidapet*, A. 1923 Mad. 475; *Nataraja* v. *Municipal Council*, 36 Mad. 120.
60. *Secy. of State* v. *Mask*, (1940) 44 C.W.N. 709 P.C.
61. *Lachmi* v. *Ram Pratap*, A. 1934 Pat. 670 F.B.
62. *Prescott* v. *Birmingham Corpn.*, (1954) 3 All E.R. 698 (C.A.).
63. *Grice* v. *Dudley Corpn.*, (1958) 2 All E.R. 673.
64. *Shyam Kishori* v. *Patna Municipal Corpn.*, A. 1966 S.C. 1678.
65. *Gopisetti* v. *Vijayawada Municipality*, A. 1966 S.C. 353.
66. *A.G.* v *Fulham Corpn.*, (1921) Ch. 440; *A.G.* v. *Smethwick Corpn.*, (1932) 1 Ch. 562.
67. *Andhia Nath* v. *Amar Nath*, A. 1961 Punj, 352.
68. *Francis* v. *Yiewsley U.D.C.*, (1957) 3 All E.R. 529 (C.A.).
69. *Walsh* v. *Lord Advocate*, (1956) 3 All E.R. 129 (H.L.).
70. *D.B., Chittagong* v. *Sashibhusan*, A. 1936 Cal. 225.

Court for a declaration that the assessment is void, where it is *ultra vires* the statute, i.e., in contravention of the powers conferred by the statute,[71] or against the fundamental principles of judicial procedure.[72]

Errors in assessment which constitute irregularities in procedure[73] merely and do not go to the foundation of the tax and render the assessment void can only be corrected in the manner laid down in the Act. In other words, an erroneous exercise of discretion or judgment by the Corporation cannot be questioned in a Court, but when the act complained of is *without jurisdiction* or *in excess of its powers* under the statute, the persons aggrieved can invoke the aid of Civil Courts.[71]

Nationality.—A person may have a declaration that he is a British subject within the meaning of the British Nationality Act, 1948.[74]

In this connection, see ss. 13-15 of *our* Citizenship Act, 1955.

Service.

(A) *England.*—Since service under the Crown is held at the latter's pleasure, no action lies for wrongful dismissal.[75]

Even where there are regulations made under a statute, prescribing a particular procedure for dismissal, it has been held that breaches of such procedural provisions do not go to the root of the jurisdiction to dismiss.[76]

Where, however, the dismissing authority is a *statutory* body, the order of dismissal would be a nullity in a case where under the statute the body had no jurisdiction to dismiss,[77] or contravened the principles of natural justice.[77] In such cases, the aggrieved employee may sue for a declaration that his dismissal was null and void[77] and that he had a right to retain the post from which he had been dismissed.[77]

(B) *India.*—1. Under s. 14(1)(b) of the Specific Relief Act, 1963, a contract for personal service cannot be specifically enforced. Hence in the case of *private* employment, no suit for specific performance of the contract of employment lies on the ground of an alleged wrongful dismissal.[78]

2. Both in *England*[79] and *India*,[80] a suit lies for a declaration that the plaintiff, who has been dismissed from employment under a *public* authority, still remains in service, the order of dismissal being illegal and void. Similar action lies also where an order of suspension[81] or compulsory retirement[82] is *ultra vires*, and damages would not be an adequate remedy.[83]

But while in *England*, no such action lies against the Crown, employment under the Government being at the pleasure of the Crown,[84] in *India*, it has

71. *Chairman of Giridih Municipality* v. *Srish Chandra*, 35 Cal. 859; *Debnarain* v. *Chairman Baruipur Municipality*, 17 C.W.N. 1230; *Lokmanya Mills* v. *Barsi Borough Municipality*, A. 1961 S.C. 1358.

72. *Secy. of State* v. *Mask*, (1940) 67 I.A. 222 (236).

73. *Pabna Municipality* v. *Naba*, (1942) 46 C.W.N. 830.

74. *A.G.* v. *Prince Augustus*, (1957) 1 All E.R. 49 (H.L.).

75. *Dunn* v. *Queen*, (1896) 1 Q.B. 116.

76. *Hogg* v. *Scott*, (1947) 1 All E.R. 789; *Noakes* v. *Smith*, (1942) 107 J.P. 101.

77. *Cooper* v. *Wilson*, (1937) 2 All E.R. 726 (736).

78. *S. Dutt* v. *University of Delhi*, A. 1958 S.C. 1050 (1054).

79. *Hanson* v. *Radcliffe U.D.C.*, (1922) 2 Ch. 490.

80. *State of Bihar* v. *Abdul Majid*, (1954) S.C.R. 786; *Om Prakash* v. *State of U.P.*, A. 1955 S.C. 600.

81. *Barnard* v. *National Dock Labour Board*, (1953) 1 All E.R. 1113 (C.A.).

82. *Union of India* v. *Kedareshwar*, A. 1959 H.P. 32.

83. *Vine* v. *National Dock Labour Board*, (1956) 3 All E.R. 939 (H.L.).

84. *Shenton* v. *Smith*, (1895) A.C. 229 (234).

been held that the pleasure of the Government being subject to the constitutional limitations under Art. 311, where a dismissal is in contravention of such limitations, a suit[85] lies for a declaration that the order of dismissal was void and inoperative and that the plaintiff remained in service at the date of institution of the suit[80] (see, further, under 'Service', *ante*).

In *India*,—

A. When the services of a civil servant have been terminated in violation of any statutory or constitutional provision (e.g., Art. 311 of the Constitution), he may obtain a declaration from the Civil Court that—

"the order purporting to dismiss the plaintiff was void and inoperative and that the plaintiff remained a member of the service at the date of institution of his suit".[80]

But the relief under s. 34 of the Specific Relief Act being discretionary, the plaintiff cannot obtain such declaration as above where—

(a) the plaintiff has already reached the age of superannuation at the date of institution of his suit for the declaration,[86] or

(b) where in view of the plaintiff's age or state of health, no purpose would be served by restoring him to office.[87]

The period of limitation for the declaratory relief is 6 years under Art. 120 of the Limitation Act.[88]

B. A suit lies for recovery of arrears of pay[89] and other allowances[90] to which he is legally entitled, by a Government servant for the period he was in office and until his service is *lawfully* terminated,[91] together with such sums as are due to him under the Rules of such Provident Fund.[92] A claim for arrears of rent can, accordingly, be added in a declaratory suit, as above, by way of consequential relief.

The limitation for a suit for recovery of arrears of pay of a Government servant is three years from the time when the salary fell due, under Art. 7 of the Limitation Act, 1963. The result is that the plaintiff would be entitled to recover all arrears of pay which fell due to him within a period of three years before institution of the suit.[93]

The Proviso to s. 34 of the Specific Relief Act, 1963, says that no Court shall make a declaration under that section where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Hence, as it has been now held by the Supreme Court that in case of wrongful dismissal the aggrieved civil servant is entitled to recover arrears of pay since the date of such dismissal by ordinary action against the Government, the plaintiff who brings a declaratory suit under s. 34 of the Specific Relief Act must necessarily claim recovery of arrears of pay so far as it has not

85. After the coming into force of the Administrative Tribunals Act, 1985, cases relating to the service of Government servants will be heard by Administrative Tribunals set up under that Act and the High or the civil courts will cease to have their existing jurisdiction.

86. Cf. *Fakir* v. *Chakravarti*, (1954) 58 C.W.N. 336 (341).

87. *Rangachari* v. *Secy. of State*. A. 1937 P.C. 27.

88. *Jagdish* v. *U.P. Govt.*, A. 1956 All. 114 (116); *Abdul* v. *Secy. of State*, A. 1943 Oudh 368.

89. *State of M.P.* v. *Mandawar*, A. 1954 S.C. 493.

90. *Jagadish* v. *U.P. Govt.* A. 1956 All. 115 (117).

91. *Om Prakash* v. *State of U.P.*, A. 1965 S.C. 600.

92. *Jogesh* v. *Union of India*, A. 1954 Assam 17 (20).

93. *Punj. Prov.* v. *Tarachand*, A. 1947 F.C. 23.

already become barred by limitation.[94] For any claim of arrears subsequent to the institution of the suit for declaration up to the date when a valid order of dismissal is eventually made, the plaintiff may bring a separate suit.[95]

C. Though a declaration that a Government servant's dismissal was illegal cannot be obtained on his death by his legal representatives, where a suit was duly instituted by the Government servant for a declaration and recovery of arrears of pay etc. and he died during the pendency of the proceedings, his legal representatives are entitled to a decree for the arrears up to the date of the plaintiff's death upon the finding that the dismissal was void.[90]

In short,—

(a) Where there is a statutory[96] or constitutional[97] limitation on the power to terminate an employment, a declaration that an order of termination is void may be obtained where the limitation has been violated.[98-99]

(b) But outside the above sphere of a guaranteed finance, where the employment rests solely on contract, the employer may recover *damages* for wrongful dismissal in breach of contract, but no declaration that his service is continuing.[100]

Status.—(a) An action lies for a declaration that a statute is not applicable to the facts of a particular case, e.g., that permission of the planning authority is not necessary for a particular piece of proposed development.[1]

(b) In *India,* further, a person whose legal interests are affected or threatened to be affected by the enforcement of a statute may bring an action for declaring that the statute is unconstitutional for contravention of some fundamental right[2] or other mandatory provision of the Constitution.

Such action also lies in *Australia.*[3]

But no such suit will lie against a Bill pending before the Legislature.[4]

Statutory authority.—In general, a suit lies against any statutory authority on the ground that its action is *ultra vires.*[5-6]

1. An action lies for a declaration that a public authority has failed to carry out his statutory duties[7] or acted in breach thereof,[8] provided a private individual has a cause of action for the enforcement of such duty[9] and a declaratory action is not precluded by statutory remedy.[10-11]

94. This point does not appear to have been considered in *Qamarali* v. *State of M.P.,* A. 1959 M.P. 47.
95. Cf. *Suraj Narain* v. *N.W.F.P.,* (1942) F.C.R. 113.
96. *High Commr.* v. *Lall,* A. 1948 P.C. 121.
97. *State of Bihar* v. *Abdul Majid,* (1955) 1 S.C.R. 786.
98. *Vine* v. *National Dock Labour Board,* (1956) 3 All E.R. 939 (H.L.).
99. *Bhagat* v. *State of H.P.,* (1983) U.J.S.C. 297 (paras. 11, 15).
100. *Tiwari* v. *Jawla D.V.M.,* A. 1981 S.C. 122 (para. 5); *Vaish Degree College* v. *Lakshmi Narayan,* A. 1976 S.C. 888.
1. *Pyx Granite* v. *Ministry of Housing,* (1959) 3 All E.R. 1 (H.L.).
2. *Dwarkadas* v. *Sholapur Co.,* (1954) S.C.R. 674.
3. *A.G. for Victoria* v. *Commonwealth,* (1945) 71 C.L.R. 237.
4. *Bhairabendra* v. *State of Assam,* A. 1953 Assam 162; *Lakshminarayan* v. *Rukhmabai,* I.L.R. (1950) Nag. 834.
5. *Gregory* v. *London Borough,* (1966) 2 All E.R. 196 (201).
6. *Buxton* v. *Minister of Housing,* (1960) 3 All E.R. 408 (411).
7. *Gateshead Union* v. *Durham C.C.,* (1918) 1 Ch. 146.
8. *Barber* v. *Manchester Hospital Bd.,* (1958) 1 All E.R. 322.
9. *Watt* v. *Kesteven C.C.,* (1954) 3 All E.R. 441 (445).
10. *Pasmore* v. *Oswaldtwistle U.D.C.,* (1898) A.C. 387.
11. *Cutler* v. *Wandsworth Standium,* (1949) 1 All E.R. 544 (548) H.L.

The law on the point when an individual may have a cause of action for a bare declaration is not quite settled, and in some cases it has been held that the interest that is required for this purpose is not identical with the interest for obtaining a writ of *certiorari*.[5] Thus, a neighbour cannot challenge an order of a Town Planning Authority relating to a land not belonging to himself, on the ground of *ultra vires* unless he can show that such order constitutes a nuisance, trespass or the like, which gives him a legal cause of action.[5-6]

2. A statutory authority itself may sue for a declaration of its rights.[12]

Statutory instrument.—Action lies for a declaration that a statutory instrument is *ultra vires*.[13]

Statutory tribunal.— Action lies for a declaration that the decision of a statutory tribunal is invalid, on the ground—

(a) That the decision is without jurisdiction or in excess of jurisdiction;[14-15]

(b) Where it acts within its statutory limits, i.e., *intra vires*, but it acts in violation of the fundamental principles of judicial procedure,[16] known as the rules of 'natural justice', e.g., where a tribunal makes a *quasi-judicial* order against a party without hearing any evidence at all.[17] But where the decision of the special tribunal is *intra vires*, mere irregularity or illegality[18] will not take away its final jurisdiction;

(c) Where the proceedings of the tribunal are vitiated by fraud,[19] or dishonesty or caprice on the part of the tribunal itself.[20]

In general, it has been said that a declaration lies where *certiorari* was available.[21-22]

But no action lies for a declaration that the determination by the tribunal is *wrong*, where it is within jurisdiction.[23]

Taxation.—An action lies for a declaration—

(i) That the tax imposed upon the plaintiff is not authorised by law,[24] or that rule or bye-law under which it is sought to be levied is *ultra vires*,[25-26]

(ii) That his property on which the tax has been imposed, is exempted by the taxing statute,[27]

(iii) That a notice withdrawing a benefit[28] or seeking to impose a liability or requiring him to furnish certain statements[29] is *ultra vires* or invalid.

12. Cf. *Central Electricity Bd.* v. *Jennaway*, (1959) 3 All E.R. 409.
13. Cf. *A.G.* v. *Crayford U.D.C.*, (1962) 2 All E.R. 147.
14. *Barnard* v. *National Dock Labour Board*, (1953) 1 All E.R. 1113 (C.A.).
15. *Secy. of State* v. *Mask*, A. 1940 P.C. 105.
16. *Vine* v. *National Dock Labour Board*, (1957) A.C. 488 (H.L.).
17. *R.* v. *Kingston-upon-Hull Tribunal*, (1949) 1 All E.R. 260.
18. *Balakrishna* v. *Simpson*, (1898) 25 Cal. 833 (842) (P.C.).
19. *Duchess of Kingston's case*, 2 Smith's L.C. 7.
20. *I.T. Commissioner* v. *Badridas*, A. 1937 P.C. 133 (138).
21. *Pyx Granite Co.* v. *Ministry of Housing*, (1959) 3 All E.R. 1 (8) H.L.
22. *Punton* v. *Ministry of Pensions*, (1963) 1 All E.R. 275 (278-79) C.A.
23. *Healey* v. *Ministry of Health*, (1954) 3 All E.R. 449 (452) C.A.
24. *Bowles* v. *Bank of England*, (1913) 1 Ch. 57.
25. *Gordhandas* v. *Municipal Commr.*, A. 1964 S.C. 1742 (1752).
26. *Lokmanya Mills* v. *Barsi Borough Municipality*, A. 1961 S.C. 1358.
27. *Sebel Praducts* v. *Commrs.*, (1949) 1 All E.R. 729.
28. *St. Pancras B.C.* v. *University of London*, (1957) 3 All E.R. 673 (C.A.).
29. *Dyson* v. *Att-Gen.*, (1911) 1 K.B. 410: (1912) I Ch. 159.

In such action, the plaintiff may claim a refund of the tax illegally collected from him.[30]

Apart from the grounds just mentioned, in India, a declaratory suit with respect to taxation will lie on an additional ground, by reason of *our* having a written Constitution, with specific limitations on the taxing power, namely,—

That the impugned tax contravenes a mandatory provision of the Constitution, such as Art. 286.[31]

A suit is not maintainable simply to challenge the legality of an assessment, to question which the aggrieved person must seek his remedy from the machinery provided by the taxing statute.[32]

But a suit is maintainable to urge those pleas which are beyond the competence of the statutory authorities to entertain,[33] e.g., the plea of unconstitutionality,[33] or of *ultra vires* (the statute under which the authorities purport to act).[34]

(B) INJUNCTION

Nature of the remedy.

An injunction is a specific order or command of the Court preventing a party from doing that which he is under a legal obligation not to do, or directing the performance of a particular act or thing.

Injunctions are either prohibitory or mandatory.—(a) A *prohibitory* injunction *forbids* a defendant to do a wrongful act which would be an infringement of some right of the plaintiff, legal or equitable. (b) A *mandatory injunction forbids* the defendant to permit the *continuance* of a wrongful state of things that already exists at the time when the injunction is issued.

(A) *England.*—Injunction is a highly useful remedy to prevent a statutory body from doing an *ultra vires* act.[35]

England.

Generally speaking, where *public* rights are involved, a private person may sue for injunction, on the showing that his personal interests have been affected;[36] or through the Attorney-General, where the relator need not show that his personal interests have been affected or that any rights of property have been invaded.[37]

But the efficacy of injunction as a remedy for obtaining judicial review of administrative action has been narrowed down in England by the principle that an injunction is not available against the Crown either directly or by issuing it against its servants. Such relief has been specifically excepted also by the Crown Proceedings Act, 1947 [s. 21(1)]. An injunction is *not* thus available against any Government department or agency.[37] Its use is virtually

30. *Union of India* v. *Kamath*, A. 1957 Mad. 110.
31. Cf. *Jaga Button Industries* v. *State of Madras*, (1959) 2 M.L.J. 415.
32. *Raleigh Investment Co.* v. *G.G. in Council*, (1947) F.C.R. 59 (P.C.) : A. 1947 P.C. 78.
33. *Public Prosecutor* v. *Ramalingam*, (1958) 2 M.L.J. 243.
34. *Chairman, Giridih Municipality* v. *Srish Chandra*, (1908) 35 Cal. 859 (865).
35. *Att.-Gen.* v. *Westminster City Council*, (1924) 2 Ch. 416 (C.A.); *Pride of Derby* v. *British Celanese Ltd.*, (1953) 1 All E.R. 179 (C.A.); *L.C.C.* v. *Att.-Gen.*, (1902) A.C. 165; *Tynemouth Corpn.* v. *A.G.*, (1899) A.C. 293.
36. *Boyce* v. *Paddington B.C.*, (1903) 1 Ch. 109: (1906) A.C. 1.
37. *Att.-Gen.* v. *Sharp*, (1931) 1 Ch. 121 (C.A.).

restricted to local authorities, or statutory domestic tribunals,[38] or statutory corporations.[39]

(B) *India.*—Corresponding to the English rule, there was a bar against issuing injunction against the Government provided in s. 56(d) of the Specific Relief Act, 1877, which was as follows—

"An injunction cannot be granted to interfere with the public duties of any department of the Central Government or any State Government."

This bar has, however, been lifted by s. 40 of the Specific Relief Act, 1963, which has omitted the above Cl. (d), on the ground that it is inconsistent with Art. 226 of the Constitution. In the result, an injunction will now be available not only against public officers but also against the Government just as the prerogative writs are available under Art. 32 or 226 of the Constitution.

India.

Under the existing case-law, we have instances of injunction being granted against statutory bodies on the following grounds—

(a) For restraining acts contrary to law or in excess of its statutory powers;[40]

(b) For restraining levy or collection of illegal tax either because the person taxed or the object of taxation is not within the purview of the taxing statute,[41] or the basis upon which it has been assessed is not authorised by the statute;[42] or the rule or bye-law authorising the tax is *ultra vires*[43] or unconstitutional;

(c) To prevent misapplication of its funds.[43]

But—

(a) It is not the practice of the Court to interfere with corporate bodies unless they are manifestly abusing their power;[44]

Where the Legislature has confined to a municipality the duty of deciding what measures within its legal powers are for the public convenience, and the municipality acts in the exercise of such power, the Court will not interfere with the exercise of such discretion[44] merely because in the opinion of the Court the object might have been attained in some other ways.[45]

Thus—

(i) In a suit by a rate-payer to restrain a Municipality from expanding its funds in the purchase of certain lands which, according to the Municipality, was necessary to widen a private path to facilitate the passing of fire engines, *held,* that the Municipal Act vested a discretion in the matter in the Municipality and that "all questions of relative necessity, advantage or facility are questions of municipal detail, and it is not within the province of a Civil Court to regulate these details".[46]

(ii) Where the construction or improvement of certain works by the District Board was found necessary in the interest of the public, it was held that no suit for

38. *Andrews* v. *Mitchell,* (1905) A.C. 78.
39. *A.G.* v. *Fulham Corpn.,* (1921) 1 Ch. 440.
40. *Administrator* v. *Abdul Majid,* A. 1945 Lah. 81 F.B.
41. *Municipal Committee* v. *Shant Singh,* I.L.R. (1940) Lah. 707 (F.B.); *Strachey* v. *Municipal Board,* (1899) 21 All. 348.
42. *Gordhandas* v. *Municipal Commr.,* A. 1964 S.C. 1742 (1752).
43. *Lokmanya Mills* v. *Barsi Borough Municipality,* A. 1961 S.C. 1358 (1361).
44. *Patel Pana Chand* v. *Ahmedabad Municipality,* 22 Bom. 230; *Lalbhai* v. *Municipal Commissioner of Bombay,* 33 Bom. 134.
45. *Corpn. of Calcutta* v. *Vijoy,* 50 Cal. 818 (821).
46. *Ramachandra* v. *Ahmedabad Municipality,* (1900) 24 Bom. 600.

injunction or damages could be brought against them for any injury caused to any person or persons by reason of such construction.[47]

(b) Nor will the Court interfere where the Municipality exercises powers which are *reasonably incidental* to the exercise of powers which are expressly conferred by the statute.[48]

Some cases where injunction has been issued administrative authorities in England and India.

Government.

A riparian owner can sue for injunction against the Government if damage is caused to his lands by the irrigation works constructed by the Government.[49]

But no injunction would issue to control the Government "in the most detailed work of managing its services".[50]

Local authority.

I. Injunction lies against the Muncipal Committee if it exceeds its statutory powers[51] or acts contrary to law.[52]

(a) One of the more common instances of the issue of injunction to restrain *ultra vires* acts of a municipal authority is affected by cases of illegal taxation,[53] either because the person taxed[54] or the object of taxation[55] is not within the purview of the statute which empowered the Municipality to levy tax.

In the absence of such illegality, a suit does not lie to restrain a Municipality from recovering a tax[56] or from sending a bill (except where it amounts to a nuisance).[57]

Injunction lies against a Municipality for the restoration of water supply illegaly cut off.[58]

(b) A suit will lie at the instance of individual taxpayers for an injunction restraining a Municipality from misapplying its funds,[59] i.e., from applying them for purposes not authorised by statute.[60]

(c) A Munickpal authority may be restrained from committing nuisance, even where compliance with the injunction depends on matters not within its control.[61] The Court may, however, suspend the operation of the injunction where it is not immediately possible for the authority to carry it out.[61]

47. *Ayasami* v. *Dt. Board*, 31 Mad. 117.
48. *Daily Gazette Press* v. *Karachi Municipality*, A. 1930 Sind 287 (289).
49. *Fischer* v. *Secy. of State*, 32 Mad. 141; *Sankaravadivelu* v. *Secy. of State*, 28 Mad. 72.
50. *Venkata* v. *Secy. of State*, A. 1937 P.C. 31.
51. *A.G.* v. *Manchester Corpn.*, (1906) 1 Ch. 643; *A.G.* v. *Fulham Corpn.*, (1921) 1 Ch. 440.
52. *Shepherd* v. *Trustees of Port of Bombay*, 1 Bom. 132 (142).
53. *Shyam Kishori* v. *Patna Municipal Corpn.*, A. 1966 S.C. 1678.
54. *Municipal Committee* v. *Shant Singh*, I.L.R. (1940) Lah. 707 (F.B.).
55. *Hamramasji* v. *Peddar, Municipal Commr.*, (1875) 12 Bom. H.C.R. 199.
56. *Chunilal* v. *Surat Municipality*, (1903) 27 Bom. 403.
57. *Municipal Committee* v. *Shantarani*, A. 1946 Nag. 78.
58. *Municipal Board* v. *Kanhaiya Lal*, (1944) A.L.W. 487.
59. *Vaman Tatyaji* v. *Municipality of Sholapore*, 22 Bom. 646.
60. *Tynemouth Corpn.* v. *A.G.*, (1899) A.C. 293 (H.L.)
61. *Pride of Derby* v. *British Celanese Ltd.*, (1953) 1 All E.R. 179.

(d) Injunction may issue against a Municipal Corporation to restrain it from committing a breach of trust.[62]

But—

(a) It is not the practice of the Court to interfere with corporate bodies unless they are manifestly abusing their power.[63-64]

Where the Legislature has confined to a Municipality the duty of deciding what measures within its legal powers are for the public convenience, and the Municipality acts in the exercise of such power, the Court will not interfere with the exercise of such discretion merely because in the opinion of the Court the object might have been attained in some other way.[63]

Thus—

(i) In a suit by a rate-payer to restrain a Municipality from expending its funds in the purchase of certain lands which, according to the Municipality, was necessary to widen a private path to facilitate the passing of fire engines, *held*, that the Municipal Act vested a discretion in the matter in the Municipality and that "all questions of relative necessity advantage or facility are questions of municipal detail, and it is not within the province of a Civil Court to regulate these details".[65]

(ii) The plaintiff sued for an injunction restraining the defendants (Municipal Commissioners of Madras) from using a plot of land acquired by them as a burial and burning ground, alleging that his premises had, in consequence thereof, become unhealthy, insanitary and unfit for residential purposes, that he had been unable to work his factory, and that his property had deteriorated in value. There was some evidence that the burning ground was to some extent a source of nuisance to anyone who occupied the plaintiff's premises and that the market-value of the premises had been depreciated by the opening of the burial ground. It was *held* that the use of a place dedicated for the communal purposes of cremation in a way which is neither negligent nor unreasonable, and which is not calculated to aggravate the inconvenience necessarily incidental to such an act as it is generally performed in the country does not amount to an actionable nuisance. It cannot be laid down as a legal proposition that anything, which, under any circumstances, lessens the comfort or endangers the safety or health of a neighbour, must necessarily be an actionable nuisance.[59]

(b) Nor will the Court interfere where the Municipality exercise powers which are *reasonably incidental* to the exercise of powers which are expressly conferred by statute.[66]

(c) Injunction will not issue against a local authority to restrain it from discharging an employee,[67] in the absence of breach of any statutory conditions.

Mandatory injunction is also available against a Muncipality[68] in proper cases, e.g., to direct the Municipality to cancel an order of demolition issued in respect of the plaintiff's building,[69] or to issue a licence to the plaintiff sanctioning the erection of his building[70] or put the plaintiff's name in the register of voters,[71] or to relinquish a land in favour of the Collector when the purpose for which it had been acquired had been abandoned.[72]

62. *Vaman* v. *Municipality of Sholapur*, (1897) 22 Bom. 752.
63. *Patel Pana Chand* v. *Ahmedabad Municipality*, 22 Bom. 230; *Lalbhai* v. *Municipal Commissioner of Bombay*, 33 Bom. 134.
64. *Corpn. of Calcutta* v. *Bijoy*, 50 Cal. 818 (821).
65. *Ramachandra* v. *Ahmedabad Municipality*, (1900) 24 Bom. 600.
66. *Daily Gazette Press* v. *Karachi Municipality*, A.I.R. 1930 Sind 287 (289).
67. *Ram Kissendas* v. *Satyacharan*, A. 1950 P.C. 81.
68. *Administrator* v. *Abdul Majid*, I.L.R. (1945) Lah. 382.
69. *Ibrahim* v. *Municipal Committee*, (1900) P.R. 52.
70. *Administrator* v. *Moniruddin*, A.I.R. 1941 Lah. 200.
71. *Ataul Huq* v. *Maniktala Municipality*, (1920) 48 Cal. 378.
72. *Raghunath* v. *Mathura Municipality*, A. 1952 All. 465.

In view of s. 41(h) of the Specific Releif Act, the question of an equally efficacious alternative remedy has arisen in connection with suits for injunction against a Municipality. It has been held that, ordinarily, the statutory remedy[73] or a suit for refund[74] would be an 'equally efficacious relief', but not so where the tax is illegal or the act of the Municipality is *ultra vires*[75] or the injury complained of is a 'recurring' one.[73]

Statute, breach of.

In general, an injunction would issue to restrain a person from committing a breach of a statute, particularly when no remedy is offered by the statute or the remedy provided for is inadequate.[74] The principle applies whether the person seeking to commit the breach is a private person or a public authority.[75]

It has been said that breach of a statute breeds disrespect for the law and causes public injury.[76] In *England,* actions for such injunctions are brought by the Attorney-General on behalf of the public. There is no such provision in *India*, but a private person may bring such action, provided he can show any interest or right which is threatened to be injured.[77] Thus, a ratepayer may sue for injunction to restrain a Municipality from misapplying its funds.[78]

Statutory authority.

Subject to statutory exceptions,[79] injunction may issue against a statutory authority to restrain him from committing an *ultra vires* act.[79-80]

Statutory corporation.

A statutory corporation may be restrained from acting *ultra vires*, i.e., beyond the scope of the purpose of the statute or the powers conferred by it,[81] at the instance of any person who shows a special interest in the prevention of such act.[82]

After Constitution, Mandamus has replaced Injunction in Administrative Law, in India.

Before parting with this topic it should be noted that in *India*, since the adoption of the Constitution, the use of declaratory suit and injunction in cases against *public* authorities has been minimised because in most such cases, speedier and cheaper remedy is available against them by way of writs or under Art. 226.[83] While for a suit the litigant has to approach a subordinate Court, relief under Art. 226 is directly available from the High Court. Moreover, under

73. *Municipal Committee* v. *Shantarani,* A. 1946 Nag. 78.
74. *A.G.* v. *Sharp,* (1930) All E.R. 741; *A.G.* v. *Premier Line Ltd.,* (1932) 1 Ch. 303; *A.G.* v. *Ashborne Recreation Ground Co.,* (1903) 1 Ch. 101.
75. *Yabbicom* v. *King,* (1899) 1 Q.B. 444 (448); *Boyce* v. *Paddington Borough Council,* (1903) 1 Ch. 109.
76. *A.G.* v. *Harris,* (1960) 3 All E.R. 207 (C.A.); *A.G.* v. *Bastow,* (1957) 1 All E.R. 497.
77. *Sivaraman* v. *Muthaya,* 12 Mad. 241 P.C.
78. *Vaman* v. *Municipality of Sholapur,* 22 Bom. 646.
79. Cf. *Merricks* v. *Heathcoat-Amory,* (1955) 2 All E.R. 453 (456-57).
80. *Harper* v. *Home Secy.,* (1955) 1 All E.R. 331 (340).
81. *A.G.* v. *Great Northern Ry. Co.,* (1860) 1 Drew. & Sm. 154.
82. *Liverpool Corp.* v. *Sharley Waterworks,* (1882) 2 De G.M. & G. 952 (860).
83. *Vide* Author's *Shorter Constitution,* 10th Ed., under Art 226.

Art. 226, besides injunctive relief,[84] the High Court is competent to grant any relief in positive terms, which is necessary to do justice to the petitioner, including compensation, refund or the like.[85] [See under 'Mandamus", *post*]. Of course, remedy under Art. 226 may not be available and a suit has to be resorted to where facts have to be investigated for giving relief.[86]

(C) ACTION FOR DAMAGES.

Legality of administrative action may be challenged also in an action for damages where the *unlawful* act committed by the Government or its servants or some other statutory authority[87] constitutes a 'tort' or a civil wrong.

In *England* (since the Crown Proceedings Act, 1947), the action may be brought not only against the office through whose agency the wrong was committed but also against the Government itself. The different kinds of torts for which, principally, action may be brought in respct of administrative wrongs are :

(i) *False imprisonment,* or arrest or detention without lawful authority.[88]

(ii) *Negligence,* in the performance of a statutory duty or power, except where liability is clearly excluded by the statute.[89]

(iii) *Nuisance.*[90] But no action lies if the nuisance is the *inevitable* result of the proper excercise of the statutory power.[91]

(iv) Trespass to *goods,* e.g., by levying a fine without jurisdiction.[92]

(v) *Trespass* upon immovable property even though committed in the course of exercise of a statutory power.[93] But there is no liability where the statute expressly authorises the trespass, e.g., under the (English) Gas Act, 1948.[94]

(vi) Failure to perform a *common law*[95] *or statutory duty.*[96]

As regards an action for breach of statutory duty, there are certain special rules, which, though not well-settled in all aspects, should be noted, in the present context :

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84. Cf. *State of Assam* v. *Tulsi,* (1962) Supp. 3 S.C.R. 508; *State of Maharashtra* v. *Prabhakar,* A. 1966 S.C. 424.

85. *Burma Construction* v. *State of Orissa,* A. 1962 S.C. 1320 *State of Kerala* v. *Roshana,* A. 1979 S.C. 765 (para. 40).

86. Cf. *D.L.F. Housing* v. *Delhi Corpn.,* A. 1976 S.C. 386; *Sohan Lal* v. *Union of India,* A. 1957 S.C. 559; *Thansingh* v. *Supdt.,* A. 1964 S.C. 1419 (1423); *D.F.O.* v. *Ram,* A. 1973 S.C. 205; *Dhanyalakshmi Mills* v. *Commr.,* A. 1976 S.C. 2243.

87. *London Passengers Transport Board* v. *Upson,* (1949) 1 All E.R. 60 (67) H.L.

88. *Kuchenmeister* v. *Home Office,* (1958) 1 All E.R. 485; *Liversidge* v. *Anderson,* (1942) A.C. 206; cf. *Mungoni* v. *A.G. of Northern Rhodesia,* (1960) 2 W.L.R. 389 (P.C.); *Abbott* v. *Sullivan,* (1952) 1 All E.R. 226 (232) C.A.

89. *Fisher* v. *Ruislip U.D.C.,* (1944) 2 All E.R. 149; *Udale* v. *Bloomsbury Authority,* (1983) 2 All E.R. 522; *Tafe* v. *G.L.C.,* (1982) 2 All E.R. 854 (C.A.)

90. *Metropolitan Asylum Dt.* v. *Hill,* (1881) 6 All. Cas. 193.

91. *Manchester Corpn.* v. *Fanworth,* (1930) A.C. 171 (183) H.L.

92. *Terry* v. *Huntington,* (1668) 145 E.R. 557; *Nichols* v. *Walker,* (1935) 79 E.R. 944.

93. *Secy. of State* v. *Moment,* (1912) 40 I.A. 48.

94. *Grove* v. *Eastern Gas Board,* (1951) 2 All E.R. 1051.

95. *Pride of Derby* v. *British Celanese Ltd.,* (1953) 1 All E.R. 179 (186; 202), C.A.

96. *Glossop* v. *Heston Local Board,* (1879) 12 Ch. D. 102; *Gateshead Union* v. *Durham C.C.,* (1918) 1 Ch. 146.

I. The general rule is that when a statute *creates* an obligation also prescribes a specific remedy for its non-performance, e.g., a fine or other penalty, the performance cannot be enforced in any other manner; hence, no action for damages would lie for its breach.[97]

Similar would be the position if the statute specifies a particular person, e.g., a Minister, who may enforce performance of the statutory duty.[98]

II. On the other hand, if a statute simply prescribes a duty but *no penalty* for its breach, a right to damages accrues to a person who is injured for its breach,[99] for, otherwise, the duty imposed by the statute, being without any sanction, would be nugatory.

III. But even where the statute prescribes a specific remedy, the person injured by its breach may have a personal right of action, in certain cases. It depends upon the intention of Parliament as to whether civil remedy is excluded or not and that intention is to be gathered from the scope and purpose of the statute and, in particular, from the fact for whose benefit it was intended[100] :

(a) If the statutory obligation is imposed for the benefit of the public (as distinguished from particular individuals) who resort to a place open to the public, the only remedy for the breach is the statutory remedy and damages are not available.[99]

(b) But when a statutory duty is imposed for the benefit of particular persons or a particular class of persons, there arises at common law a correlative right in those persons who may be injured by its contravention.[100]

IV. No action lies for an honest failure to exercise a *power*[1] as distinguished from failure to perform a 'ministerial duty'[99] or damage resulting from a negligent *operation* of a power.[2]

V. In the case of a statutory tribunal, the members of the tribunal may be liable in damages if they commit an actionable wrong by an order which is without jurisdiction or *ultra vires*,[2] even though there is no absence of good faith.[43] The principles on which this liability is based are—

(a) The conferment of a limited jurisdiction by statute implies the negative, namely, that such authority shall not have any other jurisdiction or to proceed in cases other than specified.[3]

(b) Inferior tribunals must know their own jurisdiction and would, accordingly, be liable if on the facts known to them, they have no jurisdiction to deal with the case at all.[2] A mistake of law as to jurisdiction does not excuse a statutory tribunal.[4]

(vii) *Wrongful dismissal.*—An action for damages lies where a servant has been dismissed wrongfully or illegally, on the footing of an 'unjustifiable repudiation of contract'.[5]

Dismissal is wrongful, e.g.—

(a) Where the employee has not been given such notice before dismissal

97. *Pasmore* v. *O.U.D.C.*, (1898) A.C. 394 (H.L.).
98. *Watt* v. *Kesteven C.C.*, (1955) 1 All E.R. 473 (477, 480) C.A.
99. *Cutler* v. *Wandsworth Stadium*, (1949) 1 All E.R. 544 (548; 551) H.L.
100. *Black* v. *Fife Coal Co.*, (1912) A.C. 165; *Solomons* v. *Gertzenstein*, (1954) 2 All E.R. 625 C.A.
1. *East Suffolk Rivers Board* v. *Kent*, (1941) A.C. 74.
2. *Abbott* v. *Sullivan*, (1952) 1 All E.R. 226 (232, 235) C.A.
3. *Terry* v. *Huntington*, (1668) 145 E.R. 557.
4. *Holden* v. *Smith*, (1850) 14 Q.B. 841.
5. *Rubel Bronze & Metal Co., re*, (1918) 1 K.B. 315 (321).

as was stipulated by contract, or, in the absence of an express agreement, reasonable notice.[6]

(b) Where he has not been dismissed by the authority who only was competent to dismiss.[7]

Such action is maintainable against a statutory authority, e.g., a local authority,[7] subject, of course, to statutory bars or defences, if any.[8]

VI. Action for damages also lies where a statutory power has been *maliciously* used to injure the plaintiff.[9]

(D) DEFENCE TO ENFORCEMENT PROCEEDINGS.

The person who is aggrieved or likely to be aggrieved by an administrative order may, instead of himself going to Court to seek judicial review as the plaintiff in an appropriate proceeding, remain passive until the authority seeks to enforce the order or to penalise him for its breach, through a court of law, and then set up the illegality or unconstitutionality of the law or order sought to be enforced against him.

Thus,

(a) In a criminal proceeding[10] for breach of a statute or a statutory instrument,[11] he may plead that the statute[12] or rule[10] or notice[13] is unconstitutional[10] or *ultra vires*[13-14] or vague;[15] or challenge the jurisdiction of the court by questioning the validity of the notification on which the jurisdiction of the Court was founded.[16]

(b) The same principle applies to civil proceedings.[17]

III. Statutory remedies.

(i) STATUTORY REVIEW

So far we have dealt with the remedies provided for by the Constitution and remedies based on the Egnlish common law, some of which have been codified in India. There are, besides, some special provisions for reference to or revision by specified *Courts*, on specific points, under the governing statutes relating to particular administrative action. The special feature of these remedies which justifies their treatment apart is that their incidents are solely governed by the provisions of the statute which create the remedy, unaffected by the common law principles applicable to appeal or other supervisory jurisdiction of the courts of law.

It follows that there is no set pattern of statutory review and the methods of review are of various kinds :

(i) *Statutory appeal.*—Some Acts provide for an appeal from the statutory

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6. *McManus* v. *Bowes*, (1937) 3 All E.R. 227 (230).
7. *Francis* v. *Municipal Councillors*, (1962) 3 All E.R. 633 (637) P.C.
8. *McManus* v. *Bowes*, (1937) 3 All E.R. 227.
9. *Asoka* v. *Abdul Kader*, (1963) 3 All E.R. 579 (583) P.C.
10. *Behram* v. *State of Bombay*, A. 1955 S.C. 123.
11. *Mead* v. *Phemtree*, (1952) 2 All E.R. 723.
12. Cf. *Bachan* v. *State of Punjab*, A. 1982 S.C. 1325; *Jumman* v. *State of M.P.* A. 1991 S.C. 345 (para. 14)
13. *Bessemer & Co.* v. *Gould*, (1912) 107 L.T. 298.
14. *Chimanlal* v. *State of Bombay*, A. 1960 S.C. 96.
15. *East Riding C.C.* v. *Park Estate*, (1956) 2 All E.R. 669 (672) H.L.
16. *Dhirendra* v. *Legal Remembrancer*, A. 1954 S.C. 424.
17. *Addison* v. *Holly Hill Co.*, (1944) 322 U.S. 607.

tribunal to the High Court on points of law, relating to particular matters, e.g., s. 30 of the Workmen's Compensation Act, 1923, or on all questions, as if the decision of the tribunal constituted a decree or order of a civil court, e.g., s. 40 of the Displaced Persons (Debt Adjustment) Act, 1951.

Some Acts provide for a statutory appeal to the Supreme Court from a decision of the High Court under a statutory power.[18,19]

This jurisdiction being statutory, neither the High Court not the Supreme Court can express opinion on any question other than that referred to the High Court.[20] But, if such question cannot be answered without reference to certain provisions of law, the Supreme Court is not debarred from considering them because the High Court or the Tribunal did not refer to them.[21]

(ii) *Reference to the High Court or statement of case.*—Since there is no uniformity of pattern followed by the different statutes on this point, it would be useful to deal with the procedure laid down by particular statutes of each type.

I. *Statement of case under s. 256(1) of the Income-tax Act, 1961.*

There are statutes which, instead of providing for an appeal to the High Court, provide for a reference by the administrative tribunal to the High Court on questions of law, if a party seeks it, subject to the conditions specified, e.g., s. 256(1) of the Act of 1961,[22] which provides—

"256(1). The assessee or the Commissioner may, within sixty days of the date upon which he is served with notice of an order under section 254, by application in the prescribed form, accompanied where the application is made by the assessee by a fee of rupees one hundred, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court :

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days."

The jurisdiction of the Tribunal to make a reference to the above provision and of the High Court to entertain it is conditional upon[23]—

(a) There being an order of the Appellate Tribunal which may be said to be one under s. 33(4) of the Act of 1922;[23]

(b) A question of law[24] arising out of that order.

Two questions arise on this point—

(i) What is a question of law;

(ii) When a question of law may be said to arise out of the order of the Appellate Tribunal.

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18. See s. 261 of the Income-tax Act, 1961.
19. Cf. *G.F. Pension Fund* v. *Commr. of I.T.*, A. 1955 S.C. 50.
20. *D.V.C.* v. *State of Bihar*, A. 1961 S.C. 440.
21. *Prasar* v. *Vasantsen*, A. 1963 S.C. 1356 (1391).
22. There is provision for similar reference in s. 63 of the Bengal Agricultural Income-tax Act, 1944 [*Commr. of A.I.T.* v. *Keshab*, (1950) S.C.R. 435]; s. 60 of the Travancore-Cochin Agricultural Income-tax Act, 1958 [*Trav. Rubber Co.* v. *Commr. of A.I.T.*, A. 1961 S.C. 604]; s. 21(1) of the Bengal Finance (Sales Tax) Act, 1941 or s. 34 of the Assam Sales Tax Act, 1947 [*Nathmal* v. *Supdt. of Taxes*, A. 1961 S.C. 331].
23. *Commr. of I.T.* v. *Arunachalam*, (1953) S.C.R. 463.
24. *C.I.T.* v. *Hardine*, A. 1979 S.C. 1710; *U.I. Publishing* v. *C.I.T.*, A. 1979 S.C. 1724; *Hercules T.C.* v. *C.I.T.*, (1982) 2 S.C.C. 32.

(i) *What is a question of law.*

It would be convenient to explain this by distinguishing questions of law from questions of fact.

Questions of law.	*Questions of fact.*
The conclusion as to the admissibility of an allowance.[25]	A question of *benami*.[29]
Whether a transaction is an adventure in the nature of trade;[26] or the assessee can be held to be a dealer of an investor.[27]	
Whether the assessee was a 'partner' of a firm.[28]	Question of apportionment of profit under ss. 42(1) and 42(3) of the Act of 1922.[29]
Whether a particular receipt is a revenue receipt or a capital receipt.[30]	
Whether a payment was salary in lieu of notice or compensation for loss of employment.[31]	
Whether an expenditure is a revenue expenditure or a capital expenditure.[32]	
Whether an assessee is entitled to claim depreciation on an item of property.[32]	
The interpretation of a document and its legal effects.[33]	Genuineness of a document.[35]
The construction of a statute.[34]	
Inference from facts, where the point for determination is one of mixed question of law and fact.[36]	Inference from facts, where the point for determination is one of fact.[36]
Whether place of contract is India or outside.[37]	When the finding is one of fact, the fact that it is itself an inference from other facts will not alter its character as one of fact.[36]
Whether there was any material or evidence on which the finding of the Tribunal could be based.[38]	

25. *Eastern Investments* v. *Commr. of I.T.*, A. 1951 S.C. 278.
26. *Rajputana Textiles* v. *C.I.T.*, A. 1962 S.C. 126 (mixed question of fact and law); *Venkataswami* v. *C.I.T.*, A. 1959 S.C. 359; *Janki Ram* v. *C.I.T.*, A. 1965 S.C. 1898.
27. *Oriental Investment Co.* v. *C.I.T.*, A. 1957 S.C. 852; *Ramnarain* v. *C.I.T.*, A. 1961 S.C. 1141.
28. *C.I.T.* v. *G.S. Mills*, A. 1966 S.C. 24 (30).
29. *Meenakshi Mills* v. *C.I.T.*, A 1957 S.C. 49 (65).
30. *C.I.T.* v. *Motor & General Finance*, (1959) 35 I.T.R. 702; *National Steel Works* v. *C.I.T.*, (1963) 2 S.C.R. 937.
31. *Talwar* v. *C.I.T.*, (1964) 2 S.C.R. 519; *C.I.T.* v. *Sheppard*, (1964) 1 S.C.R. 163.
32. *Sitalpur Sugar Works* v. *C.I.T.*, (1964) 3 S.C.R. 17.
33. *Oriental Investment Co.* v. *C.I.T.*, A. 1957 S.C. 852; *C.I.T.* v. *Jain*, A. 1962 S.C. 1164 (1165).
34. *Meenakshi Mills* v. *C.I.T.*, (1957) 31 I.T.R. 28 (50) S.C.
35. *Sundar Singh* v. *C.I.T.*, (1954) 25 I.T.R. 265 (273) S.C.
36. *Meenakshi Mills* v. *C.I.T.*, A. 1957 S.C. 49.
37. *Raj Kumar Mills* v. *C.I.T.*, A. 1955 S.C. 628.
38. *Gouri* v. *Bagaria*, (1961) 42 I.T.R. 112 (S.C.); *Edwards* v. *Bairstow*, (1955) I.L.R. 579 (586) H.L.

To what extent the finding is due to admission of irrelevant evidence.[39]

Whether the finding of the Tribunal is based on conjectures or irrelevant materials.[40]

The legal effects of the facts found by the Tribunal.[41]

Whether a finding of fact is inconsistent with the evidence.[42]

(ii) A question of law may be said to arise out of the Appellate Tribunal's order in a number of situations :

(a) When a question is *raised* before the Tribunal and is *dealt* with by it, it is clearly one arising out of its order.[43]

(b) When a question of law is raised before the Tribunal but the Tribunal *failed* to deal with it, it must be deemed to have been dealt with by it, and is, therefore, one arising out of its order.[43-44]

(c) When a question is *not raised* but the Tribunal *deals* with it, that will also be a question arising out of its order.[43]

But—

When a question of law is neither raised before the Tribunal nor considered by it, it will *not* be a question arising out of its order notwithstanding that it may arise on the findings given by it.[43]

Since the jurisdiction of the High Court under s. 256(1) is limited by the terms of that section, the High Court can, on such reference, decide only those questions which *are* referred to it by the Tribunal and not any other question.[43]

But the question referred might be a complex one, involving more than one aspect. All that s. 256(1) requires is that the question of law which is referred to the Court and which the Court is to decide must be the question which was *in issue before the Tribunal.* Where the question itself was in issue, there is no further limitation imposed by the section that the reference should be limited to those aspects of the question which had been *argued* before the Tribunal. For the same reason, where the question referred is sufficiently specific, relating to an issue before the Tribunal, the Court is competent to allow a *new contention* to be advanced, provided it is within the framework of the question as referred and the new contention does not involve a reframing of the issues.[43]

Of course, where the Tribunal frames its question in such wide terms as might take in questions which were not in issue before it. In such a case, the High Court will have to ascertain the scope of the reference from the statement of the case submitted by the assessee or the Commissioner to the Tribunal, under s. 256(1).[43]

Though the question referred to is investigated by the High Court as in a regular proceeding, the limits of this jurisdiction of the High Court have been reiterated by *our* Supreme Court in many decisions. It has been called

39. *Omar Salay* v. *C.I.T.*, A. 1959 S.C. 1238.
40. *Dhirajlal* v. *C.I.T.*, (1954) 26 I.T.R. 736 (739-40).
41. *Ramnarain* v. *C.I.T.*, A. 1961 S.C. 1141 (1143).
42. *Liquidators of Pursa* v. *C.I.T.*, (1954) 25 I.T.R. 265 (273).
43. *I.T. Commr.* v. *S.S. Navigation Co.*, A. 1961 S.C. 1633 (1645).

an 'advisory'[44] and not 'fact-finding' or appellate or revisional jurisdiction.[45] The High Court should, therefore, advise the Tribunal on the questions of law on the basis of the facts found by the Tribunal,[46] except where they are based on *no* evidence at all,[46] or inconsistent with the evidence,[47] or based on irrelevant evidence wholly or in part,[48] or arrived at without taking into account material circumstances;[49] or perverse.[46]

In the absence of any such exceptional circumstance, the High Court cannot interfere with the findings of fact arrived at by the Tribunal, if they are based on *any* evidence on which the conclusion can be rested, as distinguished from conjecture or surmise.[46] But, if there is *some* evidence to support the finding of the Tribunal, the Court cannot interfere on the ground that on a review of the evidence it would have arrived at a different conclusion.[50] In order to determine this point, the Tribunal's order must be read as a whole.[51]

Since the statement of the case is prepared by the Tribunal with the knowledge of the parties and they have, under the rules, full opportunity to apply for an amendment of the statement, the statement must be taken by the High Court as the agreed statement of facts by the parties on which the High Court has to pronounce its opinion,[52] irrespective of the facts as presented to it by counsel in their arguments.[52]

The High Court cannot, in exercising its advisory jurisdiction, assume to itself the jurisdiction of deciding a question of fact, or a mixed question of law and fact, on which the Tribunal has given no finding.[53]

Since the jurisdiction of the High Court is *advisory*, it cannot, while answering the question referred to it, give any directions to the revenue authorities to assess or not to assess.[54]

High Court's direction to Tribunal to state case and refer.

Where, on an application being made to the Income-tax Tribunal by the assessee (or the Commissioner), the Tribunal refuses to state the case, the assessee (or the Commissioner) may apply to the High Court under s. 256(3) of the Income-tax Act of 1961, and the Court may, if it is *not* satisfied about the correctness of the decision of the Tribunal that no question of law arises, it can *require* the Tribunal to state the case and refer it to the Court.[55] On receipt of the requisition of the High Court, the Tribunal is *bound* to state the case and refer it.

But the High Court will not make a requisition under sub-sec. (2) unless the applicant had applied to the Tribunal under sub-sec. (1), in terms

44. *Ramnathan* v. *C.I.T.*, (1967) 63 I.T.R. 458 (S.C.).
45. *Commr. of I.T.* v. *Calcutta Agency*, (1951) S.C.J. 179; *Raghubar* v. *State of Bihar*, A. 1957 S.C. 810 (811).
46. *I.T. Commr.* v. *Jadavji*, A. 1963 S.C. 1497 (1499); *Guru Estate* v. *Commr. of I.T.*, A. 1963 S.C. 1452 (1455); *I.T. Commr.* v. *I.W.T. Mills*, A. 1964 S.C. 785 (786).
47. *Liquidators of Pursa* v. *Commr. of I.T.*, (1954) S.C.R. 767 (776).
48. *Dhiraj Lal* v. *C.I.T.*, A. 1955 S.C. 271.
49. *Commr. of I.T.* v. *Chari & Chari*, A. 1966 S.C. 54 (57).
50. *Meenakshi Mills* v. *Commr. of I.T.*, (1956) S.C.R. 691 (720).
51. *Homi Jehangir* v. *C.I.T.*, A. 1961 S.C. 1135 (1138).
52. *C.I.T.* v. *Calcutta Agency*, (1950) S.C.R. 1008 (1015).
53. *Hoshiarpur E.S.C.* v. *C.I.T.*, A. 1961 S.C. 892 (894).
54. Cf. *Nathmal* v. *Supdt. of Taxes*, A. 1961 S.C. 381 (382).
55. *C.I.T.* v. *I.W.T. Mills*, A. 1964 S.C. 735.

of that sub-sec. (1), for referring the case to the High Court.[56] Any question which was not raised before the Tribunal under sub-sec. (1) cannot be raised before the High Court under sub-sec. (2).

Nor would the High Court call upon the Tribunal to state the case unless in its view a question of law arises out of the order of the Tribunal.

(a) Such a question may arise out of the findings of the Tribunal;

(b) It may also arise if the Tribunal has misdirected itself in law in arriving at its finding, e.g., where the finding is based on an assumption and no evidence at all or where the Tribunal has ignored the essential matters in arriving at the finding.[57]

High Court's power to direct Tribunal to revise statement.

S. 258 of the Income-tax Act, 1961,[55] says that—

"If the High Court or the Supreme Court is not satisfied that the statements in a case referred to under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf."

This provision empowers the High Court to require the Tribunal to furnish a Supplementary Statement of the case and to include in such Supplemental Statement material and evidence which may already be on the record, but which has not been included in the Statement initially made under sub-sec. (1).[58]

But it does not empower the High Court either to raise a new question of law which did not arise out of the Tribunal's order, or to direct the Tribunal to take additional evidence before it renders its answers on the questions initially referred to it.[58-59]

In short, where the question referred to the High Court is couched in wide terms and the High Court finds that before rendering its answer on that question some new aspects have to be considered, it may require the Tribunal to furnish a Supplemental Statement, upon the materials already on the record.[60] Secondly, instead of asking for a Supplemental Statement so that the High Court may answer the question of law referred to it in its advisory capacity, the Court cannot ask the Tribunal itself to dispose of the matter according to the directions given by it.[59]

II. *Reference under the Stamp Act.*

S. 57(1) of the Stamp Act, 1899, provides for a similar reference to the High Court, though the statutory language is somewhat different.

S. 56(2) of that Act says—

"If any Collector, acting under s. 31, s. 40 or s. 41, *feels doubt* as to the amount for duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue authority."

S. 57(1) then provides—

"The Chief Controlling Revenue authority *may* state any case referred to it under

56. *C.I.T.* v. *S.S. Navigation Co.*, A. 1961 S.C. 1633.
57. *I.T. Commr.* v. *I.W.T. Mills*, A. 1964 S.C. 735 (736).
58. *Petlad Co.* v. *C.I.T.*, A. 1963 S.C. 871; *Khan* v. *C.I.T.*, (1971) 82 I.T.R. 872 (S.C.).
59. *K. Mills Co.* v. *C.I.T.*, A. 1956 S.C. 1636 (1641).
60. *Zoraster* v. *C.I.T.*, A. 1961 S.C. 107.

s. 56, sub-sec. (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon,

(a) if it arises in a State, to the High Court for that State."

It has been held[61] that the above power of reference—

(i) includes a reference not only as to the amount of duty payable on a particular document, but all questions of law upon which the question of liability depends, e.g., the construction of the document in question;

(ii) the power of reference is coupled with an obligation to refer because it is a provision not merely for the benefit of revenue but also of the party affected by the assessment;

(iii) when, therefore, such a question arises, the revenue authority is bound to make a reference, and, on his refusal, he may be compelled to do so, by *mandamus* issued by the High Court.

(ii) STATUTORY REVISION

Many statutes vest a power of revision from the decision or order of an administrative authority in another superior administrative authority. The statute may provide such power to be exercised on application by the party aggrieved or by the superior authority *suo motu* or both.

In some cases, the power to revise may be exercised "at any time".[62] In such a case, it is obvious that it is competent for the revising authority to exercise his power at any point of time and if the rule-making authority seeks to impose a time-limit, such rule would be *ultra vires*.[62] But, at the same time, it cannot be supposed that the revising authority is entitled to exercise his powers arbitrarily. It is from a reading of the entire statute and all the circumstances involved in a particular case that the authority must determine whether he can *reasonably* exercise his discretion after the lapse of an inordinate time.[62]

In the absence of any statutory limitations, the power of revision is liberally construed. Thus, even where the revisional authority is empowered to call for the record *suo motu* and then exercise his revisional power, it has been held that though normally he is to determine the legality or propriety of the order of the infereior authority with reference to the materials on record, it would not be beyond the jurisdiction of the revisional authority to make further inquiry, if necessary,[63] provided that in so doing he does not assume to himself any power which is specifically vested by the statute in some other authority.[64]

IV. Prerogative Writs in particular.[65]

I. HABEAS CORPUS

Habeas Corpus, nature of.

By means of this writ an individual, who has been deprived of his personal liberty by any executive act, may have the validity of such act tested before a superior Court.

61. *Chief Controlling Authority* v. *Maharashtra Sugar Mills,* (1950) S.C.R. 536 (541-44).

62. Cf. s. 27, Administration of Evacuee Property Act, 1950 [*Purshottam* v. *Chaman Lal,* A. 1961 S.C. 1371 (1372-73)].

63. *State of Kerala* v. *Abdulla,* A. 1965 S.C. 1585 (1589).

64. *Swastik Oil Mills* v. *Munshi,* A. 1968 S.C. 843 (846).

65. See further Author's *Shorter Constitution of India,* 11th Ed., pp. 619 ff; *Constitutional Remedies and Writs* (K.L.H., 1994).

It is a writ in the nature of an order calling upon the person who has detained another to produce the latter[66] before the Court, in order to let the Court know on what ground he has been confined and to set him free if there is no legal justification for the imprisonment.[66]

Its object is not the punishment of the wrongdoer but to secure the release of the prisoner without which he may not be in a position to pursue his legal remedies against the wrongdoer.[66] It is essentially a procedural writ[66] and its proceeding is summary.[66]

In the sphere of administrative law, an occasion for the use of this writ arises in case of detention of an individual by the Executive (e.g., under some emergency law or regulation), as well as in the case of an illegal commitment by some military or other authority exercising *quasi-judicial* powers.

The object of issuing the writ is to ascertain whether there is any legal justification for the detention of the person in custody.[67] The *merit* of the case or the *moral* justification for imprisoning the petitioner is no relevant consideration in a proceeding for *habeas corpus*.[66] Thus, a person charged with high treason or murder is entitled to be set at liberty, if his imprisonment has not taken place in due course of law.[68]

A detention, thus, becomes unlawful not only where there is no law to justify it but also where *procedure* prescribed by the law which authorises the detention has not been followed, and, in determining whether such procedure has been complied with, the Court applies a strict standard, not only in interpreting the terms of the statute but also in exacting a strict compliance with the requirements, so interpreted, in fact. The need for this strict standard was explained in the celebrated dictum of Brett, L.J., in *Thomas Dale's case*[69] :

"It is a general rule which has always been acted upon by the Courts in England that if any person procures the imprisonment of another he must take care to do so by steps, *all* of which are *entirely* regular and if he fails to follow every step in the process with *extreme regularity* the Court will not allow the imprisonment to continue."

These words are echoed in the observation of Sastri, C.J., of *our* Supreme Court in *Ram Narayan* v *State of Delhi*[70] :

"those who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty, must strictly and scrupulously observe the forms and rules of the law. That has not been done in this case. The petitioners now before us are, therefore, entitled to be released, and they are set at liberty forthwith."[70]

But *habeas corpus* does not lie unless a person has been 'arrested' or 'detained', by placing a physical restraint, actual or constructive,[71] upon the liberty of movements of the petiotioner.[72] But the temporary release on bail, pending inquiry, after arrest, does not bar the power to issue the writ for testing the legality of the arrest.[73]

66. 'Habeas corpus' literally means 'have the body'.
67. *King* v. *Greenhill*, (1836) 4 A. & E. 629.
68. Ex parte *O'Brien*, (1923) 2 K.B. 361 (382).
69. *Thomas Dale's case*, (1871) 6 Q.B. 376 (461).
70. *Ram Narayan* v. *State of Delhi*, (1953) S.C.R. 652 (655).
71. *O'Brien*, ex parte, (1923) 2 K.B. 361; *Palmer* v. *Forsyth*, (1825) 4 B. & C. 401.
72. *Habib* v. *Crown*, A. 1950 Nag. 161.
73. *Zahir* v. *Ganga*, A. 1963 All. 4.

Uses of Habeas Corpus against Administrative Authorities.

The principal cases of use of this writ in the sphere of Administrative Law may now be referred to :

I. Deportation.

(i) *Deportation of a subject.*

(A) *England.*—When a British subject is sought to be deported under the Aliens Acts, he can apply for a writ of *habeas corpus* to have his alienage or non-alienage determined by the Court,[74] because the Acts authorise the deportation only of aliens.

(B) *India.*—If an Indian citizen is arrested for the purpose of expulsion, it will be open to him to apply for *habeas corpus* and contend that the order or the law under which it has been made constitutes an unreasonable restriction upon his right guaranteed by Art. 19(1)(d)-(e).[75]

(ii) *Deportation of alien immigrant.*

(A) *England.*—The expulsion or deportation of an undesirable alien is made in exercise of the sovereign power of a State[76] and it includes the power of removing the alien beyond the territory of the State, in order to make the deportation effective.[77]

But the deportee may apply for *habeas corpus* on the ground that the order of deportation is *ultra vires*[78] the law under which it purports to have been issued or that it was *mala fide*.[78]

England.

Habeas corpus is not, however, available on the ground that no opportunity to leave was given to the alien before making the compulsory order,[79] or that the order was made without a notice or hearing as required by the the rules of natural justice.

(B) *India.*—In *State of U.P.* v. *Abdul Samad*,[80] the majority of the Supreme Court made a suggestion (without deciding the question) that Cls. (1)-(2) of Art. 22 of the Constitution should not apply where an alien is taken into custody under a deportation order because (i) "he is not charged with any offence .... but the State is merely effecting his removal from the country—an act which the alien was himself bound by law to have done", and (ii) "in the case of a lawful deportation order the Magistrate can obviously pass no order for release on bail or direct any other custody than that of the officers who have to execute the order of deportation".

But the view taken by Subba Rao, J., in the minority, it is submitted, has its weight, namely, that when foreigners who are directed to leave the country refuse to do so and the police arrest them with a view to deport them from the country, they are "certainly guilty of an act prejudicial to the State or the public interest", within the meaning of the dictum in *Ajaib*

74. *Eshugbayi* v. *Government of Nigeria*, (1931) A.C. 662 (670).
75. Cf. *Ebrahim* v. *State of Bombay*, (1954) S.C.R. 933; *Hans Muller* v. *Superintendent*, (1955) 1 S.C.R. 1284 (1299); *Abdul Rahim* v. *State of Bombay*, (1959) S.C.R. 285.
76. *A.G. for Canada* v. *Cain*, (1906) A.C. 542.
77. *R.* v. *Secy. of State*, (1947) 2 All E.R. 550.
78. *R.* v. *Chiswick Police Station*, (1918) 1 K.B. 578.
79. *R.* v. *Governor of Brixton*, (1952) 1 All E.R. 187 (C.A.)
80. *State of U.P.* v. *Abdul Samad*, A. 1962 S.C. 1506.

Singh's case.[81] Secondly, it is submitted that the object behind Cls. (1)-(2) of Art. 22 is not merely to enable the detenu to obtain bail. In the case of a deportation order, if he is produced before a Magistrate and offered an opportunity to consult a legal practitioner, he may challenge the very legality of the deportation order and have his alienage determined by making an application for *habeas corpus*, in the proper forum.[82] If a deportation case is taken out of C1. (2), it will also go out of C1. (1), and the person detained may be denied the opportunity to be informed of the grounds or to consult a lawyer so that he may be advised to move for *habeas corpus* which has obviously a scope in deportation cases, according to the instant case before the Supreme Court.

Of course, if the foreigner who is sought to be deported has been arrested under the law of preventive detention, he is not entitled to the right under Cls. (1) and (2) of Art. 22, in view of Cl. (3) of that Article.[83]

When an order of deportation under the Foreigners Act, 1964, is made, the validity of the order may be challenged by an application for *habeas corpus*, if the petitioner can show from the record or undisputed materials[84] that he is not a 'foreigner' to whom the Act applies.[84]

II. Emergency powers of Executive, detention under.

(A) *England*.—In times of war, the Executive is armed by Parliament with wide powers of detention, without trial, of any person, subject or alien, on mere suspicion. The experience during the two World Wars shows that during war, the remedy of *habeas corpus* becomes practically illusory. Of course, the Court can grant this remedy where the Regulation[85] under which the arrest was made or the order itself[86] is found to be *ultra vires*. But, where there is no such invalidity, the Court would not examine the reasonableness of the suspicion,[87] or interfere on the ground of want of a prior notice or hearing and the writ would be available only if the detention order were not genuine or the person arrested were not the person named in the order, or the order was shown to be *mala fide*.[88] We have already seen that the task of establishing absence of *bona fides* is well-nigh impossible and that is why the history of World War II was a history of failure of applications for *habeas corpus*.[89]

England.

(B) *India*.—In *India*, the question of availability of *habeas corpus* in relation to detention under the emergency powers of the Executive has come up before the Supreme Court on many occasions since the enactment of the Defence of India Ordinance, 1962 (later replaced by Act) and the Rules made thereunder, following the 'Proclamation of Emergency in October, 1962, in view of the Chinese aggression on our north-eastern frontiers.[90]

81. *Ajaib Singh* v. *State of Punjab*, (1953) S.C.R. 254.
82. Cf. *Eshugbayi* v. *Nigeria*, (1931) A.C. 662 (670).
83. *Hans Miiller* v. *Supdt.*, (1955) 1 S.C.R. 1284; *Jagan Nath* v. *Union of India*, (1960) 2 S.C.R. 784.
84. Cf. *Union of India* v. *Ghaus*, A. 1961 S.C. 1526.
85. Cf. *Budd*, ex parte, (1941) 2 All E.R. 749 (751) [ground for release on the first application for *habeas corpus*].
86. Ex parte *O'Brien*, (1923) 2 K.B. 361.
87. *Liversidge* v. *Anderson*, (1942) A.C. 206 (221).
88. *Budd*, ex parte, (1942) 1 All E.R. 373 (376) C.A.
89. *Greene* v. *Home Secretary*, (1941) 3 All E.R. 388 (H.L.) 14; *Ex parte Pitt-Rivers*, (1942) 1 All E.R. 207.
90. *Ananda* v. *Chief Secy.*, A. 1966 S.C. 657 (660); *Mohan* v. *Chief Commr.*, A. 1964 S.C. 173.

It is to be noted, in this context, that in *Shukla's case*[91] the Supreme Court held that when Art. 21 was suspended by an Order under Art. 359, the person imprisoned or detained 'loses his *locus standi* to regain his liberty on *any* ground.[90] This decision has been obviated by an amendment of Art. 359 by the Constitution (44th Amendment) Act, 1978, by which it has been provided that) the Presidental Order (under Art. 359) cannot suspend the enforcement of the rights conferred by Arts. 20 and 21. In the result, even during the operation of a Proclamation of Emergency, the individual's right to move the Supreme Court or a High Court to challenge either a law or an executive order on the ground of contravention of the rights guaranteed by Arts. 20 and 21 shall survive.

Effect of amendment of Art. 359 of Constitution.

[See, further, under 'Preventive Detention', *post*].

III. Military Tribunal, excess of jurisdiction by.

While courts martial may be set up to try the military personnel or other persons subject to the military law, under the Army or the Air Force Acts, 1950, a military tribunal is a tribunal which the military authorities may establish for the trial of civilians, when martial law has been proclaimed in an area and it is *not physically possible* (in view of the state of war) for the ordinary courts to function. Under the present head, we are considering the question how far these military tribunals are subject to the control of the ordinary courts through the prerogative writs.

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As regards *habeas corpus*, there is a conflict between the decisions of Irish Courts and those of the Privy Council but the position seems to be this: The ordinary Courts have jurisdiction to determine whether a state of war[92] or armed rebellion did exist justifying the setting up of a military tribunal.[93] So, if the Court holds that a state of war did exist, there is no remedy by *habeas corpus* against a sentence passed by the military tribunal[94] or otherwise to control any act of the military forces.[95]

On the other hand, since the Petition of Right, 1628, the Crown has no power to try persons by martial law in time of peace.[96] But the fact that for some purposes the ordinary Courts have been permitted to function in a district in which martial law has been proclaimed is not conclusive to establish that war is not raging in that district.[96]

(a) Where the ordinary Court holds that there was *no* state of war at the time of setting up of the tribunal, *habeas corpus* would issue to set the prisoner free forthwith.[97]

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91. *A.D.M.* v. *Shukla,* A. 1976 S.C. 1207.
92. *R.* v. *Allen,* (1921) 2 I.R. 241.
93. *R.* v. *Strickland,* (1921) 2 I.R. 317.
94. Ex parte *Erskine Childers,* (1923) I.R. 5.
95. *R.* v. *Military Governor,* (1924) 1 I.R. 32 (C.A.); The view taken in *Egan* v. *Macready,* (1921) 1 I.R. 265, that notwithstanding a state of war the civil courts can interfere where the order of the Military Tribunal is *ultra vires,* is not shared by later authorities, and is inconsistent with the subsequent decision of the same Judge (O'Connor, J.) in Erskine Childers, *ex parte,* (1923) I.R. 5.
96. Ex parte *Marais,* (1902) App. Cas. 109 (114).
97. *R.* (*Ronayne & Mulcahy*) v. *Strickland,* (1921) 2 I.R. 333.

Where *habeas corpus* is issued by the High Court, it would be a contempt of Court on the part of the military authorities to disobey it and the High Court may issue writ of attachment against the military commander who dares to disobey the writ of *habeas corpus*.[98]

(b) Where the ordinary Court holds that there is a state of war or of rebellion, *so long as it continues,* the Court shall have no power to interfere with the action of the military in restoring order,[99] or with the sentence of a military tribunal,[99] even though statutory forms were not observed.[99]

But after the state of war or rebellion is over and peace restored,[100] *habeas corpus* will issue in respect of acts proved to have been done in excess of what was reasonably required by the necessities of the case,[99] unless, of course, an Act of Indemnity is passed in the meantime.[1]

IV. Preventive Detention.

A prolific source of applications for *habeas corpus* under *our* Constitution has been an order of preventive detention, under the Preventive Detention Act, the National Sucrity Act and the like :

Preventive detention being obviously a restraint on personal liberty by the Executive, *habeas corpus* would lie, on twofold grounds—(i) Constitutional; (ii) Non-constitutional.

I. *Constitutional.*

The constitutional invalidity of the detention may be due either to the unconstitutionality of the statute under which the order has been made or of the order itself.

(a) The unconstitutionality of the statute may be due to—

(i) want of legislative competence;[2-5]

(ii) contravention of Art. 22 of the Constitution.[4]

(b) Though the statute may be quite valid, the order itself may be unconstitutional if it violates the provisions of Art. 22(5),[6] directly or indirectly.[5]

(c) The detention will be invalid if the grounds of detention or some[7] of them are irrelevant[8] to the grounds for which a law of preventive detention can be made,[9] or are non-existent,[10] or vague;[11] or the Advisory Board refused

98. Observations of O'Connor, M.R., in *Egan* v. *Macready*, (1921) 1 I.R. 265.
99. *R.* v. *Allen*, (1921) 2 I.R. 241 (contra *Egan* v. *Macready*, (1921) 1 I.R. 265.
100. *Higgins* v. *Willis*, (1921) 2 I.R. 386.
1. *Tilonko* v. *A.G. for Natal*, (1907) A.C. 93.
2. *D'Souza* v. *State of Bombay*, (1956) S.C.R. 382 (387); *Dwarkadas* v. *State of J.& K.*, A. 1957 S.C. 164.
3. *Puranlal* v. *Union of India*, A. 1958 S.C. 163; *Naranjan* v. *State of Punjab*, A. 1952 S.C. 106.
4. *Khudiram* v. *State of W.B.*, (1975) 2 S.C.C. 81 (*91-95*).
5. *Gopalan* v. *State of Madras*, (1950) S.C.R. 88.
6. *State of Bombay* v. *Atmaram*, (1951) S.C.R. 167; *Harikisan* v. *State of Maharashtra*, A. 1962 S.C. 911; *Suryakant* v. *State of Maharashtra*, A. 1980 S.C. 2130.
7. *Shiv* v. *State of M.P.*, A. 1981 S.C. 870; *Dwarika* v. *State of Bihar*, A. 1975 S.C. 134.
8. *Dhananjay* v. *District Magistrate*, A. 1982 S.C. 1315.
9. *Dwarkadas* v. *State of J.&K.*, (1956) S.C.R. 945; *Pushkar* v. *State of W.B.*, (1968) S.C. (W.P. 179/68, dt. 7.11.1968); *Dwarka* v. *State of Bihar*, A. 1975 S.C. 134.
10. *Ram Bahadur* v. *State of Bihar*, A. 1975 S.C. 223.
11. See pp. 161-62, *ante.*

to allow the defence to be represented by a non-lawyer friend;[12] or the Government fails to consider the detenu's representation without unreasonable delay, and independently of the Advisory Board's opinion.[13]

Where some of the grounds are irrelevant.

The earlier view that if *any* of the grounds was irrelevant or vague, the order of detention would *ipso facto* be invalid,[9] has been relaxed in recent cases, holding that the order would not be invalid where it is clear from the facts that the bad grounds did not affect the decision of the detaining authority.

Statutory provision has been made in this matter in the Conservation of Foreign Exchange Act and Prevention of Smuggling Activities, 1974, by inserting s. 5A in the Act, in 1975, as follows :

"5-A. Grounds of detention severable.—Where a person has been detained in pursuance of an order of detention under sub-section (1) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds."

I. *Non-Constitutional*

(a) Where the order of detention is *ultra vires* the provisions of the Act, the order becomes a nullity and the detenu is entitled to obtain his release by *habeas corpus*. In *India,* this common law right to the restoration of liberty where it has been violated without authority of law has also been given a constitutional support by Art. 21, so that in every case where a person has been detained without the authority of law or under an order which is *ultra vires,* there is a violation of the constitutional guarantee under Art. 21, and, consequently, on this ground an application under Art. 32 as well as under Art. 226 lies.

(b) Apart from a plain transgression of the terms of the statute authorising the detention, the detention may be illegal by reason of an abuse of the statutory power[2] or a *mala fide*[3] use of it and in such cases the detenu is entitled to obtain his release by *habeas corpus.*

(c) It will be equally bad if the detaining authority did not apply his mind to the statutory requirements or acts upon a misconstruction of the statute or upon materials which have no rational probative value to the grounds of obtention.[4]

12. *Abdul* v. *State of Rajasthan,* A. 1983 S.C. 505; *A.K. Roy* v. *Union of India,* A. 1982 S.C. 710 (747).

13. *Rahamatulla* v. *State of Bihar,* A. 1981 S.C. 2069; *Ashok* v. *State of J.&K.,* A. 1981 S.C. 851; *Harish* v. *State of U.P.,* A. 1981 S.C. 1126; *State of Maharashtra* v. *B.K. Takkamore,* A. 1967 S.C. 1353.

II. MANDAMUS

Mandamus, nature of.

'*Mandamus*' literally means a *command.* It differs from the writ of *prohibition* or *certiorari* in its demand for some *activity* on the part of the body or person to whom it is addressed.[14]

"It commands the person to whom it is addressed to perform some *public* or *quasi-public legal duty* which he has *refused* to perform, and the performance of which cannot be enforced by any other adequate legal remedy....* Where any tribunal, inferior Court or body of persons charged with the performance of a public duty do not discharge that duty, *mandamus* lies to compel him to do it."[15]

"*Mandamus* will lie to any person who is under a duty imposed by statute or by the common law to do a particular act. If that person refrains from doing the act or refrains from wrong motives from exercising a power which it is his duty to exericse, this court will by order of *mandamus* direct him to do what he should do. *Mandamus* may go to individuals. It may go to corporations and it goes quite independently of whether the individual or body to which it is addressed is not a court."[16]

Mandamus, distinguished from other remedies.

Mandamus differs from *certiorari* and *prohibition* in that the latter writs are used where an inferior tribunal has *wrongly exercised* or *exceeded* its jurisdiction, while *mandamus* is only used where the inferior tribunal has *declined* jurisdiction,—the object of *mandamus* being not to review or control the action of the inferior Court, but merely to compel it to act.

1. While *certiorari* goes to quash the order, *mandamus* compells the tribunal to act according to law.[17]

2. While *mandamus* demands some *activity* on the part of the body or person to whom it is addressed, *prohibition* commands *inactivity,*—the object of *prohibition* being to prevent the inferior Court from usurping jurisdiction which is not legally vested in it or from exceeding the limits of its jurisdiction.

3. The great advantage of *mandamus* over *prohibition* and *certiorari* is that while the latter are limited to the control of judicial or *quasi-judicial* orders, mandamus extends also to administrative acts. *Certiorari* will not issue unless the authority against whom it is sought is a judicial or *quasi-judicial* tribunal; but *mandamus* can issue to an executive or administrative authority vested with public duties.

4. *Mandamus* differs from *quo warranto* in that it is used to *compel* an election to a vacant public office, while *quo warranto* only *questions* an election already held.[18] Where, however, the election to an office is merely colourable, the office may be regarded as vacant, and *mandamus* may be resorted to in order to direct a fresh election.[18] While *quo warranto* requires a person to state by what authority he claims an office, *mandamus* assumes that he holds an office and requires him to perform the duties of that office according to law.[19] Generally speaking, *mandamus* would not be granted where *quo warranto* lay.[20]

14. Stephen's *Commentaries,* 20th Ed. Vol. I, p. 591.
15. Short & Mellor, 2nd Ed., p. 197.
16. *R.* v. *Metropolitan Police Commr.,* (1953) 2 All E.R. 717 (719).
17. *R.* v. *Woodhouse,* (1906) 2 K.B. 501.
18. In re *Barnes Corpn.,* (1933) 1 K.B. 668.
19. *University of Madras* v. *Govind,* A. 1965 S.C. 491.
20. *R.* v. *Mayor of Colchester,* (1788) 99 E.R. 743.

5. *Mandamus* differs from mandatory injunction or an order for specific performance, inasmuch as it lies only to enforce duties of a public or *quasi-public* nature, and cannot be invoked to enforce merely private rights,[21] whether arising from contract or otherwise.

Conditions precedent to issue of Mandamus.

(A) *In England.*—In order to obtain a writ of *mandamus* the applicant must satisfy the following conditions.

(a) The applicant must show that he has a *legal right* to the performance of a *legal duty* by the party against whom the *mandamus* is sought.[22]

Thus, *mandamus* would not issue to enforce an 'imperfect obligation',[23] e.g., the obligation of the Crown to protect the realm from the inroads of the sea,[23] or to enforce the performance of an act which the respondent has no *duty* to perform.[24]

(b) The foundation of *mandamus* is the existence of the right.[25] It is not intended to create a right but to restore a party who has been denied his right to the enjoyment of such right.[26]

(c) The right must be a 'public right' and the duty sought to be enforced must be of a *public* nature.[26] The writ of *mandamus* is not issued to settle private disputes or to enforce private rights,[27] unless the petitioner can show that besides his private right, some public interest is involved.[28]

(d) The legal right to compel the performance of the public duty must be shown to reside in the applicant himself.[29] It will not do to show merely that the applicant has an *interest* in the performance of the duty,[30] as distinguished from a *special* interest,[31] e.g., where he, more than other members of the public, has suffered from the non-performance.[30] The right may, however, be enjoyed in common with others.[32]

(e) The application must be made by an aggrieved party. The writ will never be granted to remove an erroneous order at the instance of the party in whose *favour* the order was made.[29]

(f) The application must be made in good faith and not for an *indirect* purpose,[33] or on behalf of a third party.[34]

(g) The application must be preceded by a distinct *demand* for performance of the duty, in order to give the party an opportunity to consider

21. *R.* v. *Clear,* (1825) 4 B. & C. 889 (901); Briggs, *ex parte,* (1859) 28 Q.B. 272.
22. Ex parte *Napier,* (1852) 18 Q.B. 692 (695); *R.* v. *Barnstaple Justices,* (1937) 54 T.L.R. 36.
23. *Att. Gen.* v. *Tomline,* (1880) 14 Ch. D. 58 (66)
24. *R.* v *Bishop of Oxford,* 4 Q.B.D. 553; *Stepney (Borough of)* v. *John Walker,* (1934) A.C. 365 (397) H.L.
25. *Napier, ex parte,* (1852) 18 Q.B. 692 (695).
26. *Basset* v. *Barnestable Corp.,* 82 E.R. 1109; *R.* v. *Bank of England,* (1819) 2 B. & Ald. 620.
27. *R.* v. *Clear,* (1825) 4 B. & C. 899.
28. Ex parte *Briggs,* (1859) 120 E.R. 1141.
29. *R.* v. *Lewisham Union,* (1897) 1 Q.B. 498.
30. *R.* v. *London Assessment Committee,* (1907) 2 K.B. 764 (C.A.).
31. *R.* v. *Cotham,* (1898) 1 Q.B. 802; *R.* v *Manchester Corpn.,* (1911) 1 K.B. 560.
32. *A.G.* v. *Vestry of Bermondsey,* 23 Ch. D. 60.
33. *R.* v. *Peterborough Corp.,* (1875) 44 LJ. (Q.B.) 85.
34. *R.* v. *Liverpool Ry. Co.,* (1852) 21 Q.B. 284.

whether he should comply or not,[26] and such demand must be shown to have been met by a refusal either by words or conduct,[35] so that the Court may be satisfied that the party complained of is determined not to do what is demanded.[35]

(h) The person or body to whom the writ is directed must be subordinate to the jurisdiction of the Court issuing the writ.[36]

(i) The writ will not be issued if another equally convenient, beneficial and effective remedy is available.[37]

(j) The writ will not be issued if the conduct of the applicant is such as to disentitle him to an equitable or discretionary remedy;[38] or the writ would be futile in its result,[39] or the respondent has no power to perform the act sought to be enjoyed.[40]

(B) *In India.*—The English principles have been broadly followed to lay down that the following conditions must exist in order to obtain a writ of *mandamus* or any writ or order in the nature of *mandamus*— *India.*

(i) *Mandamus* would not issue unless the petitioner has a right[41] to compel the performance of some legal duty (as distinguished from a discretion[42]) cast upon the respondent.

1. Where the act sought to be completed lies at the *discretion* of the Government e.g., dearness allowance granted compassionately under F.R. 44,[43] no *mandamus* lies to compel the Government to grant it or to grant it at a particular rate.

2. Similarly, where at a public auction the auctioning authority has, according to the rules, a discretion to accept or reject the highest bid, the highest bidder does not acquire any legal right by reason of his bid being the highest, and cannot, accordingly, maintain an application of *mandamus* to enforce his alleged right.[44]

3. The grant of a liquor licence being a matter of discretion of the Government, the Court will not issue *mandamus* to direct its grant or renewal, in the absence of any statutory requirement or any arbitrary or *mala fide* or unfair action.[45]

[As to 'discretionary power', see further, under 'Statutory Duties', *post*].

(ii) The duty that may be enjoined by *mandamus* may be one imposed by the Constitution,[46] a statute,[47] common law,[48] or rules or orders having the force of law.

Where the Government have framed certain Rules under a statutory power, laying down a procedure or conditions for doing a thing (e.g., for holding a public auction), Government is not free to adopt an *ad hoc* procedure in particular cases, departing from such rules.[44]

35. *R.* v. *Brecknock Canal Co.*, (1835) 3 A.&E. 217.
36. *R.* v. *Oxenden*, (1691) 1 Show. 217; Short & Mellor, 2nd Ed., p. 202.
37. *Stepney Borough Council* v *Walker*, (1934) A.C. 365.
38. *R.* v. *Garland*, (1870) 5 Q.B. 269.
39. *R.* v. *All Saints*, (1876) 1 App. Cas. 611 (622) H.L.
40. *R.* v. *Eastbourne Corpn.*, (1900) 83 L.T. 338 (C.A.).
41. *Umakant* v *State of Bihar*, A. 1973 S.C. 964.
42. *State of Mysore* v. *Syed*, A. 1968 S.C. 1113.
43. *State of M.P.* v. *Mandawar*, A. 1954 S.C. 493.
44. Cf. *Guruswami* v. *State of Mysore*, (1955) 1 S.C.R. 305.
45. *Chingleput Bottlers* v. *Majestic Co.*, A. 1984 S.C. 1030 (paras. 13, 17, 41).
46. *Wazir Chand* v. *State of H.P.*, (1955) 1 S.C.R. 408; *Rahsid Ahmed* v *Municipal Board*, (1950) S.C.R. 566.
47. *State of Bombay* v. *Hospital Mazdoor Sabha*, A. 1960 S.C. 610.
48. *Commr. of Police* v. *Gordhandas*, A. 1952 S.C. 16 (21).

But *mandamus* does not lie to endorse departmental manuals or instructions not having any statutory force.[49]

(iii) The writ of *mandamus* is only granted to compel performance of duties of a public nature[50-51] or to enforce private rights when duties of a public nature specially affect private rights[39] or when the private rights are withheld by public officers,[51] in collusion with a private party.[51]

(iv) *Mandamus* does not issue against a private individual, unless he was acting in collusion with a public authority.[51]

In order to be a *public* body, it is not necessary that the body must be constituted by a statute.[51] The condition is satisfied whenever a statute appoints a person or body of persons to carry out measures of public benefit,[52] the receipt of emoluments by such persons is not essential;[53] nor is it necessary that the body should be incorporated,[54] or be a permanent body.

(v) The legal right to compel performance of the public duty must *reside in the applicant* himself, either solely, or in common with others. It will not do to show merely that the applicant has an *interest* in the performance of the duty. The petitioner must show that he himself has a legal right to insist on such performance.[55]

On the other hand—

(a) Anybody who is likely to be affected by the order of a public officer is entitled to bring an application for *mandamus* if the officer acts in contravention of his statutory duty.[42] Thus,

An intending bidder at a public auction is entitled to apply if the authority holding the auction acts contrary to the statute under which the auction is held,[44] or fails to perform his statutory duties in connection with the auction,[55] even though the auction relates to a licence for business in liquor to which no person has an absolute right.[56]

(b) Even though the order of the Government or its officer is likely to be eventually held *ultra vires,* the person against whom it is issued can refuse to comply with it only at his peril. He is, accordingly, entitled to challenge its validity in Court by applying for *mandamus,*[57] though he has not yet been actually injured by the enforcement of the order.

(vi) The application must be made by the aggrieved party. The writ will never be granted to remove an erroneous order at the instance of the party in whose *favour* the order was made.

(vii) The application must be made in *good faith* and not for an *indirect* purpose or on behalf of a third party.

(viii) The application must be preceded by a distinct *demand* for performance of the duty, in order to give the party an opportunity to consider

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49. *State of Assam* v. *Ajit Kumar,* A. 1965 S.C. 1196 (1200); *Fernandes* v *State of Mysore,* A 1967 S.C. 1753 (1757).

50. See, further, under 'Against whom *Mandamus* does not lie,' p. 511 *post.*

51. *Sohan Lal* v. *Union of India,* A. 1957 S.C. 529; *Syndicate* v *Union of India,* A. 1975 S.C. 460.

52. *Bijoy Ranjan* v. *Das Gupta,* A. 1953 Cal. 289.

53. *Samarendra* v. *University of Calcutta,* (1951) 55 C.W.N. 443; *Dipa Pal* v *University of Calcutta,* (1952) 56 C.W.N. 278.

54. *Chettiar Farm* v. *Kaleeswarar,* A. 1967 Mad. 309 (312); *Satyanarayan* v *State of A.P.,* A. 1959 A.P. 429.

55. *Rambharosa* v. *Govt. of Bihar,* A. 1953 Pat. 370.

56. *Cooveriee* v. *Excise Commr.,* (1954) S.C.R. 873.

57. *Bengal Immunity Co.* v. *State of Bihar,* (1955) 3 S.C.R. 303.

whether he should comply or not, and such demand must be shown to have been met by a refusal either by words or conduct, so that the Court may be satisfied that the party complained of is determined not to do what is demanded.[58] The demand must be made *prior* to the application.[58]

But a demand is not required 'where it is manifest that it would be an idle ceremony',[59] i.e., where it is obvious that the respondent would not comply with the demand of the petitioner.[59] Thus, where the Government refers to an Industrial Tribunal a dispute which is not an 'industrial dispute,' or where the authority making impugned order referred the petitioner to the Government under whose orders he said he was acting,[59] the petition for *mandamus* cannot be defeated by raising the objection that no demand for justice had been made.

Further, what the rule requires is that there must be a demand and a denial in *substance,* not in any particular form or words.[60] Thus, refusal may be inferred from conduct.[61] All that is necessary in order that *mandamus* may issue is to satisfy the Court that the party complained of has distinctly determined not to do what was demanded.[62] Thus, where the petitioner had previously brought a suit (asking for injunction) for the same relief which was contested by the respondents, a formality of demand and refusal before the petition for *mandamus* is not necessary.[61]

In a case which went up to the Supreme Court on appeal, the condition of demand and refusal was not insisted upon on the ground that fundamental right had been infringed.[63]

(ix) As a general rule, *mandamus* is not issued in *anticipation* of injury.

But there are important exceptions to the above rule :

(a) Anybody who is likely to be affected by the order of a public officer is entitled to bring an application for *mandamus* if the officer acts in contravention of his *statutory* duty.[62] Thus,

An intending bidder at a public auction is entitled to apply if the authority holding the auction acts contrary to the statute under which the auction is held, or fails to perform his statutory duties in connection with the auction.[64]

(b) A person against whom an illegal[59] or unconstitutional[65] order is made is entitled to apply to the Court for redress even before it is actually *enforced against* him or he does something to his detriment in pursuance of the order.[65] For, the issue of such order constitutes an immediate encroachment on his rights and he can refuse to comply with it only at his peril.[65]

Grounds on which Mandamus may be refused.

Even though the foregoing conditions are satisfied, relief by way of *mandamus,* which is discretionary and not 'of right',[66] may be refused on any of the following grounds :

58. *S.I. Syndicate* v. *Union of India,* A. 1975 S.C. 460 (para 24); *Amrita* v *Collector,* A. 1975 SC (para 25).
59. *Commr. of Police* v. *Gordhandas,* (1952) S.C.R. 135 (152).
60. *Bengal Club* v. *Shantiranjan,* A. 1956 Cal. 545.
61. *Venugopalan* v. *Vijayawada Municipality,* A. 1956 Andhra 832 (837).
62. *Raman & Raman* v. *State of Madras,* A. 1957 Mad. 536 (541).
63. *Fram Nusserwanji* v. *State of Bombay,* A. 1951 Bom. 210 (225); on appeal *State of Bombay* v. *Balsara,* (1951) S.C.R. 682.
64. *Guruswami* v. *State of Mysore,* A. 1954 S.C. 592.
65. *Bengal Immunity Co.* v. *State of Bihar,* (1955) 2 S.C.R. 603.
66. *Durga Prasad* v. *Chief Controller,* A. 1970 S.C. 769 (770).

(i) Where the act against which *mandamus* is sought has been completed and the writ, if issued, will be *infructuous*.[67] On the same principle, the Court would refuse a writ of *mandamus* where it would be *meaningless*, owing to lapse of time or otherwise,[64] Thus,—

Mandamus will not issue against an order refusing to grant a licence[68] or lease[69] or an order cancelling a licence, after the period for which the licence was granted or applied for (as the case may be) has expired, or where there is no application pending before the licensing officer in respect of which the order of *mandamus* may possibly operate.[70]

(ii) Where the application is *premature*, as, for instance, where no action contrary to law has yet been done or proposed.[71]

(iii) A *mandamus* will not go when it appears that it would be futile in its results. Accordingly, the Court will not, by *mandamus*, order something which is impossible of performance because the party against whom the order prayed for does not, for some reason, *possess the power to obey*,[72] or where the office in respect of which the petitioner seeks relief is held at will and can be terminated immediately on reinstatement;[73] or where the thing ordered cannot be legally given effect to by the party,[74] or will be redered nugatory by another authority having jurisdiction in the matter who is not a party to the *mandamus* proceeding.[74]

(iv) The writ being discretionary, it may be refused on equitable grounds, such as *suppression* or *misstatement* of material facts in the application.[75]

(v) It may be refused on the ground of laches, or unexplained *delay*.[76] Carrying of departmental correspondence is not a sufficient explanation.[77]

(vi) *Mandamus* is not an appropriate proceeding to decide questions of *title* to property[78] or complicated questions of fact.[78-79]

But the High Court has the jurisdiction to make an inquiry into facts, in appropriate cases.[79]

(vii) A *mandamus* cannot issue against a public servant to enforce a contract, independently of any statutory duty or obligation to the applicant.[80]

(viii) *Mandamus* will not issue to compel a person to institute legal proceedings, even in cases of contravention of a statute.[81]

(ix) The object of *mandamus* being simply to compel performance of a legal duty on the part of some person or body who is entrusted by law with that duty, the Court, in a proceeding for *mandamus*, will never sit as a

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67. *Daya* v. *Joint Chief Controller*, A. 1962 S.C. 1796.
68. *A.N. Sinha* v. *Mukherjee*, A. 1956 Cal. 146.
69. Cf. *State of Assam* v. *Tulsi*, (1962) Supp. 3 S.C.R. 508.
70. *Amar Jyoti Stone Crushing Co.* v. *Union of India*, (1962) 3 S.C.R. 62.
71. *F.I. Commercial Co.* v. *Collector*, A, 1957 Cal. 606 (613); *Nanda* v. *Board of Trustees*, A. 1957 Cal. 578 (582)
72. *Amar* v. *Govt. of Pepsu*, A. 1953 Pepsu 58 (62).
73. *Balkrishan* v. *State of Punjab*, A. 1956 Punj. 201.
74. *Lekhraj* v. *Mathur*, A. 1962 Ker. 152.
75. *Ibrahim* v. *High Commr.*, A. 1951 Nag. 38 (43).
76. *State of Rajasthan* v. *Karamchand*, A. 1965 S.C. 913 (916); *Union of India* v. *Karanpura Colliery*, A. 1969 S.C. 125 (127); *State of M.P.* v *Nandlal*, A. 1987 S.C. 251 (paras. 23-24).
77. *Rajalakshmiah* v. *State of Mysore*, A. 1967 S.C. 993 (997).
78. *Sohan Lal* v. *Union of India*, A. 1958 S.C. 529.
79. *State of Orissa* v. *Binapani*, A. 1967 S.C. 1269 (1270).
80. *Dhanyalakshmi Mills* v. *Commr.*, A. 1976 S.C. 2243 (para. 29).
81. *Nagpur Glass Works* v. *State of M.P.*, A. 1955 Nag. 32 (35).

Court of Appeal so as to examine facts or to substitute its own wisdom for the discretion vested by law in the person or body against whom the writ is sought.[82]

Though *mandamus* is a discretionary remedy, *our* Supreme Court held that in some cases it should issue *ex debito justitiae,* namely, where an inferior tribunal has refused to carry out the *intra vires* order of its superior tribunal.[83]

(x) A Directive Principle in Part IV of the Constitution not being legally unenforceable until it is implemented by suitable legislation, no *mandamus* is available to compel the State to carry out any of the directives, e.g., Art. 39A, to offer free legal aid to any citizen.[84]

How far alternative remedy bars mandamus.

(A) *England.*—In England, non-availability of an adequate and equally convenient and effective[85] remedy is a *condition precedent* to the issue of *mandamus,* so that where there is any such[86] alternative remedy at law[87] *mandamus* will be refused.[88]

England.

Thus, mandamus will be refused where there is a right of action under the general law[89] or an execution proceeding,[90] which will give complete satisfaction,[91] e.g., to enforce the terms of a contract[92] or the duty of common carriers;[93] or where the statute which imposes the duty prescribes a specific remedy for the enforcement of that duty;[94] or where there is a right of appeal to a Court or to an administrative authority.[95]

The rule is so strictly adhered to that applications for *mandamus* have been refused on the ground that another prerogative writ is available on the facts of the case, e.g., *certiorari*[96] or *quo warranto.*[97]

But *mandamus* will issue—

(a) Where the alternative remedy is not adequate or complete.[89]

Thus, though *mandamus* will not ordinarily lie where criminal prosecution is the usual procedure,[98] it will issue where the right to which the petitioner is entitled cannot be had in a criminal prosecution which is meant

82. *Vice-Chancellor* v. *S.K. Ghose,* A. 1954 S.C. 217 (220); *State of U.P.* v. *Jaiswal,* A. 1985 S.C. 1108 (para. 16).
83. *Himmatlal* v. *State of M.P.,* (1954) S.C.R. 1122.
84. *Ranjan* v. *Union of India* A. 1983 S.C. 624 (para 7).
85. *R.* v. *Registrar of Joint Stock Companies,* (1888) 21 Q.B. 131 (135).
86. *Stepney (Borough of)* v. *John Walker,* (1934) A.C. 364 (399) H.L.
87. *R.* v. *Southampton Port Commrs.,* (1870) 4 H.L. 449 (471).
88. *R.* v. *Inland Rev. Commrs.,* (1884) 12 Q.B.D. 461 (478-79); *Stepney B.C.* v. *Walker,* (1934) A.C. 365.
89. *Dunn,* ex parte, (1917) 1 K.B. 19; *R.* v *Dymock,* (1914) 1 K.B. 147 (153).
90. *R.* v. *Victoria Park Co.,* (1841) 1 A.&E. (Q.B.) 288 (291).
91. *Nathan, in re,* (1884) 12 Q.B.D. 461 (471).
92. *Pering, ex parte,* (1836) 111 E.R. 1040.
93. *Robins, ex parte* (1839) 7 Dowl. 566 (P.C.).
94. *Pasmore* v. *Oswaldtwistle Urban Council,* (1898) A.C. 387 (H.L.).
95. *R.* v. *Port of London Authority,* (1919) 1 K.B. 176 (186).
96. Scovell, *ex parte,* (1907) 72 J.P. 60.
97. *R.* v. *Colchester Corpn.,* (1788) 2 T.R. 259.
98. *R.* v. *Crown Office Master,* (1913) 29 T.L.R. 427.

only for punishment of the offender, e.g., where a railway company was compelled by *mandamus* to replace the railway though an indictment lay for non- repair.[99]

Similarly, *mandamus* would issue to compel a local authority to perform its duty in the matter of carrying on the public services, where the statutory penalty, such as distress, for non-performance of such duty is inadequate or useless to the ratepayers.[100]

(b) Where the alternative remedy is at the *discretion* of an authority and the petitioner has no legal right to pursue it.[1]

(c) Where it is not possible for the applicant to file an appeal, e.g., where the authority simply refuses his application, *without* stating the reasons for such refusal.[2] For, in such a case, it cannot be said that the remedy by way of appeal is adequate :

"Where the applicant would have to appeal without knowing what were the grounds of the decision against her, and would not, therefore, be in the same position upon an appeal as she would have been if the grounds had been stated.[2]

(B) *India.—Our* Supreme Court[3] has acknowledged the distinction between the writ of *mandamus* and the writs of *prohibition* and *certiorari* in this behalf, namely, that while in the case of the latter two, the existence of an alternative remedy is only a factor to be taken into consideration in exercising the discretion, it is a plea in bar in the case of *mandamus*.

India.

But, nevertheless, a distinction has been made between the case where the writ or order in the nature of *mandamus* is sought for the enforcement of fundamental rights and where it is sought for 'other purposes':

(A) As regrads *fundamental rights,*—it has been held that the enforcement of the fundamental rights being the *duty* of the Courts (under Art. 32[4] or 226[5]) and the powers of the Supreme Court or High Court under Art. 32 or 226 not being confined to issuing 'prerogative writs' only—

"the principle that a Court will not issue a prerogative writ when an adequate alternative remedy was available could not apply where a party came to the Court with an allegation that his fundamental right had been infringed".

Thus—

Though ordinarily an application for writ is not an appropriate proceeding where a question of title is involved—where goods are seized by the police from the possession of a person *without any authority of law* in contravention of Art. 31(1) [now Art. 300(1)], *mandamus* should be issued to direct restoration of the goods to the possession of that person without entering into the question of title to the goods seized.[5]

(B) As regards *'other purposes',*—the English rule has been applied.

I. *Thus, mandamus* will not issue—

(a) To correct an error or irregularity in the judgment of a Court which could be corrected by appeal or revision.[6]

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99. *R.* v. *Severn R. Co.,* (1819) 2 B. & Ald. 646.
100. *R.* v. *Popular Borough Council (No. 1),* (1922) 1 K.B. 72 (78-79; 85; 90) E.A.
1. *R.* v. *Leicester Guardians,* (1899) 2 Q.B. 632 (638).
2. *Queen* v. *Thomas,* (1892) 1 Q.B. 426.
3. *State of U.P.* v. *Nooh,* A. 1958 S.C. 86.
4. *Himmatlal* v. *State of M.P,* (1954) S.C.R. 1122.
5. *Wazir Chand* v. *State of H.P.,* (1955) 1 S.C.R. 408.
6. Cf. *Naresh* v. *State of Maharashtra,* A. 1967 S.C. 1.

(b) Where effective and convenient remedy is provided by the statute which created the right which has been infringed.[7-8]

The petitioner, who complained of the jurisdiction of the Income-tax Investigation Commission and applied for writs of *prohibition* and *certiorari*, had already availed himself of the remedy provided by s. 8(5) of the Taxation of Income (Investigation Commission) Act, 1947, and a reference under that section was already pending before the High Court when the petition under Art. 226 was made. *Held*, in the circumstances, it was proper for the High Court to refuse the writs.[7]

(c) Where the aggrieved party would get adequate remedy by an ordinary action in the Civil Court, e.g., under which he had entered into to restrain the performance of a contractual obligation or to remedy a breach of contract.[9-10]

II. But the existence of an alternative remedy is no bar in the following cases :

(a) Where the applicant has no *right* to pursue the alternative remedy i.e., where the statute simply gives power to the Government or any other authority to revise the order complained of, *suo motu* and the applicant has no right to apply for such revision.[11]

(b) Where, owing to the delay involved in a suit, the remedy would be ineffective or inadequate.[12]

The cinema licence of the petitioner was illegally cancelled. A *mandamus* was issued directing the Commissioner to make a proper order under the law, holding that a right of suit or the remedy of injunction was inadequate to meet the exigencies of the case, because—(a) A notice under s. 80, C.P. Code would be required to institute the suit, which would at once import delay. (b) The delay of a prolonged civil litigation including appeal would ruin the big commercial undertaking involved in the case.[12]

(c) Where the alternative remedy is of an *onerous* character, so that it can hardly be described as an adequate alternative remedy, e.g., where the petitioner is required to deposit the amount of the assessed tax before he can exercise his right of appeal against the order of assessment.[13]

(d) An appeal or revision[14] would be similarly useless where the appellate authority or tribunal was not competent to decide the question agitated in the petition under Art. 226, e.g., the question of jurisdiction or that the assessment was *ultra vires*.[15]

III. The existence of an alternative remedy, above all, does *not* bar the jurisdiction of the Court under Art. 226, but only raises a point for its consideration in the exercise of its discretion.[16]

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7. *Rashid* v. *I.T. Investigation Commn.*, (1954) S.C.R. 738; *Veerappa* v. *Raman*, (1952) S.C.R. 583.
8. *S.T.O.* v. *Shivratan*, (1965) 16 S.T.C. 599.
9. *Ananda* v. *State of Orissa*, (1955) 2 S.C.R. 919; *Shantabai* v. *State of Bombay*, A. 1958 S.C. 532; *Sham Lal* v. *State of Punjab*, A. 1976 S.C. 2045 (paras. 19-20).
10. *Satramdas* v. *Dy. Custodian*, (1966) 1 S.C.R. 120 (126).
11. *Shanker* v. *Municipal* Bd., A. 1956 All. 70.
12. *Commr. of Police* v. *Gordhandas*, (1952) S.C.R. 135 (150).
13. *Himmatlal* v. *State of M.P.*, (1954) S.C.R. 1122.
14. *Collector of Customs* v *Bava*, A. 1968 S.C. 13 (15).
15. *Venkataraman* v. *State of Madras*, A. 1966 S.C. 1089; *Beharilal* v. *S.T.O.*, (1966) 17 S.T.C. 508 (S.C.).
16. *Zilla Parishad* v. *Kundan Sugar Mills*, A. 1969 S.C. 98 (100); *Venkateswaran* v. *Ramchand*, A. 1961 S.C. 1506.

Against whom Mandamus does not lie.

(i) (A) *In England.*—As no Court can compel the Sovereign to perform any duty, no writ of *mandamus* will lie to the *Crown*[17] or to any officer acting simply in the capacity of a servant of the Crown.[18] Where it is sought to establish a right against the Crown, the appropriate remedy is a petition of right,[19] in respect of duties owed wholly to the Crown.[20]

England.

Where, however, Government officials have been constituted *agents* for carrying out particular duties in relation to subjects, by royal charter, statute, or common law, so that they are under a *legal obligation* towards such subjects, a writ of *mandamus* will lie for the enforcement of such duties,[21] e.g., against the Board of Education.[22]

Before *mandamus* can issue to a public servant it must, therefore, be shown that a duty towards the applicant has been imposed upon the public servant by *statute*[23] so that he can be charged thereon, and independently of any duty of which as servant he may owe to the Crown, his principal. The distinction is made between accountability to the Crown and to Parliament.[24] In the former case, *mandamus* does not lie, but in the latter it would. Thus, it has been issued even against a Minister, in respect of statutory duties.[25]

2. *Mandamus* will not issue against an inferior or ministerial officer who is *bound* to obey the orders, of a competent authority, to compel him to do any act which he is so bound to do according to the orders of such authority.[26]

This rule will not, however, apply where the act to be enforced by *mandamus* is outside the sphere within which he is bound to act according to the orders of his superior,[27] or where he has received no orders from the superior authority,[27] so that no question of compelling the inferior or ministerial officer by *mandamus* to disobey the orders of his superior can possibly arise.

3. *Mandamus* will not issue unless the duty to be enforced is of a *public* nature.[28] Hence, *mandamus* will not issue against a private person who holds no public office, or has no statutory duty to perform.[29]

4. It will not issue against a public body if it has no *legal* duty to perform, e.g., a *non-statutory* administrative body whose function is purely *advisory*.[30]

17. *R.* v. *Powell,* (1841) 1 Q.B. 352 (361).
18. *R.* v. *Secy. of State,* (1891) 2 Q.B. 326 (334) (C.A.).
19. This position has not been changed by the Crown Proceedings Act, 1947 [ss. 21(2); 38(2)]. But jurists are of late urging for the removal of this deficiency, at least in the social and economic sphere [Cf. Macdermott, *Protection from Power,* 1957 p. 86; Wade, *Administrative Law,* 1961, p. 126; Allen, *Law & Orders,* 1956, pp. 252-53].
20. *R.* v. *Commrs. of Inland Revenue,* (1884) 12 Q.B.D. 461.
21. *R.* v. *I.T. Commrs.* (1888) 21 Q.B.D. 313 (317) (C.A).
22. *Board of Education* v. *Rice,* (1911) A.C. 179.
23. *R.* v *Speyer,* (1916) 1 K.B. 595 (620).
24. *Queen* v. *Lords Commissioners,* (1872) 7 Q.B. 387; *Commissioner of I.T.* v. *Bombay Trust Corporation,* (1936) 63 I.A. 408 (427).
25. *R.* v. *Minister of Health,* (1925) 2 K.B. 363.
26. *R.* v. *Bristow,* (1795) 6 T.R. 168.
27. *R.* v. *Payn,* (1837) 6 A.&E. 392.
28. *R.* v. *Bank of England,* (1819) 106 E.R. 492.
29. *Praga Tools Corpn.* v. *Immanual,* A. 1969 S.C. 1306; *Commr.* v *Premlata,* A. 1971 S.C. 334 (para. 3).
30. *Mann,* ex parte, (1916) 32 T.L.R. 479.

(B) *In India.*— In *India,* there is no doctrine of immunity of the Sovereign or of its officers, under the Constitution. Only the Executive heads of the Union and the States have *personal* immunity for their official acts under Art. 361, but that Article expressly provides that appropriate proceedings may be brought against the Government concerned. Art. 226 itself includes 'Government', specifically. There is nothing to bar issue of *mandamus* also against the officers concerned, in appropriate cases.

India.

It is obvious that *mandamus* will issue against the Government where fundamental rights[31] of the petitioner have been infringed by State action.

But there are certain specific provisions of the Constitution which bar any judicial proceedings against certain specified officers. Thus, Arts. 122(2) and 212(2) of the Constitution bar judicial proceedings, including *mandamus,* against any person presiding over a House of the Legislature and exercising powers under the Constitution for regulating procedure or the conduct of business or for maintaining order in such Legislature.

Mandamus will *not* be granted against the following persons :

(i) The President, or the Governor of a State, for the exercise and performance of the powers and duties his office or for any act done or purported to be done by him in the exercise and performance of those powers and duties (Art. 361).

(ii) An inferior or ministerial officer who is *bound* to obey the orders of his higher authority, to compel him to do something which is part of his duties in that capacity.[32] On this principle, *mandamus* has been refused against the Registrar of the High Court itself.[33]

(iii) In general, *mandamus* does not lie against a private individual or non-statutory body, whether incorporated or not.[29]

This rule is, however, subject to some exceptions :

(a) *Mandamus* will lie against a private person or body, when it is entrusted with a public duty, by common law or statute, and it has failed in the performance of that duty,[29] even though it does not hold any 'public *office*'.

(b) *Mandamus* will also issue where the State is in collusion with such private party or organisation,[34] or the right of the private party is founded on the illegal act of a public authority which is liable to be cancelled by *mandamus*.[35]

A writ of *mandamus* may issue against the Union of India if a displaced person has been evicted from his property in contravention of the Public Premises (Eviction) Act by the Union of India and the property is in the possession of the latter. But no remedy by way of a writ under Art. 226 is available against the Government, if the property is in the possession of another displaced person who entered into possession without its knowledge that the eviction was illegal and without any collusion with the Union of India.[32]

(iv) *Mandamus* will not issue against a company registered under Companies Act, even though it be a 'Government company'.[36]

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31. Cf. *Ramprasad* v. *State of Bihar,* A. 1953 S.C. 215; *Jagannath* v. *State of Orissa,* (1954) S.C.R. 1046; *State of Rajasthan* v *Nathmal,* (1954) S.C.R. 982.
32. *Babul Chandra, re,* A. 1952 Pat. 309 (F.B.).
33. *Arati* v. *Calcutta High Court,* A. 1969 S.C. 1133.
34. *Sohan Lal* v. *Union of India,* A 1957 S.C. 532.
35. *Behari Lal* v. *Commr.* A. 1966 All. 176 (181).
36. *Heavy Engineering Union* v. *State of Bihar,* A. 1970 S.C. 82.

(v) While *mandamus* would not lie against the Supreme Court or the High Court itself or any Judge thereof, acting in a *judicial* capacity, it may be against the Chief Justice of India or of a High Court—

(a) In the matter of determination of the age of a High Court Judge, on the ground of contravention of the provisions of the Constitution, e.g., Art. 217(3).[37]

(b) In the matter of transfer of a Judge or the termination of the services of an Additional Judge on the ground of violation of the relevant provisions of the Constitution or *mala fides*.[38]

(vi) *Mandamus* will not issue against the Legislature[39] or any authority exercising delegated[40] legislative power.

But *certiorari* might issue against the administrative action when it inflicts *civil consequences* and the persons affected are not given any opportunity to be heard.[41]

Uses of mandamus.

There being no Fundamental Rights in *England*, there cannot be any question of the writ of *mandamus* being used for the enforcement of Fundamental Rights. It is used for the enforcement of the ordinary legal rights relating to public matters.

In *India*, the writ is available under Art. 226 not only for the purposes for which it is available in England, but also for the enforcement of Fundamental Rights. It is obvious, therefore, that in the matter of enforcement of Fundamental Rights, Indian Courts may have to evolve principles which are different from those which govern the issue of the writ in *England*. For instance, the remedy by means of the writ being guaranteed by the Constitution for the enforcement of the Fundamental Rights, it becomes the duty of the Court to issue the writ of *mandamus* where a Fundamental Right has been infringed,—in a case where the writ might not be available in England.

The uses of the writ in India should, therefore, be discussed under two heads: (a) For the enforcement of Fundamental Rights, and (b) for other purposes. For the convenience of reference, however, we shall deal with the different heads arranged *alphabetically*.

I. Administrative authorities in general.

[See 'Government and its officers'; 'Public duties, enforcement of'; 'Statutory duty', *post*].

Subject to the general principles to be discussed under 'public duties', *post*, *mandamus* lies against administrative authorities in a variety of cases, e.g.—

(a) To compel public officials or bodies to perform their public duties[42] whether imposed by statute or common law.

37. Cf. *Jyoti Prakash* v. *Chief Justice*, A. 1965 S.C. 961.

38. *Union of India* v. *Seth*, A. 1977 S.C. 2328; *Gupta* v *Union of India*, A. 1982 S.C. 149.

39. *Narinder* v. *State of H.P.*, A. 1971 S.C. 2399.

40. *Union of India* v. *Cyanamide*, (1987) 2 S.C.C. 720 (paras. 5, 7); *Sundarjas* v. *Collector*, A. 1991 S.C. 1893 (paras. 14, 25).

41. *Baldev* v. *State of H.P.*, A. 1987 S.C. 1129 (para. 5); *Govt. of Mysore* v. *Bhat*, A. 1975 S.C. 696.

42. *Commr. of Police* v. *Gordhandas*, (1952) S.C.R. 135 (148).

(b) To direct a public authority to hold a fresh election where there has been an election which is void or colourable.[29]

(c) More numerous are the cases where *mandamus* is issued against an administrative authority to restrain it from committing an *ultra vires*[43] act or an act done without jurisdiction[44] or to restore what has been interfered with by an *ultra vires action*,[45] e.g.—

(i) to direct it not to enforce an *ultra vires*[46] (or unconstitutional) order[47] or notification[43] or to hold an election on the basis of an *ultra vires* electoral roll;[48]

(ii) not to give effect to an executive order which seeks to effect what could be done only by legislation;[49]

(iii) not to enforce a subordinate legislation which is *ultra vires*[49] (see *post*);

(iv) to comply with the requirements of the law, exercising statutory powers.[50] Thus,

> Where, while granting the renewal of a permit, the Authority imposed *ultra vires* conditions, the Court directed the Authority "to comply with the requirements of the law ..... in the order of renewal made by them .....".[50]

(v) To forbear from imposing[51] or collecting[52] *ultra vires* or unconstitutional tax [see under 'Taxation', *post*].

2. But no *mandamus* will issue—

(a) To interfere with an administrative decision on its *merits*,[53] that is, in the absence of unconstitutionality, want of jurisdiction or *mala fides*.[54]

(b) Against an administrative authority in a matter which lies solely within his discretion, uncontrolled by any statutory obligation or limitation,[55] or to enforce mere administrative instructions which have no statutory force;[56] or on the ground that it has reviewed its previous order,[57] not being fettered by any statutory bar in that behalf. But a memorandum issued under statutory authority may be enforced.[58]

(c) To interfere with an administrative policy merely because there is a variation or contradiction or to substitute the wisdom of the Court for that of

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43. *State of Bihar* v. *Ganguly*, A. 1958 S.C. 1018 (1026).
44. *Calcutta Discount Co.* v. *I.T.O.*, A. 1961 S.C. 372.
45. *State of Bombay* v. *Hospital Mazdoor Sabha*, A. 1960 S.C. 610.
46. *Sheriff* v. *T.A.*, A. 1960 S.C. 321.
47. *Rashid Ahmad* v. *Municipal Board*, (1950) S.C.R. 566; *State of Bombay* v. *Bombay Education Society*, (1955) 1 S.C.R. 658.
48. *Chief Commr.* v. *Radhey Shyam*, (1957) S.C.R. 67 (77).
49. *Promod* v. *State of Orissa*, A. 1962 S.C. 1288 (1304); *Wazir Chand* v. *State of H.P.*, (1955) 1 S.C.R. 408.
50. *Sheriff* v. *Mysore S.T.A.*, A. 1960 S.C. 321 (327); *State of Assam* v. *Tulsi*, (1962) Supp. 3 S.C.R. 508.
51. *Diamond Sugar* v. *State of U.P.*, (1961) 3 S.C.R. 242 (257).
52. *Bengal Immunity Co.* v. *State of Bihar*, (1955) 2 S.C.R. 603.
53. *Vice-Chancellor* v. *Ghosh*, A. 1954 S.C. 217 (219).
54. *P.C. H.S.* v. *State of Maharashtra*, A. 1991 S.C. 1453 (para. 5).
55. Cf. *Guruswami* v. *State of Mysore*, (1955) 1 S.C.R. 305; *Om Prakash* v. *Commr. of Police*, (1960) 1 M.L.J. 22n.; *Mallihal* v. *State of Mysore*, A. 1969 Mys. 345.
56. *Fernandez* v. *State of Mysore*, A. 1967 S.C. 1753 (1757).
57. *Rewa Coalfields* v. *Central Govt. I.T.*, A. 1969 M.P. 174 (176).
58. *Saksena* v. *State of M.P.*, A. 1967 S.C. 1264.

the administrative authority to whom the matter is entrusted by the Constitution or the law;[59] or because it causes hardship.[59] But the Court may interfere if it is vitiated by *mala fide* or irrational or extraneous considerations.[59]

II. Administrative (non-statutory) Rules, Instructions.

The law on this point has been complicated owing to its development under various situations.

I. Where Rules are made by an administrative authority under powers conferred by statute or the Constitution, e.g., under Art. 309 or Art. 15(4), such Rules are enforceable in the courts like any other statutory provisions.[60]

II. Where an administrative Rule or Instruction has been issued without any statutory power, the general rule is that it is not enforceable by any member of the public against the State.[60]

But even when there is *no* statutory power empowering the Executive to make Rules, and such Rules are made under the general executive power conferred by Art. 154(1) or 162, then, too, it has been held that such Rules may be enforceable, in certain circumstances, provided they do not conflict with any existing *law* or any provision of the Constitution.[61] These circumstances include—

(a) Provided the language is *mandatory*,[62] and the Rule is made for the benefit of individuals, it may create rights in favour of such individuals which are capable of being enforced against the State.[63]

(b) Where the non-statutory rule, order or the other instrument operates as a *promissory estoppel* against the Government[64] provided such instrument contains a representation, and has been made by an official of the Government within the scope of his authority,[64] or by a Minister authorised by the Rules of Business under Art. 166,[66] and such representation does not prevent the Government from discharging its functions under the law.[65]

(c) If, in applying such non-statutory Rules or Instructions, the State acts arbitrarily or discriminates between individuals.[66]

Where, however, the Rule is *recommendatory*, the aggrieved individual cannot enforce it in his favour. Thus, where an administrative instruction empowered an officer to suspend an employee, pending investigation into an allegation against him, and then to report to the Government if the investigation is not completed within 6 months, the order of suspension does not cease to exist on the expiry of 6 months, but continues *until* the Government reviews it and revokes it in accordance with the law.[67]

III. In the case of employees under the Government and its instrumen-

59. *T.N.E.D. Services Assocn.*, (1980) U.J.S.C. 282 (paras. 8-10, 17-18).
60. *Fernandez* v. *State of Mysore*, A. 1967 S.C. 1753 (para. 12)—3 Judges.
61. *Balaji* v. *State of Mysore*, A. 1963 S.C. 649 (paras. 19, 35).
62. *State of M.P.* v. *Nivedita*, A. 1981 S.C. 2045 (paras. 20, 23).
63. *Motilal* v. *State of U.P.*, A. 1979 S.C. 621 (pras. 24).
64. *Jit Ram* v. *State of Haryana*, A. 1980 S.C. 1285 (1302).
65. *Eurasian Equipment* v. *State of W.B.*, A. 1975 S.C. 266; *Ramana* v. *I.A.A.I.*, A. 1979 S.C. 1628 (paras. 11, 21).
66. *Govt. of A.P.* v. *Sivaraman*, (1990) 3 S.C.C. 57 (para. 4); *D.G.* v. *Ratnagiri*, (1990) 3 S.C.C. 68 (para. 3).
67. *Sukhdev* v. *Bhagatram*, A. 1975 S.C. 1331 (1357).

talities (who come under Act. 12), a different principle has been applied in favour of the employees relying on non-statutory executive instructions :

(a) "Even if these regulations have *no force of law*, the employment ..... is *public* employment, and, therefore, an employee would get a status which would enable him to obtain a declaration for continuance in service, if he was dismissed or discharged *contrary* to the regulations.[67-68]

The principle is that an administrative authority who purports to act by *its* regulation (even though non-statutory) must be held bound by the regulation.[69] "Of course, any executive instructions could be substituted by issuing fresh executive instructions ..... but once issued these must be *uniformly* and invariably applied to all cases ..... so as to avoid the charge of discrimination under Art. 14."

Prisoner. Applying the above principle, the Supreme Court granted remission to a lifetime *convict*, on the basis of non-statutory executive instructions.

In another case,[70] the Court observed that in the matter of transferring Government lands, a public official must follow the procedure prescribed by a Government Manual, even though non-statutory, for a failure to do that might expose his action to the charge of being contrary to the public interest, which is hit by Art. 14.[70]

In this context, it is to be remembered that any deviation from such instruction, which is not substantial, will not be condemned as discriminatory on the theory that the machinery of Government would not work if it were not allowed a little play in its joints.[71]

On the other hand—

In the absence of any statutory provision to the contrary, mandatory non-statutory administrative Rules are enforceable *against* individuals,[72] in so far as such Rules are made in exercise of the executive power under Art. 162 of the Constitution, and the Constitution does not require legislation for dealing with the subject.

III. Commission of Inquiry.

Mandamus would lie to cancel an order to constitute a Commission under the Commissions of Inquiry Act, 1952, on the following grounds :

(a) That the conditions specified in s. 3(1) of the Act have not been fulfilled.[73]

(b) That the order is *mala fide*;[73-75] but mere existence of political rivalry is not enough.[75]

(c) That the order is unconstitutional, having violated Art. 14[74] of the Constitution.

(d) That the Act is itself unconstitutional.[74]

(e) That the order is *ultra vires*.[74-75]

68. *Kalra* v. *P.R.C.I.*, A. 1984 S.C. 1361 (para. 26)—3 Judges.
69. *Sadhu* v. *State of Punjab*, A. 1984 S.C. 739 (para. 6)—3 Judges.
70. *Sachidanand* v. *State of W.B.*, A. 1987 S.C. 1109 (para. 31).
71. *Bain* v. *Pinsons*, (1930) 282 U.S. 499; *State of J.&K.* v. *Triloki*, A. 1974 S.C. 1 (para. 42).
72. *State of A.P.* v. *Narendra*, A. 1971 S.C. 2560 (paras, 8, 15); *Rajendran* v. *State of Madras*, A. 1968 S.C. 1012.
73. Cf. *State of J.&K.* v. *Ghulam Mohammad*, A. 1967 S.C. 122 (130).
74. *Ram Krishna* v. *Tendolkar*, A. 1958 S.C. 538 (544, 553).
75. *Jagannath* v. *State of Orissa*, A. 1969 S.C. 215 (224).

(f) That the matter or allegation into which the inquiry is directed is *vague*.[73]

IV. Constitution, enforcement of mandatory provisions of.

In *India, mandamus* will issue not only where a fundamental right has been infringed[76] but also where the action of the public official or Government, or a law[77] violates a mandatory provision of the Constitution,[76] so as to make it *ultra vires*, e.g., Art. 286,[78] Art. 321,[79] or Art. 311.[80]

V. Educational authorities [see also under 'Certiorari', *post*].

I. (1) Where Universities and similar bodies are created by statute, their powers are limited by such statute and the rules and regulations validly made thereunder. Hence, the Court can issue *mandamus* against them in cases where it could be issued against other statutory bodies, e.g., where the order or resolution of the University is *ultra vires*.[81-82]

(2) But where the breach alleged is procedural, the Court should distinguish an irregularity from an illegality. Thus, though want of notice to each member to hold a meeting renders the decision taken at the meeting *ultra vires*, the defect would be cured if all the members appear at the meeting and unanimously come to a decision.[83]

II. *Mandamus* would also issue where though the decision is *intra vires*, the authority has exercised his discretionary power unreasonably or without due care.[83]

But in determining whether the action of the authority was unreasonable the Court should not sit as a Court of Appeal[83] or judge by the standard as to how the Court would have acted if it were vested with the discretion.[83] The reasonableness has to be determined with reference to the circumstances.[83] Thus,

> Where the situation was urgent, the Syndicate had to discuss the question of cancellation of an examination for unfair means or leakage of question papers, without issuing a notice of agenda that the matter would be discussed at that meeting but the Syndicate came to a unanimous decision, in the presence of all the members, after hearing experts and other persons, who could throw light on the incident, the Supreme Court refused to hold that the action of the Syndicate was unreasonable, having regard to the urgency of the situation.[83]

III. *Mandamus* will not issue against an educational authority which does not hold a 'public office' nor has any statutory duty to perform, e.g., the manager or head of a private or aided institution.[84]

IV. Nor will the Court interfere where the matter is left to the discretion of the authorities,[81] e.g., in the matter of selection for admission[85] or as to

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76. Cf. *Ram Prasad* v. *State of Bihar*, A. 1953 S.C. 215.
77. *Yasin* v. *Town Area Committee*, A. 1952 S.C. 115.
78. *Himmatlal* v. *State of M.P.*, A. 1954 S.C. 403.
79. *Mira Chatterjee* v. *Public Service Commission*, A. 1958 Cal. 345 (349).
80. *Sukhbans* v. *State of Punjab*, A. 1962 S.C. 1711 (1716).
81. Cf. *Kamala* v. *Calcutta University*, A. 1956 Cal. 563 (567).
82. *Kulshrestha* v. *Allahabad University*, A. 1980 S.C. 2141; *Uni. of Mysore* v. *Govinda*, A. 1965 S.C. 491 (para. 13).
83. *Vice-Chancellor* v. *Ghosh*, A. 1954 S.C. 217 (220).
84. *State of Assam* v. *Ajit*, A. 1965 S.C. 1196 (1220).
85. *Anand* v. *Govt. of M.P.*, A. 1959 M.P. 265.

the quantum of punishment,[86] or in the matter of appointment of a teacher,[87] there being no statutory rules governing the matter, unless some constitutional provision has been infringed[88] or where there has been a violation of the principles of natural justice,[89] or *mala fides.*[90]

In short, in the absence of any legal or constitutional infirmity, the Court will not substitute its judgment for that of academicians, as if sitting in appeal.[82]

Admission, 1. In matters relating to the internal working of an educational institution (say, the matter of admission) and academic matters,[91] the Court will not interfere unless the act complained of is clearly beyond jurisdiction; or contrary to the statute, rules or regulations governing the institution;[92] or the Constitution,[93] or the impugned act is *mala fide*,[83] or where the reservation in favour of a class or region, otherwise justifiable, is highly excessive.[94]

2. When a candidate has been wrongly admitted in contravention of the law or the Constitution, such admission has to be quashed.[92]

But in view of the fact that litigation to quash such admission comes to the Court long after the beginning of the academic session, the career of the wrongly admitted students would be ruined, unless the court makes some equitable directions to prevent such injustice,[95] e.g., to direct the University or the Government concerned to increase the number of seats[95] or to relax the rules for admission[95] or allowing the wrongly admitted students to complete their course[92] or to allow them to appear at a fresh test for admission.

Similar directions may be made also where a candidate has been denied admission because the seats had been filled up by the wrongly admitted candidates. They do not secure admission solely as a result of getting the wrong admissions quashed. The only result of their success in the litigation would be that a fresh test for admission shall be held according to law where the successful petitioners shall have to compete for admission on the strength of their own merit.[92]

3. A student's claim to be admitted rests on whether he fulfills the eligibility qualifications specified in the advertisement issued by the Government or other educational authority. If he is rejected on some other consideration, there would be a discrimination, hit by Art. 14,[96] except where there was any error in issuing the advertisement.[97]

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86. *Rana Pratap* v. *Vice-Chancellor*, A. 1960 All. 579.
87. *Shivendra* v. *Nalanda College*, (1962) Supp. (2) S.C.R. 147.
88. *Umesh* v. *Principal*, I.L.R. 46 Pat. 616.
89. *Deba Prasanna* v. *Principal*, (1971) Cut. 433; *Gajadhar* v. *Vice-Chancellor*, A. 1966 All. 477 (F.B.).
90. *Jawharlal Nehru University* v. *Narewal*, A. 1980 S.C. 1666.
91. *University of Mysore* v. *Govinda*, A. 1965 S.C. 491 (496-97); *Bihar School Bd.* v. *Subhas*, A. 1970 S.C. 1269 (1272-73).
92. *Punjab Engineering College* v. *Sanjay*, A. 1983 S.C. 580 (para. 5).
93. *Nishi* v. *State of J.&K.* (Art. 14). *Arti* v. *State of J.&K.*, A. 1981 S.C. 1009 (Art. 14); *State of U.P.* v. *Pradip*, A. 1975 S.C. 563 (Art. 14); *Ajay* v. *Khalid*, A. 1981 S.C. 487 (Art. 4); *Periakaruppan* v. *State of T.N.*, A. 1971 S.C. 2303 (Art. 14).
94. *Jagdish Saran* v. *Union of India*, A. 1980 S.C. 820 (para. 36).
95. *Arti* v. *State of J.&K.*, A. 1981 S.C. 1009 (1014); *State of Kerala* v. *Roshana*, A. 1979 S.C. 765 (paras. 41-45).
96. *Vinay* v. *State of J.&K.*, A. 1983 S.C. 1199 (paras. 4-5).
97. *State of Maharashtra* v. *Minoo* A. 1989 S.C. 1513.

4. As to admission to Post-Graduate courses in the Medical Wing, the Supreme Court has directed that, in view of the special risks resulting from medical practitioners who are not properly qualified, the admission should be on the basis of an all-India selection test and not merely on the basis of the M.B.B.S. results;[98-99] or on the basis of their residence within the State.[98]

Post-Graduate course.

As a rule, no admission should be made in a Post-Graduate course (a) in the mid-session; nor (b) a candidate who has failed to qualify himself at the Entrance Test be admitted merely because there is a vacant seat, after the course has commenced.[100]

The contrary view taken in the special circumstances of admission to an Undergraduate course[1] should not be applied to a Post-Graduate course where the need for excellence is higher.[100]

Subject to this, the Rules made by the State Government under Art. 162 of the Constitution (unless repugnant to the statutory Rules made under the Medical Council Act, 1956)[2] must be complied with and nobody can claim admission in violation of these Rules.[3]

5. Where the Rules of admission classify the candidates into several categories but do not offer any guidelines for determining the comparative eminence as between different candidates falling within the same class (e.g., amongst the reserved category for sportsmen), the selection amongst them should be made according to their academic merit on the basis of marks obtained at the qualifying examination.[4]

Pre-eminence among the same category.

6. Where there is a statutory provision as to how an admission card, once issued, can be withdrawn, the University cannot be allowed, subsequently, to withdraw the admission card on any ground of infirmity which the University could or should have discovered before giving the applicant permission to appear.[5]

Admission to sit for Examination.

But, in the absence of any such statutory provision, there is nothing to deny the University the power to revoke the permission to appear at the examination merely on the ground of waiver or estoppel, particularly where the applicant did not, at the time of his application for the permission, disclose all the facts or made a false statement, so that the University was induced to grant the admission[6] card.

Examination I. A. *Mandamus* may lie against Universities or other examining authorities where—

(a) There has been a contravention of the law or statutory rules and regulations governing the examination, e.g., as to the constitution of the examining body itself.[7]

98. *Pradip* v. *Union of India*, A. 1984 S.C. 1420 (1430).
99. *U.P.J.D.A.C.* v. *Sheetal*, A. 1992 S.C. 671 (paras. 1, 4)—3 Judges.
100. *State of U.P.* v. *Anupam*, A. 1992 S.C. 932 (paras. 12, 14).
1. *Jeevak* v. *Union of India*, A. 1988 S.C. 1812, *State of Orissa* v. *Asim*, A. 1989 S.C. 1801.
2. Cf. *Ambesh* v. *Principal*, A. 1987 S.C. 400 (paras. 17, 22).
3. *Ajay* v. *State of M.P.*, A. 1988 S.C. 1875 (paras. 9, 10, 19).
4. *Khalid* v. *Commr.*, A. 1987 S.C. 2074 (paras. 5-6).
5. *Krishan* v. *Kurukshetra University*, A. 1976 S.C. 376; *Premji* v. *Ravishanker University*, A. 1967 M.P. 194; *Jagannadham* v. *Dt. Collector*, A. 1966 A.P. 59.
6. *Atul* v. *State*, A. 1983 All. 281 (paras. 10-11) D.B.; *Unni* v. *Principal*, A. 1983 Ker. 200 (para. 44).
7. *Jitendra* v. *W.B. Board of Exams.*, A. 1983 Cal. 275 (paras. 27, 39, 40)

B. On the other hand, the Court cannot interfere—

(a) Where there is no statutory provision creating any legal right in favour of the petitioner,[8] e.g., in the manner of awarding grace marks;[8] or where the quantum of grace marks has been reduced by an amendment of the Regulations since his admission but before he sat for the examination.[9]

But even in such a case, the Court may interfere on the ground of discrimination in violation of Art. 14 of the Constitution, if, in the *same* examination, grace marks have been given to some of the examinees and denied to the petitioners, without any justification.[10] Of course, no such discrimination arises only because grace marks were allowed on some previous occasion and refused in the case of the disputed examination.[8]

(b) The Court cannot strike down a Regulation which, after taking all possible precaution for ensuring a fair evaluation of answer papers, prohibits their revaluation, because there is no such rule of fair play or natural justice or reasonableness that an examinee who is dissatisfied with his results shall have an inherent right to demand a disclosure and personal inspection of his scripts and, further, a right to ask for their revaluation.[11]

But where a University, while publishing the results, also publishes the key answers furnished by the paper-setter and it appears from the prescribed text-books that the answer given by the students is correct and the key-answers is incorrect, the Court may direct the University to revalue the scripts and, if it was an admission test, to admit the petitioners.[12]

Syllabus, Text-books. 1. The State Government, in exercise of its executive power under Art. 162 of the Constitution,[13-14] prescribe text-books, provided it does not violate the provisions of any law or the fundamental rights of an individual.[13]

2. But no publisher has any fundamental right to have his books prescribed as text-books.[13-14]

3. But a statutory authority, such as an Education Board, has no power to prescribe text-books unless empowered by the statute[13] in that behalf, and unless the power is exercised in conformity with the procedure prescribed thereby and the policy and standard laid down therein.[15]

4. *Mandamus* will issue if the act of the Government or the statutory authority is *ultra vires* on any of the grounds specified in the preceding paras.[15]

Appointment and removal of staff. 1. *Mandamus* would issue to cancel the appointment of a person who has been appointed to an educational institution controlled by the State, if such appointment is made in contravention of statutory provisions,[16] but not to help a person whose appointment was

8. *Rajinder* v. *State of Punjab*, A. 1983 P. & H. 285 (para. 5) D.B.
9. *Punjab University* v. *Subash*, A. 1984 S.C. 1415 (paras. 9-12)—3 Judges.
10. *Jitendra* v. *W.B. Board of Exams.*, A. 1983 Cal. 275 (paras. 27, 39, 40); *Principal* v. *Bishan*, A. 1984 S.C. 221 (paras. 6, 15-16).
11. *Maharashtra S.B.C.* v. *Paritosh*, A. 1984 S.C. 1543 (paras. 12, 26, 28).
12. *Kanpur University* v. *Samir*, A. 1983 S.C. 1230 (paras. 16, 20).
13. *Naraindas* v. *State of M.P.*, A. 1974 S.C. 1232 (paras. 10-11, 14, 21, 22).
14. *Ram Jawaya* v. *State of Punjab*, (1955) 2 S.C.R. 225.
15. *State of M.P.* v. *Ram*, A. 1979 S.C. 888 (paras. 22, 25).
16. *Calton* v. *Director*, (1983) U.J.S.C. 398.

void *ab initio*, having been made by some authority which is not empowered by statute in that behalf.[17]

VI. Election.

In this matter, a distinction should be made between elections held under the Constitution, to which the provisions of Art. 329(b) are attracted, and those held under other laws :

(A) *Elections under the Constitution.*

By reason of Art. 329(b), as interpreted by the Supreme Court,[18] neither the Supreme Court nor a High Court has any power to interfere with the procedure of election. But when an 'election dispute' comes before the Election Tribunal, *mandamus* may issue if the Tribunal refuses to exercise its jurisdiction, as in the case of any other *quasi-judicial* Tribunal.

(B) *Elections under other laws.*

I. The general rule is that the right of franchise created by a statute is governed by the provisions thereof, and, if the statute provides a remedy, e.g., by an election petition, that must be followed, at least in the first instance, before invoking the jurisdiction under Art. 226.[19-20]

II. The general rule is that statutory remedy should be pursued, and the High Court would not interfere under Art. 226, at least at any stage prior to the holding of the election,[21] e.g., on the ground of irregularity of procedure.[21]

III. After the election is over, the statutory remedy by way of election petition being available, an application under Art. 226 shall ordinarily not be entertained because of the alternative remedy.[21]

IV. But the existence of a statutory remedy is no bar to *mandamus*—

(a) Where the ground on which relief is sought is beyond the competence of the statutory tribunal to entertain,[22] e.g.,—

(i) That the entire Electoral Roll has been prepared in contravention of the statute or the rules made thereunder,[23] as distinguished from a technical defect.[24] In such a case, the Court may issue *mandamus* directing the respondents not to give effect to the said Electoral Rolls, i.e., not to hold an election on the basis thereof,[19] and also to draw up proper Rolls in conformity with the law.[19]

(ii) Where the statutory provisions or the Rules under which the election has been held are themselves unconstitutional or *ultra vires*.[20]

(b) Stated otherwise, where the *entire* election is challenged as illegal or unconstitutional by reason of some defect going to the root of the proceedings,[22] as distinguished from some illegality attaching to the election of a particular candidate, a petition under Art. 226 would be maintainable.[20]

But the Supreme Court[25] has overruled the view that merely because

17. *Ramji* v. *State of U.P.*, (1983) U.J.S.C. 493.
18. *Ponnuswami* v. *Returning Officer*, (1952) S.C.R. 218 (230-32); *Hari Vishnu* v. *Ahmad*, (1955) 1 S.C.R. 380.
19. *Shrivastava* v. *Bhupendra*, A. 1977 S.C. 1703; *Muthuswami* v. *Natarajan*, A. 1988 S.C. 616 (para. 14).
20. *Nanhoo* v. *Hira*, A. 1975 S.C. 2140 (paras. 3, 5).
21. *Bar Council of Delhi* v. *Surjeet*, A. 1980 S.C. 1612 (paras. 9-12).
22. *Baidyanath* v. *Sitaram*, A. 1970 S.C. 314; *Kabul* v. *Kundan*, A. 1970 S.C. 340; *Wapansao* v. *Odyuo*, A. 1971 S.C. 2123.
23. *Chief Commr.* v. *Radhey Shyam*, A. 1957 S.C. 304.
24. *Pratap Singh* v. *Sri Krishna*, A. 1956 S.C. 140.
25. *Shrivastava* v. *Bhupendra*, A. 1977 S.C. 1703 (para. 4) [3 Judges].

the entire election is challenged, the High Court must entertain a petition under Art. 226, notwithstanding the existence of a statutory remedy.[94] Even in such a case, the High Court should refuse a petition under Art. 226, in the following cases, for instance—

(i) Where the period of limitation for the statutory remedy prescribed by the relevant statute is very short.[93]

(ii) Where the petitioner has, in fact, initiated a statutory proceeding, which is pending.[26]

VII. Government and its officers.

[See 'Administrative authorities', p. 541, *ante*].

1. *Mandamus* will issue when the appropriate Government or its officers either overstep the *limits* of their power conferred by statute[27] or fail to comply with the *conditions* imposed by statute for the exercise of the power.[28] In other words, it will issue to quash an *ultra vires* order.[28-29]

2. 'Statute' in this context, of course, includes subordinate legislation which has the force of law. Where Government has framed certain Rules under statutory power, laying down a procedure or conditions for doing a thing (e.g., for holding a public auction), Government is not free to adopt an *ad hoc* procedure in particular cases, departing from such Rules.[30]

Thus, after having provided in the Rules that the settlement of a public ferry may be made only by a public auction, that Government or the statutory authority cannot settle it for a new term or extend an existing term without holding a public auction.[31]

3. The power to issue *mandamus* against administrative orders is governed by the following principles :

Mandamus will issue—

(i) Where the law under which the order has been made, e.g., an order cancelling a licence[32] or a notice not to hold a market[33] or to pay or to submit return for payment of a tax[34] is unconstitutional, or *ultra vires*.

But—

(a) *Mandamus* will not issue to enforce an executive notification or order which has no statutory force, a press notification; the rules of an administrative manual.[35]

(b) *Mandamus* does not issue against ministerial officers.

(ii) Where the act of the Government itself contravenes a fundamental right or other mandatory provision of the Constitution or of law.[36]

II. *Mandamus* will lie against the Government and administrative authorities to order them—

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26. As was held in *Sher Singh* v. *State of Punjab*, A. 1965 Punj. 361.
27. *Cooverjee* v. *Excise Commr.*, A. 1954 S.C. 220.
28. *State of Bihar* v. *Ganguly*, A. 1958 S.C. 1018; *Chief Commr.* v. *Radhey Shyam*, (1957) S.C.R. 67 (78).
29. *State of Bihar* v. *Ram Bharosa*, (1956) S.C.A. 762; A. 1956 S.C. 640.
30. *Guruswamy* v. *State of Mysore*, A. 1954 S.C. 592.
31. *State of Assam* v. *Keshab*, (1953) S.C.R. 865.
32. *Tahir Hussain* v. *Dt. Board*, A. 1954 S.C. 130.
33. *Dwarka Prasad* v. *State of U.P.*, (1954) S.C.R. 803.
34. *Himmatlal* v. *State of M.P.*, (1954) S.C.R. 1122.
35. *Fernandez* v. *State of Mysore*, A. 1967 S.C. 1753 (1757).
36. *State of Bombay* v. *Balsara*, (1951) S.C.R. 682; *Chintamanrao* v. *State of M.P.*, (1950) S.C.R. 759; *Saifuddin* v. *State of Bombay*, A. 1962 S.C. 853 (870).

(a) To forbear from enforcing against the petitioner an *unconstitutional statute*;[36] or other law[37] or administrative order[38] or tax.[39]

(b) To restrain the enforcement of an illegal executive order seeking to extinguish an existing law.[40]

(c) To direct them to perform their legal duty.[41]

III. On the other hand,—

(a) In the absence of a law governing the matter, the State cannot be compelled by any individual to do business with him.[41]

(b) In the absence of statutory or constitutional provisions *mandamus* will not lie to obtain recovery of money from the Government.[42]

(c) Though the doctrine of 'promissory estoppel' may be applied against the Government to enforce a contract defective for non-compliance with Art. 229,[43] it cannot be applied against the exercise of sovereign executive and legislative functions.[44]

(d) The Court cannot interfere with the making or changing of executive policy, unless it is arbitrary, *mala fide* or guided by ulterior considerations or discriminatory or unfair, as against the mandate of Art. 14 of the Constitution.[45-46]

Such, for instance, is the making of schemes for the socio-economic development of the country and their implementation;[46] the export and import policy;[47] fixation of prices of essential commodities;[48] banning of harmful drugs.[49]

In service matters, a number of subjects have been assigned to the realm of policy of the Government on the ground that the Government which is responsible for the administration should be left a free hand to make these decisions in the interest of efficiency, discipline and the like (subject, of course, to constitutional limitations) and also because these matters require an expertise which the Court does not possess.

Such matters, for instance, are—

(i) To divide a service into cadres, to reorganise or amalgamate them.[50]

(ii) To lay down the qualifications for appointment[51] or promotion[52] to a post.

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37. *Chiranjit Lal* v. *Union of India*, (1950) S.C.R. 869; *Ratilal* v. *State of Bombay*, A. 1954 S.C. 388; *Narendra* v. *Union of India*, A. 1960 S.C. 430.
38. *State of Madras* v. *Champakam*, (1951) S.C.R. 525.
39. *Bengal Immunity* v. *State of Bihar*, A. 1955 S.C. 661.
40. *Madhorao* v. *State of M.B.*, A. 1961 S.C. 298 (303).
41. *Promod* v. *State of Orissa*, A. 1962 S.C. 1288 (1304); *Wazir Chand* v. *State of H.P.*, (1955) 1 S.C.R. 408; *State of Bombay* v. *Hospital Mazdoor Sabha*, A. 1960 S.C. 610; *Satyanarayan* v. *Dt. Engineer*, A. 1962 S.C. 1161.
42. *Suganmal* v. *State of M.P.*, A. 1965 S.C. 1740.
43. *Union of India* v. *Afghan Agencies*, (1968) S.C.R. 366.
44. *Excise Commr.* v. *Ram*, A. 1976 S.C. 2237; *Bihar E.G. Fishermen Soc.* v. *Sipahi*, (1977) S.C./C.A. 1978/76, dt. 1-9-1977.
45. *Sangwan* v. *Union of India*, (1980) U.J.S.C. 519 (para. 4); *Richhariya* v. *D.D.A.*, (1980) U.J.S.C. 64n (66).
46. *Mahajan* v. *J.M.C.*, (1991) 3 S.C.C. 91 (para. 22)—3 Judges; *Peerless* v. *R.B.I.*, (1992) 2 S.C.C. 344 (paras. 31, 36, 39).
47. *Liberty Oil Mills* v. *Union of India*, (1984) 3 S.C.C. 465 (para. 6).
48. *Sitaram* v. *Union of India*, (1990) 3 S.C.C. 223 (para. 56) C.B.
49. *Vincent* v. *Union of India*, (1987) 2 S.C.C. 165 (para. 17).
50. *Director* v. *Pravat*, (1991) 2 S.C.C. 295 (para. 4).
51. *Lamba* v. *Union of India*, A. 1985 S.C. 1019 (paras. 26ff.); *Chakravarty* v. *Union of India*, (1988) 3 S.C.C. 575; *Union of India* v. *Radhakrishnan*, (1991) Supp. (2) S.C.C. 208 (paras. 7-8).
52. *Union of India* v. *Syed*, (1992) 1 U.J.S.C. 590 (para. 13).

(iii) To decide how many[53] appointments shall be made to a service; or how many vacancies are to be filled up.[54]

(iv) To lay down the criteria to be adopted as the basis of seniority[50,55] or promotion.[56]

(v) To fix the age of superannuation or retirement.[57]

Doctrine of Promissory Estoppel.

1. After some wavering it appears that the equitable doctrine of promissory estoppel is applicable against the Government, as against a private individual, even though there has been no contract according to the requirements of Art. 299.[58-60]

2. It means that if the Government or some other *public body*[58-60] or its officials makes a representation or a promise and an individual acts upon such promise and alters his position, Government or the public body must make good that promise[61] and shall not be allowed to fall back upon the formal defect in the contract.[61]

3. It does not belong to the law of contract or evidence but appertains to equity.[58]

4. It is available not merely as a plea in defence but also to found a cause of action.[58]

3. On the one hand—

(i) The Government or administrative authority cannot ignore its promise on some unidentified or undisclosed grounds of necessity[58, 60-61] or on the ground that it would fetter the future executive action of the Government.[58]

(ii) The person invoking the doctrine need not show that he has suffered detriment or injury as a result of acting on the promise of the authority.[60]

4. But since the doctrine of promissory estoppel is an equitable doctrine,[60] it would be subject to limitations to which all equitable rights and obligations are subject,[60] e.g.—

(a) It would be open for the Government or public authority to show that the officer or agent who made the representation acted beyond the scope of his authority and the person who dealt with him is supposed to have notice of the limitation of the authority of a public servant with whom he is dealing.[62]

(b) It would be open to the public authority to prove that there were special considerations which necessitated his not being able to comply with his obligations under the doctrine, in the public interest.[62]

(c) The doctrine cannot be invoked to prevent the Government from acting in discharge of its duty under the law,[62] or where its application would invlove the violation of a statute.[63]

53. *Jatinder* v. *State of Punjab*, (1985) 1 S.C.C. 122 (paras. 12, 15-16).
54. *Shankarsan* v. *Union of India*, (1991) 2 S.C.C. 212 (paras. 7, 10, 11) C.B.
55. *Lila* v. *Collector of Customs*, (1979) U.J.S.C. 933.
56. *Union of India* v. *Dutta*, (1991) 1 S.C.C. 505 (paras. 14, 18).
57. *Nagaraj* v. *State of A.P.*, A. 1985 S.C. 551 (para. 28).
58. *Union of India* v. *Godfrey*, A. 1986 S.C. 806 (paras. 8-14)—3 Judges.
59. *Century Spinning* v. *Ulhasnagar Municipality*, A. 1971 S.C. 1021 (1024).
60. *Motilal* v. *State of U.P.*, A. 1979 S.C. 621 (622)—2 Judges.
61. *Union of India* v. *Indo-Afghan Agencies*, A. 1968 S.C. 718 (723).
62. *Jit Ram* v. *State of Haryana*, A. 1980 S.C. 1285 (1305)—2 Judges.
63. *Andhra S.C.* v. *A.P.S.E.B.*, (1981) 3 S.C.C. 263 (paras. 13-15).

(d) The doctrine cannot be applied against the exercise of the legislative power of the State.[62]

(e) Where a contract describes itself as 'provisional' and stipulates that Government would not be bound to complete it (e.g., in the case of settlement by public auction), there is nothing to prevent the Government from changing its policy and cancelling the provisional contract before the contract is finally accepted.[64]

(f) It would not be applied where the Government can show that there are certain circumstances in the case which render it inequitable that the representation would be enforced against the Government or that the private interest must yield to the public.[58,65]

(g) The doctrine of promissory estoppel cannot be invoked when the petitioner knew all the facts and there was no question of his being misled by the representation[66] or the authority or the Government was under a legal duty[62] or prohibition to act in a particular manner,[68] or the petitioner failed to substantiate[68] that he had altered his position, relying on the alleged representation[67-68] or the officer concerned acted beyond the scope of his authority, so that the alleged representation was *ultra vires*.[69]

5. The doctrine is not applicable against the Legislature[68] or to challenge the *vires* of a statute.[70]

6. Nor is it available to compel the Government or a public authority to carry out a representation which is contrary to law[68] or outside the authority of the officer to make,[68] or to debar the Government from enforcing a statutory prohibition.

7. But a Division Bench[70] has held that where a person raises factories to exploit forests on the assurance of the State Government, Government cannot thereafter take away that right by enacting a law. In this case,[70] the Government declared that Act to be invalid.[71]

8. A statutory authority which has the power to grant an examption is competent to withdraw it. But it cannot withdraw it by means of its notification having retrospective operation where the parent Act did not confer upon it power to give retrospective effect. When subsequently, the statute is amended to confer such power upon the statutory authority, it cannot be debarred from withdrawing the exemption with retrospective effect, unless the authority has, in the intervening period, done anything which attracts the rule of estoppel.[68]

9. Even where the doctrine of promissory estoppel does not apply because of absence of any unequivocal promise on the part of the Government, the Court may give direction when public interest so demands, e.g., to give a preference to trained apprentices over direct recruits, where possible.[71a]

64. *State of U.P.* v. *Vijay*, A. 1982 S.C. 1234 (para. 3).
65. *Vasantkumar* v. *Bd. of Trustees*, (1990) J.T. (3) S.C. 609.
66. *Ramanatha* v. *State of Kerala*, A. 1973 S.C. 2641.
67. *Bihar E.G.F. Co-op. Soc.* v. *Sipahi*, A. 1977 S.C. 2149.
68. *Bakul* v. *S.T.C.*, A. 1987 S.C. 2239 (paras. 5, 11)—2 Judges.
69. *Express Newspapers* v. *Union of India*, A. 1986 S.C. 872 (paras. 182-83).
70. *Vij* v. *State of J.&K.*, A. 1989 S.C. 1629 (paras. 25, 27)—2 Judges.
71. This declaration is debatable. It is open to the Court to give relief to the Petitioner [*State of M.P.* v. *O.P.M.*, (1990) 1 S.C.C. 176 (para. 8)]; but it cannot raise estoppel against it to nullify it [*Union of India* v. *Godfrey* A. 1986 S.C. 806 (paras. 8, 14].
71a. *U.P.S.R.T.C.* v. *U.P. Nigam*, (1995)2 S.C.C. 1 (paras. 10-11).

VIII. Industrial Dispute.

1. Though s. 10(1)[72] or s. 12(5) of the Industrial Disputes Act confers a discretionary power upon the Government to refer an industrial dispute to a tribunal and the exercise of that discretion is not subject to judicial review on the merits, *mandamus* will, nevertheless, issue to direct the Government to proceed according to law—

(i) Where the act of the Government is *ultra vires*, e.g., where a reference already made is cancelled or superseded without such authority having been conferred by the Act;[72]

(ii) Where in making the reference the Government violates any of the statutory provisions;[73]

(iii) Where the Government does not record the reasons and communicate the reasons to the parties concerned while it refuses to make a reference, as required by s. 12.[73]

But—

(i) The Government is not obliged to write an elaborate order indicating exhaustively all the reasons that weighed in its mind in refusing to make a reference.[74]

(ii) If some reasons are given, the Court cannot, under Art. 226, consider the propriety of those reasons as a Court of Appeal, nor can the Court issue *mandamus* to compel the Government to make a reference on the ground that the Government considered some of the pleas raised by the petitioner for making a reference but not others.[74]

(iii) Where the refusal by the Government is not *bona fide* or is based on extraneous or irrelevant considerations,[74] e.g., that the workmen had resorted to 'go-slow' tactics.[75]

2. But, in the absence of such exceptional circumstances, the Court will not interfere with the discretion of the Government in exercising the power under s. 10,[74] as if sitting in appeal.[73]

IX. Licensing Authority.

I. The general principle is that except where a statutory provision has been violated, the Court will not issue *mandamus* to interfere with the exercise of a discretionary power to grant or refuse a licence.[76]

But *mandamus* will lie, if a licence is revoked in violation of statutory conditions;[77] or *ultra vires*[78] or unconstitutional[79] conditions are imposed in a licence.[78]

II. In a case for *certiorari, our* Supreme Court observed that where an authority empowered to issue a licence or permit[80] has a *discretion* in the matter, no one is of right entitled to it even though he fulfills the conditions mentioned in the statute for the purpose of qualifying for the licence or permit and that, accordingly, *certiorari cannot* issue on the ground that the exercise of the discretion was erroneous.

But even in such cases, *mandamus* will issue to direct the authority to determine the application according to law, where—

72. *State of Bihar* v. *Ganguly*, A. 1958 S.C. 1018.
73. *State of Bombay* v. *Krishnan*, A. 1960 1223: (1961) 1 S.C.R. 227.
74. *Bombay Union of Journalists* v. *State of Bombay*, A. 1964 S.C. 1617 (1622).
75. *State of Madras* v. *Sarathy*, (1953) S.C.R. 334: A. 1953 S.C. 53.
76. *Om Prakash* v. *Commr. of Police*, (1960) 1 M.L.J. 22n.
77. *Narayana* v. *State of Kerala*, A. 1974 S.C. 175.
78. *Sheriff* v. *Mysore S.T.A.*, A. 1960 S.C. 321 (327).
79. *Seshadri* v. *Dt. Magistrate*, (1955) 1 S.C.R. 686.
80. *Veerappa* v. *Raman*, (1952) S.C.R. 583 (595).

(i) It grants or refuses an application for licence or renewal of licence on irrelevant grounds, or extraneous considerations,[81] e.g., where an application for renewal is refused or a restriction imposed in the absence of any change in the circumstances.

(ii) It refuses to specify the grounds for its determination where so required by the statute, expressly or by implication.

(iii) It refuses to exercise its discretion with reference to the merits of the *individual case* before it, e.g., by acting according to predetermined rules or its own order in previous cases or the directions or instructions of a superior or other authority.[82]

Even where the authority formulates a general policy, it must hear each particular case to see whether the general policy would be applicable to that case, and in case of refusal of such hearing, *mandamus* will lie.[82]

(iv) Where the discretion is not absolute but is circumscribed by statutory conditions, *mandamus* will issue to direct the authority to exercise his discretion in conformity with the statutory conditions.[83]

III. Similarly, as regards the cancellation or revocation of a licence, already issued, where the discretion of the authority is unfettered by any statutory conditions, the Court cannot interfere if the licensing authority cancels it at any time, in the *bona fide* exercise of his discretion. But even in this case, the Court may issue *mandamus* directing the licensing authority to exercise his discretion, taking into consideration relevant matters, where he has simply acted under the instructions or orders of another authority, without exercising the discretion which the statute has vested in himself.[84]

IV. There are certain statutes under which the authority has a *duty* to grant the licence if the statutory conditions are complied with by the applicant. In such cases, *mandamus* lies to compel the authority to grant a licence if he refuses to grant it notwithstanding the fulfilment of the statutory conditions, the Court being competent to inquire whether the statutory conditions have been fulfilled.[85]

V. In India, *mandamus* would also go against a licensing authority whether his order of refusal or cancellation has been made under a law which is unconstitutional,[85] or in disregard of the statutory conditions.[86]

X. Local Authority.

The Court can interfere with the action of a statutory local body in the following cases, *inter alia*—

(i) To prevent the public funds being diverted to purposes other than those authorised by the governing statute.[87]

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81. *Prem Sagar* v. *S.V. Oil Co.*, A. 1965 S.C. 107 (111).

82. *Commr. of Police* v. *Gordhandas*, (1942) S.C.R. 135 (147); *Mannalal* v. *State of Assam*, A. 1962 S.C. 386 (392).

83. *Sheriff* v. *S.T.A.*, A. 1960 S.C. 321 (327); *Dwarka Prasad* v. *State of U.P.*, (1954) S.C.R. 803.

84. *Commr. of Police* v. *Gordhandas*, (1952) S.C.R. 135 (144, 146).

85. *Dwarka Prasad* v. *State of U.P.*, (1954) S.C.R. 803; *Fedco* v. *Bilgrami*, A. 1960 S.C. 415; *Ganapati* v. *State of Ajmer*, (1955) 1 S.C.R. 1065; *Pannalal* v. *Union of India*, A. 1957 S.C. 397 (410).

86. Cf. *Shanker Prasad* v. *State of M.P.*, A. 1965 M.P. 153 (158).

87. *Narendra* v. *Corpn. of Calcutta*, A. 1960 Cal. 102 (111); *Municipal Corpn.* v. *Govind*, A. 1949 Bom. 229.

(ii) To direct it not to enforce an *ultra vires*[88] or *unconstitutional*[89] bye-law against the petitioner.

(iii) To direct it not to impose or collect an *ultra vires*[90] or *unconstitutional*[91] tax.

(iv) Where the action of the local authority or its bye-law is unconstitutional.[92]

(v) Where the action of the local authority is *ultra vires*, e.g.—

To restrain it from giving effect to a resolution passed at a meeting illegally constituted.[93]

(vi) To restrain it from acting contrary to the *purpose* of the governing statute; or unreasonably.[94]

(vii) Where a local authority, having the power to approve or disapprove building plans, approves of the plan, subject to a condition it has no authority to impose, *mandamus* will issue, commanding it to approve the plan as submitted, i.e., without the *ultra vires* condition.[95]

(viii) Where the plea of *ultra vires* is founded upon the violation of a procedural requirement, the Court must ascertain whether the requirement is mandatory or directory.[96] If the requirement is mandatory, its breach will render the action void.[97] But, if it is directory, a substantial compliance will uphold its validity.[96]

(ix) Where the act of the statutory authority, though apparently within the letters of the statute, constitutes a *mala fide* exercise of the power, e.g., where it is sought to be exercised for a purpose other than that for which the power was intended. But where there is nothing *ultra vires* in the action of the local authority and the authority has exercised its *discretion* in *good faith* and on reasonable grounds, *mandamus* will not issue on the ground that the decision is *erroneous*.[97]

XI. Public auction.

A. When a public auction is held *under statutory provisions*, the auction must be held in conformity with the requirements laid down by such provisions,[98] e.g., requiring deposit of balance of the sale price.[99] In case of violation of such requirements *mandamus* will issue at the instance of anybody interested in the auction.[98]

B. *In the absence of a specific statutory provision*—

(a) The highest bidder has no legal right to have his bid accepted and it is at the discretion of the authorities to accept a lower bid,[98] because it is open to the Government to enter into contracts with whomsoever they please.[98]

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88. *Yasin* v. *Town Area Committee*, (1952) S.C.R. 572.
89. *Tahir Husain* v. *Dt. Board*, A. 1954 S.C. 630.
90. Cf. *Berar Swadeshi Vanaspati* v. *Municipal Committee*, (1962) 1 S.C.R. 596.
91. *Yasin* v. *Town Area Committee*, (1952) S.C.R. 672; *Tahir* v. *Dt. Bd.*, A. 1954 S.C. 630; *Bagalkot City Municipality* v. *Bagalkot Cement Co.*, A. 1963 S.C. 771.
92. *Rashid Ahmed* v. *Municipal Board*, (1950) S.C.R. 566.
93. Cf. *Mool Chand* v. *State of U.P.*, A. 1967 S.C. 112.
94. *Bangalore M.T.V.* v. *Muddappa*, A. 1991 S.C. 1902 (para. 20).
95. *Purushottam* v. *State of U.P.*, A. 1959 All. 26.
96. *Pratap Singh* v. *Krishna*, (1956) S.C.A. 366.
97. *Rattan* v. *Atma Ram*, (1955) 1 S.C.R. 481.
98. *Guruswamy* v. *State of Mysore*, (1955) 1 S.C.R. 305.
99. *Lakshmansami* v. *C.I.T.*, (1992) 1 S.C.C. 91 (95-96).

If, however, the statutory provisions require that in accepting a bid the authority shall have regard to certain conditions, a refusal to accept the highest bid on a ground *foreign* to the statutory conditions would be *ultra vires* and *mandamus* will issue directing the authority to make a fresh order 'in accordance with the law'.

(b) (i) Though the State may impose reasonable conditions for being eligible to bid at an auction, the Executive can have no discretionary power to exclude any person from bidding at a public auction,[100] or to prevent him from continuing to bid at a particular stage.[1]

XII. Public duties, enforcement of [see 'Statutory duties', *post*].

I. Under the present head we shall discuss the use of *mandamus* for the enforcement of a *public duty*, whether imposed by common law[2] or by statute or by any other law for the time being in force.[2] A duty imposed by statute, but relating to private rights will be dealt with under the head 'Statutory duties, enforcement of', *post*.

The writ of *mandamus* will lie to compel a *public, official* or *body* to perform his public duty whether imposed by statute[3-4] or otherwise.[5]

"Where officials have a public duty to perform, and have refused to perform it, *mandamus* will lie on the application of a person interested to compel them to do so."[6]

Non-performance of the duty, in this context, includes performance in such an illegal or perfunctory manner that there is in fact no performance.[5]

Whenever a statute appoints a body of persons to carry out purposes of *public benefit*, the persons constituting that body *ipso facto* become holders of a public office, for the purpose of *mandamus*.[7] Thus, a company, created by statute, has been compelled, by *mandamus*, to pay its duties under an award, when other remedies against the company or its officers were barred by the statute.[8]

For this purpose, the following, *inter alia*, have been held to be public offices or bodies :

(i) The Syndicate of a University;[9]

(ii) The State Medical Faculty;[10]

(iii) Universities and similar statutory educational bodies [see under 'Educational authorities', *ante*];

(iv) Municipal and similar local authorities such as a City Improvement Trust;[11]

(v) Public Service Commission;[12]

(vi) A statutory corporation, such as the Road Transport Authority.[13]

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100. *Nand Kishore* v. *State of Rajasthan*, A. 1965 S.C. 1992 (1993).
1. *Vellayan* v. *Dt. Forest Officer*, (1960) 1 M.L.J. 434 (438).
2. *Commr. of Police* v. *Gordhandas*, A. 1952 S.C. 16 (21).
3. *I.T. Commr.* v. *Bombay Trust Corpn.*, (1936) 63 I.A. 408.
4. *R.* v. *Paddington Valuation Officer*, (1965) 3 W.L.R. 426 (435) C.A.
5. Cf. *R.* v. *Bowman*, (1898) 1 Q.B. 663 (667).
6. *R.* v. *Commr. for Special Purposes*, (1888) 21 Q.B. 313 (317).
7. In re *Natesan*, (1918) 40 Mad. 125 (143).
8. *R.* v. *St. Katharine Dock Co.*, (1832) 4 B. & Ad. 360 (363).
9. *S.K. Ghose* v. *Vice-Chancellor*, A. 1952 Orissa 1; *University of Calcutta* v. *Dipa Pal*, (1952) 56 C.W.N. 730; *Tapendra* v. *University of Calcutta*, A. 1954 Cal. 141.
10. *B.C. Das Gupta* v. *Bejoy Ranjan*, (1952) 56 C.W.N. 861.
11. *Babulal* v. *Collector*, A. 1956 M.B. 221.
12. *State of Mysore* v. *Chandrasekhara*, A. 1965 S.C. 532 (537).
13. *Sheriff* v. *S.T.A.*, A. 1960 S.C. 321.

II. If the statute merely confers a discretion or power, as distinguished from a duty, *mandamus* will not issue to compel its performance, except in certain cases (as to which, see under 'Statutory duties', *post*).

General principles relating to mandamus to enforce public duties. The considerations governing the issue of *mandamus* under the present head are—

(a) That the duty is *public*. In the absence of a statutory provision *mandamus* will not issue to secure the performance of the obligation of a company to its members.[14]

(b) That it is a duty enforced by rules *having the force of law*.

Thus,

(i) Where an administrative advisory body is set up (without the sanction of any statute), *mandamus* will not issue against such body even though the functions of the body relate to public matters.[15]

(ii) Though executive or administrative directions issued by a superior authority are enforceable against an inferior authority by departmental action, they have no force of law and are, accordingly, not enforceable by *mandamus*.[16]

(iii) A contractual obligation, even though incurred by a public servant, cannot be enforced by *mandamus*.[17]

On the other hand,—

Where a University or other body has a duty under Rules having a statutory force to act towards the petitioner in a particular manner and the body fails in that duty *mandamus* will issue. In *R.* v. *University of Cambridge*,[18] it was observed :

".....and lest in this particular case the party should be remedyless, it was absolutely necessary for this Court to require the University to say the state of their proceedings before us; that if they have erred the party may have *right* done to him, or if they have acted according to the rule of *law*, that their acts be confirmed."[18]

[See 'Educational Authorities', *ante*].

(c) So long as public functionaries strictly confine themselves within the exercise of those duties which are confined to them by law, the Court will not interfere.

"To justify any writ of *mandamus*, it must be made to appear that the Bishop has not exercised the jurisdiction which the statute has vested in him.....Your Lordships would be exceeding your own jurisdiction if you were attempting to review a judgment, the jurisdiction to form which the Legislature has confided to the Bishop and to the Bishop alone."[19]

It follows, therefore, that the writ will not issue simply because there is an *irregularity* in its proceedings while there has been a substantial compliance of the law.[20] Nor can the Court enter into the merits or soundness of a decision made by such a body, as if sitting in appeal over it.[20]

(d) But—

(i) *Mandamus* will not be granted against an *inferior or ministerial*

14. *Praga Corpn.* v. *Immanual*, (1969) 1 S.C.C. 585 (589-90).
15. *Mann*, ex parte, (1916) 32 T.L.R. 479.
16. Cf. *Rowther* v. *S.T.A. Tribunal*, A. 1959 S.C. 869.
17. *Lekhraj* v. *Dy. Custodian*, A. 1966 S.C. 334 (337).
18. *R.* v. *University of Cambridge*, (1749) 93 E.R. 696.
19. *Allcroft* v. *Bishop of London*, (1891) App. Cas. 675.
20. *Vice-Chancellor* v. *S.K. Ghose*, (1954) S.C.R. 883.

officer, who is bound to obey the orders of a competent authority,—to compel him to do something which is part of his duty in that capacity.[21]

Thus, *mandamus* will not issue to a constable or other ministerial officer to execute a warrant directed to him. The reason behind this rule is that where the law imposes the duty on the superior officer, and the inferior officer simply carries out his orders, it is the superior officer alone who may be compelled to do his duty according to the general principle already discussed.[22]

But it may lie against the inferior authority where the carrying out of the orders of the superior authority is itself the *statutory* duty of the inferior authority.[23]

(ii) *Mandamus* will not issue against an officer, whose office and duty are prescribed by statute,—to compel him to do an act which is not clearly provided for by that statute; although it may be highly convenient and desirable that such an act should be done by him.[24]

(iii) *Mandamus* will not issue to direct an authority to exercise his discretion in a particular manner,[25] or to control the exercise of his discretion in the absence of *mala fides*.[26]

It follows that where a public authority has a discretion as to the *mode* of performing his duty, the Court cannot command him to perform his duty in a specific way.[27]

XIII. Service under Government.

I. *Appointment or promotion.* Since no one has a legal right to be appointed to an office under the Government and, in the absence of any statutory provision, promotion also lies at the discretion of the latter, *mandamus* does not lie to compel an appointment or promotion of the person aggrieved unless—

In refusing appointment to the petitioner, there has been a violation of a constitutional guarantee, e.g., Art. 14[28] or Art. 16(1).[29] In case of such violation, the petitioner may have a *mandamus* to direct the State to consider his application on the merits.[29]

II. *Dismissal.*

(a) *Mandamus* will not lie to reinstate a dismissed employee where the service is held at the pleasure of the State.[30]

But—

An order of dismissal may be quashed by *mandamus* where it is in contravention of a statutory rule or regulation having the force of law.[31]

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21. In re *Babul Chandra*, A. 1952 Pat. 309 (311).
22. *R.* v. *Payn*, (1837) 6 A. & E. 392 (400).
23. *Sheriff* v. *R.T.A.*, A. 1978 S.C. 209 (para. 14).
24. Short & Mellor, 2nd Ed., p. 205.
25. *State of Mysore* v. *Chandrasekhara*, A. 1956 S.C. 532.
26. *Tukaram* v. *Shukla*, A. 1968 S.C. 1050.
27. *University of Poona* v. *Shankar*, A. 1972 S.C. 1783 (para. 20).
28. Cf. *Benarasi* v. *State of U.P.*, (1956) S.C.R. 357 (361).
29. *Gazule Dasaratha* v. *State of A.P.*, (1961) 2 S.C.R. 931 (948).
30. *State of Bombay* v. *Hospital Mazdoor Sabha*, A. 1960 S.C. 610.
31. *State of U.P.* v. *Babu Ram.*, A. 1961 S.C. 751, affirming *Babu Ram* v. *U.P. Govt.*, A. 1958 All. 584 [Order of dismissal quashed for contravention of para. 447 of the U.P. Police Regulations].

(b) To direct the Government to pay to the petitioner his arrears of salary during the period intervening the date of suspension and date of reinstatement, where it is found that the suspension or dismissal was without any lawful authority or justification, though, of course, a claim for recovery of such arrears can only be made by suit.[32]

III. *Seniority and Promotion.* 1 *Mandamus* would issue to cancel a seniority list or promotion and to make necessary adjustments, where the seniority list has been made in contravention of Art. 14 or 16(1)[33] or made in contravention of the statutory rules[34] or making *ad hoc* deviations therefrom.[33]

2. Fixation of the year of allotment under the I.A.S. (Regulation of Seniority) Rules, 1954, being a matter of *discretion* with the Government, it cannot be interfered with by the Courts under Art. 226, unless—(a) the decision is arbitrary or *capricious*; or (b) in breach of the Rules.[35]

Where the Service Rules provide for recruitment from two different sources (e.g., by direct recruitment or promotion) and also prescribes a quota, as between the two categories, any recruitment in excess of the quota would be invalid, and any member of the other category who has been affected by such transgression of the quota, may obtain *mandamus* to quash the seniority list which is violative of the quota and to make a fresh seniority list in accordance with the quota rule so prescribed.[36-37]

If, however, the Rules while prescribing a quota also empower the Government to relax the quota, in its discretion, to meet the exigencies of service, any recruitment made in excess of the prescribed quota cannot be challenged as invalid[38] unless it is shown that such relaxation was vitiated by *mala fides*.[38-39]

Demolishing the pre-Constitution theory that pension is a matter of bounty of the Government, the Supreme Court has held[40] that pension can be claimed as of right by a retired Government servant in consideration of his past services, so that, subject to the rate being determined according to the relevant Rules, *mandamus* would issue against the Government to pay the proper pension to the retired Government servant. It would also issue to direct the Government to pay him the cash equivalent of the leave due to him on the date of retirement.[41]

On the other hand, *mandamus* will not issue—

(i) To command the Government to give to the petitioners some *concessions* which they might have offered to some other employees, without involving any breach of the Rules or any provision of the Constitution.[42]

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32. *Bhagat* v. *State of H.P.*, (1983) U.J.S.C. 297 (paras. 11, 15).
33. *Jagmohan* v. *Union of India*, A. 1975 S.C. 1427 (paras. 13, 16-17).
34. *Ramaswamy* v. *Union of India*, A. 1976 S.C. 2394 (paras. 11-12).
35. *Suri* v. *Union of India*, A. 1979 S.C. 1596 (paras. 17-18).
36. *Jaisinghani* v. *Union of India*, A. 1967 S.C. 1427 (1434).
37. *Janardhana* v. *Union of India*, A. 1983 S.C. 769 (paras. 21-23, 36).
38. *Bachan Singh* v. *Union of India*, A. 1973 S.C. 441.
39. *Chauhan* v. *State of Gujarat*, A. 1977 S.C. 251.
40. *Nakara* v. *Union of India*, (1983) U.J.S.C. 217 (para. 64). [This case has modified the 'bounty theory' by the 'socialist' theory of the duty of a Welfare State to provide for State aid in old age]. Also *Devaki Nandan* v. *State of Bihar*, A. 1983 S.C. 1134; *Deoki Nandan* v. *State of Bihar*, A. 1971 S.C. 1409.
41. *Shiv Dayal* v. *Union of India*, A. 1984 S.C. 465 (para. 7); *Union of India* v. *Gurnam*, A. 1982 S.C. 1265 (paras. 2, 8).
42. *Rajalakshmiah* v. *State of Mysore*, A. 1967 S.C. 993 (996).

(ii) To challenge as discriminatory an extra payment made to those who were willing to go on transfer to a remote place.[43]

IV. *Other conditions of service.* It is now settled[42] that *mandamus* will lie to quash an order of the Government or an administrative authority which is in contravention of a *mandatory*[42] Rule, relating to service conditions, which has been framed under statutory authority and has, therefore, the force of law. All the Rules and Regulations relating to Government servants are not, however, framed under statutory authority and some of them are merely administrative or Departmental instructions.[44] It is evident that *mandamus* will not lie to enforce non-statutory administrative instructions or orders.[45]

When, therefore, *mandamus* is sought to quash an order affecting a Government servant on the ground that the order is in contravention of a Service Rule, the first thing to be determined is whether the Rule in question has been framed under the authority of any statute.[46]

V. *Mandamus* will also lie where an order, made to the prejudice of the petitioner, itself contravenes some mandatory provision of the Constitution, e.g., Art. 16,[47] or is a nullity.[48]

XIV. Service under statutory authority.

Though outside the sphere where Art. 311 of the Constitution is attracted, the principle that a contract to render personal service shall not be specifically enforced applies, nevertheless the Court may, under Art. 226 of the Constitution, issue *mandamus* to quash an *ultra vires* order of termination of service under a non-Governmental authority.[49]

(i) Where the employee has a *statutory right* to be reinstated, e.g., in case of a retrenchment or dismissal in contravention of the provisions of the Industrial Disputes Act.[50]

(ii) Where the authority, in making the order of dismissal, has violated a mandatory obligation imposed by statute.[49]

XV. Statutory Authority. [See 'Statutory duties, enforcement of'.]

I. *Mandamus* will issue against a statutory authority to *prevent* the enforcement of :

(i) an *ultra vires order*,[51] e.g., where a Board of Religious Trusts called upon the trustees of a *private* trust to file statements of income and expenditure, under a law which did not apply to trusts,[51] or an *ultra vires*[52] or *mala fide* notification;[53]

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43. *R.B.I.* v. *R.E.I. Staff*, (1991) 2 U.J.S.C. 546 (para. 3).
44. Cf. *Niranjan Singh* v. *State of U.P.*, A. 1957 S.C. 142.
45. *Regina* v. *A.H.E. School*, A. 1971 S.C. 1920 (paras. 12, 15).
46. *State of Assam* v. *Akshay*, A. 1976 S.C. 37.
47. *Krishan Chander* v. *Tractor Organisation*, A. 1962 S.C. 602 [directing repondent to remove the ban arbitrarily imposed upon the Petitioner at the time of termination of his temporary service by notice, against further employment under the Government].
48. *State of Assam* v. *Padma Ram*, A. 1965 S.C. 473 (476).
49. *Tewari* v. *Dt. Board*, A. 1964 S.C. 1680 (1682-83).
50. *State of Bombay* v. *Hospital Mazdoor Sabha*, A. 1960 S.C. 610; *Jahiruddin* v. *Rathi*, A. 1966 S.C. 907.
51. *Ram Swaroop* v. *Sahi*, A. 1959 S.C. 951 (960).
52. *State of Bihar* v. *Ganguly*, A. 1958 S.C. 1018 (1026); *Ram Krishna* v. *Tendolkar*, A. 1958 S.C. 538 (545).
53. Cf. *Indramani* v. *Natu*, A. 1963 S.C. 374; *Prakash Cotton Mills* v. *State of Bombay*, (1962) 1 S.C.R. 105 (113).

(ii) an unconstitutional law,[54] or subordinate legislation, such as a scheme or notification, contravening Art. 19(1)(g);[55]

(iii) a valid statute, so long as the condition precedent for its application has not been fulfilled.[56]

S. 5A of the Bombay Agricultural Produce Markets Act, 1939, provides—

"Where a *market is established* under s. 5AA the market committee may issue licences ....."

The other provisions of the Act are dependent upon the establishment of a market in accordance with the formalities prescribed by s. 5AA. A market committee constituted under the Act began to issue licences and collect licence fee before any market was established in accordance with s. 5AA.

The Supreme Court directed the respondents "not to enforce any of the provisions of the Act ..... against the petitioners with respect to the market *till a market is properly established in law* for ths area under s. 5AA .....".[56]

Where the validity of a statutory order is challenged, the order is to be construed in the light of the language used in the order itself and not in the light of explanations subsequently given by the officer making the order.[57]

II. It will also issue to *compel* a statutory authority to proceed according to law.

(a) Where he has failed in his duty under the statute, e.g., where the Income-tax Officer failed to modify the assessment, while acting under s. 23(5)(b) of the Act,[58] or failed to make a payment due under a statute,[59] including salary payable under statutory provisions, to an employee[60] refused to register an instrument which it has the duty to register.[61]

(b) Where he has acted otherwise than in accordance with the *procedure* prescribed by the law. Where a statute prescribes the manner in which a legal duty is to be performed, the statutory authority will be compelled to do it in that very manner and no other.[62]

(c) Where he has imposed an *ultra vires* condition while granting a licence or a permit.[63] The order in such a case may be in the direct form to omit the *ultra vires* condition from the licence already granted.[64]

The Vindhya Pradesh Tendu Leaves Act, 1953, provides that no person shall purchase or transport *tendu* leaves unless he obtains a licence. It also authorised the Government to grant contracts for collecting tendu leaves from Government waste lands 'but *not including* land held by Jagirdars and tenants'. Notwithstanding this prohibition with respect to Jagir lands and tenants' holdings, the Government granted contracts to collect leaves from the trees on those lands and then granted a licence to the Petitioner for purchase of leaves *'from contractors in Vindhya Pradesh'*. Since under the Act, contracts would not be granted in respect of lands held by Jagirdars and tenants, the imposition of the condition in the licence requiring the Petitioner to purchase only from contractors was *ultra vires* and hence constituted an unreasonable restriction within the meaning of Art. 16. The Supreme Court (under Art. 32), therefore, directed—

54. *Jagannath* v. *State of Orissa*, (1954) S.C.R. 1046.
55. *Orissa Cement Ltd.* v. *Union of India*, A. 1962 S.C. 1402.
56. *Hussain* v. *State of Bombay*, A. 1962 S.C. 97 (106).
57. *Commr. of Police* v. *Gordhandas*, (1952) S.C.R. 135.
58. *Sarup Chand* v. *Union of India*, A. 1959 S.C. 1207 (1214).
59. *R.* v. *Lords of the Treasury*, (1851) 16 Q.B. 357 (361).
60. *R.* v. *Davies*, (1911) 2 K.B. 669 (685).
61. *R.* v. *Registrar*, (1915) 1 K.B. 224.
62. *R.* v. *Shoreditch Assessment Committee*, (1910) 2 K.B. 859.
63. *Sheriff* v. *Mysore S.T.A.*, A. 1960 S.C. 321 (327).
64. *Hamid* v. *State of M.P.*, A. 1959 S.C. 959.

"that the words 'from contractors in Vindhya Pradesh' shall be omitted from the licence granted to the Petitioner".[64]

III. Even where the order is *intra vires,* if the statutory power was exercised unreasonably and without care, *mandamus* may issue, directing the authority to exercise its power in accordance with the law.[65]

But in determining the reasonableness of the exercise of the power, the Court should take into account circumstances which called for the exercise of the power[66] and uphold the order if there was *anything* upon which the authority could have reasonably come to that conclusion.[67] The Court, in a proceeding for *mandamus,* cannot sit as a Court of Appeal or substitute its own discretion for that of the authority in which the statute has vested discretion.[66]

IV. *Mandamus* also lies to compel a statutory authority to hear and determine or dispose of a matter which he is empowered to determine by the statute, within a *reasonable time,*[68] even where the statute does not prescribe any time-limit for such disposal.[69]

V. When a statutory authority makes an order based on certain stated grounds, its validity must be judged by the reasons so mentioned, and it cannot be supported by fresh reasons offered in the shape of affidavit or otherwise.[70]

VI. Where a statute confers discretionary power upon a statutory authority without any guidelines,[71] and such guidelines cannot be deciphered from the various provisions of the statute.[72] But when the relevant provision confers such discretionary power, without procedural safeguards, as may be used arbitrarily in favour of one party or the other, that provision should be struck down and the administrative order passed thereunder, shall be struck down as violative of Art. 14 of the Constitution.[71]

VII. But no *mandamus* will lie—

(a) To compel an authority to do something which it has no power or jurisdiction under the law to do;[73]

(b) To enforce an obligation arising out of a contract,[74] as distinguished from law;

(c) To compel it to do something which it has a discretion but no legal duty to do;[75]

(d) To interfere with the exercise of its discretion unless it has been exercised *mala fide;*[76]

(e) To direct an authority to exercise its discretion in a particular manner.[77]

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65. *Mayor of Westminster* v. *L.&N.W. Ry. Co.,* (1905) App. Cas. 426.
66. *Vice-Chancellor* v. *S.K. Ghosh,* (1954) S.C.R. 883.
67. *Associated Picture Houses* v. *Wednesbury Corpn.,* (1947) 2 All E.R. 680 (683-84) C.A.
68. Cf. *Ambalal* v. *Ahmedabad Municipality,* A. 1968 S.C. 1223 (1227).
69. Cf. *Samarth Transport Co.* v. *R.T.A.,* A. 1961 S.C. 93 (96).
70. *Mohinder* v. *C.E.C.,* A. 1978 S.C. 851.
71. *Rajwanshi* v. *State of M.P.,* A. 1988 S.C. 1089 (paras. 13, 22).
72. *Harishankar* v. *State of M.P.,* A. 1954 S.C. 465 (para. 8).
73. *Arati* v. *High Court.* A. 1969 S.C. 1133 (1144).
74. *Lekhraj* v. *Dy. Custodian,* A. 1966 S.C. 334 (336).
75. *Gokkar* v. *Shukla,* A. 1968 S.C. 1050 (1053).
76. *Jaisinghania* v. *Union of India,* A. 1967 S.C. 1427 (1434).
77. *U.P.S.R.T.C.* v. *Ismail,* (1991) 3 S.C.C. 239.

XVI. Statutory duties, enforcement of.

While under the previous head we have considered the case of an authority *constituted* by statute, under the present head we are discussing a broader head of statutory duties in general, whether they are imposed upon a statutory body or upon public officers or upon private persons.

I. In the case of a statutory duty *mandamus* will issue even though the person against whom the duty is imposed by a *private* party or a company.[78-79] Thus, the writ will issue to an official of a society to compel him to perform the terms of the statute by which the society is controlled.[80] The only condition in the case of statutory duty is that the duty must be imperative and not discretionary.[81]

II. In the case of a public officer, too, it is only where a *duty* has been imposed by statute, as distinguished from a discretion or a power, that a *mandamus* will issue (see *below*). A writ of *mandamus* will be granted to compel the performance of a *duty* laid down by a statute as distinguished from a merely discretionary or permissive authority.[82]

Where a public officer has *refused* to perform his statutory duties', *mandamus* would issue to compel him to perform those *duties*.[83]

III. Where the *manner* in which a duty is to be performed is also laid down by the statute,[84-85] *mandamus* will lie to compel the authority to do it in the prescribed manner, i.e., to follow the steps prescribed by the law for reaching the result.[61]

IV. Broadly speaking, where *mandamus* is sought against a statutory authority on the ground that he has failed to discharge his duties, the Court may have to answer the following questions :

(i) What are the duties imposed upon the authority by the relevant statute,[86] and the extent thereof;[87]

(ii) Whether he has failed to perform those duties;[86]

(iii) Whether, in performing his duties, the authority has allowed himself to be influenced by extraneous considerations;[86]

(iv) Whether the procedure laid down in the statute for the performance of the duty has been followed;[61]

(v) If the authority has any discretion to exercise in the course of performance of his statutory duties, whether he has exercised that discretion in good faith[86] or *mala fide*.

Discretion: Meaning and scope.

Discretion is to know law what is just where a judge has to exercise a judicial discretion his order is unappealable unless he did so under a mistake of law or fact or indisregard of principle, or after taking into account

78. *R.* v. *Bristol Dock Co.*, (1841) 2 Q.B. 64.
79. *Commr.* v. *Prem Lata*, A. 1977 S.C. 334 (para. 3).
80. *R.* v. *Pharmaceutical Society*, (1854) 2 W.R. 220.
81. *Stepney B.C.* v. *Walker & Sons*, (1934) A.C. 365; *R.* v. *Hughes*, 3 A. & E. 429 (432).
82. *Ram* v. *Sankaramma*, A. 1956 S.C. 319 (355).
83. *R.* v. *Board of Education*, (1910) 2 K.B. 165 (175).
84. *Taylor* v. *Taylor*, (1876) 1 Ch. D. 426.
85. *State of U.P.* v. *Singhara Singh*, A. 1964 S.C. 358.
86. *R.* v. *Paddington Valuation Officer*, (1965) 3 All E.R. 200 (208; 216).
87. Cf. *Special Commrs. of I.T.* v. *Linsleys*, (1958) 1 All E.R. 343 (H.L.).

irrelevant matters. Discretion is not properly exercised if there was no material on which he exercised his discretion in the way he did when anything is left to a person, Judge or Magistrate, to be done according to his discretion, the law intends it must be done with sound discretion, and according to law.

In its ordinary meaning the word 'discretion' signifies unrestrained exercise of choice or will, the liberty or power of acting without control other than one's own judgment. But when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to their dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong, and therefore, whoever hath power to act at discretion, is bound by the rule of reason and law.

Discretion, in general, is the discernment of what is right and proper. It denotes knowlege and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution. 'Exercise of discretion' means something has to be done according to rules of reason and justice, not according to private opinion. It must not be arbitrary, vague or fanciful, but legal and regular. It must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.

The word 'discretion' standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care. Therefore where the legislature concedes discretion it also imposes a heavy responsibility.[87a]

Discretionary Power.

When statute confers power on any statutory authority however wide the discretion may be it has to be exercised reasonably within the sphere of statute and such exercise of power must stand the test of judicial scrutiny. The reason recorded must truly disclose the justifiability of the exercise of such power. The exercise of power must be for the furtherance of the policy. The authority must record its reasons even if the section is silent about recording of reasons. If wide power is vested it has to be exercised with greater circumspection. The authority must bear in mind the purpose of the policy of the Act. The power may be exercised to eliminate individual hardship if it does not materially affect the public cause.[87b]

The discretionary power must be exercised in a manner which would promote the object for which power or discretion was conferred. Power cannot be exercised arbitrary.[87c]

Discretion must be exercised reasonably. To determine reasonableness court has to find whether the administrator has left out relevant factors or taken into account irrelevant factors. Decision must have been made within the four corners of law and not one which no sensible person could have reasonably arrived at. Decision may be one of many choices. Court cannot substitute its view. Authority must exercise discretion to which he is committed.

87a. *Union of India* v. *Kuldeep Singh*, (2004)2 SCC 590.

87b. *Consumer Action Group* v. *State*, (2000)7 SCC 425.

87c. *A.P. Agarwal* v. *Govt. of NCT of Delhi*, (2000)1 SCC 600: AIR 2000 SC 205.

He will not act under the dictates of another. If power is exercised on the basis of facts which do not exist or which is patent in erroneous exercise of power is vitiated. Authority may be compelled to exercise the discretion. Authority must genuinely address itself to the matter before it.[87d]

Grant of largesse is at the discretion of the State Government. Nevertheless its action should be open, fair, honest and completely above board.[87e]

An authority, statutory or otherwise, vested with powers cannot abstain from exercising the powers when exercise of such power becomes necessary. The authority cannot refuse to act at its will or pleasure particularly if there is a threat to the administration of justice or fundamental rights of citizens. Court will compel or enforce the exercise of power by the statutory authority.[87f]

Duty and Discretion.

Even though an authority may be under a *duty* to do an act, whether by common law or by statute, he may have a discretion as to the manner of performance,[88] e.g., 'to act as it thinks fit.'[89] In such cases, though the Court may compel performance of the duty, it cannot compel the authority to perform the duty or to exercise the discretion in the manner directed by the Court.[90] The rules which come into operation in the sphere of discretion are :

I. *Mandamus* will not be issued to compel an authority to exercise a discretion in a *particular way*.[91-92] In other words, the Court cannot substitute its own view or discretion for the view taken or discretion exercised by the authority who is vested with a discretionary power.[92]

The principle is that—

"Where the Legislature has confined the power to a particular body with a discretion *how* it is to be used it is beyond the power to contest that discretion. Of course, this assumes that the thing done is a thing which the Legislature has authorised."

II. Where, therefore, it is alleged that the requirements of a statute have been violated, the first thing the Court has to determine is whether the provision in question is imperative or discretionary.[93]

III. Even though the Court will not interfere with the manner of exercise of a simple discretion, it will interfere with a discretionary act[94] by issuing *mandamus*—

(a) Where the discretion is exercised to do an act which is *ultra vires* the statute which conferred the discretion.[95]

87d. *Indian Railway Construction Co. Ltd.* v. *Ajay Kumar*, (2003)4 SCC 579: AIR 2003 SC 1843.

87e. *T.V.L. Sundaram Granites* v. *Imperial Granites Ltd.*, (1999)8 SCC 150.

87f. *Harish Uppal* v. *Union of India*, (2003)2 SCC 45: AIR 2003 SC 739.

88. *R.* v. *Marshland Commrs.*, (1920) 1 K.B. 155 (166).

89. Cf. *Akshaibar Lal* v. *Vice-Chancellor*, A. 1961 S.C. 619 (626).

90. Cf. *State of Mysore* v. *Syed Mahmood*, A. 1968 S.C. 1113 (1114).

91. *Julius* v. *Bishop of Oxford*, (1880) 5 A.C. 214; *Westminster Corpn.* v. *London & N.W. Ry.*, (1905) A.C. 426 (427).

92. *Veerappa* v. *Raman & Raman Ltd.*, (1952) S.C.R. 583; *Vice-Chancellor* v. *S.K. Ghose*, (1954) S.C.R. 883.

93. *R.* v. *Harland*, (1938) 8 A. & E. 826 (829-831).

94. *Gaokar* v. *Shukla*, A. 1968 S.C. 1050 (1053).

95. *Barium Chemicals* v. *Company Law Bd.*, A. 1967 S.C. 295 (313); *Rohtas Industires* v. *Agarwal*, 1969 1 S.C.C. 325; *Manu* v. *State of W.B.*, A. 1973 S.C. 295.

In other words, a statutory power must be exercised within the scope of the power conferred by the statute.[96]

(b) Where the statutory *conditions* precedent for exercise of the discretion have not been fulfilled.[95]

This vice is otherwise expressed as 'non-application of mind', that is, where a statutory order or notification is made by an authority without applying its mind to the conditions precedent[95] to the exercise of the power as well as other circumstances[95,97], relevant thereto.

(c) Where the authority has failed to exercise his discretion where it was his duty[98] to exercise.

(d) Another facet of non-application of mind is where the statutory authority, instead of exercising his own discretion, acts at the direction of some superior or other authority.[99] Of course, it is open to an administrative (not being *quasi-judicial*[100]) authority to take the *advice* of some other public body, but, then, he cannot act *mechanically*[99] according to such advice, without exercising his own discretion, as envisaged by the statute.

(e) Where the administrative action offends the principles of *natural justice* or fair play.[100]

As explained earlier, it is now settled that even when an administrative action is not *quasi-judicial* but subjective or discretionary, it must comply with the principles of natural justice or fair play, if it inflicts civil consequences upon an individual. Failure to do so will render the action arbitrary and violative of Art. 14 of the Constitution and, therefore, *null and void.*[100]

The discretion has to be exercised in a reasonable *manner* and the procedure for the performance of a public act must be *fair* and *reasonable*.[96]

(f) Where the exercise of the discretion is irrational or unreasonable.[96]

In issuing a *mandamus* commanding the admission of a doctor to the College of Physicians, Dr. Mansfield observed :

"It is true that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physicians; and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be *fair, candid and unprejudiced; not arbitrary, capricious or biased, much less, warped by resentment or personal dislike.*"[1]

This means that if in the exercise of his discretion or subjective opinion, the authority takes such a decision as no reasonable person could take, on the facts and in the circumstances before him.[100] But in a later case,[2] it has been observed that the test to be applied in the present context is not that of a reasonable man (as in the law of torts) but that of *improper* use of power.

This principle is limited by the doctrine that the Court, exercising

96. *Olga* v. *B.M.C.*, A. 1986 S.C. 180 (197).

97. *Monghyr Factory* v. *Labour Court*, A. 1978 S.C. 1428 (1432); *Abdul* v. *Commr.*, (1989) 2 S.C.C. 222 (233-34).

98. *U.P.S.R.T.C.* v. *Ismail*, (1991) 3 S.C.C. 239 (paras. 12-15).

99. *Commr. of Police* v. *Gordhandas*, A. 1952 S.C. 16; *Orient Mills* v. *Union of India*, A. 1970 S.C. 1498.

100. *Rajagopala* v. *S.T.A.T.*, A. 1964 S.C. 1573.

1. *Maneka* v. *Union of India*, A. 1978 S.C. 597 (690); *Shreeram* v. *Settlement Commn.*, A. 1989 S.C. 1038 (para. 6); *State of Orissa* v. *Binapani*, A. 1967 S.C. 1269 (1272).

2. *Mahajan* v. *I.M.C.*, (1991) 3 S.C.C. 91 (paras. 41, 43, 45).

judicial review over administrative action, cannot sit in appeal over the decision of the statutory authority simply because the Court thinks it to be unreasonable. Ultimately, thus, the Court's interference is limited to decisions which are 'perverse',[3] or arbitrary[4] or capricious[5] or based on no material.[4]

(d) Where the administrative action offends the principles of natural justice or fair play.

As explained earlier, it is now settled that even when an administrative action is not *quasi-judicial* but subjective or discretionary, it must comply with the principles of natural justice or fair play, if it inflicts civil consequences upon an individual. Failure to do so will render the action arbitrary and violative of Art. 14 of the Constitution and, therefore, *null and void*.

The discretion has to be exercised in a reasonable *manner* and the procedure for the performance of a public act must be *fair* and *reasonable*.[96]

(d) The position will be similar if it has exercised its discretion *mala fide*[6] or for a purpose[7] other than that for which it was entrusted with the discretion.

"..... the Legislature has entrusted the sole discretion to them and no *mandamus* could go to them to alter their decision. But they must *fairly* consider the application and exercise their discretion fairly, and not take into account any reason for their decision which is not a legal one. If people who have to exercise a *public duty* by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of law they *have not* exercised their discretion."[8]

It is a *mala fide* exercise of the discretion if the authority is influenced by extraneous or irrelevant consideration,[95] i.e., matters which are foreign to the statute under which the power is being exercised.[95] Again, if the authority takes into consideration irrelevant matters together with relevant matters and they are inextricably mixed up, the decision would be regarded as bad.[95]

This is also categorised as 'non-application of mind'.[9]

S. 1 of the Small Tenements Act, 1938, empowered a Magistrate to issue a warrant for the recovery of possession of a tenement, in these words—

"If the tenant or occupier shall not thereupon appear .... and show cause to the satisfaction of the justices ..... *reasonable cause* why possession should not be given under the provisions of the Act .... *it shall be lawful* for the justices ... to issue a warrant."

Held, that the words 'reasonable cause' confined the discretion of the Magistrate to refuse to issue the warrant only where the cause shown satisfies the Magistrate that the case should not be heard under the Act at all. 'Reasonable cause' means some cause which gives a right under the Act for the tenant to remain in possession, so that the Magistrate (notwithstanding the permissive words 'it shall be lawful') cannot refuse to exercise his power to issue the warrant for a cause extraneous to the Act, namely, the personal position of or *hardship* to the individual tenant.[10]

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3. *State of U.P.* v. *Renusagar*, A. 1988 S.C. 1737.
4. *Baikuntha* v. *C.D.M.O.*, (1992) 2 S.C.C. 299 (132) 34 (III) ; *P.T. Bd.* v. *Murthy*, (1992) 2 S.C.C. 317 (para. 5).
5. *Rohtas* v. *Agrawal*, A. 1969 S.C. 707 (721); *Hukam* v. *Union of India*, A. 1976 S.C. 789 (para. 15).
6. *Rowjee* v. *State of A.P.*, A 1964 S.C. 962.
7. *U.P.S.R.T.C.* v. *Ismail*, (1991) 3 S.C.C. 234 (para. 15).
8. *R.* v. *Vestry of St. Pancras*, (1890) 24 Q.B.D. 371 (375).
9. *Kishori* v. *State of W.B.*, A 1972 S.C. 1749.
10. *Shelley* v. *L.C.C.*, (1948) 2 All E.R. 898 (901, 903) (H.L.).

(e) *Mandamus* will also issue where the statutory authority has committed *'abuse* of power'[11] or 'colourable exercise of power',[12] i.e., where the power has been exercised for a purpose *other than* the purpose for which it had been conferred by the statute.[7,11]

It is also labelled as *'fraud on the statute'*.[13]

IV. If the authority is under a *duty* to exercise a discretion, it may be compelled by *mandamus* to exercise that discretion *in one way or other*,[14] if he has refused to exercise the discretion unlawfully.[15]

Duty distinguished from Power.

The distinction between a statutory duty and a discretionary power has already been explained at pp. 194, 202, *ante.*

I. The general rule is that while *mandamus* will issue to compel the performance of a public duty, it will not issue to compel authority to exercise a *power*[16] which is merely *permissive* and does not impose any obligation.[14]

In other words, where a statute enjoins the doing of something, it would not be enforced by *mandamus* unless the provision can be construed as imperative or mandatory as distinguished from merely enabling or permissive.[17]

II. Whether a staute is merely permissive or obligatory, that is to say, whether it confers a power or imposes a duty is itself a vexed question and no rigid formula to distinguish between the two has yet been invented.

In general, it may be stated that in determining whether a statute creates a duty as distinguished from a mere power or discretion, the Court has to consider the provisions of the enactment and to weigh its general *scheme* and substantial *object,* the use of the word 'may' or 'shall' not being conclusive.[18-19] Certain standards have been laid down by judicial decisions:

(i) Though a power is usually conferred by words, such as 'it shall be lawful',[20] language is not conclusive[21] and the Court may infer a duty to exercise a power from various circumstances :

"There may be something in the nature of the *thing* empowered to be done, something in the *object* for which it is to be done, something in the *conditions* under which it is done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."[20]

Thus,—

"Where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out and with regard to whom

11. *State of Punjab* v. *Ramji,* A. 1971 S.C. 1228 (para. 9); *State of Mysore* v. *Kulkarni,* A. 1972 S.C. 2170 (2172).
12. *Wadhwa* v. *State of Bihar,* (1987) 1 S.C.C. 378 (393-94).
13. *Vora* v. *State of Maharashtra,* (1984) 2 S.C.C. 337 (341).
14. *Julius* v. *Bishop of Oxford,* (1880) 5 App. Cas. 214 (H.L.).
15. *R.* v. *Canterbury,* 15 East 135; *R.* v. *North Riding, JJ.,* 2 B.&C. 291.
16. *Bank View Mills* v. *Nelson Corpn.,* (1943) K.B. 337.
17. *R.* v. *Shoreditch Assessment Committee,* (1907) 2 K.B. 764; *Stepney B.C.* v. *Walker,* (1934) A.C. 365.
18. *R.* v. *Marshland Commrs.,* (1920) 1 K.B. 155 (165-66).
19. *Govindrao* v. *State of M.P.,* A. 1965 S.C. 1222.
20. *R.* v. *Shoreditch Assessment Committee,* (1907) 2 K.B. 764; *Stepney B.C.* v. *Walker,* (1934) A.C. 365.
21. *Alcock Ashdown & Co.* v. *Chief Revenue Authority,* A. 1923 P.C. 138.

a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the Court will require it to be exercised."[22]

The question has to be determined upon an examination of the scope and object of the statute,[20] the importance of the provision and the relation of that provision to the general object to be secured by the Act.[23]

Thus,

(a) Enabling words are construed as compulsory whenever the object of the power is to *effectuate a legal right*. In such a case *mandamus* would issue on the application of those whose private rights required the exercise of the power conferred by the statute.[20]

(b) For the same reason, when a statute confers an authority to do a *judicial* act in a certain case, it is imperative on those so authorised to exercise the authority when the case arises and its exercise is duly applied for by a party interested and having the right to make the application.[23] The word 'may', in such context, "is not used to give a discretion, but to confer a power upon the Court and Judges and that the exercise of such power depends, not upon the discretion of the Court or Judges, but *upon proof of the particular case out of which* such power arises".[24]

(c) A statute which enjoins the doing of an act for the public good is, as a general rule, construed as mandatory,[19] a provision for—

Granting maintenance to the family of a former ruling Chief who has been deprived by the statute of the benefit of exemption from payment of revenue.[19]

(d) There are circumstances in which the Court construes a *duty* to exercise a discretion. These will be discussed under the next head.

(e) If a statute itself prescribes a discretion to be exercised in a particular way or having regard to particular considerations, an exercise of the discretion in some other way or regardless of those considerations amounts to a *refusal* to exercise the discretion.[25]

The principle was thus explained by the Court of Appeal—

"If people who have exercised a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have *not exercised their discretion*".[26]

1. Under r. 250 of the Rules framed under the City of Bombay Police Act, 1902, the Commissioner is bound to exercise his own independent judgment and to decide for himself with reference to the facts and circumstances of the case, whether to cancel the licence or not. Where the Commissioner cancelled a licence 'as directed by the Government', the Supreme Court issued a *mandamus* directing the Commissioner to make a proper order.[27]

2. Statute No. 30, framed under the Banaras Hindu University Act, 1915, provided for the examination of any case for termination of the service of any member of the teaching staff by a Reviewing Committee and then empowered the Executive Council of the University by cl. (5) of the State as follows :

"On receipt of the recommendations of the Reviewing Committee, the Executive Council shall take *such action thereon as* it may think fit ....."

On receipt of the report of the Reviewing Committee regarding the case of the appellants, the Executive Council took no action upon the report but applied Ordinance

22. *Western India Match Co.* v. *Lock*, (1946) 2 All E.R. 227.
23. *Howard* v. *Bodington*, (1877) 2 P.D. 203 (211).
24. *McDougal* v. *Paterson*, (1851) 6 Ex. 337n.
25. *Commr. of Police* v. *Gordhandas*, (1952) S.C.R. 135.
26. *R.* v. *Vestry of St. Pancras*, (1890) 24 Q.B.D. 371 (C.A.).
27. *Akshaibar Lal* v. *Vice-Chancellor*, A. 1961 S.C. 619 (626).

No. 6 to terminate the service of the Appellants by giving 4 months' notice in terms of their agreements.

The Court held that the powers of the University to proceed under the Statute and the Ordinance were not cumulative or alternative since the Act had expressly made the Ordinance subject to the Statutes, and the power of terminating services with notice could not be invoked where the allegations against the persons had been scrutinised by the Reviewing Committee and its report was pending before the Council. In the result, having proceeded under the Statute, they could not fall back upon the Ordinance, without completing the proceedings under the Statute. Though the Council had the discretion to act as it thought fit on the recommendations of the Reviewing Committee, they had a *duty to form an opinion,* this way or the other, upon a consideration of the report. "The words *do not give a discretion to take action outside the Statute.*"[27]

(ii) In short, even where a statute uses permissive language to confer a power, the Court would infer a power *coupled with a duty* and issue *mandamus* to compel its performance, where it appears that the power is conferred for the benefit of *specific* persons,[22,25] or for the advancement of public justice.[28]

In such cases, the public authority must exercise the power when the circumstances so demand; and the performance of it can be compelled by *mandamus.*[29]

S. 57 of the Stamp Act, 1899, provides—

"The Chief Controlling Revenue Authority *may* state any case referred to it under s 56(2), or otherwise coming to its notice ....."

Held, that the power conferred by this section is intended not for the benefit of the Revenue Authority alone, but also for the benefit of the party affected by the assessment. While the power under s. 56(2) is to be exercised by the Collector only when he is in doubt about his decision or conclusion there is no such limitation in s. 57. S. 57 casts a duty upon the public officer to do the right thing and to make a reference to the Court whenever an important and intricate question of law in respect of the construction of a document arises. The duty arises from the nature of the thing empowered to be done, and if the Revenue Authority omits to make the reference in such cases, the High Court has the power to direct him to discharge that duty.[29]

(iii) On the other hand, where a statute merely confers a *power* on a public authority to do some act for the public good, it being for the benefit of the *general public,* a particular individual cannot compel that authority to exercise that power unless he can show that the default of the authority constitutes a breach of duty owed to him as an individual as distinguished from the general public.[30]

III. (a) Where an authority has a discretionary power (as distinguished from a duty to exercise a discretion), nobody can complain of the *non-exercise* of the power.[30]

(b) Where a statute confers upon an authority a *general* discretion to take an action if certain conditions as specified in the statute are fulfilled, in a permissive language, the authority is competent to refuse to exercise the discretionary power even though the statutory conditions are fulfilled.[31] Thus,

It has been held that a Transport Authority under the Motor Vehicles Act, 1939, has a general discretion to refuse a permit even where an applicant complies with the conditions specified in s. 42 of the Act,[32] and if his order is within jurisdiction, the Court would not interfere merely on the ground that it is erroneous.[32]

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28. *R.* v. *Tithe Commrs.*, (1849) 14 Q.B. 459.
29. *Chief Rev. Authority* v. *Maharashtra Sugar Mills*, (1950) S.C.R. 536 (544).
30. *East Suffolk Catchment Bd.* v. *Kent*, (1941) A.C. 74.
31. Re *Electrical & Industrial Trust*, (1956) 1 All E.R. 162 (169).
32. *Veerappan* v. *Raman*, (1952) S.C.R. 583.

But in *India*, there is an additional consideration which does not obtain in *England*, namely, the impact of the exercise of such discretionary power on *fundamental rights*.[33] The power to decide whether the statutory conditions have been fulfilled must necessarily be given to that authority,[34] and this discretion is wider where (as in s. 47 of the Motor Vehicles Act) the authority is empowered to take into account certain administrative considerations, apart from certain specified conditions, such as objections from a police or other local authority.[35] But, apart from this, if the licensing authority is guided by considerations extraneous to the statute, his action would be *ultra vires*, in the same manner as it would be *ultra vires* if he acts in contravention of a statutory condition.[36]

Fundamental Rights.

Where exercise of power is conditional upon subjective satisfaction.

It has been stated earlier that where the exercise of a power is subject to prescribed conditions, the non-fulfilment of such conditions renders the exercise of the power *ultra vires*.

The applicability of this principle to cases where the exercise of the power is made conditional upon the subjective satisfaction of the statutory authority as to the existence of specified circumstances is not so clear.

In *India*, in the non-emergency sphere, the Supreme Court has allowed evidence to be given that the condition had not been fulfilled and granted *mandamus* to quash the exercise of the power.[37] Thus—

S. 10(2)(a) empowers the Central Government to deprive a person of his Indian citizenship "if it is satisfied" that the registration.....was obtained "by means of fraud, false representation or the concealment of any material fact".

The plea of the Government was that the cancellation of registration was made on the ground that the Petitioner had obtained registration by concealing the fact that his earlier application for permanent settlement in India had been refused. The Petitioner established from his original application for registration that the fact alleged to have been suppressed had been in fact mentioned therein. The Court held the cancellation to be *ultra vires* and set it aside.[37]

It may be noted that in the foregoing case,[37] though the satisfaction was to be that of the Government, it related to facts, such as fraud or concealment which were capable of being proved *objectively*.

But where the condition imposed by the statute is vague, the Court is inclined to revert to its general attitude of non-interference with subjective satisfaction.

The only general propositions that may be enunciated in this context that the Court will not interfere with the exercise of a power conditional upon the subjective satisfaction of the statutory authority vested with the power unless the exercise of such power is—

(a) *ultra vires*;[37-38] or

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33. *Faruk* v. *State of M.P.*, (1969) 1 S.C.R. 833 (837).
34. Cf. *Dwarka Prasad* v. *State of U.P.*, (1954) S.C.R. 803 (811).
35. The observations of the Supreme Court in *Veerappa* v *Raman*, (1952) S.C.R. 583, appear to have been made in view of the above provisions in the statute.
36. *Shrinivasa* v. *State of Mysore*, A. 1960 S.C. 350 (352); *Sheriff* v. *S.T.A.*, A. 1960 S.C. 321 (326).
37. *Ghaural* v. *State of Rajasthan*, (1961) S.C. [Petn. 60/58].
38. *A.G.* v. *Gamage*, (1949) 2 All E.R. 732 (735).

(b) *mala fide*;[39-40] or

(c) founded upon no materials whatever;[41] or upon materials upon which no reasonable person could be satisfied;[42]

(d) founded upon irrelevant considerations;[43-44]

(e) founded on grounds which have no rational connection with the object of the statutory power.[40]

XVII. Statutory instruments or subordinate legislation.

1. *Mandamus* lies to quash a notification order, rule, scheme or other form of subordinate legislation where it is *ultra vires*[45] or unconstitutional.[46]

2. The doctrine of *ultra vires* has been explained in detail at pp. 92ff, *ante*. By way of recapitulation, the salient points may be noted :

A statutory instrument may be *ultra vires* if—

(i) It exceeds the power delegated to the subordinate authority.[47]

(ii) It abuses its power,[48] by—

(a) acting in bad faith,[49] or

(b) exercising it for an unauthorised purpose,[50] or

(c) acting on irrelevant considerations or by keeping out of consideration relevant considerations,[48]

(d) it is perverse, in the sense that no fair-minded person could have ever made it,[50]

(e) it is manifestly erroneous, having been made on the basis of facts which do not exist.[51]

3. On the other hand—

(i) A statutory Rule or Regulation (unlike a bye-law) cannot be held invalid on the ground of unreasonableness,[47] as distinguished from arbitrariness.[51]

(ii) Nor can the Court question the wisdom of the policy behind the subordinate legislation.[47]

(iii) The Court should give greater attention before quashing a statutory instrument made under a beneficent legislation intended to remedy public misery, such as large-scale unemployment.[51]

(iv) A statutory rule cannot be superseded by a non-statutory order, notification or instruction.[52]

(v) *Mandamus* will *not* issue to direct a subordinate legislative authority

39. *Ramakrishna* v. *Tendolkar*, A. 1958 S.C. 538 (551).
40. *Barium Chemicals* v. *Company Law Board*, A. 1967 S.C. 295 (321).
41. *Thornloe* v. *Board of Trade*, (1950) 2 All E.R. 245 (249); *Ross Clunis* v. *Papadopoullos*, (1958) 2 All E.R. 23 P.C.
42. *D.P.P.* v. *Head* (1958) 1 All E.R. 679 (691) H.L.
43. *Demetriades* v. *Glasgow Corpn.*, (1951)1 All E.R. 457 (460) H.L.
44. *Rohtas Industries* v. *Aggarwal*, (1969) S.C. [C.A. 2274-6/66, dt. 16-12-68].
45. Cf. *Shivdev* v. *Krishnan*, A. 1962 S.C. 365.
46. *Lakshmana* v. *State of M.P.*, (1983) U.J.S.C. 499 (para. 3); *Vakara* v. *Union of India*, A. 1983 S.C. 130.
47. *Maharashtra Bd.* v. *Paritosh*, A. 1984 S.C. 1543 (paras. 14-18).
48. *Royappa* v. *State of T.N.*, A. 1974 S.C. 555 (583-84).
49. *Supreme Court Employees* v. *Union of India*, A. 1990 S.C. 334 (para. 105).
50. *S.I. Syndicate* v. *Union of India*, A. 1975 S.C. 460 (464).
51. *D.L. Breweries* v. *D.B. Trading Co.*, (1986) U.J.S.C. 506 (para. 2) D.B.
52. *Union of India* v. *Arun*, A. 1986 S.C. 737 (para. 15).

to enact or not to enact a rule, order or notification which it is competent to enact.[53]

(vi) The Court cannot assume the role of rule-making authority or assume the role of an appellate authority.[54]

XVIII. Taxation.

1. *Mandamus* lies for directing a revenue authority not to levy or collect an *ultra vires*[55] or unconstitutional tax,[56] or a tax which that authority has no jurisdiction to collect[57] or which is a colourable use of the taxing power,[58] even though the assessment has become 'final' under the statute.[58]

2. It also lies for directing a taxing authority not to make[59] or give effect to an *ultra vires*[60] or unconstitutional assessment,[61] e.g., where an assessment was made giving retrospective effect to a law which was not, in fact, retrospective.[61]

3. A refund of tax already collected may be ordered in a proceeding for *mandamus*.[62,63]

(a) Where it is established that the tax was unconstitutional[64-65] or *ultra vires*,[66] e.g., that the recovery was not in accordance with law;[67] or it has been imposed upon goods exempted by the statute.[68]

(b) Where there was a right to refund under the statute itself, subject to the limitations imposed by the statute itself, if any.[69]

XIX. Transport Authority.

1. *Mandamus* lies against the Transport Authority if an application for a permit under s. 57 of the Motor Vehicles Act is not disposed of within a reasonable time;[70] or the order of renewal is not in accordance with the law,[71] or a permit is granted to the State Transport Undertaking where the application of the Undertaking has not complied with the statute;[72] or where

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53. *Supreme Court Employees* v. *Union of India*, A. 1990 S.C. 338 (paras. 50-56); *Narinder* v *Administrator*, A. 1971 S.C. 2399 (2401); *A.K. Roy* v. *Union of India*, A. 1982 S.C. 710.
54. *Chandigarh Administration* v. *Manpreet Singh*, (1992) 1 S.C.C. 380.
55. *Shinde Bros.* v. *Dy. Commr.*, A. 1967 S.C. 1512.
56. *Chhotabhai* v. *State of U.P.*, A. 1962 S.C. 1614.
57. Cf. *Devanagere Cotton Mills* v. *Dy. Commr.*, A. 1961 S.C. 1441.
58. Cf. *Jagannath Baksh* v. *State of U.P.*, A. 1962 S.C. 1563.
59. Cf. *East India Tobacco Co.* v. *State of A.P.*, A. 1962 S.C. 1733.
60. *Union of India* v. *D.C.M.*, A. 1963 S.C. 791; *Zilla Parishad* v. *K.S. Mills*, A. 1968 S.C. 98 (100).
61. *Second Addl. I.T.O.* v. *Atmala*, (1962) S.C. [C.A. 168/61].
62. *Burma Construction Co.* v. *State of Orissa*, A. 1962 S.C. 1320.
63. As to claim by suit, see *State of Bombay* v. *Jagmohandas*, A. 1966 S.C. 1412.
64. *Mehtab* v. *State of Madras*, A. 1963 S.C. 928.
65. *State of M.P.* v. *Bhailal*, A. 1966 S.C. 1006 (1011).
66. *S.T.O.* v. *Kanhaiya Lal*, A. 1959 S.C. 135; *Zilla Parishad* v. *K.S. Mills*, A. 1968 S.C. 98 (100).
67. *State of Orissa* v. *Chakobhai*, A. 1961 S.C. 284.
68. *State of Gujarat* v. *Ananta Mills*, A. 1965 S.C. 953.
69. *Burma Construction Co.* v. *State of Orissa*, A. 1962 S.C. 1320; *State of M.P.* v. *Hasan*, A. 1966 S.C. 905.
70. Cf. *Samarth Transport* v. *R.T.A.*, A. 1961 S.C. 93 (96-97).
71. *Mahaboob* v. *Mysore S.T.A.*, A. 1960 S.C. 321.
72. *Shrinivasa* v. *State of Mysore*, A. 1960 S.C. 350 (352).

the Authority has granted an application for renewal which was not maintainable in law.[73]

2. There has been some controversy as to what considerations would be relevant in dealing with an application for permit under s. 47(1) of the Act.

But the expression 'interests of the public generally' in Cl. (a) has been liberally interpreted to include—

(a) Whether the service offered by the individual applicant would be efficient and satisfactory;[74]

(b) Whether the applicant would be in the position of a monopolist, if permit were granted to him.[74] Such consideration cannot be irrelevant merely because it has been incorporated in administrative instruction issued under s. 43A of the Act;[74]

(c) Whether the applicant has his residence or place of business[75] or repairing or maintenance facilities[76] on the route or at the terminals;

(d) Whether the applicant is guilty of any past misconduct[76] or whether he is a small operator as distinguished from a monopolist.[77]

(e) If, however, in granting or refusing a permit under s. 47(1), the authority acts on irrelevant considerations, the Court will interfere under Art. 226.[74] The result would be the same if he ignores a relevant consideration in breach of s. 47, even though he may be acting in pursuance of a direction issued under s. 43A.[75]

3. *Mandamus* may also lie against the State Government if, in confirming a scheme under s. 68C, it is guided by extraneous consideration,[70] or the scheme was framed by the State Transport Undertaking not after taking into consideration the conditions imposed by s. 68C, but at the direction of the Chief Minister who was actuated by malice,[78] or on other considerations extraneous to the statute, or the scheme is *ultra vires* the statute or the Rules framed thereunder.[78]

XX. Tribunal, quasi-judicial.

1. The writ of *mandamus* will issue to tribunals[79] exercising an inferior jurisdiction, commanding them to sit,[79] hear[79] and adjudicate according to their powers in matters which are judicial in their character,[80] in cases of refusal *to exercise jurisdiction*,[81] subject to the following limitations :

(i) A *mandamus* goes to set a *tribunal in motion* but not to prescribe the way in which it shall do any particular act, unless it is quite plain that what it has to do is purely *ministerial*, and not *judicial*.[82] In other words, a *mandamus* may be issued to command a tribunal to hear and decide a particular matter, but no direction would be given as to the manner in which it is to decide.[83] Thus, an administrative tribunal may be compelled to hear and determine an appeal,[84] within a reasonable time.[85]

73. *Gandhara Transport Co.* v. *State of Punjab*, A. 1964 S.C. 1245 (1248).
74. *Ram Vilas Service* v. *Chandrasekharan*, A. 1965 S.C. 107 (109).
75. *Shanmugam* v. *S.R.V.S.*, (1964) 1 S.C.R. 809 (821; 829).
76. *Ayyaswami* v. *S.M.S.*, (1962) S.C. [C.A. 198/62, dt. 17-9-62].
77. *Sankara* v. *Narayanaswami*, (1960) S.C. [C.A. 213/60, dt. 10-10-60].
78. *Rowjee* v. *State of A.P.*, A. 1964 S.C. 962 (973, 976).
79. *R.* v. *Mayor of Monmouth*, (1870) 5 Q.B. 251 (256).
80. Halsbury, 3rd Ed., Vol. II, p. 95.
81. See p. 552, *post*, as to when Court or tribunal may be said to have *refused to exercise jurisdiction*.
82. *Rex* v. *Justices of Kingston*, (1902) 86 L.T. 590.
83. Ex parte *Cook*, (1860) 29 Q.B. 68.
84. *King* v. *Housing Tribunal*, (1920) 3 K.B. 334.
85. *Ambalal* v. *Ahmedabad Municipality*, A. 1968 S.C. 1223 (1227).

(ii) In short, *mandamus* cannot be used by way of appeal to correct erroneous decisions within jurisdiction, whether of law or of fact.[86]

(iii) *Mandamus* will not issue to interfere with the manner of exercise of the discretion, unless the discretion is exercised arbitrarily or *mala fide*,[87] in which case it amounts to a non-exercise of the discretion.[88]

II. Before granting *mandamus* to direct a tribunal to exercise its jurisdiction, the Court must be satisfied that—

(a) the tribunal has jurisdiction to make the order sought;[89]

(b) the order may be enforced if resisted;[89]

(c) the exercise of the power is obligatory, *not discretionary*.[90]

Refusal to exercise jurisdiction.

Mandamus is the proper remedy where tribunal refuses to exercise a jurisdiction which has been vested in it by law. Refusal to exercise jurisdiction is practically an application of the principle of *ultra vires*, namely, to decide upon a consideration foreign to the statute, or to decide without taking into consideration a matter which the statute says should be considered by the tribunal.

(i) When the tribunal acts upon extraneous considerations or decides a point other than that brought before them, the tribunal is deemed to have declined jurisdiction and *mandamus* lies.[91-92] In other words—

"A tribunal will be held to have refused to hear and determine when it has in substance shut its ears to the application which was made to it and has determined an application which was not made to it;" or

"where the (licensing) justices so far departed from the plain words of the Act—deciding upon some extraneous consideration—that they could not be said to have heard and determined according to law".[93]

(ii) Even in the matter of a discretion, there may be a refusal to exercise jurisdiction if the tribunal refuses to exercise the discretion on an extraneous or irrelevant consideration, e.g., that it disapproves of the policy of the statute which conferred the jurisdiction or has omitted to consider such aspects of the question as would constitute no exercise of the discretion at all,[94] or mechanically exercise the discretion without weighing the relevant circumstances.[95]

(iii) Similarly, *mandamus* will issue to direct a tribunal to state a case where it has refused to state a case on a wrong view of the law, viz., that the question was concluded by a previous decision which, however, was not final, or wrongly declined to make a reference to the High Court on a question of law as required by a statute, e.g., under s. 57 of the (Indian) Stamp Act.[96]

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86. *Pranlal* v. *Dt. Magistrate*, (1962) S.C. [Petn. 313/61].
87. *R.* v. *Marshland Commrs.*, (1920) 1 K.B. 155 (165).
88. *K.* v. *Boteler*, (1864) 4 B.&S. 959.
89. *R.* v. *Godolphin*, (1838) 8 A.&E. 338 (344).
90. *R.* v. *Harland*, (1838) 8 A.&E. 826 (829-30); *Municipal Corpn.* v. *Advance Builders*, A. 1972 S.C. 793.
91. *R.* v. *Port of London Authority*, (1919) 1 K.B. 176; *R.* v *Evans*, (1890) 62 L.T. 570; *R.* v. *Board of Education*, (1910) 2 K.B. 165 (179).
92. *Bharat Bank* v. *Employees*, A. 1950 S.C. 188.
93. *R.* v. *Cotham*, (1898) 1 Q.B. 802 (807).
94. *K.D. Co.* v. *K.N. Singh*, A. 1956 S.C. 446 (452).
95. *Hindustan Steel* v. *Roy*, (1969) 3 S.C.C. 513 (paras. 14, 16).
96. *Chief Controlling Revenue Authority* v. *Maharashtra Sugar Mills*, (1950) S.C.R. 536.

(iv) An inferior tribunal refuses jurisdiction when it disregards the provisions of the statute giving it jurisdiction.[97]

III. PROHIBITION

Prohibition, nature of.

Prohibition is "a judicial writ, issuing out of a superior Court and directed to an inferior Court, preventing the inferior Court from *usurping jurisdiction* with which it is not legally vested"; or, in other words, it is issued to compel Courts entrusted with judicial duties to keep within the limits of their jurisdiction.[98]

As *Blackstone* put[99] it—

"A Prohibition is a writ .... directed to the judge and parties of a suit in any inferior Court, commanding them to cease from the prosecution thereof, upon a suggestion that either the cause originally, or some collateral matter arising therein, *does not belong to that jurisdiction,* but to the cognizance of some other Court ..... Or, if, in handling matters clearly within their cognizance, they transgress the bounds prescribed to them by the laws of England."[99]

As will be more fully explained under 'Certiorari', *post,* 'Court', in the present context, includes administrative tribunals who have a duty to act 'judicially'.[100-1]

Prohibition and Mandamus.

(a) In *English* law, the primary distinction between these two writs is that while *mandamus* commands activity, *prohibition* commands inactivity. The distinction is thus explained in Halsbury :[2]

"An order of *mandamus* is, in form, a command directed to any person, corporation or inferior tribunal, requiring him or them *to do* some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. An order of *prohibition* is an order, directed to an ..... interior ..... tribunal, *forbidding* such court or inferior tribunal to continue proceedings."[2]

This distinction is, however, blurred in *India,* for *mandamus* has been issued also in the prohibitory form, to direct an authority to forbear from taking an action which is illegal[3] or unconstitutional.

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97. *Joychandlal* v. *Kamalakshe,* A. 1919 P.C. 239.
98. *Clifford & O'Sullivan, in re,* (1921) 2 A.C. 570; Short & Mellor, 2nd Ed., p. 252.
99. (1768) 3 Bl. Com. 111-12.
100. *R.* v. *Electricity Commrs.,* (1924) 1 K.B. 171 (C.A.); *Frome United Breweries* v. *Bath JJ.,* (1926) A.C. 586 (602).
1. *East India Commercial Co.* v. *Collector of Customs,* A. 1962 S.C. 1893.
2. Halsbury, 3rd Ed., Vol. II, p. 52, para. 107.
3. Cf. *State of Bihar* v. *Ganguly,* A. 1958 S.C. 1018 (1026); *Calcutta Discount Co.* v. *I.T.O.,* A. 1961 S.C. 372; *State of Assam* v *Tulsi,* (1962) Supp. 3 S.C.R. 508. As Prof. de Smith (*Judicial Review of Administrative Action,* 1959, p. 434) points out, such use of *mandamus* is unwarranted by English practice. This would also follow from the statement in Halsbury, just quoted.

It would seem, however, that Indian Courts have looked at the substance rather than the form inasmuch as formalities do not bind *our* Courts under Arts. 32 and 226. If it is a duty of a public officer to do a positive duty enjoined by the law, it is as much his duty not to do an act which is *ultra vires* or unlawful. In any case, it is a welcome improvement upon the practice relating to the 'prerogative writ' of *mandamus,* the deficiencies of which have attracted the attention of English jurists themselves.

(b) While *mandamus* is available against any public authority, including administrative and local bodies, *prohibition* will issue only against *judicial authorities,* including within that term *quasi-judicial* tribunals.[4] *Prohibition* is not available against purely executive acts which may be controlled by *mandamus*.[5] Nor is it available against the Legislature or to restrain legislative powers.[6] But it has been held that when acts of a statutory body are subject to approval by Parliament, the Court may intervene *before* that approval is given,[100] provided the act of the statutory body involves a 'quasi-judicial' element and the other condition is present, namely, an 'excess of jurisdiction' which, as broadly interpreted, also includes violation of the principles of natural justice.

Prohibition and Certiorari.

I. From the observation in *R.* v *Electricity Commrs.*,[100] it has already become clear that there is a common ground between the writs of *certiorari* and *prohibition* in so far as—

(a) Both writs are available against the same class of persons, namely, authorities exercising judicial or *quasi-judicial* powers.[7]

(b) In both cases, the ground of intervention of the superior Court is the same, namely, 'defect of jurisdiction' as widely understood.

In *India,* there is an additional ground for intervention, namely, violation of fundamental rights, or unconstitutionality.

II. The distinction between the two writs lies in this—

(a) They are issued at different *stages* of the proceedings before the inferior court or *quasi-judicial* tribunal.[8]

The reason is that the object of *prohibition* is prevention, while *certiorari* may serve the dual purpose of prevention and cure. Prohibition restrains the tribunal from proceeding further in excess of jurisdiction; *certiorari* requires the record or the order of the Court to be sent up (to the superior Court), to have its legality inquired into, and, if necessary, to have the order quashed.[9]

"*Certiorari* lies where the usurpation of jurisdiction is a *fait accompli,* while *prohibition* lies when usurpation of jurisdiction has not yet taken place, but is merely proposed and there is still something to operate upon."[10]

(b) Where a decision has been given, *prohibition* will not lie unless there are pending proceedings for *enforcement* of that decision or proceedings consequential on the decision, the continuance of which may be prohibited. But if there are no such proceedings pending, it is too late to issue prohibition and *certiorari* is the proper remedy to resort to.[8]

(c) But it might happen that in a proceeding before an inferior Court a decision might have been passed which *does not completely* dispose of the matter, in which case it might be necessary to apply both for *certiorari* and *prohibition—certiorari* for quashing what had been decided and *prohibition* for arresting the further continuance of the proceeding.[11]

4. *R.* v. *Electricity Commrs.*, (1924) 1 K.B. 171 (205).
5. *Hetherington* v. *Security Export Co.*, (1924) A.C. 988.
6. *R.* v. *Legislative Committee of Church Assembly*, (1928) 1 K.B. 411.
7. *Hari Vishnu* v. *Ahmed*, (1955) 1 S.C.R. 1104 (1117); *Radheshyam* v. *State of M.P.*, A. 1959 S.C. 107 (115, 121); *Prabodh* v. *State of U.P.*, (1985) U.J.S.C. 1 (11).
8. *Hari Vishnu* v. *Ahmed*, (1955) 1 S.C.R. 1104 (1117).
9. *R.* v. *Electricity Commissioners*, (1924) 1 K.B. 171 (204).
10. *Estate & Trust Agencies* v. *Singapore Improvement Trust*, A. 1937 P.C. 265.
11. Cf. *R.* v *Paddington Rent Tribunal*, (1949) 1 All E.R. 720 (729); *R.* v. *Electricity Commrs.*, (1924) 1 K.B. 171.

Grounds for the issue of Prohibition.

Generally speaking, the conditions for the issue of *prohibition* are the same as those for the issue of *certiorari,* except as to the stage when the relief is available. It follows that the grounds on which *prohibition* will issue are the same on which *certiorari* will issue (if the petitioner comes to Court after the tribunal has already pronounced its decision). Thus, *prohibition* will issue to prevent the tribunal from proceeding further, when the inferior Court or tribunal—

(a) proceeds to act without or in excess of jurisdiction;

(b) proceeds to act in violation of the rules of natural justice;

(c) proceeds to act under a law which is itself *ultra vires* or unconstitutional (in *India*).

Illustrations.

I. *Customs.*

Prohibition will issue to restrain a Customs authority from pursuing a notice for confiscation of imported goods, in case he had no jurisdiction to initiate the proceeding or to make inquiry or to confiscate the goods, under the relevant law.[12]

II. *Taxation.*

In the field of taxation, the Court may issue *prohibition, inter alia,* in the following cases :

(a) To restrain an assessment proceeding which the taxing authority had no jurisdiction to make under the relevant law;[13] or where the proceeding was unconstitutional being violative of a fundamental right.[14]

(b) To restrain the recovery of a tax or fee without the authority of law or under Rules which were *ultra vires*[15] or under a law which was unconstitutional.[16]

IV. CERTIORARI

Certiorari, nature of.

(A) *England.—'Certiorari'* comes from 'certify' (to inform). It was the writ by which—

"the King commanded the judges of any *inferior* Court of record to certify the record of any matter in that Court with all things touching the same and to send it to the King's Court to be examined."[17]

The form in which the King's Bench issued this prerogative writ was as follows :

"We being willing for certain reasons that all singular orders made by you (as is said) be *sent by you before us,* do command that you send *forthwith* before us all and singular the said orders *with all things touching the same,* as fully and perfectly as they have been made by you and now remain in your custody or power, together with this our writ, that we may cause further to be done thereon *what of right and according to the law and custom of England as we shall see fit to be done.*"

U.K.

12. *E.I. Commercial Co.* v. *Collector,* A. 1962 S.C. 1893 (paras. 15, 26-27).
13. *Madan* v. *E.T.O.,* A. 1961 S.C. 1565 (paras. 2, 6).
14. *Bidi Supply* v. *Union of India,* A. 1956 S.C. 479.
15. *Abdul* v. *State of Kerala.*
16. *Chhotabhai* v. *Union of India,* A. 1962 S.C. 1006 (paras. 5, 34, 41); *Jagannath* v. *State of U.P.,* A. 1962 S.C. 1563 (paras. 1, 15-17).
17. *R.* v. *Northumberland Tribunal,* (1952) 1 All E.R. 122 (128) C.A.

The object of the writ was thus to remove the record of the inferior tribunal to the superior Court so that the latter may "inform itself upon every subject essential to decide upon the *propriety of the proceedings below*".[18] As the Privy Council explained in a case from India[19] :

"The ancient writ of *certiorari* in England is an original writ which may issue out of a superior Court requiring that the record of the proceedings in some cause or matter pending before an inferior Court should be transmitted into the superior Court to be there dealt with. The writ is so named because in its original Latin form it required that the King should *'be certified'* of the proceedings to be investigated, and the object is to secure, by the exercise of the authority of a superior Court, that the jurisdiction of the inferior tribunal be properly exercised."[17]

The substitution of the writ by an order in the nature of *certiorari*, by the Administration of Justice (Miscellaneous Provisions) Act, 1938, has not changed the scope of *certiorari*.

Thus, in England, *certiorari* is issued for removing the records of proceedings before an inferior tribunal or *quasi-judicial* authority for the purpose of—

(a) giving a 'fuller or more satisfactory effect to them than could be done by the Court below;[20]

(b) quashing a decision of the inferior Court or tribunal which

(i) goes beyond its jurisdiction;[21] or

(ii) violates a principle of natural justice;[22] or

(iii) is vitiated by an error of law apparent on the face of the record.[23]

India. (B) *India.—Our* Supreme Court has the power to issue *certiorari* only for the purpose of enforcement of fundamental rights, under Art. 32, while *our* High Courts have this power, under Art. 226, not only for this purpose but also for other purposes where, according to the general principles govering *certiorari*, it would lie.

It is to be noted, however, that though we have an additional *ground* in India (as compared with the position in England), namely, the enforcement of fundamental rights, the use of the writ has so far been confined to the purpose of *quashing* a decision and not to remove a case from an inferior tribunal to be tried by the Supreme Court or a High Court itself, for which there are statutory provisions.

Conditions precedent to the issue of Certiorari or Prohibition.

U.K. It should be pointed out at the outset that the outlook of English law on this basic question has been revolutionised since the House of Lords decision in *Ridge* v. *Baldwin*,[24] so that it would be proper to discuss the leading decisions under two heads :

(A) Prior to 1963, and (B) After 1963.

(A) *Prior to 1963.*

The conditions for the issue of *prohibition* or *certiorari* (to quash) rested

18. Chitty, *General Practice*, 3rd Ed., Vol. II, p. 353a.
19. *Ryots of Garabandhu* v. *Parlakimedi*, A. 1943 P.C. 164.
20. *Board of Education* v. *Rice*, (1911) A.C. 179; *Local Government* v *Arlidge*, (1915) A.C. 120.
21. *R.* v. *London County Council*, (1931) 2 K.B. 215 (233).
22. *R.* v. *Hendon*, (1933) 2 K.B. 696.
23. *R.* v. *Northumberland Tribunal*, (1952) 1 All E.R. 122 (128) C.A.
24. *Ridge* v. *Baldwin*, (1963) 2 All E.R. 66 (77-78) H.L.

on two observations of the English Court of Appeal which were cited in almost every case on the subject ever since, both in England and in India.[25]

(i) The first is that of Atkin, L.J., in *R.* v *Electricity Commrs.*[26]—

"Whenever any body of persons having legal authority to determine question affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs [of *certiorari* and *prohibition*]."

(ii) In the *Church Assembly case,*[27] Lord Hewart, C.J., adopted the foregoing observation and embellished it, by emphasising upon the duty to proceed judicially—

"In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subject; there must be superadded to that characteristic the further characteristic that the body has the *duty to act judicially.* The duty to act judicially is an ingredient which, if the test is to be satisfied, must be present.[27]

When analysed, the foregoing observations require the following general conditions to be present before either of the two writs may issue :

There should be a person or body of persons,—(i) having legal authority, (ii) to determine questions affecting rights of subjects, and (iii) having a duty to act judicially, including within that term all *'quasi-judicial'* bodies.

India.

Following the foregoing English decisions, it was held in India that *certiorari* or *prohibition* would not lie unless the duty to act judicially was imposed by the law which created a tribunal or authority[28] and that, accordingly, it would not issue against mere *administrative* action where no duty to proceed judicially was laid upon the authority concerned, expressly, by the relevant law.[29]

(B) *After 1963.*

U.K.

In *Ridge* v *Baldwin,*[30] Lord Reid observed that in order to attract *certiorari,* it was *not* necessary that the statute which creates the statutory authority or tribunal must expressly require it to proceed judicially. The duty to proceed judicially would be implied from the nature of the power or function which the authority was authorised, by the statute, to exercise, namely, *"to determine the rights of an individual".* A more liberal version was—"where immediate or subsequent rights of a citizen were *affected*"[31] by the statutory act or determination.

India.

As will be more fully explained under the caption 'Sources of *quasi-judicial* obligation', *post,* the liberalisation of tests for the application of *certiorari* has taken place in India on similar lines as in England, following *Ridge* v *Baldwin*[30] and the cases subsequent thereto[31] so much so that the distinction between administrative and *quasi-judicial* orders has practically been obliterated, and the modern rule has been established that whenever any action of the Government or its

25. *Prov. of Bombay* v. *Khusaldas,* (1950) S.C.R. 621 (630-31); *Basappa* v. *Nagappa,* (1955) 1 S.C.R. 250 (257).

26. *R.* v. *Electricity Commrs.,* (1924) 1 K.B. 171 (C.A.); *R.* v. *London C.C.,* (1931) 2 K.B. 215 (233).

27. *R.* v. *Legislative Committee of the Church Assembly,* (1928) 1 K.B. 411 (C.A.).

28. *Prov. of Bombay* v. *Khusaldas,* (1950) S.C.R. 621.

29. *State of Bihar* v. *Ganguly,* A. 1958 S.C. 1018 (1028).

30. *Ridge* v. *Baldwin,* (1964) A.C. 40 (75).

31. *R.* v. *Criminal Compensation Bd.,* (1967) 2 All E.R. 770 (778); *R.* v. *Bd. of Visitors,* (1978) 2 W.L.R. 598 (603); *Pearlberg* v *Varty,* (1962) 1 W.L.R. 534 (547) H.L.

agencies affects the civil rights of an individual,[32] the Court would quash that action provided the grounds for interference by the writ of *certiorari* e.g., violation of natural justice, exist. The steps in which this progress has been achieved will be explained *below*.

Sources of quasi-judicial obligation

1. In *Prov. of Bombay* v *Khusaldas*,[33] the majority concurred on the proposition that a decision is judicial or *quasi-judicial* only if the law under which the decision is made, itself *requires* judicial approach; in other words the *duty* to act judicially must be laid down in the law itself.

But the above wide statement[33] has been substantially modified by the Court in its later decisions and the following propositions may be taken as broadly settled.[34]

The duty to proceed may be laid down by a statute either expressly or by necessary implication.[34] Thus, "it may be inferred from the scheme of the statute and its material provisions",[34] e.g., where it requires the authority to record reasons for its order.[35]

Hence, even where the statute is *silent* as to any duty to act judicially, such obligation may be inferred from the provisions of the statute and the nature of the rights affected, the nature of the power,[36] and other relevant factors.[37]

2. On the other hand,—

If the statutory provision either specifically or by necessary implication *excludes* the application of any rule of natural justice, then the Court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice.[38]

These principles have been fully discussed at pp. 210ff., *ante*.

Whether certiorari is available against administrative decisions.

1. The Supreme Court of India is becoming more and more conscious of arbitrary action taken by administrative authority in spheres where the relevant statute does not lay down any *quasi-judicial* obligation.

In the earlier cases, the Court adhered to the English view that *certiorari* lies only against judicial and *quasi-judicial* proceedings and that it will not issue against an administrative order in respect of which the Court could not come to a finding that it was saddled with a *quasi-judicial* obligation.[39]

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32. *Jaswant Sugar Mills* v. *Lakshmi*, A. 1963 S.C. 677; *State of Orissa* v. *Binapani*, A. 1967 S.C. 1269 (1271); *Mohinder* v. *Chief Election Commr.*, A. 1978 S.C. 851.

33. *Prov. of Bombay* v. *Khusaldas*, (1950) S.C.R. 621.

34. *Radheshyam* v. *State of M.P.*, A. 1959 S.C. 107 (116); see also Subba Rao. J., for the majority, in *Gullapalli* v. *A.P. State Road Transport Corpn.*, A. 1959 S.C. 308 (322); adopted by the Court in *Board of High School* v. *Ghanshyam*, A. 1962 S.C. 1110; *Shri Bhagwan* v. *Ram Chand*, A. 1965 S.C. 1767 (1770); *Shankarlal* v. *Shankarlal*, A. 1965 S.C. 506 (511); *Anglo-American Direct Tea Trading Co.* v. *Workmen*, A. 1963 S.C. 874.

35. *Ajantha Industries* v. *Central Bd.*, A. 1976 S.C. 437 (441).

36. *Jaswant Sugar Mills* v. *Lakshmi Chand*, A. 1963 S.C. 677.

37. *State of Assam* v. *Bharat Kala Bhandar*, A. 1967 S.C. 1766 (1773).

38. *Union of India* v. *J.N. Sinha*, A. 1971 S.C. 40.

39. *Prov. of Bombay* v. *Khusaldas*, (1950) S.C.R. 621 (631; 698); *Basappa* v. *Nagappa*, (1955) 1 S.C.R. 250 (257); *State of Bihar* v. *Ganguly*, A. 1958 S.C. 1018 (1028); *Radheshyam* v. *State of M.P.*, A. 1959 S.C. 107 (119).

But as the result of a series of liberal decisions, the position now is—

"The old distinction between a judicial act and administrative act has withered away and we have been liberated from the pestilent incantation of administrative action."[40]

2. The Court has later come to realise that it is not always possible to determine whether a decision is administrative or *quasi-judicial* by applying the traditional tests laid down in this behalf in case-law.[41-42] Recent cases have, therefore, attempted to widen the scope of *certiorari*, by proceeding in two directions :

I. The Court has, firstly, applied the functional test to imply a *quasi-judicial* obligation in cases where the relevant statute is silent, by bringing more and more classes of cases under the *quasi-judicial* obligation, having regard to the nature of the power, the nature of the rights affected, and the like,—a trend which has already been noticed.

II. The other direction in which the Supreme Court has developed the law is more vital and intriguing; the attempt now is to disregard the old distinction between administrative and *quasi-judicial* decisions,[40-42] for the purpose of requiring that an administrative authority, in respect of whom the Court cannot predicate a *quasi-judicial* obligation even by implication, must comply with the minimal requirements of justice and fair play.

Once the test of 'fairness' is substituted for a 'hearing' in this area of administrative decisions, it would follow that it cannot require that much of hearing when a person is charged with some offence or misconduct. Notice of the penalty sought to be imposed with an opportunity for making a representation and consideration of that representation would suffice. This has been observed by the House of Lords in the *Pearlberg case.*[43]

"Fairness, however, does not necessarily require a plurality of hearings or representations and counter-representations. If there were too much elaboration of procedural safeguards, nothing could be done simply and *quickly* and cheaply. Administrative or executive *efficiency* and *economy* should not be too readily sacrificed."[43]

The above observation is echoed by *our* Supreme Court in *Mohinder Singh's case.*[42]

"Fair hearing is thus a postulate of decision-making *cancelling a poll,* although fair *abridgment* of that process is *permissible.* It can be fair without the rules of evidence or forms of trial. It cannot be fair if *apprising the affected* and appraising the *representations* is absent ....."[42]

(a) First, came the observation of Das, J., in *Radheshyam's case,*[44] that though *certiorari* was not available against a purely administrative order, every administrative authority must observe the rules of 'fair play', but this observation was not amplified.

(b) Then came a group of cases where the Court issued either prohibition or *certiorari* or orders in the nature thereof against administrative action, on the ground that it was *ultra vires* or without jurisdiction, on the assumption that it could do so even if the action could not be held to be *quasi-judicial*[45]

40. *Kapoor* v. *Jagmohan,* A. 1981 S.C. 136 (para. 7).
41. *Kraipak* v. *Union of India,* A. 1970 S.C. 150 (154).
42. *Mohinder* v. *Chief Election Commr.,* A. 1978 S.C. 851 (paras. 44, 75).
43. *Pearlberg* v. *Varty,* (1972) 1 W.L.R. 534 (547) H.L.
44. *Radheshyam* v. *State of M.P.,* A. 1959 S.C. 107 (119); *Keshav Mills* v. *Union of India,* A. 1973 S.C. 389 (para. 8); *Swadeshi Cotton Mills* v. *Union of India,* A. 1981 S.C. 818 (para. 42).
45. *Calcutta Discount Co.* v. *I.T.O.,* A. 1951 S.C. 372 (380); *Irani* v. *State of Madras,* A. 1961 S.C. 1731 (1738); *Kondala* v. *A.P.S.R.T.C.,* A. 1961 S.C. 82 (93); *Aurora* v. *State of U.P.,* A. 1962 S.C. 764 (775); *B.B.L.&T. Merchants' Assocn.* v. *State of Bombay,* A. 1962 S.C. 486 (496).

or without going into the question whether the decision was administrative or *quasi-judicial.*

(c) Then came a group of cases where it was held that even an *administrative* order must be made in conformity with the rules of natural justice, *if it involves civil consequences*;[46] or if it affects any right of citizen which is capable of being enforced by a legal action,[42] including even procedural rights.

Applying this test, the Court has extended the requirement of natural justice to the function of—

The Election Commission cancelling a poll.[42]

But the better view is that in this area, it is not the duty to act "judicially" or to comply with the requirements of natural justice, but the duty to 'act fairly',[47-48] which will be exacted by the Court, through *certiorari.* Hence, in such a case the Court will not interfere merely because the individual did not get a formal hearing or a copy of an investigation report, if he had, in fact, received a 'fair treatment'[48-49] and had made all the representation he could possibly make against the proposed action.[48]

The test of 'civil consequences' has, again, been widened to include not only infraction of property or personal rights but also of civil liberties, material deprivations and non-pecuniary damages; in short, "everything that affects a citizen in his civil life inflicts a civil consequence".[42]

(d) The trend has been accentuated by the widening of judicial review even in cases where the statute authorises the administrative authority to take action upon his subjective satisfaction, by using the words 'is satisfied' or the like.[48-49] In this arena, the Court first interfered through the following process:

The conditon as to which the statutory authority is required to be 'satisfied' is held to be a 'jurisdictional fact'[50] and accordingly subject to the objective scrutiny by the Court as to whether there was such satisfaction in fact and the Court would strike down the order where, on the materials on the record, the alleged satisfaction could be said to be arbitrary, perverse or without any evidence,[51] or without considering the relevant material, or the relevant considerations specified in the statute,[52] even though the Court cannot question 'the *sufficiency* of the grounds upon which the satisfaction is reached'.[51]

(e) The final stage comes with the view taken in the *Rampur Distillery case.*[51] In this case it has been held that the use of words, such as 'is satisfied', denoting subjective satisfaction, is not conclusive in determining whether the function is *quasi-judicial,* as was so long supposed, but that if the administrative decision is to affect valuable civil rights, including the liberty of contract, of a person, the statutory authority must proceed judicially, notwithstanding the subjective nature of the statutory power, and that in such cases the inquiry must be 'consistent with the rules of *natural justice ..... without bias,* without predilection and without prejudice'.

46. *State of Orissa* v. *Binapani*, A. 1967 S.C. 1269; *Kraipak* v. *Union of India*, A. 1970 S.C. 150 (156); *D.F.O.* v. *Ram Sanehi*, (1970) S.C.R. 194 (198); *Maneka* v. *Union of India*, A. 1978 S.C. 597 (para. 61).

47. Cf. *Pearlberg* v. *Varty*, (1972) 1 W.L.R. 534 (547) H.L.

48. *Kesava Mills* v. *Union of India*, A. 1973 S.C. 389 [order under s. 18A, Industries (Development & Regulation) Act, 1951]; *State of Kerala* v. *Shaduli*, (1977) U.J.S.C. 318 (para. 3).

49. *Maneka* v. *Union of India*, A. 1978 S.C. 597 (paras. 52, 62).

50. *Shauqin Singh* v. *Desa Singh*, (1969) S.C. [C.A. 155/67, dt. 4-12-1969].

51. *Rampur Distillery Co.* v. *Company Law Board*, (1969) 2 S.C.C. 774 (779); *Raja Anand* v. *State of U.P.*, A. 1967 S.C. 1081 (1085).

52. *Barium Chemicals* v. *Company Law Board*, (1966) Supp. (1) S.C.R. 311 (362).

The result of this decision, thus, is that a full-fledged *quasi-judicial* obligation can be inferred, by the application of the 'functional test' even where the language used by the statute indicates a decision upon subjective satisfaction.

2. But the requirement of natural justice or the applicability of *certiorari* cannot be invoked where—

(i) the impugned governmental act involves no exercise of statutory power, but is solely based on breach of the terms of a contract;[53]

(ii) the *quasi-judicial* stage has not yet been reached, and only a statutory notice has been issued in a proceeding in which the authority has jurisdiction;[54]

(iii) the matter rests on legislative or fiscal policy,[55] such as fixing the price or tariff for goods[56] or services[55] supplied or controlled by the Government;

(iv) the impugned act of the Executive or administrative authority is *quasi-legislative* in nature, such as conditional legislation,[57] even though private rights may be affected thereby, e.g., the declaration by the State Government of any area as a 'town area' under the U.P. Town Area Act, 1914;[57]

(v) the relevant statute expressly[58] excludes the application of the requirements of natural justice, or, from the nature of the function, such exclusion may be implied.[59]

The *grounds* for issuing *certiorari* and *prohibition* are :

I. *Want or excess of jurisdiction.*

These two cases are sometimes conveniently grouped together under the expression 'defect of jurisdiction'. Neither of these two writs will issue unless there is a defect of jurisdiction, in the wider sense just referred to.

Thus, *certiorari* would not lie merely because the decision of a tribunal, which is within its jurisdiction, happens to be wrong,[60] not being an error of law *apparent* on the face of the record, or the tribunal acts without sufficient evidence or misdirects itself in considering the evidence. Again, defect of jurisdiction must be distinguished from error or irregularity in *procedure*. The reason is that—

"In granting ..... *certiorari* the superior Court does not review or reweigh the evidence upon which the determination of the inferior Tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior Tribunal."

This fundamental characteristic of the scope of *certiorari* should never be forgotten. While appeal is a remedy for correcting an *erroneous* decision (whether on fact or on law), the writ of *certiorari* does not issue to correct a mere erroneous decision[61] or irregularity in procedure (except where the error is one of law which is 'apparent on the face of the record'[62] or it constitutes a denial of natural justice).[61] Its object is to get rid of a decision which is vitiated by a defect of jurisdiction or a denial of the basic principles of justice,—not to substitute a right determination for a wrong one.[62-66]

53. *Radhakrishna* v. *State of Bihar*, A. 1977 S.C. 1496 (paras. 23, 25).
54. *G.F. Industries* v. *Union of India*, A. 1977 S.C. 456 (para. 24).
55. *Narayana* v. *Union of India*, A. 1976 S.C. 1986.
56. *S.L. Syndicate* v. *Union of India*, A. 1975 S.C. 460; *Porwal* v. *State of Maharashtra*, A. 1981 S.C. 1127.
57. *Tulsipur Sugar Co.* v. *Notified Area Committee*, A. 1980 S.C. 883 (paras. 5-8).
58. *Union of India* v. *Singh*, A. 1971 S.C. 40 (42).
59. *Hira* v. *Principal*, A. 1973 S.C. 1260 (1264).
60. *Basappa* v. *Nagappa*, (1955) 1 S.C.R. 250 (257-58); *Yakoob* v. *Radhakrishnan*, A. 1964 S.C. 477.
61. *R.* v. *Middlesex II*, (1952) 2 All E.R. 312.
62-66. *R.* v. *Northumberland Compensation Tribunal*, (1952) 1 K.B. 338 (357).

II. *Contravention of the rules of natural justice.*

1. Though an administrative body vested with *quasi-judicial* power is not bound to follow the rules of judicial procedure, such as to examine witnesses[67] or even to hear the parties *orally*,[68] there is a minimum standard of natural justice which must be complied with by 'anyone who decides anything',[67] namely, that they must "act in good faith and fairly listen to both sides",[67] or "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case made".[68]

2. The requirements of natural justice vary with the varying constitution of the different *quasi-judicial* authorities and the statutory provisions under which they function. Hence, the question whether or not any rule of natural justice has been contravened in any particular case should be decided not under any preconceived notions, but in the light of the relevant statutory provisions,[69] the constitution of the Tribunal and the circumstances of each case.[70] This should be borne in mind while applying the general principles relating to natural justice.

III. *Error apparent on the face of the record.*

1. It means an error of law which is apparent from the record of the proceedings brought before the superior Court, and does not require to be established by evidence. Though *certiorari* will not issue to quash a decision which is within the jurisdiction of the tribunal, on the mere ground that it is erroneous on the mertis, recent decisions in *England*[71] and in *India*[72] have acknowledged this exception to the foregoing proposition, namely, that when it is an error of *law*, and it is 'apparent', *certiorari* will issue even though the tribunal has not transgressed its 'jurisdiction' in any way.

2. 'Error', in this context, means 'error of law'.[73] Where the Tribunal stated on the face of the order the grounds on which they made it and it appears that in law these grounds were not such as to warrant the decision to which they had come; *certiorari* would issue to quash the decision,[74] e.g.,—where the order cites the provision of law relied upon but the facts stated do not warrant its application.[75]

'Law', in this context, includes a *mixed* question of fact and law.[76]

3. An 'error of *fact*', apparent on the face of the record may be a ground for review under O. 47, r. 1 of the C.P. Code but not for interference by means of *certiorari, however,* gross the error may be,[73] except where a finding of fact is based *on no evidence at all*,[74] or perverse,[76] that is to say,

67. *Board of Education* v. *Rice,* (1911) A.C. 179.

68. *Local Govt. Board* v. *Arlidge,* (1915) A.C. 120 (132).

69. *N.P.T. Co.* v. *N.S.T. Co.,* (1957) S.C.R. 98; *Bharat Barrel Co.* v. *L.K. Bose,* A. 1967 S.C. 361 (367); *Union of India* v. *P.K. Roy,* A. 1968 S.C. 850 (858); *Jagdish* v. *University of Bihar,* A. 1968 S.C. 353; *State of Kerala* v. *Shaduli,* (1977) U.J.S.C. 318 (para. 5).

70. *Suresh* v. *University of Kerala,* A. 1969 S.C. 198.

71. *R.* v. *Northumberland Compensation Tribunal,* (1942) 1 K.B. 338 (357).

72. *Basappa* v. *Nagappa,* (1955) 1 S.C.R. 250 (258); *Ambica Mills* v. *Bhatt,* A. 1961 S.C. 970 (973).

73. *Hari Vishnu* v. *Ahmad,* (1955) 1 S.C.R. 1104 (1123); *Yakoob* v. *Radhakrishnan,* A. 1964 S.C. 477; *Custodian* v. *Abdul Shakoor,* A. 1961 S.C. 1087 (1094).

74. *P.T. Services* v. *S.I. Court,* A. 1963 S.C. 114.

75. *Collector of Customs* v. *Pednekar,* A. 1976 S.C. 1408 (paras. 22, 24).

76. *Shafi* v. *Addl. Dt. & Sessions Judge,* A. 1977 S.C. 836 (para. 5).

a conclusion which no one instructed in law and acting judicially could have arrived at from the evidence, in which cases it constitutes an 'error of law', or the Tribunal, in arriving at that finding, has been *influenced* by inadmissible evidence or has refused to admit admissible evidence.[73]

4. Interference on the ground of error apparent on the face of the record is an exception to the rule that, in exercising its power to issue *certiorari*, the Court cannot act as a Court of Appeal. This does not mean, however, that in exercise of this power, the Court issuing *certiorari* can interfere in case of every error of law which could be corrected by a Court of appeal.[73] The purpose of *certiorari* on the ground of error apparent on the face of the record is to determine, on an examination of the record whether the inferior tribunal has not proceeded in accordance with the *essential* requirements of the law which it was meant to administer.[73]

Thus,

(A) The Court will not, by *certiorari*, interfere with—

(a) Mere formal or technical errors even though of law,[77] e.g., errors in appreciation of documentary evidence.[73]

(b) A decision on a question of law merely because two views are possible on such question.[78]

(B) But it will be issued where there is a *patent* error of law, manifest on the record, which goes to the root of the matter, e.g.—

(i) Where it is based on a clear disregard of the provisions of law,[72] e.g., where the impugned order is founded on an obviously wrong interpretation of a statutory provision;[79] or other instrument[78] upon which the decision rests; or where a material provision of law is overlooked.[80]

(ii) A finding based on *no evidence* constitutes an error of law,[81] but an error in appreciation of evidence or in drawing inferences is not,[74] except where it is 'perverse', that is to say, such a conclusion as no person properly instructed in law could have reached,[74] or it is based on evidence which is legally inadmissible.[82]

5. For finding out whether there is such error, the Court must[83]—

(a) find whether there is any legal proposition which is the basis of the order;

(b) read the order as it stands, without inserting any words into it or drawing any inference.

6. For the purpose of application of this principle, a record consists of the pleadings, if any, or the document which initiates the proceedings, and the adjudication, but not the evidence.[84]

But there may be cases where this test would break down and the question whether there has been an error apparent on the face of the record

77. *Prem Singh* v. *Deputy Custodian General*, A. 1958 S.C.A. 24.
78. *Ambica Mills* v. *Bhatt*, A. 1961 S.C. 970 (974).
79. *Nanag Ram* v. *Ghinsi Lal*, A. 1952 Raj. 107.
80. *Juwansinji* v. *Tribunal*, A. 1957 Bom. 182 (185).
81. *Kaushalya* v. *Bachittar*, A. 1960 S.C. 1168 (1171); *Board of High School* v. *Bagleswar*, A. 1966 S.C. 875 (876).
82. *Swarn Singh* v. *State of Punjab*, A. 1977 S.C. 232 (paras. 12-13).
83. *Bharat Barrel Co.* v. *Bose*, A. 1967 S.C. 361 (368).
84. *S.K. Dutt* v. *A.I. Jute Mills*, A. 1957 Cal. 514 (520); *Habib* v. *Bhikamchand*, A. 1954 Nag. 306.

must be left to be determined on the facts of each case.[85] Thus, where the order incorporates[85] reference to other documents, the Court is not prevented from looking into them to determine whether there has been such an error.[86]

7. Where an order is vitiated by an error of law apparent on the face of the record, it is liable to be quashed and no further question of any hardship of any of the parties would arise.[87]

Instances of 'error apparent on the face of the record'.

(A) In the following cases, it has been held that the order of the tribunal or authority has been vitiated by an error apparent on the face of the record :

(i) Where an administrative tribunal plainly misread the provisions of an agreement, ignoring their very object on which two views were not possible and based its decision thereon;

(ii) Where the decision is, on the face of the record, based on *no evidence* at all[88] or not warranted by the findings arrived at;

(iii) Where the Tribunal made a patent error in interpreting the material statutory provision;[89]

(iv) Where an appellate authority reverses the order of primary authority without considering the reasons stated therein and without giving reasons in support of that order, its decision suffers from error apparent on the face of the record.[90]

(B) On the other hand, in the following cases it has been held that there was *no* error apparent on the face of the record :

(i) A petition for declaring the election of the successful candidate void and holding the Petitioner elected on the ground of irregularity in commencing the polling at a centre half an hour later than the scheduled time and of corrupt practices on the part of the successful candidate, was allowed on both grounds. In an application for *certiorari*, it was urged that the finding that the result of the election was materially affected by reason of the late commencement of the polling was vitiated by an error apparent on the face of the record inasmuch as it was pure surmise so long as the exact number of voters who went away owing to the late commencement and the number of those out of such persons who would have voted for the Petitioner, were not known. *Held*, that if the Tribunal had declared the Petitioner to be the duly elected candidate merely upon the view that he would have got more votes than the successful candidate had the polling commenced in due time, there would, obviously, have been an error apparent on the face of the record. But the Tribunal, in fact, considered the fact of late commencement only as one of the circumstances in coming to a determination, under s. 100(2)(c) of the Representation of the People Act, 1951, as to whether the violation of the statutory rule materially affected the result of the election, and the declaration in favour of the Petitioner specifically rested on the finding that the Petitioner could have secured the majority of votes but for the *corrupt* practices of the respondent. There was no error of law apparent on the face of the record in this latter finding which the Tribunal was competent to make under the law.

(ii) The Bomaby Revenue Tribunal rejected a landlord's application for possession on the ground that a previous notice required by s. 14 of the Bombay Tenancy and Agricultural Land Act, 1948, had not been given. The order was challenged as being vitiated by an error of law. The Supreme Court refused *certiorari*, holding that the question whether such notice would be required in the facts of the case was a controversial

85. *Satyanarayan* v. *Mallikarjun*, A. 1960 S.C. 137 (142).
86. *Abanindra* v. *Mazumdar*, A. 1966 Cal. 273 (275) F.B.
87. *Shafi* v. *Addl. D. & S. Judge*, A. 1977 S.C. 836 (para. 5).
88. *Kaushalya* v. *Bachittar*, A. 1960 S.C. 1168.
89. *Union of India* v. *India Fisheries*, A. 1966 S.C. 35 (37).
90. *State of W.B.* v. *Atul*, (1991) Supp. (1) S.C.C. 414.

one and required arguments to establish the error, if any. There might have been erroneous decision on a point of law, but it was *not apparent* on the face of the record.[85]

IV. *Unconstitutionality*[91] [see *ante*].

Availability of certiorari against particular proceedings.

Under this head, we shall discuss *some* of the cases where the application of *prohibition* or *certiorari* has gained prominence.

I. Administrative Tribunals, in general.

I. (i) *Certiorari* will be issued where an administrative tribunal exercising *quasi-judicial* function offends against the principles of natural justice,[92] the requirements of which, of course, will have to be determined with reference to the provisions of the statute governing its constitution.[93]

(ii) Where the tribunal has no jurisdiction to entertain the proceeding, e.g.—

(a) Where an Industrial Tribunal entertained an application under s. 33A of the Industrial Disputes Act, 1947, in a case not coming under that section.[94]

(b) Where the reference to the Tribunal itself was bad because the employees were not "workmen" or the dispute referred to was not an "industrial dispute".[95]

(iii) Where it has committed an error of law apparent on the face of the record.[96]

II. But the High Court will not, in a proceeding for *certiorari*, sit as a Court of Appeal to substitute its own view.[97]

Hence, the Court will not interfere—

(a) Where there has been a mere breach of the technical rules of evidence and pleadings, not amounting to a violation of the rules of natural justice.[92]

(b) On a question of fact which the tribunal has jurisdiction to determine,[98] unless it is shown to be *fully* unsupported by evidence.

But, if it is a jurisdictional fact, and the statute does not authorise the Tribunal to determine it *finally*, the superior Court may interfere if the Tribunal has given itself jurisdiction by a *wrong* decision as to the existence of the jurisdictional fact.[99]

(c) In the exercise of its jurisdiction under Art. 226, the Court will not interfere with the exercise of a *discretionary* power by the inferior tribunal, unless it is arbitrarily exercised, e.g.—

The granting of adjournment of a proceeding.[100]

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91. *Basappa* v. *Nagappa*, A. 1964 S.C. 440.

92. *Dhakeswari Cotton Mills* v. *Commr. of I.T.*, A. 1955 S.C. 65 (69-70); *Sarana* v. *University of Lucknow*, A. 1976 S.C. 2428.

93. *N.P.T. Co.* v. *N.S.T. Co.*, (1957) S.C.R. 98 (118).

94. *S.K.G. Sugar* v. *Chairman, Industrial Tribunal*, A. 1959 S.C. 230.

95. *Newspapers Ltd.* v. *State Industrial*, (1957) S.C.R. 754 (759).

96. *Nagendra* v. *Commr.*, (1958) S.C.R. 1240 (1269); *N.P.T. Co.* v. *N.S.T. Co.*, A. 1957 S.C. 232; cf. *Govindrao* v. *State of M.P.*, A. 1965 S.C. 1222 (1226).

97. *Basappa* v. *Nagappa*, A. 1954 S.C. 440.

98. *Associated Cement Co.* v. *Vyas*, A. 1960 S.C. 665 (668).

99. *Dharangadhra Chemical Works* v. *State of Saurashtra*, A. 1957 S.C. 264 : (1957) S.C.R. 152; *Union of India* v. *Goel*, A. 1964 S.C. 364; *Munni* v. *Gokal*, A. 1970 S.C. 1727; *Shauqin* v. *Desa*, A. 1970 S.C. 672; *Surja* v. *Hardeva*, A. 1970 S.C. 1193.

100. *Gayadin Ram* v. *Khan*, (1951) 55 C.W.N. 667.

III. In the absence of a specific statutory requirement, an administrative tribunal, exercising *quasi-judicial* functions—

Is not bound to follow the procedure prescribed for trial in the Courts or the rules of evidence.[1-2]

IV. It is a basic principle of judicial procedure that the person who hears must decide the case and not another person.[2] Conversely, one who decides must hear.[3]

Hence, if an officer, who is bound under the law to give a personal hearing, is transferred, his successor-in-office cannot decide the matter without giving a fresh hearing.[4-5]

Though there is agreement about the above fundamental principles, there may be variation as to the detailed application of the above rules according to the nature of the functions of different *quasi-judicial* bodies and the nature of the rights affected by their decisions and the provisions of the statutes constituting them.[2]

A corollary from the foregoing principle is the proposition that unless authorised by the governing statute, judicial power cannot be delegated, excepting the power to inquire and to report to the deciding authority.[6]

II. Customs Authorities.

1. A proceeding by a Customs authority to impose a penalty, e.g., under s. 167(8) of the Sea Customs Act, 1878, is a *quasi-judicial* proceeding,[7] so that *certiorari* would lie against such order on proper grounds, such as the violation of the principles of natural justice,[8] or lack of jurisdiction.[7]

2. There is a violation of the principles of natural justice where in a case to which s. 178A of the Sea Customs Act[9] is not attracted, the burden of showing that the goods were not unlawfully imported is thrown on the person whose goods are sought to be confiscated.[8]

3. But the Court should not entertain an application under Art. 226, unless a statutory remedy by way of appeal or revision has been exhausted, particularly where disputed facts have to be investigated.[10]

4. Having regard to the nature of the proceeding, natural justice cannot be held to require that, in a confiscation or penalty proceeding, the informants should be examined in the presence of the person affected or offered for cross-examination by him.[11]

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1. *Union of India* v. *Verma*, (1958) S.C.R. 499.
2. *Nageswara Rao* v. *A.P.S.R.T.C.*, A. 1959 S.C. 308; *Union of India* v. *P.K. Roy*, A. 1968 S.C. 850 (858).
3. *Morgan* v. *U.S. (I)*, (1936) 298 U.S. 468 (481).
4. *Calcutta Tanneries* v. *Commr. of I.T.*, A. 1960 Cal. 543.
5. *Ram Saran* v. *L.T. Commr.*, A. 1969 P.&H. 429.
6. *Pradyot* v. *Chief Justice*, A. 1956 S.C. 285 (291). *B.M.C.* v. *Dhondu*, A. 1965 S.C. 1486 (1488).
7. *East India Commercial Co.* v. *Collector of Customs*, A. 1962 S.C. 893 (1903).
8. *Amba Lal* v. *Union of India*, A. 1961 S.C. 264; cf. *Girdharilal* v. *Union of India*, A. 1964 S.C. 1519 (1522).
9. *Collector of Customs* v. *Sampothu*, A. 1962 S.C. 316; *Pukhraj* v. *Kohli*, A. 1962 S.C. 1959 (1562).
10. *B.I.S.N. Co.* v. *Jasjit*, A. 1964 S.C. 1451 (1453).
11. *Kanungo & Co.* v. *Collector*, A. 1972 S.C. 2136 (para. 12).

III. Disciplinary proceedings by statutory employers.

1. The foregoing principles relating to the termination of the employment of Government employees have been basically extended to the termination of the employment of the employees of statutory authorities, on the ground that the power conferred by the relevant statute to terminate the services of the employees must be exercised *quasi-judicially*.[12]

2. Hence, *certiorari* will lie against a statutory authority where the services of its employee have been terminated in contravention of the rules of natural justice, even where there are no statutory provisions or Rules requiring an inquiry before dismissal,[13] or where the statutory disciplinary authority blindly acts in compliance with the directions issued by the Government or some other body, such as the Vigilance Commission.[14]

3. In the result, even where the employee had been detained by an order under the Preventive Detention Act, for prejudicial activities, his services cannot be terminated on that ground, without holding an inquiry, with notice of the specific charge and upon leading proper evidence, which cannot be dispensed with on the ground that the allegations had been examined by the Advisory Board set up under the Preventive Detention Act.[12]

4. But except in the case of employees governed by industrial or labour law, in a proceeding under Art. 226 for termination of services of an employee of a statutory authority, the Court should simply quash the order of termination, if found to be illegal, and should not make any further direction as to reinstatement or payment of back wages,[13] even though legal effect of quashing the order of termination would be to restore the Petitioner to the position as it obtained before the dismissal.[13]

5. It is to be noted, however, that in the absence of any breach of a statutory obligation,[15] a suit for declaration of invalidity of an order of dismissal by a statutory authority, such as a corporation, will not lie but an action for damages for wrongful dismissal may lie.

IV. Disciplinary proceedings against Government servants.

Not only dismissal but also removal from service as well as reduction in rank can be ordered only after the public servant in question has been given 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him', as specifically required by Art. 311(2), subject to certain specified exceptions.

Relying upon the words 'reasonable opportunity', *our* Supreme Court has laid down the following broad propositions—

I. The proceedings in which the punishments aforesaid are sought to be imposed are *quasi-judicial* in nature,—both at the earlier stage of inquiry into the charges brought against the delinquent officer and at the later stage of awarding punishment upon the evidence on the charges,[16] so that *certiorari* would be attracted if there is violation of the *quasi-judicial* obligation at those stages.[17]

12. *Calcutta Dock Labour Bd.* v. *Imam*, (1965) II S.C.A. 226 (230-32); *Jagdish* v. *Chancellor*, A. 1968 S.C. 353.

13. *U.P. Warehousing Corpn.* v. *Vijay*, A. 1980 S.C. 840.

14. *Nagaraj* v. *Syndicate Bank*, (1991) 2 U.J.S.C. 217 (paras. 15, 17, 19).

15. *L.I.C.* v. *Sunil Kumar*, (1964) 5 S.C.R. 528; cf. *State of Punjab* v. *Bakhtawar*, A. 1973 S.C. 2083; *Warehousing Corpn.* v. *Chandra*, A. 1970 S.C. 1244.

16. *Bachittar Singh* v. *State of Punjab*, A. 1963 S.C. 395.

17. *Khem Chand* v. *Union of India*, A. 1958 S.C.R. 1080 (1098); *Union of India* v. *Goel*, A. 1964 S.C. 364; *State of M.P.* v. *Chintaman*, A. 1961 S.C. 1623 (1629).

II. An inquiry, in compliance with the requirements of natural justice, cannot be dispensed with on the ground that the employee had been detained by an order under the Preventive Detention Act and that the allegations made against him were examined by an Advisory Board for the purposes of that Act.[12]

III. It follows that *prohibition* or *certiorari* would lie (at the appropriate stage) if *any* of the principles of natural justice is violated, e.g.—

A. *At the inquiry stage :*

(i) Where the inquiry is not directed against the alleged misconduct of the Government servant in question but is a general investigation to find out who is responsible for an accident or the like, without any charge against any particular person, and the penalty is proposed on the basis of such investigation.[18]

(ii) Where the inquiry is held *ex parte* or the witnesses for the prosecution are examined in his absence[19] or he is denied the opportunity of cross-examining them[19] or any other materials are relied upon without giving the delinquent officer an opportunity of explaining them.[19]

(iii) Even where the Rules provide for discharge of a temporary employee after simple notices natural justice would require a hearing where the order of discharge contains a shigma[19a] or is attended with penal consequences.

In the absence of such penal consequences, no hearing would be required in such cases.[19b]

But there is no violation of natural justice—

If a previous statement, i.e., a statement made prior to the inquiry made by a prosecution witness is read over, a copy delivered to the person charged and the witness is tendered for cross-examination with reference to such statement.[20]

(iii) Where a copy of the application on the strength of which the inquiry started,[21] the statements of the prosecution witnesses,[21] including their previous statements[20-21] which are relied upon by the prosecution, or any other papers which are relevant to support the defence,[21] are withheld, unless, of course, they are 'secret' in the proper sense[21] or there is any other lawful justification for withholding them.

(iv) Where the delinquent officer is denied the opportunity of examining a witness on his behalf or of adducing other evidence on which he relies.[19]

(v) Where the Inquiry Officer has a personal bias against the person charged,[22] as distinguished from 'official' bias.[23]

IV. The Court may also interfere where there is a patent error of law on the face of the record, e.g.—

Where the conclusion arrived at is not supported by any evidence at all,[24] even though it may be *bona fide*. But the Court is not concerned with the sufficiency of evidence.[25]

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18. *Amalendu* v. *D.T.S.*, A. 1960 S.C. 992.
19. *Union of India* v. *Verma*, (1959) S.C.R. 499 (507); *State of Punjab* v. *Chuni Lal*, (1970) S.C. [C.A. 2348/66, dt. 16-2-1970]: (1970) 1 S.C.W.R. 413.
19a. *State of Haryana* v. *Jagdish*, (1995) 2 S.C.C. 567 (para. 5).
19b. *M.P.H.S.V.M.* v. *Devendra*, (1995) 1 S.C.C. 638
20. *State of Mysore* v. *Shivabasappa*, A. 1963 S.C. 375; *Shinde* v. *State of Mysore*, A. 1976 S.C. 1080 (paras. 9-10).
21. *State of M.P.* v. *Chintaman*, A. 1961 S.C. 1623 (1627-28).
22. *State of U.P.* v. *Md. Nooh*, A. 1958 S.C. 86 (91).
23. *Sunil* v. *State of W.B.*, (1980) U.J.S.C. 479 (para. 5).
24. *Union of India* v. *Goel*, A. 1964 S.C. 364 (369); *State of A.P.* v. *Rama Rao*, A. 1963 S.C. 1723.
25. *Kshirode* v. *Union of India*, (1970) 1 S.C.W.R. 325 (327).

The jurisdiction of the Court being supervisory,—not appellate,—the Court cannot assess the evidence afresh to see whether the finding of the domestic tribunal was correct.[26] Its only function is to see whether there was *any* legal evidence to support the finding or it was perverse.[26] A disciplinary proceeding is not a criminal trial; the standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.[26] Hence, where there are *some* relevant materials on which the conclusion of the disciplinary authority that the Government servant is guilty could be supported, the Court cannot, under Art. 226, enter into the question of adequacy or reliability of the evidence.[27]

B. *At the punishment stage :*

The pre-1976 decisions on this topic must now be read subject to the material amendment of Cl. (2) and the insertion of the first Proviso, by the Constitution (42nd Amendment) Act, 1976, as a result of which the opportunity of making representation in connection with the penalty proposed has been taken away.

But the condition that the penalty must be based solely on the evidence adduced at the inquiry remains. Hence, *certiorari* may lie to quash the penalty if the authority, in awarding the penalty, relies upon some material which was not produced at the inquiry stage,[26] or, no reasons are discernible from the order of the punishing authority or the other materials on the record.[28]

V. Disciplinary proceedings against students.

I. It is *settled* that a disciplinary proceeding against a student on the ground of some misconduct, e.g., malpractice at an examination, is a *quasi-judicial* proceeding,[29-30] and that the principles of natural justice must be observed.[29]

It follows that the examination of a candidate or the result[30] thereof cannot be cancelled, without informing him or her of the nature of accusation made,[31] and offering him or her an opportunity of being heard[30] and of defending himself or herself,[32] whether there is a statutory obligation to proceed *quasi-judicially* or not,[30] except in cases like mass copying, where the evidence of unfair means is 'perfectly plain and transparent'.[33]

II. The following acts have been held to be *quasi-judicial*, where they are done by the authorities on the ground of misconduct or misbehaviour of the student :

(i) Expulsion;[29] rustication;[29]
(ii) Cancellation of admission;[34]
(iii) Suspension;[35]
(iv) Cancellation of admission to an examination;

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26. Cf. *State of Mysore* v. *Manche Gowda*, A. 1964 S.C. 506 (510); *State of U.P.* v. *Harish*, (1969) 1 S.C.C. 403 (406); *Bhagat* v. *State of H.P.*, A. 1983 S.C. 454 (para. 10).
27. *Union of India* v. *Sardar*, (1972) U.J.S.C. 126 (para. 13).
28. *Kalra* v. *P.E.C.*, (1984) 3 S.C.C. 316 (para. 28) C.B.
29. *Board of High School* v. *Ghanshyam*, A. 1962 S.C. 1110.
30. *Board of High School* v. *Chitra*, A. 1970 S.C. 1939.
31. *Suresh* v. *University of Kerala*, A. 1969 S.C. 198 (202).
32. *Board of High School* v. *Bagleswar*, (1963) 3 S.C.R. 767; *Prem* v. *Punjab University*, A. 1972 S.C. 1408.
33. *Bihar School Bd.* v. *Sinha*, (1970) 1 S.C.R. 648.
34. *Prasant* v. *Lingaraj Law College*, A. 1977 Or. 107.
35. *Rakesh* v. *State of Punjab*, A. 1965 Punj. 507 (509).

(v) Disqualified from sitting at examination;[36]

(vi) Cancellation of examination.[33]

III. But, subject to the above *quasi-judicial* obligation—

(a) It is within the jurisdiction of the educational institution or the tribunal set up by it to decide all relevant questions in the light of the evidence adduced before it.[31]

(b) It would not be reasonable to import into such inquiry all considerations which govern criminal trials in Courts of law.[31]

(c) It is open to the domestic tribunal to evolve its own *procedure* for inquiry etc.[32,37]

(d) There would be a sufficient compliance of the requirements of natural justice in such case if—

(i) the delinquent student is informed of the charge or the case he has to meet,[31] and

(ii) he is given an adequate opportunity of meeting such charges and the materials used against him and of stating his own case.[31,38]

If these two conditions have been satisfied, the proceeding cannot be vitiated on the ground that the delinquent was not given an opportunity of cross-examining the witnesses[39] examined against him or that they were examined in his absence,[38] or that the report of the Inquiry Officer was not supplied to him.[31]

(e) No inquiry of any sort is necessary where the adoption of unfair means by an examinee is detected by the invigilators at the examination hall and the examinee is expelled from the hall on that ground,[40] or the examinee walks out as soon as he is detected.[40]

Similarly, where the identity of wrong answers offers intrinsic evidence of copying from the same source, the Court cannot interfere on the ground that the inquiring authority acted without *any* evidence.[32,36] The Court cannot apply the same strictness as applicable to criminal charges before a Court of law in the case of a domestic body.[32,36] The Court would not interfere on the ground that the decision of the authority is not supported by any evidence where there is circumstantial evidence to justify it.[41]

Nor is it necessary to make a formal inquiry after issuing a show-cause notice where the charge was of all the examinees at a centre *en masse* using unfair means as distinguished from the case of any particular examinee being so charged.[42]

(f) The Court, under Art. 226, cannot sit as a Court of Appeal over such domestic tribunals, e.g., the matter of quantum of punishment (in the absence of any statutory limitation in that behalf).

(g) The head of an educational institution has the inherent power to take disciplinary action against students who misbehave.[39]

IV. Disciplinary action by way of expulsion or rustication or suspension must, however, be distinguished from a refusal to admit or readmit a student,

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36. *Prem Prakash* v. *Punjab University*, A. 1972 S.C. 1408.
37. *State of Mysore* v. *Sivabasappa*, A. 1963 S.C. 375.
38. *Nagaraj* v. *University of Mysore*, (1968) S.C. [C.A. 1957/66, dt. 15-4-1968]; *Gauhati University* v. *Raj Konwar*, (1970) Assam L.R. (S.C.) 1.
39. *Hiranath* v. *Principal*, (1973) U.J.S.C. 83n (for the safety of girl students involved).
40. *University of Calcutta* v. *Dipa Pal*, A. 1952 Cal. 594.
41. *Maharashtra Board* v. *Gandhi*, (1991) 2 S.C.C. 716 (paras. 15, 26, 37).
42. *Bihar School Bd.* v. *Subhas*, A. 1970 S.C. 1269 (1273).

which is solely within the discretion of the head of the institution[30] [subject, of course, to constitutional provisions, e.g., Art. 15 or 29(2)].[43]

V. In general, the Court should not issue *certiorari* against an educational authority where the regulation in question is capable of two constructions, and the Court should be slow to grant an *ex parte* interim order in such matters, unless it thinks it must do so in the interests of justice.[44]

VI. No opportuntiy need be given to a student to be heard when the matter is solely one of academic adjudication; it is the function of experts which cannot be challenged in the absence of bias or *mala fides*[45] or breach of law.[46]

V. Licensing.

I. *Granting or refusal.*

There has been some wavering of judicial opinion on this point.

In *Veerappa* v. *Raman*,[47] there was a short observation that the function of granting permits under s. 42 of the Motor Vehicles Act, 1939, was a *quasi-judicial* function, but in the later case of *Raman & Raman* v. *State of Madras*,[48] the Supreme Court, upon an analysis of the provisions of the Act, came to the view that "the procedure" for granting permits under the Act was "clearly *quasi-judicial*".

In *Nagendra* v. *Commr.*,[49] on the other hand, the Court relied on the language of the relevant statute, vesting absolute discretion in the Excise authorities, to grant or refuse *licence for excise shops*, to hold that the function of the licensing authorities was administrative,[50] but that when it went on appeal to the superior authority, it became *quasi-judicial*, as the appellate function was, of its nature, of that class.

In *Kishan Chand* v. *Commr. of Police*,[51] the Supreme Court has, by a bare majority (3 : 2), held that even where the function of licensing affects a fundamental right (e.g., carrying on the business of an eating house), it is not *quasi-judicial* where the statute does not provide for a hearing and vests the power to *grant* or refuse a licence in the subjective satisfaction of the authority. But, as the minority pointed out, there were no exceptional circumstances in this case which could take it out from the *normal* rule that vesting of an absolute power constitutes an unreasonable restriction upon the fundamental right guaranteed by Art. 19(1).

In *Purtabpore Co.* v. *Cane Commr.*,[52] again, there is an *obiter* to the effect that the function of granting a licence may not be *quasi-judicial* as the function of revocation is.[52] But the statute will be invalid on the ground of constituting an unreasonable restriction upon the fundamental right guaran-

43. *Rajendran* v. *State of Madras*, A. 1968 S.C. 1012 (1015); *State of Madras* v. *Champakam*, (1951) S.C.R. 525.
44. *Principal, Patna College* v. *Raman*, A. 1966 S.C. 707.
45. *J.N. University* v. *Narwal*, A. 1980 S.C. 1666 (para. 8).
46. *Kulshreshtha* v. *Allahabad University*, A. 1980 S.C. 2141 (para. 17).
47. *Veerappan* v. *Raman*, (1952) S.C.R. 583 (595).
48. *Raman & Raman* v. *State of Madras*, A. 1959 S.C. 694 (697, 698); *Parbhani* v. *R.T.A.*, A. 1960 S.C. 801 (806).
49. *Nagendra* v. *Commr.*, A. 1958 S.C. 398 (407).
50. *Bishnu* v. *Parag*, A. 1983 S.C. 898 (para. 16).
51. *Kishan Chand* v. *Commr. of Police*, A. 1961 S.C. 705 (701).
52. *Purtabpore Co.* v. *Cane Commr.*, (1969) 1 S.C.C. 308 (316); *City Corner* v. *Collector*, A. 1976 S.C. 143.

teed by Art. 19, if it vests *uncontrolled* discretion in the statutory authority to grant or refuse a licence.[53]

In *Raghunandan* v. *State of Orissa*,[54] it has been held that in the absence of a statutory provision to that effect, nobody has any vested legal right to obtain a lease of Government property and, hence, no writ lies to enforce its grant, though the Court might interfere if the refusal is made *unfairly or arbitrarily*.[54]

II. *Revocation or cancellation.*

1. Where the function of licensing related to a fundamental right, e.g., to carry on the business of public transport, it must be held to be *quasi-judicial*,[52] even though the statute did not provide for a hearing of interested objectors. Even dealing in liquor has been brought under this category.[55]

It is now practically settled that the refusal, cancellation or revocation of a licence to carry on a *business* must comply with the minimum requirements of natural justice (i.e., notice and opportunity to represent against the proposed order), because such order visits the person in question with civil and pecuniary injury.[56]

On the other hand,—

(a) The cancellation of an arms licence[57] has been held to be an administrative act.[58]

(b) So, also, where a lease is sought to be cancelled for breach of the terms of a contract, without involving the exercise of any statutory power.[59]

The Gordian knot may be cut by holding that whenever a fundamental right of a person is to be affected either by the refusal or revocation of a licence—

(a) If the statute is silent about the *quasi-judicial* obligation, it should be implied unless the exclusion of it would be justified by exceptional circumstances, e.g.—

(i) public safety,—such as in the case of an arms licence;[60]

(ii) public economy,—such as in the case of a licence relating to the supply of essential commodities in times of emergency;[61]

(iii) inherently dangerous trade or profession, such as relating to trade in or manufacture of liquor;[62]

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53. *Faruk* v. *State of M.P.*, (1969) 1 S.C.R. 833 (857).

54. *Raghunandan* v. *State of Orissa*, A. 1975 S.C. 434.

55. *Krishna* v. *J.&K. State*, A. 1967 S.C. 1368.

56. *Raj Restaurant* v. *Municipal Corpn.*, (1982) U.J.S.C. 851 (para. 5) D.B.

57. *Kishore* v. *State of Rajasthan*, A. 1954 Raj. 264; *Chand Singh* v. *Commr.*, A. 1958 Cal. 420; *Godha Singh* v. *Dt. Magistrate*, A. 1955 Punj. 33.

58. The view taken in *Naneppa* v. *Divl. Commr.*, A. 1967 Mys. 238, that an opportunity must be given to the licensee to make representation before making the order does not appear to be sound because it relates to a thing which is inherently dangerous [Cf. *Cooverjee* v. *Excise Commr.*, (1954) S.C.R. 873] and the statute afforded other safeguards [*vide* ss. 17(3), 18 of the Arms Act, 1959].

59. *Radhakrishna* v. *State of Bihar*, A. 1977 S.C. 1496; *Har Shankar* v. *Dy. Excise Commr.*, A. 1975 S.C. 1121 (1126).

60. *Hasan Ali* v. *Commr.*, A. 1969 A. & N. 50; *Chand Singh* v. *Commr.*, A. 1958 Cal. 420; *Moti* v. *Commr.*, A. 1960 M.P. 157. [contra *Jai Narain* v. *Dt. Magistrate*, A. 1966 All. 265; *Harisingh* v. *Deboo*, A. 1969 Guj. 349; *Naneppa* v. *Divl. Commr.*, A. 1967 Mys. 238].

61. Cf. *Harishankar* v. *State of M.P.*, (1955) 1 S.C.R. 380.

62. *Cooverjee* v. *Excise Commr.*, (1954) S.C.R. 873; *Nagendra* v. *Commr.*, A. 1958 S.C. 398 (405-06).

(iv) public order, —such as relating to a licence for taking out a procession.[63]

The enumeration of exceptions cannot, of course, be exhaustive. The Courts will have to determine in the case whether a denial of a hearing could be justified as a 'reasonable restriction' upon the exercise of the fundamental right in view of the exceptional circumstances, if any, of the case.

It is submitted, with respect, that none of such exceptional circumstances was present in *Kishan Chand's case*[64] (p. 594, *ante*). As has been pointed out earlier, the observations of the Privy Council in *Nakudda Ali* v. *Jayaratne*[65] that—

"In truth when he cancels a licence he is not determining a question; he is taking executive action to withdraw a privilege",

are not applicable to our Constitution inasmuch as that judgment was under a special Act of Ceylon where there was no fundamental right to carry on a business as under Art. 19(1)(g) of *our* Constitution and no question of the *reasonableness* of the restriction upon that fundamental right could possibly arise in that case.

(b) If the statute excludes a hearing, it will have to be determined by the Court whether, in view of the circumstances of the case, such exclusion can be upheld as a 'reasonable restriction'; if not, the obligation to hear will be *implied* if, by any means, it is possible from the contents of the statute,[66] and where that is not possible, the statute itself must be struck down as unconstitutional.

2. But no question of the function being *quasi-judicial* or the requirement of natural justice arises where a lease is revoked solely on the ground of breach of contract without involving the exercise of any statutory power.[67]

VI. Local Authority.

A. Orders of.

Certiorari lies for quashing the *quasi-judicial* orders of *such bodies*, on proper grounds, e.g.—

(i) An order to pay a sum out of the public funds which is *ultra vires* and amounts to a 'wrongful expenditure';[68]

(ii) An order without jurisdiction, e.g., where a licence was granted in contravention of a statute, which it had no power to dispense with;[69]

(iii) An order which was vitiated by this e.g., the approval of a plan by an authority, one of the members of which had an interest in the development to which the plan related;[70]

(iv) An order vitiated by an error of law apparent on its face.[71]

B. Order of removal or supersession of.

I. Where a statute provides for the removal of a particular officer of

63. Cf. *Babulal* v. *State of Maharashtra*, A. 1960 S.C. 51.
64. *Krishan Chand* v. *Commr. of Police*, A. 1961 S.C. 705 (710).
65. *Nakkuda Ali* v. *Jayaratne*, (1951) A.C. 66.
66. Cf. *Chaturbhai* v. *Union of India*, A. 1960 S.C. 424 (430).
67. *Radhakrishna* v. *State of Bihar*, A. 1977 S.C. 1496 (paras. 23-25).
68. *R.* v. *Priest*, (1851) 16 Q.B. 32 (45).
69. *R.* v. *L.C.C.*, (1931) 2 K.B. 215.
70. *R.* v. *Hendon R.D.C.*, (1933) 2 K.B. 696.
71. *R.* v. *Northumberland Compensation Appellate Tribunal*, (1952) 1 K.B. 338.

a local authority, such as the Chairman, on the ground of misconduct and with a stigma, a *quasi-judicial* obligation must be implied from the nature of the function.[72]

II. The question becomes more complicated when the municipal authority, as a collective body, is sought to be superseded or dismissed, in exercise of a statutory power vested in the Government.

In India, the question came up before the Supreme Court in *Radheshyam* v. *State of M.P.*,[73] where the majority of the Supreme Court seems to have made a distinction between orders of this nature having a temporary and a permanent effect. The two provisions of the C.P. and Berar Municipalities Act, 1922, which came up before the Court in this case, were ss. 53A and 57:

"S. 53A. (1) If a committee is *not competent to perform* the duties imposed on it or undertaken by it or under this Act .... and the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government as the executive officer of the committee, the State Government may, by an order *stating the reasons therefor* published in the Gazette, appoint such servant as the executive officer of the committee for such period not exceeding 18 months as may be specified in such order....

(2) When under sub-sec. (1) an executive officer is appointed for any committee, the State Government shall determine from time to time which powers, duties and functions of the committee .... shall be exercised and performed by such officer, in addition to, or to the exclusion of, their exercise and performance by the said committee ....."

"S. 57. (1) If a committee is *not competent* to perform .... the duties imposed upon it .... or exceeds or abuses its powers to a grave extent, the State Government may, by an order *stating the reasons* therefor published in the Gazette, *dissolve* such committee and order a *fresh election* to take place.

(2) If after fresh election the new committee continues to be incompetent to perform .... such duties....or exceeds or abuses its powers to a grave extent, the State Government may, by an order stating the reasons therefor published in the Official Gazette ,.... *supersede* it for a period to be specified in the order ...

(3) No order under sub-sec. (1) or sub-sec. (2) shall be passed until reasonable opportunity has been given to the committee to furnish its explanation."

S. R. Das, C.J., speaking for the majority (p. 119)[73] held that an order under sub-sec. (1) or sub-sec. (2) of s. 57 was a *quasi-judicial* order, but an order under s. 53A(1) was administrative, for two reasons—

(a) Sub-sec. (5) of s. 57 expressly required an opportunity to be given to the municipal committee before making the order, while such a provision was deliberately absent from s. 53A.

(b) An order under s. 57 was of drastic nature and put an end to the existence of the municipal committee itself, while the order under s. 53A was of a temporary duration and did not threaten the existence of the committee itself.

There was no difference of opinion and there could not be any, as regards the nature of the function under s. 57, because there was an express provision imposing a *quasi-judicial* obligation.

As regards the nature of the function under s. 53A, Bhagwati, J., did not express any opinion because, in his opinion, an opportunity had, in fact, been given. Subba Rao, J., differed from the opinion of the majority and held that a *quasi-judicial* duty was also to be implied from the *nature of the*

72. *Bhagat* v. *State of Punjab*, A. 1972 S.C. 1571 (1577).
73. *Radheshyam* v. *State of M.P.*, A. 1959 S.C. 107.

function and that an express provision to give opportunity was absent in this section was not conclusive. In the opinion of his Lordship, the decisive nature of the function was that the jurisdictional fact upon which only the State Government could act under s. 53A was an *objective* fact, namely, a charge of incompetency, which was not left by the statute to the subjective satisfaction of the Government, and, on the other hand, the Government was obliged to give its reasons. It was rightly pointed out by Subba Rao, J., that the extent of duration of the order was immaterial if the nature of the order under s. 53A was penal in the same manner as an order under s. 57. It may be added that the view of Das, C.J., that the penal nature differed because an order under s. 53A did not put an end to the existence of the committee itself was not beyond criticism inasmuch as when an executive officer was appointed by the State Government under s. 53A, he was sure to exclude the elected committee from the exercise of some of its statutory functions, by reason of the order under sub-sec. 3 of s. 53A. If this was done on the charge of incompetence, the nature of the order remained as penal as that under s. 57, and the *extent* of the injury effected by the order could not be relied upon as a criterion for differentiating s. 53A from s. 57.

Further, once it is conceded that it was the nature of the order that made the order under s. 57 *quasi-judicial,* a provision for supersession of the municipality collectively would be *quasi-judicial* even in the absence of an express provision imposing such obligation, where it was made on a charge of incompetency or misconduct.[74]

VII. Statutory Tribunal, in general.

1. A finding of fact[75] by a statutory tribunal is not reviewable[76] by the High Court under Art. 226 except—

(i) Where the finding is on a preliminary question upon which the jurisdiction of the Tribunal depends,[77] and the Legislature has not vested the Tribunal with a final jurisdiction to determine that question as well.[78] Thus,

The High Court may quash a notice issued by an Income-tax Officer on the ground that the condition precedent[79] for the exercise of the jurisdiction or power by the Officer did not exist,[80] but the Court cannot go into the evidence to find whether the Officer's determination as to the existence of that condition was proper.[80]

A later three-Judge Bench[81] has held that even where the jurisdiction of the Courts is excluded by statute or the Constitution itself, e.g., under Art. 262(2), the Supreme Court retains its jurisdiction to decide the parameters of the jurisdiction of the Tribunal which depends upon an interpretation of the Constitution or the statute (as the case may be). What is excluded is

74. This view of the Author expressed at pp. 497-98 of the Fourth edition stands affirmed by the Privy Council decision in *Durayappah* v. *Fernando,* (1967) 2 A.C. 337 (P.C.); and *our* Supreme Court decision in *Kapoor* v. *Jagmohan,* A. 1981 S.C. 136 (paras. 10, 16).

75. *Mukunda* v. *Bangshidar,* A. 1980 S.C. 1524 (para. 16).

76. *Sundari Lal* v. *Union of India,* (1974) 1 S.C.C. 1.

77. *State of M.P.* v. *Jadav,* A. 1968 S.C. 1186 (1190).

78. *Brij Raj* v. *Shaw & Bros.,* (1951) S.C.R. 145; *Lilavati* v. *State of Bombay,* A. 1957 S.C. 521 (528).

79. *State of Punjab* v. *Ardaman,* A. 1969 S.C. 13 (paras, 3-4).

80. *Kartar Singh* v. *Union of India,* (1967) S.C., dt. 18-10-1967.

81. *State of T.N.* v. *State of Karnataka,* (1991) 2 U.J.S.C. 134 (para. 11).

the power of the Courts to sit in judgment over the *merits* of the orders of the Tribunal.[81] But the function of interpreting the statute or of determining whether the act of a constitutional or statutory authority falls within the constitutional or legislative conferment of power rests solely with the Court.[82]

(ii) Where the finding of the Tribunal is so perverse that no reasonable Tribunal could arrive at such finding,[80] or based on mere suspicion[83] or violative of natural justice.[81]

2. On a question of law, the High Court may interfere if there is an error apparent on the face of the record, but not otherwise.[84]

3. On the other hand—

It is not open to the parties before a *quasi-judicial* tribunal (as in the case of Courts) to assail its record of proceedings and the statement of facts made therein as incorrect, unless steps are taken before the same forum.[85]

VIII. Transport Authority.

I. The function of the Regional Authority in granting permits or cancelling them has been held to be a *quasi-judicial* function.[86]

II. *Certiorari* would lie against the order of the Transport Appellate Tribunal on the ground—

(i) That no appeal lay to it under the statute from the order of the subordinate authority in question.[87]

(ii) That there was an error apparent on the face of the record[88] or a breach of the principles of natural justice.[89]

(iii) That the Tribunal has acted on irrelevant considerations or on considerations invalid in law.[90]

(iv) That the finding of the Tribunal is based on *no* evidence.[90]

(v) That in arriving at a *quasi-judicial* decision, it relied solely on the administrative directions of the Government.[91]

III. But where the Tribunal has arrived at a decision upon a consideration of all relevant factors,[92] *certiorari* cannot issue simply because—

(a) all the reasons have not been set out in the order of the Tribunal;[92]

(b) the considerations upon which the Tribunal acted, though relevant, were contained in the administrative directions issued upon the Tribunal under s. 43A of the Motor Vehicles Act;[92] or

(c) the High Court would have taken a different view on the evidence adduced in the proceedings;[92] or

(d) the Tribunal did not consider *some* item or items of evidence,[88] but there was some evidence to support the finding.[88]

IV. *Certiorari* may lie against the Transport Authority or other Tribunal under the Motor Vehicles Act, if, in the discharge of its *quasi-judicial* duties,

82. *Kehar* v. *Union of India*, (1989) 1 S.C.C. 204 (214).

83. *State of Rajasthan* v. *Bhanu*, (1967) S.C., dt. 22-9-1967; *Collector* v. *Sanawarmal*, (1968) S.C., dt. 16-2-1968; *State of Madras* v. *Sarathy*, (1953) S.C.R. 534.

84. *Chockalingam* v. *Manickavasagam*, (1978) 1 S.C.C. 48 (para. 18); *Hari* v. *Ahmed*, (1955) 1 S.C.R. 1104.

85. *Bhagwati* v. *D.S.M.D.C.*, (1990) 1 S.C.J. 433 (para. 5).

86. *State of Kerala* v. *Shaduli*, A. 1977 S.C. 1627 (para. 5).

87. Cf. *Ram Gopal* v. *Anant*, (1959) 2 S.C.R. 692.

88. *Yakoob* v. *Radhakrishnan*, A. 1964 S.C. 477 (479, 482-83); *Shanmugam* v. *S.R.V.S.*, A. 1963 S.C. 1626.

89. Cf. *N.P.T. Co.* v. *N.S.T. Co.*, (1957) S.C.R. 98.

90. *Prem Sagar* v. *S.V. Oil Co.*, A. 1955 S.C. 107 (111).

91. *Subbaraj* v. *Motor Union*, (1973) U.J.S.C. 311 (paras. 9, 11).

92. *Sri Ram Vilas Service* v. *Chandrasekharan*, A. 1965 S.C. 107.

e.g., the disposal of an application for a permit[93] or renewal of a permit, it is actuated by bias,[94] or its decision is based solely upon a direction issued by the State Government under s. 43A, which is *ultra vires*[94] or it commits an error apparent on the face of the record, e.g., by ignoring a consideration specified in s. 47.[77]

V. *Certiorari* lies against the State Government, exercising revisional authority under the Motor Vehicles Act, where it has, in revision, made an order which the subordinate authority whose order it was revising, had no jurisdiction to pass, e.g., increase the number of permits as fixed by the subordinate authority, under s. 47(3) of the Act.[95]

VI. *Certiorari* would lie against the State Government when giving a hearing under s. 68D, for approving a scheme,[96] e.g.—

(i) Where it is established that the State Government or the Minister in charge[97-98] acted in collusion with the State Transport Undertaking and thus made a *mala fide* exercise of its statutory power[97] or had bias against the private operators;

(ii) Where the State Government or its delegate refused to take relevant and necessary evidence from the parties.[99] In such case, hearing of arguments is not enough.[98]

(iii) Where the State Government refused to allow a party to the hearing to lead relevant evidence,[99] or does not allow him a reasonable opportunity to be heard;[100]

(iv) Where the scheme prepared amounts to a fraud on s. 68C.[1]

VII. On the other hand, the following functions under the Act have been held to be administrative and *not* amenable to *certiorari*.[94]

(a) The State Government issuing a direction under s. 43A.[94]

(b) The State Government dealing with an application of the State Transport Undertaking under s. 68F(1)-(2).[2]

VIII. But the Court's jurisdiction being merely supervisory and not appellate, after quashing an order on the ground of error of law or the like, the Court cannot make a finding of its own on the merits,[3] but has to send the case back to the Tribunal for a reconsideration according to law.[4]

V. QUO WARRANTO

Jurisdiction to issue Quo Warranto.

(A) *England.*—*'Quo Warranto'* means 'by what authority'. This writ[5]

93. *Samarth Transport* v. *R.T.A.*, A. 1961 S.C. 93 (98).
94. *Rajagopala* v. *S.A.A. Tribunal*, A. 1964 S.C. 1573 (1580).
95. *Abdul Matten* v. *Ram Kailash*, A. 1963 S.C. 94.
96. *Raman & Raman* v. *State of Madras*, A. 1959 S.C. 694 (698-99).
97. Cf. *Kondala Rao* v. *A.P.S.R.T.C.*, A. 1961 S.C. 82 (88-90).
98. *Rowjee* v. *State of A.P.*, A. 1964 S.C. 962 (970, 972).
99. *Malik Ram* v. *State of Rajasthan*, A. 1961 S.C. 1575 (1578).
100. *Narayanappa* v. *State of Mysore*, A. 1960 S.C. 1073.
1. *Aswathanarayan* v. *State of Mysore*, A. 1965 S.C. 1848.
2. *Abdul Gafoor* v. *State of Mysore*, A. 1961 S.C. 1556; *Kalyan Singh* v. *State of U.P.*, A. 1962 S.C. 1183 (1189).
3. *Chief Constable* v. *Evans*, (1982) 3 All E.R. 141 (H.L.).
4. *Naina* v. *Natarajan*, (1975) U.J.S.C. 595.
5. In *England*, the writ of *quo warranto* or information in the nature of *quo warranto*, which in course of time took the place of the writ, has been replaced by a simple order of injunction by the Administration of Justice (Miscellaneous Provisions) Act, 1938. This Act empowers the High Court to grant an injunction to restrain a person from acting in an office to which he was entitled, and, if necessary, to declare the office to be vacant. The *injunction* would, however, issue only in circumstances under which the writ of information in the nature of *quo warranto* would have issued and only in favour of a person who would have been entitled to apply for *quo warranto* [s. 9, Administration of Justice (Miscellaneous Provision) Act, 1931].

was issued to persons "who claimed or usurped any office, franchise, liberty or privilege belonging to the Crown (read 'State' in India), to inquire by what authority they maintained their claim, in order that the right to the office or franchise might be determined."[6]

As *Blackstone*[7] put it—

"The ancient writ of *quo warranto* was in the nature of a writ of right for the king against him, who claimed or usurped any office, franchise or liberty, to *inquire* by what authority he supported his claim, in order to *determine* the right."

In the words of *Spelling*[8]—

"*Quo warranto* is the remedy or proceeding where the State inquires into the legality of the claim which a party asserts to an office or franchise, and to oust him from its enjoyment if the claim be not well founded, or to have the same declared forfeited, and recover it, if, having once been rightfully possessed and enjoyed, it has become forfeited for misuser or non-user."

The most primary thing to be remembered in regard to *quo warranto* is that it originated as a judicial means of asserting a sovereign right[7] and that it has retained that character in England and America even to-day.[9] It will, therefore, not issue merely for the determination of a private right wherein the public are not interested. On the other hand, even where the question is apparently a question of title to an office between two claimants, *quo warranto* will issue if the office be a *public* one for the public has an interest to see that an unlawful claimant shall not usurp a public office, or that a person, who was duly elected or appointed but has since forfeited his right to continue in office by reason of some act or event, shall not continue in office.[7-8]

It should be noted that the writ of *quo warranto* is issued, against the usurper *personally* and that, accordingly, the fact that the usurper was appointed by an order of the Sovereign[10] or by the Head of the State[11] who is immune from the jurisdiction of the Court is of no avail. The result is that, while *mandamus* is not available against servants of the Crown, *quo warranto* is.[12]

Owing to the popularity of other remedies, the writ of *quo warranto* had fallen into disuse even before it was replaced by the statutory remedy of injunction in 1938,[5] so that English decisions on this subject, as the footnotes in the following pages will show, are more than half a century old.

(B) *India.*—As has been explained earlier, prior to the Constitution, the High Courts in the Presidency towns[12] had the jurisdiction to issue this writ, within the limits of their original jurisdiction.[13]

Under the Constitution, the power to issue the writ belongs to the Supreme Court under Art. 32 and to a High Court under Art. 226. The power is being exercised broadly on the same principles as in England.

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6. Selway, quoted in Chalmers & Hood Phillips, p. 292; Halsbury, 3rd Ed., Vol. 11, p. 145.
7. 3 Bl. Comm., Bk. III, 262.
8. Spelling, *Injunction and other Remedies*, Vol, II, pp. 1516 1601.
9. Ferris, *Extraordinary Remedies*, p. 138.
10. *R.* v. *Speyer*, (1916) 1 K.B. 595 (610).
11. Observation to the contrary in *Bimanchandra* v. *H.C. Mookerjee*, (1952) 56 C.W.N. 651 should be examined in this light.
12. *Corkhill*, re, (1895) 22 Cal. 717.
13. *Hamid Hasan* v. *Banwarilal*, A. 1947 P.C. 90 (91).

Purposes for which Quo Warranto may be issued.

In *India*, the use of *Quo Warranto*, in Administrative Law, has been confined to cases of usurpation of a public office and the removal of such usurper.

Conditions for the issue of Quo Warranto in relation to Public Office.

A writ of *Quo Warranto*[14] will issue in respect of an office only if the following conditions are satisfied:—

I. The office must be *public*.[15] It will not lie in respect of office of a private charitable institution or of a private association. Thus, the Managing Committee of a private school, even though a small section of the public, viz., the students and their guardians are interested in the school, is not an office of a public nature for the purpose of *quo warranto*.[16] The test of a public office is whether the *duties* of the office are public in nature,[17] in which the public are interested whether it is or is not remunerated.[17] But payment of remuneration out of public funds will be a specific test.[17]

II. The office must be *substantive*[15] in character, i.e., an office independent in title.[15]

III. It must have been created by *statute* or by the Constitution itself.[16] Thus,

(a) The writ will not lie against the Managing Committee, not created by any statute, or by Rules having statutory force, of a private educational institution.[16]

(b) On the other hand, the writ would issue in respect of the office of—

(i) Officers appointed under a Municipal Act,[18] including an Administrator;[19]
(ii) Members of a local or municipal body, created by statute;[20]
(iii) Members of any statutory body,[21] such as the Devaswom Board;[22]
(iv) Officers of a University created by statute;[23] or the Syndicate;[24]
(v) Speaker of a House of the Legislature;[25]

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14. Its literal meaning is—'Where is your warrant of appointment?'
15. *University of Mysore* v. *Govinda*, A. 1965 S.C. 491 (494); *Hamid* v. *Banwari*, A. 1947 P.C. 90.
16. *Amarendra* v. *Narendra*, A. 1953 Cal. 114; *Dineswar* v. *State*, A. 1984 Pat. 13 (paras. 6-7); *Niranjan* v. *Bihar University*, A. 1973 Pat. 85 (para. 3).
17. *Ramachandran* v. *Aligiriswami* A. 1961 Mad. 450 (455, 467).
18. *Ashgar Ally* v. *Birendra*, (1945) 49 C.W.N. 658.
19. *R.C. Deb* v. *Govt. of Tripura*, A. 1976 Gau. 897; *Baijnath* v. *State of U.P.*, A. 1965 All. 151.
20. *Haran* v. *State of W.B.*, A. 1952 Cal. 907; *Masehulla* v. *Abdul*, A. 1953 All. 193; *Baijnath* v. *State of U.P.*, A. 1965 All. 151; *Shyabudinsab* v. *Municipality*, A. 1955. S.C. 314.
21. *Dineswar* v. *State of Bihar*, A. 1980 Pat. 54 (para. 11).
22. *Govinda* v. *Balakrishna*, A. 1955 T.C. 42.
23. *Rajendrakumar* v. *State of M.P.*, A. 1957 M.P. 60 (62). [The Calcutta decision in *S.B. Ray* v. *P.N. Banerjee*, (1967) 72 C.W.N. 50 (64), that the Principal of the University Law College, appointed under the University Act, 1951, did not hold a public office, it is submitted, appears to have been arrived at upon a misreading of Ferris on *Extraordinary Legal Remedies*, p. 165].
24. *Satish* v. *Rajasthan University*, A. 1970 Raj. 184 (para. 32).
25. *Nesamony* v. *Verghese*, A. 1952 T.C. 66.

(vi) Advocate-General;[26] or Government Pleader;[27] or Public Prosecutor;[28]

(vii) Member of a Legislature;[29]

(viii) Chief Justice of Supreme Court;[30] Judge of a High Court;[31] District Judge;[32] Registrar of a High Court;[33]

(ix) Vice-Chancellor of a University;[34]

(x) Minister;[35]

(xi) Statutory Tribunal.[36]

IV. The respondent must have asserted his claim to the office.

The application is premature until the respondent has assumed the office[37] or asserted his claim to it. On the other hand,—

Whether the respondent has usurped the office is a question of substance and *quo warranto* may issue even though the respondent has not assumed the *name* of the office.[38]

V. The respondent is not legally qualified[39] to hold the office or to remain in the office,[40] or some statutory provisions have been violated in making the appointment,[15] which cannot be cured as an 'irregularity',[41] so that his *title* to the office becomes invalid[15] or without legal authority.[15]

In other words, the invalidity of the appointment may arise not only from want of qualifications, but also from the violation of such legal conditions or procedure for appointment as are mandatory[30] and as a result of which the appointment becomes void,[42] e.g., want of Government sanction.[42]

In short, *quo warranto* will not issue unless there is a clear infringement of provisions having the force of law,[36] as distinguished from mere administrative instructions,[43] or some provision of the Constitution itself.[44] The question to be determined before issuing *quo warranto* is whether the impugned appointment has contravened the binding rule of the law and not whether it has involved a 'manifest error' which is relevant in a proceeding for *certiorari*.[15]

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26. *Karkare* v. *Shevde*, A. 1952 Nag. 330.
27. *Kanta* v. *Nanak*, A. 1970 S.C. 694.
28. *Rajendra* v. *State of U.P.*, (1979) Cr. L.J. 243 (para. 7) All.
29. In re *Chakkarai*, A. 1953 Mad. 96; *Despande* v. *State of Hyderabad*, A. 1955 Hyd. 396.
30. *Lakhanpal* v. *A.N. Ray*, A. 1975 Del. 66.
31. *Chandra Prakash* v. *Chaturbhuj*, (1969) S.C. [2331/168, dt. 18-12-1969]; *Q.E.* v. *Gangaram*, (1894) 16 All. 136.
32. *Kuseswar* v. *State*, A. 1969 A. & N. 128; on appeal, A. 1970 S.C. 1616 (para. 1).
33. *Malik* v. *Sharma*, A. 1982 Del. 83.
34. *Chaturvedi* v. *Chatterjee*, A. 1959 Raj. 260; *Kashinath* v. *R.K. Nehru*, (1965) [*Statesman*, 4-12-1965].
35. Cf. *Har Sharan* v. *Chandra Bhan*, A. 1962 All. 301 (307).
36. *Statesman* v. *H.R. Deb*, A. 1968 S.C. 1495 (1500).
37. *Pundlik* v. *Mahadeo*, A. 1959 Bom. 2.
38. In re *Banwarilal*, (1944) 48 C.W.N. 766.
39. *Chandra Prakash* v. *Chaturbhuj*, (1969) S.C. [C.A. 2331/68, dt. 18-12-1969].
40. Cf. *Pentiah* v. *Muddala*, (1961) 2 S.C.R. 295 (311).
41. *Hanuman Foundries* v. *Hem Ranjan*, (1967) 15 F.L.R. 122 (147).
42. According to a Division Bench of the Patna High Court [*Dineswar* v. *State of Bihar*, A. 1980 Pat. 54], the plea that the statutory provision, which has been violated in making an appointment is merely directory, is no valid plea to defeat an application for *quo warranto*, though it may be a good plea against a writ of *mandamus*.
43. *Alex* v. *Urmese*, A. 1970 Ker. 312 (315).
44. *Baij Nath* v. *State of U.P.*, A. 1965 All. 151 (para. 9); *Narayan* v. *Rathi*, A. 1963 M.P. 17.

But the infringement of the law must be *clear*, in order to sustain *quo warranto*.[36]

In the absence of violation of a mandatory provision of the Constitution or a statute, the Court will not issue *quo warranto* in respect of appointment to an office held at 'pleasure'.[45]

When Quo Warranto may be refused.

I. *Quo warranto* is a discretionary remedy which the Court may grant or refuse according to the facts and circumstances of each case.[30] Thus, the Court may refuse it—

(a) Where it would be vexatious;[46]

(b) Where it would be futile in its results,[30] e.g., where the respondent has ceased to hold the office, the appointment to which has been questioned in the proceeding[47] or persons senior to him have in the meantime resigned or retired;[30]

(c) Where the petition is motivated by malice or ulterior purpose[48] and not actuated by public interest.[49]

But—

(i) Where the respondent has been appointed to another officiating post and is likely to revert to the office in question, the petition cannot be thrown out as not maintainable.[47]

(ii) Another exception acknowledged by the courts is that resignation after the *Rule nisi* has been issued is no answer to the Rule.[49]

But the writ cannot issue where, owing to the changed circumstances, the defect in the appointment (as alleged) can be cured by immediate reappointment.[30] But this principle cannot extend to a case where such reappointment can be made only by *changing the law*.[50] What is relevant is the law[51] and circumstances standing at the time of the hearing.[30]

(c) Where there has been an *irregularity* in the election to an office which has not affected the result of the election and there is no bad faith.[52]

(d) Where the result of granting a *quo warranto* in the matter of election to a corporate office would be to disturb the peace and quiet of the Corporation,[53] unless the illegalities brought to the notice of the Court are grave and manifest, as distinguished from the breach of technical rules.[54]

(e) Where the petition is barred by *res judicata*.[55]

II But considerations, such as the following, are no grounds for refusing *quo warranto*, once the Court is satisfied that the respondent is a usurper of the public office in question :

(a) That the respondent has discharged the functions of the office for

45. *Jogendra* v. *State of Assam*, A. 1982 Gau. 25 (para. 10).
46. *Mohichandra* v. *Secy., Local Self-Govt.*, A. 1953 Assam 12; *Karkare* v. *Shevde*, A. 1952 Nag. 330.
47. *Rameshwar* v. *State of Punjab*, A. 1961 S.C. 816 (818).
48. *Shastri* v. *State of Punjab*, (1988) Supp. S.C.C. 127 (para. 8).
49. *Balbir* v. *Tapase*, A. 1985 P.&H. 244 (paras, 23-28) F.B.
50. *Mahadeokar* v. *Chief Commr.*, (1973) 1 S.L.R. 1042.
51. *Hari Shankar* v. *Sukhdeo*, A. 1954 All. 227 (F.B.).
52. *B.K. Sen* v. *Bhattacharya*, (1959) 59 C.W.N. 590 (610).
53. *Mohichandra* v. *Secy., Local Self-Govt.*, A. 1953 Assam 12.
54. *Bhairulal* v. *State of Bombay*, A. 1954 Bom. 116.
55. *Niranjan* v. *Bihar University*, A. 1973 Pat. 85 (para. 3).

any length of time.[56-57] Delay is, thus, no ground for bringing an application for *quo warranto*, if the respondent is still in office.[54] The reason is that—

"If the appointment of an officer is illegal, every day he acts in that office a fresh cause of action arises; there can, therefore, be no question of delay in presenting a petition for *quo warranto* in which his very right to act in such a responsible post has been questioned."[51]

This holds good particularly when the appointment is shown to be unconstitutional.[58]

But in the case of a Magistrate having been appointed to an Industrial Tribunal, the Supreme Court seems to have shown reluctance to interfere on the ground that the person had exercised the functions of the office for some years, even though the Court came to hold that the expression 'judicial office' in s. 7(2)(d) of the Industrial Disputes Act referred to members of the 'civil judiciary'.[59]

(b) Acquiescence is no ground for refusing *quo warranto* in case of *appointment* to a public office of a disqualified person, though it may be a relevant consideration in the case of election.[56]

(c) That the respondent has resigned or has been transferred from the office subsequent to issue of the Rule.[60] The case of expiry of the term of office may be different.[61]

The 'de facto' doctrine. While the object of a proceeding for *quo warranto* is to protect the public from usurpation of a public office by a person who is not legally entitled to hold it, there is a contrary principle that the public have a right to presume that a person who is *de facto* (i.e., in fact) in possession of an office, he has a *de jure* (in law) title to it, until the contrary is established in due course of law.[62]

This is a rule of public policy, aimed at the prevention of endless confusion and needless chaos and the protection of public and private interest.[62]

From this latter principle, several corollaries appear to have been drawn.

I. The title of an alleged usurper cannot be challenged except in a *direct* proceeding to which he is a party. In short, it can be challenged in a proceeding for *quo warranto*, but not in any other collateral proceeding, e.g., *mandamus* or *certiorari*[63] or to quash conviction ordered by a *de facto* judicial officer[64] or by way of defence in a criminal proceeding;[64] or to question the title of the appellate Court in an appeal before him[63] or to question the title of the Members of the Public Service Commission in a writ proceeding to quash a seniority list approved by the Commission.[63]

56. *Sri Hanuman Foundries* v. *Hem Ranjan*, (1967) 15 F.L.R. 122 (148) Cal; *Kashinath* v. *State of Bombay*, A. 1954 Bom. 41; *Sanu Sampat* v. *Jalgaon Municipality*, I.L.R. (1958) Bom. 113; *S.B. Ray* v. *P.N. Banerjee*, (1967) 72 C.W.N. 50 (55).

57. *Baijnath* v. *State of U.P.*, A. 1965 All. 151 (para. 6).

58. *Malik* v. *Sharma*, A. 1982 S.C. 83 (para. 16).

59. *Statesman* v. *H.R. Deb*, A. 1968 S.C. 1495 (1500).

60. *State of Rajasthan* v. *Mewar Mills*, (1954) S.C.R. 1129 (1130); *Rameswar* v. *State of Punjab*, A. 1961 S.C. 816 (818); *R.* v. *Francis*, (1852) 21 L.J. Q.B. 304; *R.* v. *Warlaw*, (1813) 2 M. & S. 75; *R.* v. *Blizard*, (1866) 1 I.R. Q.B. 55.

61. *S.B. Ray* v. *P.N. Banerjee*, (1967) 72 C.W.N. 50 (67); *Puranlal* v. *P.C. Ghosh*, A. 1970 Cal. 118 (119).

62. *Gokaraju* v. *State of A.P.*, A. 1981 S.C. 1473 (paras. 4, 13-15).

63. *Parameswaran* v. *State Prosecutor*, A. 1951 T.C. 45; *Menon* v. *State*, A. 1970 Ker. 165 (170).

64. *Pulin* v. *E.K.*, (1912) 15 C.L.J. 517 (577).

II. The law makes a distinction between an intruder, a *de jure* and a *de facto officer*.[65] (a) An officer *de jure* is one who has been legally appointed, having legal qualifications therefor. No question as to the legality of the acts by reason of his appointment can possibly arise. (b) An intruder is one who attempts to perform the duties of an office without authority of law, and without public acquiescence. For legal purposes, acts done by him are absolutely void. (c) An officer *de facto* stands between the two foregoing categories. His appointment may be defective by reason of absence of right of the person who made the appointment, or of disregard of the legal requirements, for making the appointment, or absence of his own qualification[66] for the office. But notwithstanding such defects, the public may have acquiesced in such appointment for some time and submitted to acts done by him. To prevent confusion in the conduct of public business in such cases, the legal maxim provides that the acts of an officer *de facto* cannot be questioned collaterally.[65]

III. A Judge *de facto* is one who is not a mere intruder or usurper but who holds office under colour of lawful authority[66] though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced and acts done by him, when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a Judge *de jure*.[62]

IV. Another rule of public policy, which follows from the above, is that the appointment of a *de facto* Judge may be questioned *directly* in a proceeding to which he may be a party but not in a litigation between two private litigants.[62]

V. Much confusion has arisen in the judicial world as to what would be treated as a 'collateral' as opposed to a 'direct proceeding'. A *quo warranto* is undoubtedly a direct proceeding for removing a *de facto* public officer, including a judicial officer.[59] In India some controversy arose, whether the acts done by a *de facto* officer could also be sought to be quashed in a proceeding for *quo warranto*.

In the case of *Hanuman Foundries* v *Hem Ranjan*,[67] which was referred to by the Supreme Court in *Statesman* v *Deb*,[59] the question which arose was whether in a *quo warranto* proceeding to remove a person who was holding the office of the Presiding Officer of a Labour Court, without being qualified, an order in the nature of *certiorari* to quash an award made by him could also be asked for. While Basu, J., held that the technicalities of the English writs not being imported into India, there was nothing to bar a petitioner, in a petition under Art. 226, from joining the substance of the two writs of *quo warranto* and *certiorari*, the third Judge, Sinha, J., held to the contrary, on the ground that *certiorari* was a collateral proceeding in relation to the removal of a *de facto* officer, which the Presiding Officer in question was. This issue was not touched upon in *The Statesman case*[59] because the Supreme Court cut at the root by holding that the Presiding Officer had, in fact, held a 'judicial office' as a 'magistrate'. But the question arose directly before the Supreme Court in the subsequent case from Haryana, relating to the same statute and regarding the same office of the Presiding Officer of a Labour Court.[65]

65. *State of Haryana* v. *Haryana Transport*, A. 1977 S.C. 237.
66. *Beopar* v. *Vishwa Nath*, A. 1987 S.C. 2111 (para. 12).
67. *Hanuman Foundries* v. *Hem Ranjan*, (1967) 15 F.L.R. 122 (148).

The answer given by the Supreme Court on this question[65] (paras. 2, 9, 10, 15) vindicates the decision of Basu, J., in the *Hanuman case*[73] as follows :

In the *Haryana case*,[65] the Petitioner (Respondent) filed the Petition under Arts. 226-227 to set aside an award given by *H* (2nd Resp. to the Petition) *on the ground* that he was not qualified to hold the post of Judge, Labour Court, and, therefore, the award made by him was *without jurisdiction*. In the Petition, the Petitioner did *not* mention *quo warranto*, but asked for *certiorari* or 'other suitable writ, order or direction'. It was found that *H* had never, before his appointment, held any judicial office, so that his appointment under s. 7(3)(d) of the I.D. Act, 1947, had been illegal, *and, consequently, his award was without jurisdiction*. The High Court *allowed* the Writ Petition and set aside the award. The State of Haryana having appealed, the Supreme Court dismissed the appeal and *upheld* the *judgment* of the High Court, declaring the appointment invalid and setting aside the award. The Supreme Court held that even though the Petitioner had not specifically asked for the writ of *quo warranto*, the Petition was, in substance, one for *quo warranto*, which the Court could grant under the residuary prayer for 'other writ', inasmuch as the real attack on the award was the ineligibility of *H*, the facts relating to which had been duly averred; that *H* having been impleaded as a party respondent; it was a direct and not a 'collateral' proceeding to challenge his appointment; and that quashing of the award, being without jurisdiction, followed as a consequential relief.[65]

It follows from the *Haryana*[65] decision that in India, prayer for invalidating the appointment of a public officer, including a *de facto* judicial or *quasi-judicial* officer, can be combined with that for *quo warranto* in a Petition under Art. 226 if the Officer is made a party thereto, and his appointment is challenged with necessary averments as to its illegality. It does not even matter if the writ of *quo warranto* is not specifically mentioned in such Petition.

The foregoing view has been further affirmed by the decision in *Gokaraju's case*[62] (para. 15) that the doctrine against collateral attack means that the validity of the Judge's appointment cannot be questioned in a litigation between two private litigants, in their private capacity or in an *appeal* from the judgment rendered by such Judge. Once, therefore, the challenge to his title is raised in a proceeding to which the Judge is a party, the requirement of the rule barring collateral attack is satisfied, and thereafter there is nothing to prevent several wrtis being combined in that proceeding.

This thesis of the Author is justified by the proposition established by the Supreme Court that the jurisdiction under Art. 32 or 226 is not limited to 'Prerogative Writs' and that the Court should grant the Petitioner any relief which is necessary to afford proper justice, *regardless of technicalities*.[68]

VI. If the foregoing ingredients are present, it is immaterial that the usurper was holding *de facto* with the acquiescence of the public for any length of time[62]. The view taken in a pre-Constitution case[64] that the acts done by a *de facto* Judge could not be set aside on the ground of illegality of his appointment is not, therefore, tenable.

68. *Harbans* v. *State of U.P.*, A. 1982 S.C. 849 (paras. 16, 20); *Basappa* v. *Nagappa*, (1955) 1 S.C.R. 250; *Dwarka* v. *I.T.O.*, A. 1966 S.C. 81 (85); *Mehta* v. *Union of India*, A. 1987 S.C. 1086.

VII. The application of the *de facto* doctrine to uphold judgments pronounced by a Judge whose appointment is subsequently declared invalid would not contravene Art. 21 (in the case of a judgment of conviction),[62] provided the office held by him was validly created.[62]

Doctrine of proportionality.

Administrative action in India affecting fundamental freedoms has always been tested on the anvil of proportionality. But "proportionality" it is meant that the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of administrative order, as the case may be. Under the principle court will see that the legislature and he administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court to decide. This is the principle of proportionality.

While dealing with the validity of legislation infringing fundamental freedoms enumerated in Art. 19(1) of the Constitution e.g. freedom of speech and expression, freedom to move freely etc. the Supreme Court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. "Reasonable restrictions" under Art. 19(2) to (6) could be imposed on these freedoms only by legislation and courts had occasion to consider the proportionality of the restrictions. Legislation may be made and the restriction may be reasonable. But a balance has to be struck between fundamental right and need for restriction.[69] In cases where such legislation is made and the restrictions are reasonable; yet if the statute concerned permitted administration authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administration for imposing the restriction or whether the administrator has not properly balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restrictions etc. In such cases, the administration action in our country has to be tested on the principle of proportionality, just as it is done in the case of main legislation. This, in fact, is being done by the courts.[70]

MISCELLANEOUS

Transparency in disinvestment.

Global advertisement was made to select global advisor and strategic partner. The offer of highest bidder was accepted. It was more than the reserve price. Thus fair, just and equitable procedure has been followed in carrying out this disinvestment. Therefore there was transparency in disinvestment. Transparency would require that the manner in which decision is taken is made known. Persons who are to decide are not arbitrarily selected or appointed. By way of judicial review court can only examine whether proper procedure had been followed and whether the reserve price which was fixed was arbitrarily low and on the face of it unacceptable.[71]

69. *Om Kumar* v. *Union of India*, (2001)2 SCC 386.
70. *Teroat Estates (P) Ltd.* v. *U.T. Chandigarh*, (2004)2 SCC 130.
71. *BALCO Employees' Union* v. *Union of India* AIR 2002 SC 350: (2002)2 SCC 333.

Disinvestment.

If policy of disinvestment does not contravene any law it cannot be challenged. In the case of policy decision on economic matters court will not intervene unless the policy contravenes any law or constitution. Process of disinvestment is a policy decision involving complex economic factors. So court will not decide whether the policy of a particular disinvestment is desirable or not.[72]

Decision to disinvest in BALCO is not alleged to be capricious, arbitrary, illegal or uninformed. In the process of disinvestment the principles of natural justice will not be applicable. As a matter of good governance and administration whenever a policy decision is taken, it is desirable that there should be wide range of consultations including consideration of representation, if filed. But there is no provision in law which would require a hearing before a policy decision is taken. So the decision is not vitiated for not giving the workmen an opportunity of hearing although they are affected by this decision. If, however, the decision is illegal, contrary to law or constitutional provision the persons affected can impugn the same.[73]

RBI failed to perform statutory duty. Parties suffering on account of such default of RBI cannot ask for recovery of compensation. Compensation for violation of statutory duty to enable individuals to recoup financial loss has never been recognized in India.[74]

Fairness in action.

Allegation of copying in competitive examination. It is very difficult to get direct evidence. Findings are based on probabilities and circumstantial evidence. If the enquiry is held to be fair and it affords the candidate adequate opportunity to defend himself court should not examine the matter with same strictness as applicable to criminal changes.[75]

Competent authority cancelled selection in its entirety. No finding of any specific or categorical finding of wide spread infirmities of all pervasive nature undermining the selection process. Decision of cancellation of entire selection is unreasonable.[76]

Delay.

If a statutory authority is not a court it cannot condone delay.[77] An applicant for an exemption or concession cannot be denied the benefit if delay for determination of eligibility is caused by the authority.[78]

Limits of sympathy.

Court cannot provisionally admit a student in the university and ultimately regularize it by taking a sympathetic view.[79]

An action subject to approval will hold good unless the action is disapproved. But an action subject to permission will not be effective unless is permission is obtained.[80]

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72. *BALCO Employees' Union* v. *Union of India,* (2002)2 SCC 333: AIR 2002 SC 350.
73. *BALCO Employees' Union* v. *Union of India,* (2002)2 SCC 333: AIR 2002 SC 350.
74. *Pramod* v.*Union of India,* (2004)3 SCC 415.
75. *U.P.S.C.* v. *Jagannath,* (2003)9 SCC 237.
76. *Union of India* v. *Rajesh P.U.,* (2003)7 SCC 285.
77. *Prakash* v. *Marie Fernandes,* (2003)8 SCC 431.
78. *C.C.E.* v. *M.P.V. & Eng. Industries,* (2003)5 SCC 333.
79. *C.B.S.E.* v. *P. Sunil Kumar,* (1998)5 SCC 377.
80. *High Court of Rajasthan* v. *P.P. Singh,* (2003)4 SCC 239: AIR 2003 SC 1029.

Wrong reference.

A mere wrong reference to enabling provision is notification will not vitiate the amendment of bye-law if it is within the power of bye-law-making authority.[81]

Provision not cited or wrongly cited.

The provision is complied with. Failure to mention is the provision is immaterial.[82] An order is not invalid on account of mentioning a wrong provision. If, however, two statutory provisions operate in two different fields requiring compliance with different pre-requisites citing the wrong provision is fatal.[83]

Order of Supreme Court: Modification thereof.

Order and direction of Supreme Court cannot be nullified, modified or altered by any administrative decision of the Government.[84]

Bureaucracy* v. *Politicians.

Senior officers occupying new positions, e.g. secretaries are not supposed to mortgage their own discretion, volition and decision making authority and succumb to the pressure of politician in carrying out commands having no sanctity of law.[85]

Error in citing correct provision of law.

Mere omission or error in reciting correct provision of law does not denude the power of the authority from taking statutory action so long as its action is legitimately traceable to a statutory power governing such action.[86]

Compassionate appointment.

Compassionate appointment shall be made only if vacancies exist. High Court cannot direct the employer to create supernumerary post to make such appointment.[87] The employer decides not to make a fresh appointment despite existence of a vacancy. Such decision is found to be *bona fide*. The court cannot question the decision and direct the employer to consider the case of the petitioner on compassionate ground.[88]

Transfer.

Power of transfer has to be exercised *bona fide* transfer is an incidence of service and so the employer can transfer an employee unless expressly barred.[89] Courts will not normally interfere with the order of transfer unless it is made in a vindictive manner.[90]

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81. *Om Prakash* v. *State*, (2004)3 SCC 402.
82. *State* v. *Sidharth*, (2003)9 SCC 336.
83. *Chandra Singh* v. *State*, (2003)6 SCC 545: AIR 2003 SC 2889.
84. *M.C. Mehta* v. *Union of India*, (2002)4 SCC 356.
85. *Tarlochan Dev* v. *State*, AIR 2001 SC 2524: (2001)6 SCC 260.
86. *B.S.E. Brokers' Forum* v. *Securities and Exchange Board of India*, AIR 2001 SC 1010: (2001)3 SCC 482.
87. *Orissa S.E.B.* v. *Raj Kumari*, 1999 SCC (L&S) 729.
88. *Regional Manager, A.P.S.R.T.C.* v. *M. Sampoornamma*, 1999 SCC (L&S) 1162.
89. *State* v. *Anand Prakash*, (2003)7 SCC 403.
90. *Public Services Tribunal Bar Association* v. *State*, (2003)4 SCC 104: AIR 2003 SC 1115.

APPENDIX I

FEDERAL ADMINISTRATIVE PROCEDURE ACT, 1946

[60 U.S. STAT 237 (1946), as amended up to 1978].

(Extracts)

DEFINITIONS

Section 2. For the purpose of this sub-chapter—

(a) *Agency.*—"Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Except as to the requirements of Section 3, there shall be excluded from the operation of this Act—(1) agencies composed of representatives of the parties or of representatives of organisations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory,.....

(b) *Person and party.*—"Person includes an individual, partnership, corporation, association, or public or private organisation other than an agency.

"Party" includes a person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding, and a person or agency admitted by an agency as a party for limited purposes.

(c) *Rule and rule making.*—"Rule" means the whole or any part of any agency statement of general or particular applicability and future effect designated to implement, interpret, or prescribe law or policy or to describe the organisation, procedure, or practice requirements of any agency and includes the approval or reorganisations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing upon any of the foregoing.

"Rule making" means agency process for the formulation, amendment or repeal of a rule.

(d) *Order and adjudication.*—"Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive or declaratory in form) of any agency in any matter other than rule making but including licensing.

"Adjudication" means agency process for the formulation of an order.

(e) *License and licensing.*—"License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or form of permission. "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification or conditioning the license.

(f) *Sanction and relief.*—"Sanction" includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any

form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restriction, compensation, costs, charges of fees; (6) requirements, revocation or suspension of a license; or (7) taking of other compulsory or restrictive action.

"Relief" includes the whole or any part of any agency— (1) grant of money, assistance, license, authority, exemption, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption or exception; or (3) taking of any other action upon the application or petition of, and beneficial to, a person.

(g) *Agency proceeding and action.*—"Agency proceeding" means any agency as defined in sub-sections (c), (d) and (e) of this section.

"Agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

PUBLIC INFORMATION

Section 3.—Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest, or (2) any matter relating solely to the internal management of an agency—

(a) *Rules.*—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organisation including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or mark submittals or requests; (2) statements of the general course and method by which its functions are channelled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorised by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organisation or procedure not so published.

(b) *Opinions and orders.*—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) *Public records*—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

RULE MAKING

Section 4.—Except to the extent that there is involved (1) any military, naval or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants , benefits for contracts—

(a) *Notice.*—General notice of proposed rule-making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include (1) a statement of the time, place, and nature of public rule-making proceedings; (2) reference to the authority under which

the rule is proposed; (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this sub-section shall not apply to interpretative rules, general statements of policy, rules of agency organisation, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) *Procedures.*—After required by this section, the agency shall afford interested persons an opportunity to participate in the rule-making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of Sections 7 and 8 shall apply in place of the provisions of this sub-section.

(c) *Effective dates.*—The required publication or service of any substantive rule (other than one granting or recognising exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than thirty days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(d) *Petitions*—Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

ADJUDICATION

Section 5.—In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts *de novo* in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to Section 11; (3) proceedings in which decisions rest solely on inspections, test, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) *Notice.*—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) *Procedure.*—The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding and the public interest permit, and (2) to the extent that parties are unable so to determine any controversy by consent, hearing and decision upon notice and in conformity with Sections 7 and 8.

(c) *Separation of functions.*—The same officers who preside at the reception of evidence shall make the recommended decision or initial decision .... Save to the extent required for the disposition of *ex parte* matters ..... no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to, or subject to, the supervision or direction of any officer ..... engaged in the performance of investigative or prosecuting functions .....

ANCILLARY MATTERS

Section 6. (a) *Appearance.*—Any person compelled to appear in person before any agency ..... shall be accorded the right to be accompanied, represented, and advised by counsel .....

(b) *Investigations.*—No process, requirement of a report, inspection or investigative act or demand shall be issued, made, or enforced in any matter or for any purpose except as authorised by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed cost, procure a copy or transcript thereof .....

(c) *Subpoenas.*—Agency subpoenas authorised by law shall be issued to any party upon request and, as may be required by rules of procedure upon a statement or showing of general relevance and reasonable scope of the evidence sought .....

(d) *Denials.*—Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement or procedural or other grounds.

HEARINGS

Section 7. (a) *Presiding Officers.*—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprise the agency, or (3) one or more examiners ..... the functions of all presiding officers and participating in decisions ..... shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and upon the filing in good faith of a timely and sufficient affidavit of personal bias ....

(b) *Hearing Powers.*—Officers presiding at hearing shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas ....., (3) rule upon offers of proof and receive relevant evidence, (4) take and cause dispositions to be taken wherever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions, (9) take any other action authorised by agency rule consistent with this Act.

(c) *Evidence.*—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitive evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as

may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts .....

(d) *Record.*—The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision ..... and, upon payment of lawfully prescribed costs, shall be made available to the parties.

DECISIONS

Section 8. (a) In cases in which the agency has not presided at the reception of the evidence, the officer who presided ..... shall initially decide the case or the agency shall require ..... the entire record to be certified to it for decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided to the reception of the evidence, such officers shall first recommend a decision except that in rule-making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision, or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

(b) *Submittals and decisions.*—Prior to each recommended, initial or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings, or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions ..... shall become part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or direction presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

SANCTIONS AND POWERS

Section 9. (a) *In general*—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorised by law.

JUDICIAL REVIEW

Section 10. (a) *Rights of Review.*—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) *Reviewable Acts.*—Every agency action made reviewable by statutes and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review.....

(c) *Scope of review.*—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (a) compel agency action unlawfully withheld or unreasonably delayed; and (b) hold unlawful and set aside agency action, findings and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence or otherwise on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial *de novo* by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portion thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

APPENDIX II

ADMINISTRATIVE TRIBUNALS ACT, 1985
(as amended)

AN ACT

to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of [any corporation owned or controlled by the Government in pursuance of Art. 323A of the Constitution][1] *and for matters connected therewith or incidental thereto.*

Be it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows :

Object of the Act. The object of enacting the A.T. Act was (a) to relieve the congestion in the courts, and (b) to provide for a speedier disposal of disputes relating to service matters than in the courts.[2] These objects should be borne in mind in interpreting and applying this Act.

1. Words within brackets have been substituted by the Amendment Act (No. 19) of 1986, s. 2, w.e.f. 22-1-1986.
2. *Surinder* v. *Union of India,* (1986) A.T.C. 656 (para. 43) (C.A.T., N.D.).

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Administrative Tribunals Act, 1985.

(2) It extends—

(a) in so far as it relates to the Central Administrative Tribunal, to the whole of India;

(b) in so far as it relates to Administrative Tribunals for States, to the whole of India, except the State of Jammu and Kashmir.

(3) The provisions of this Act, in so far as they relate to the Central Administrative Tribunal, shall come into force on such date[3] as the Central Government may, by notification, appoint.

(4) The provisions of this Act, in so far as they relate to an Administrative Tribunal for a State, shall come into force in a State on such date as the Central Government may, by notification, appoint.

2. Act not to apply to certain persons.—The provisions of this Act shall not apply to—

(a) any member of the Naval, Military or Air Forces or of any other armed forces of the Union;

[4][... ... ...]

(c) Any officer or servant of the Supreme Court or of any High Court [or Courts subordinate thereto][5];

(d) any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union territory having a Legislature, of that Legislature.

Scope of s. 2. This section provides that an Administrative Tribunal shall have *no* jurisdiction over the three classes of employees mentioned in cls. (a), (c) and (d).

So far as employees governed by the Industrial Disputes Act are concerned, they were originally excluded; but by the Amendment of 1986, they have been brought under the *concurrent* jurisdiction of the Administrative Tribunal and the Industrial Tribunal (see also s. 28(b), *post*).

Cl. (a) : 'Other Armed Forces of the Union.' 1. This expression is wide enough to include a force which is constituted an Armed Force of the Union by a statute, e.g., the Central Reserve Police Force;[6] the Central Industrial Security Force;[7] the Railway Protection Force (*after* the 1985 amendment of the Railway Protection Force Act, 1957);[7] or the Border Security Force under the B.S.F. Act, 1968[8]; right of a discharged member of the Armed Forces which arose *before* his discharge,[9] because cl. (a) excludes not only

3. Act came into force w.e.f. 1st July, 1985, *vide* G.S.R. 527(E), published in the *Gazette of India*, Extraordinary, Pt. II, s. 1, dated 1st July, 1985; Tribunals set up on 1-11-1985.

4. Cl. (b) was *omitted* by the A.T. (Amendment) Act, 1986, s. 3, w.e.f. 1-11- 1985.

5. *Ins.* by the A.T. Amendment Act, 1986, s. 2, w.e.f. 22-12-1987.

6. *Jagannathan* v. *Govt. of India*, (1987) 4 S.L.R. 41 (para. 5) (C.A.T., Mad.). (*Jai Singh* v. *Union of India*, (1986) A.T.C. 67 (C.A.T., Del.); *Anand* v. *Union of India*, (1986) A.T.C. 366 (N.D.).

7. *Shiv Kumar* v. *Union of India*, (1987) 1 S.L.R. 777 (para. 6) Guj.

8. *Subhadra G.M.*, (1993) 23 ATC 601 (Nag.).

9. *Natchitrakannan* v. *Union of India*, (1993) 23 A.T.C. 694 (Mad.).

members of the Armed Service while in service but also to one who has ceased to be a member.[10]

2. On the other hand, the following personnel, not being a part of the Armed Forces of the Union, *shall be within the jurisdiction* of an Administrative Tribunal :

Members of the N.C.C., under the National Cadet Corps Act, 1948,[11] the Delhi Police Force under the Delhi Police Force Act, 1978.[12]

3. There has been a conflict of opinion as to the status of the General Reserve Engineering Force.[13]

Cl. (b) : Employees governed by the Industrial Disputes Act.—Cl. (b), which excluded from the jurisdiction of the Administrative Tribunal employees in industrial establishments of the Government to whom the I.D. Act applies, has been omitted by the Amendment Act of 1986.

But in view of s. 28 of the A.T. Act, service matters relating to employees of the Central Government to whom the Industrial Disputes Act applies, will now be under the concurrent jurisdiction of the Central Administrative Tribunal and the Tribunal or Labour Court under the I.D. Act.[14] Hence, when an order of retrenchment violates s. 25F of the I.D. Act, the Administrative Tribunal is competent to quash that order of retrenchment.[14]

3. Definitions.—In this Act, unless the context otherwise requires—

[15][(*a*) *"Administrative Member" means a Member of a Tribunal who is not a Judicial Member within the meaning of clause (i);*]

[16][(*aa*)] "Administrative Tribunal" in relation to a State, means the Administrative Tribunal for the State or, as the case may be, the Joint Administrative Tribunal for that State and any other State or States;

(b) "application" means an application made under section;

(c) "appointed day", in relation to a Tribunal, means the date with effect from which it is established, by notification, under section 4;

(d) "appropriate Government" means—

(i) in relation to the Central Administrative Tribunal or a Joint Administrative Tribunal, the Central Government;

(ii) in relation to a State Administrative Tribunal, the State Government;

(e) "Bench" means a Bench of a Tribunal;

(f) "Central Administrative Tribunal" means the Administrative Tribunal established under sub-section (1) of section 4;

(g) "Chairman" means the Chairman of a Tribunal;

(h) "Joint Administrative Tribunal" means an Administrative Tribunal for two or more States established under sub-section (3) of section 4;

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10. *Bedanand* v. *D.G.*, (1988) Supp. S.C.C. 790.
11. *Bajwa* v. *Union of India*, (1987) 1 A.T.R. 22 (paras. 5, 6) (C.A.T., Hyd.).
12. *Surinder* v. *Union of India*, (1986) A.T.C. 656 (C.A.T., N.D.).
13. Vide *Kunju* v. *Union of India*, (1986) A.T.C. 453 (C.A.T., N.D.).
[The Supreme Court decision in *Viswan* v. *Union of India*, (1983) 3 S.C.C. 401, was made in the context of Art. 33 of the Constitution which includes forces for 'maintenance of public order'; the A.T. Act stands on a different footing.]
14. *Chhangu* v. *Asst. Engineer*, (1987) 1 A.T.R. 654 (C.A.T., All.); *Sagaran* v. *Union of India*, (1987) 3 S.L.R. 872 (paras. 13-14) (C.A.T., Tabal.).
15. *Ins.* by the Administrative Tribunals (Amendment) Act, 1986, s. 4, w.e.f. 22-1-1986.
16. Relettered, *ibid*, s. 4, w.e.f. 22-1-1986.

[17][(i) *"Judicial Member" means a Member of a Tribunal appointed as such under this Act, and includes the Chairman or a Vice-Chairman who possesses any of the qualifications specified in sub-section (3) of section 6;*

(ia) *"Member" means a Member (whether Judicial or Administrative) of a Tribunal, and includes the Chairman and a Vice-Chairman;*]

(j) "Notification" means a notification published in the Official Gazette;

(k) "post" means a post within or outside India;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "President" means the President of India;

[18][(n) * * * * * * *]

(o) "rules" means rules made under this Act;

(p) "service" means service within or outside India;

(q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any Local or other authority the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [*or society*][19] owned or controlled by the Government, as respects—

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;

Service Matter.

This expression is wide enough to include,—

(a) The claim of a casual employee against an order of termination of service, to continue in service on temporary status.[20]

(b) The claim of an employee suffering from cancer to special treatment instead of submitting to general treatment in the Railway Hospital, where his ailment could not be properly diagnosed.[21]

(c) The claim to allotment of Government residential accommodation.[22]

(d) Classification of posts.[23]

(e) Pay, including deputation allowances,[24] deduction of wages.[25]

(f) Cancellation of offer of appointment.[26]

(g) Determination of the status of an employee, e.g., his membership of S.C. or S.T., upon which his employment depends;[27] or whether a person continued to be a Government employee after the Government office was converted into a Government undertaking.[28]

17. *Subs.* by the A.T. (Amendment) Act, 1986, s. 4, w.e.f. 22-1-1986.
18. *Omitted* by the A.T. (Amendment) Act, 1986, s. 4, w.e.f. 22-1-1986.
19. *Ins., ibid.*, s. 4, w.e.f. 22-1-1986.
20. *Union of India* v. *Deep*, (1993) 23 A.T.C. 356 (paras. 5-6) S.C.
21. *Awasthi* v. *Union of India*, (1993) 23 A.T.C. 573 (Luck.).
22. *Ramesh* v. *Union of India*, (1992) 22 A.T.C. 3 (para. 5) (N.D.).
23. Cf. *I.R.T.S.A.* v. *Union of India*, (1992) 22 A.T.C. 11 (N.D.).
24. *Jain* v. *Union of India*, (1988) 6 A.T.C. 88 (N.D.).
25. *D.P.O.* v. *Laxmi*, (1988) 6 A.T.C. 1(2) (Jodh.).
26. *Sharma* v. *Delhi Admn.*, (1993) 23 A.T.C. 616.
27. *Nagam* v. *Union of India*, (1993) 23 A.T.C. 121 (para. 9) (Hyd.).
28. *Om Prakash* v. *Union of India*, (1993) 23 A.T.C. 624 (N.D.).

(h) Quantum of punishment awarded in disciplinary proceeding.[29]

(r) "service rules as to redressal of grievances", in relation to any matter, means the rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal otherwise than under this Act, of any grievances in relation to such matters;

[19]*(rr) "society" means a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State;*

(s) "Supreme Court" means the Supreme Court of India;

(t) "Tribunal" means the Central Administrative Tribunal or a State Administrative Tribunal or a Joint Administrative Tribunal;

(u) "Vice-Chairman" means the Vice-Chairman of a Tribunal.

Explanation.—In the case of a Tribunal having two or more Vice-Chairmen, references to the Vice-Chairman in this Act shall be construed as a reference to each of those Vice-Chairmen.

CHAPTER II

ESTABLISHMENT OF TRIBUNALS AND BENCHES THEREOF

4. Establishment of Administrative Tribunals.—(1) The Central Government shall, by notification, establish an Administrative Tribunal, to be known as the Central Administrative Tribunal, to exercise the jurisdiction, powers and authority conferred on the Central Administrative Tribunal by this Act.

(2) The Central Government may, on receipt of a request in this behalf from any State Government, establish, by notification, an Administrative Tribunal for the State to be known as the .... (name of the State) Administrative Tribunal to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunal for the State by this Act.

(3) Two or more States may, notwithstanding anything contained in sub-section (2) and notwithstanding that any or all of those States has or have Tribunals established under that sub-section, enter into an agreement that the same Administrative Tribunal shall be the Administrative Tribunal for each of the States participating in the agreement, and if the agreement is approved by the Central Government and published in the Gazette of India and the Official Gazette of each of those States, the Central Government may, by notification, establish a Joint Administrative Tribunal to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunals for those States by this Act.

(4) An agreement under sub-section (3) shall contain provisions as to the name of the Joint Administrative Tribunal, the manner in which the participating States may be associated in the selection of the Chairman, Vice-Chairman and other Members of the Joint Administrative Tribunal, the places at which the Bench or Benches of the Tribunal shall sit, the apportionment among the participating States of the expenditure in connection with the Joint Administrative Tribunal and may also contain such other supplemental, incidental and consequential provisions not inconsistent with this Act as may be deemed necessary or expedient for giving effect to the agreement.

29. *Union of India* v. *Parmanand,* (1989) 2 S.C.C. 177.

[30](5) *Notwithstanding anything contained in the foregoing provisions of this section or sub-section (1) of section 5, the Central Government may,—*

(a) with the concurrence of any State Government, designate, by notification, all or any of the Members of the Bench or Benches of the State Administrative Tribunal established for that State under sub-section (2) as Members of the Bench or Benches of the Central Administrative Tribunal in respect of that State and the same shall exercise the jurisdiction, powers and authority conferred on the Central Administrative Tribunal by or under this Act;

(b) on receipt of a request in this behalf from any State Government, designate, by notification, all or any of the Members of the Bench or Benches of the Central Administrative Tribunal functioning in that State as the Members of the Bench or Benches of the State Administrative Tribunal for that State and the same shall exercise the jurisdiction, powers and authority conferred on the Administrative Tribunal for that State by or under this Act,

and upon such designation, the Bench or Benches of the State Administrative Tribunal or, as the case may be, the Bench or Benches of the Central Administrative Tribunal shall be deemed, in all respects, to be the Central Administrative Tribunal, or the State Administrative Tribunal for that State established under the provisions of Article 323A of the Constitution and this Act.

(6) Every notification under sub-section (5) shall also provide for the apportionment between the State concerned and the Central Government of the expenditure in connection with the Members common to the Central Administrative Tribunal and the State Administrative Tribunal and such other incidental and consequential provisions not inconsistent with this Act as may be deemed necessary or expedient.

5. Composition of Tribunals and Benches thereof.—(1) Each Tribunal shall consist of a Chairman and such number of Vice-Chairmen [and Judicial and Administrative Members][31] as the appropriate Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.

[31][(2) Subject to the other provisions of this Act, a Bench shall consist of *one Judicial Member and one Administrative Member.*]

[32][(3) * * * *]

(4) Notwithstanding anything contained in sub-section (1) * * [32] the Chairman,—

[31]*(a) may, in addition to discharging the function of the Judicial Member or the Administrative Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Administrative Member, of any other Bench;*

(*b*) may transfer the Vice-Chairman or other Member from one Bench to another Bench;

[31]*(c) may authorise the Vice-Chairman or the Judicial Member or the Administrative Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, the Judicial Member or Administrative Member of another Bench; and*

(*d*) may, for the purpose of securing that any case or cases which, having regard to the nature of the questions involved, requires or require,

30. *Ins.* by the A.T. (Amendment) Act, 1986, s. 5, w.e.f. 22-1-1986.
31. *Subs.* by the A.T. (Amendment) Act, 1986, s. 6, w.e.f. 22-1-1986.
32. *Omitted* by the A.T. (Amendment) Act, 1986, s. 6, w.e.f. 22-1-1986.

in his opinion or under the rules made by the Central Government in this behalf, to be decided by a Bench composed of more than *two*[30] Members, issue such general or special orders, as he may deem fit.

[33]*"Provided that every Bench constituted in pursuance of this clause shall include at least one Judicial Member and one Administrative Member."*

(5) Omitted.[32]

(6) Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as [a Bench][31] *consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify :*

Provided that if at any stage of the hearing of any such case or matter it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of [two][31] *Members, the case or matter may be transferred by the Chairman, or, as the case may be, referred to him for transfer, to such Bench as the Chairman may deem fit.*

[31]*(7) Subject to the other provisions of this Act, the Benches of the Central Administrative Tribunal shall ordinarily sit at New Delhi (which shall be known as the principal Bench), Allahabad, Calcutta, Madras, New Bombay and at such other places as the Central Government may, by notification, specify.*

(8) Subject to the other provisions of this Act, the places at which the principal Bench and other Benches of a State Administrative Tribunal shall ordinarily sit shall be such as the State Government may, by notification, specify.

Member

2. The Administrative Member alone cannot hear and decide a case.[34]

3. A Member cannot claim equality with the Vice-Chairman in respect of pay or age of superannuation.[35]

6. Qualifications for appointment as Chairman, Vice-Chairman or other Members.—(1) A person shall not be qualified for appointment as the Chairman unless he—

(a) is, or has been, a Judge of the Supreme Court or of a High Court[35a]; or

(b) has, for at least two years, held the office of Vice-Chairman; [...][36]

(c) [..... ....][36]

(2) A person shall not be qualified for appointment as the Vice-Chairman unless he—

(a) is, or has been, [or is qualified to be][37] a Judge of the Supreme Court or of a High Court[35a]; or

(b) has, for at least two years, held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; or

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33. *Ins.* by the A.T. (Amendment) Act, 1986, s. 6, w.e.f. 22-1-1986.
34. *Amulya* v. *Union of India,* (1991) 1 S.C.C. 181.
35. *Majumdar* v. *Union of India,* (1990) 4 S.C.C. 501 (para. 18).
35a. *Benoy* v. *U.O.I.,* A. 1994 S.C. 502 (para. 4).
36. *Omitted* by Act 51 of 1987, s. 3(*a*), w.e.f. 22-12-1987.
37. *Ins.* by Act, 51 of 1987, s. 3(a), w.e.f. 22-12-1987.

[38]*(bb) has, for at least five years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or*;

(c) has, for a period of not less than three years, held office as *a Judicial Member or an Administrative Member.*[39]

[39][(3) *A person shall not be qualified for appointment as a Judicial Member unless he —*

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years.

(3A) A person shall not be qualified for appointment as an Administrative Member unless he—

(a) has, for at least two years, held the post of an Additional Secretary to the Government of India of any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or

(b) has, for at least three years, held the post of a Joint Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India,

and shall, in either case, have adequate administrative experience.]

(4) [39][*Subject to the provisions of sub-section (7), the Chairman,* Vice-Chairman] and every other Member of the Central Administrative Tribunal shall be appointed by the President.

(5) [39][*Subject to the provisions of sub-section (7), the Chairman*], Vice-Chairman and every other Member of an Administrative Tribunal of a State shall be appointed by the President after consultation with the Governor of the concerned State.

(6) The Chairman, Vice-Chairman and every other Member of a Joint Administrative Tribunal shall, subject to the terms of the agreement between the participating State Governments published under sub-section (3) of section 4, *and subject to the provisions of sub-section* (7)[40] be appointed by the President after consultation with the Governors of the concerned States.

[41]*(7) No appointment of a person possessing the qualifications specified in sub-section (3) as the Chairman, a Vice-Chairman or a Judicial Member shall be made except after consultation with the Chief Justice of India.*

Explanation.—In computing, for the purposes of this section, the period during which a person has held any post under the Central or a State Government, there shall be included the period during which he has held any other post under the Central or a State Government (including an office under this Act) carrying the same scale of pay as that of the first mentioned post or a higher scale of pay.

7. Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances. (1) In the event of the occurrence of any

38. *Ins.* by the A.T. (Amendment) Act, 1986, s. 7, w.e.f. 22-1-1986.
39. *Subs.* by the A.T. (Amendment) Act, 1986, s. 7, w.e.f. 22-1-1986.
40. *Ins.* by Act 19 of 1986, s. 7, w.e.f. 22-1-1986.
41. *Subs.* by Act 51 of 1987, s. 3(c), w.e.f. 22-12-1987.

vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the appropriate Government may, by notification, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the appropriate Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

8. Term of office.—The Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years or until he attains, —

(a) in the case of the Chairman or Vice-Chairman, the age of sixty-five years, and

(b) in the case of any other Member, the age of sixty-two years, whichever is earlier.

9. Resignation and removal.—The Chairman, Vice-Chairman or other Member may, by notice in writing under his hand addressed to the President, resign his office :

Provided that such person shall, unless he is permitted by the President to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

(2) The Chairman, Vice-Chairman or any other Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of a Chairman, Vice-Chairman or other Member referred to in sub-section (2).

10. Salaries and allowances and other terms and conditions of service of Chairman, Vice-Chairman and other Members.—The salaries and allowances payable to, and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chairman, Vice-Chairman and other Members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowance nor the other terms and conditions of service of the Chairman, Vice-Chairman or other Members shall be varied to his disadvantage after his appointment.

11. Provision as to the holding of offices by Chairman etc. on ceasing to be such Chairman etc.—On ceasing to hold office,—

(a) the Chairman of the Central Administrative Tribunal shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) the Chairman of a State Administrative Tribunal or a Joint Administrative Tribunal shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman or Vice-Chairman or any other

Member of the Central Administrative Tribunal or as the Chairman of any other State Administrative Tribunal or Joint Administrative Tribunal, but not for any other employment either under the Government of India or under the Government of a State;

(c) the Vice-Chairman of the Central Administrative Tribunal shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman of that Tribunal or as the Chairman or Vice-Chairman of any State Administrative Tribunal or Joint Administrative Tribunal, but not for any other employment either under the Government of India or under the Government of a State;

(d) the Vice-Chairman of a State Administrative Tribunal or a Joint Administrative Tribunal shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman or Vice-Chairman of the Central Administrative Tribunal or of any other State Administrative Tribunal or Joint Administrative Tribunal, but not for any other employment either under the Government of India or under the Government of a State;

(e) a Member (other than the Chairman or Vice-Chairman) of any Tribunal shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman or Vice-Chairman of such Tribunal or as the Chairman, Vice-Chairman or other Member of any other Tribunal, but not for any other employment either under the Government of India or under the Government of a State;

(f) the Chairman, Vice-Chairman or other Member shall not appear, act or plead before the Tribunal of which he was the Chairman, Vice-Chairman, or other Member.

Explanation.—For the purposes of this section, employment under the Government of India or under the Government of a State includes employment under any local or other authority within the territory of India or under the control of the Government of India or under any corporation *or society*[42] owned or controlled by Government.

12. Financial and administrative powers of the Chairman.—The Chairman shall exercise such financial and administrative powers over the.....[43] Benches as may be vested in him under the rules made by the appropriate Government :

Provided that the Chairman shall have authority to delegate such of his financial and administrative powers as he may think fit to [44][the Vice-Chairman or any officer of the Tribunal, subject to the condition that the Vice-Chairman or such officer] shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairman.

13. Staff of the Tribunal.—The appropriate Government shall determine the nature and categories of the officers and other employees required to assist a Tribunal in the discharge of its functions and provide the Tribunal with such officers and other employees as it may think fit.

[45][(1A) The officers and other employees of a Tribunal shall discharge their functions under the general superintendence of the Chairman.]

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42. *Ins.* by the A.T. (Amendment) Act, 1986, s. 8, w.e.f. 22-1-1986.
43. *Omitted* by the A.T. (Amendment) Act, 1986, s. 9, w.e.f. 22-1-1986.
44. *Subs.* by the A.T. (Amendment) Act, 1986, s. 9, w.e.f. 22-1-1986.
45. *Ins.* by the A.T. (Amendment) Act, 1986, s. 10, w.e.f. 22-1-1986.

(2) The salaries and allowances and conditions of service of the officers and other employees of a Tribunal shall be such as may be specified by rules made by the appropriate Government.

CHAPTER III

JURISDICTION, POWERS AND AUTHORITY OF TRIBUNALS

14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court [.....][46] in relation to,—

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with Defence or in the Defence Services, being, in either case, a post filled by a civilian;

(b) All service matters concerning,—

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of All-India Service or a person referred to in clause (c)] appointed to any Defence Services or a post connected with Defence; and pertaining to the service of such member, person, or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation *or society*[47] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation *or society*[47] or other body, at the disposal of the Central Government for such appointment.

[48]"*Explanation.—For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.*

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporation *or society*[47] owned or controlled by Government, not being a local or other authority or corporation *or society*[46] controlled or owned by a State Government :

Provided that if the Central Government considers it expedient so to

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46. Words "under Article 136 of the Constitutions" *omitted* by the A.T. (Amendment) Act, 1986, s. 11, w.e.f. 22-1-1986.

47. *Ins.* by the A.T. (Amendment) Act, s. 11, w.e.f. 22-1-1986.

48. *Ins.* by the A.T. (Amendment) Act, 1986, s. 11, (and incorporated, as deemed, w.e.f. 1-11-1985).

do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations *or societies*.[47]

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise on and from the relevant date all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court[* * *][46] in relation to,—

(a) recruitment, and matters concerning recruitment to any service or post in connection with the affairs of any local or other authority or corporation *or society*[47] to which the provisions of this sub-section apply by virtue of a notification issued under sub-section (2), and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of any local or other authority or corporation *or society*[47] referred to in clause (a), and pertaining to the service of such person in connection with the affairs of such local or other authority or, as the case may be, corporation *or society*.[47]

Explanation.—For the purpose of this sub-section, "relevant date", in relation to any local or other authority or corporation, means the date with effect from which the provisions of this sub-section apply to such local or other authority or corporation *or society*.[46]

Sub-sec. (1); cl. (a) : 'Civil post' under the Union. 1. The Central Administrative Tribunal shall have jurisdiction only if the applicant holds a 'civil post'[49] under the *Union*. Hence,

While an extra-departmental postmaster or extra-departmental delivery agent[50] holds such civil post, a licensed postal agent being governed by a specific contract and not appointed to a civil post, cannot apply to the Administrative Tribunal.[51]

2. The following hold 'civil post'—

(a) Employees of the Indian Railway Conference Association.[52]

(b) Employees in the establishment of the Administrative Tribunal itself, e.g., the Deputy Registrar.[53]

(c) The claim of a family member of deceased employee, to compassionate appointment.[54]

The following classes of employees do *not* hold 'civil post under the Union'.....

(a) Employees of private aided schools managed by Societies and Trusts under the Delhi Administration.[55]

(b) An apprentice appointed under the Apprentice Act, 1961, who has no legal claim to any employment on completion of the apprenticeship, by reason of s. 22 of that Act.[56]

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49. [See Author's *Commentary on the Constitution of India*, 6th Ed., Vol. M, p. 128ff., as to the expression 'civil post'].
50. *State of Assam* v. *Kanak*, A. 1967 S.C. 884.
51. *Suresh* v. *P.M.G.*, (1987) 4 S.L.R. 303 (paras. 10-11) (C.A.T., Mad.).
52. *Vikram* v. *Union of India*, (1991) 4 S.C.C. 32.
53. *Zacharia* v. *U.O.I.*, (1993) 23 A.T.C. 197 (para. 41) (Ern.).
54. *Bhagwati* v. *U.O.I.*, (1993) 23 A.T.C. 90 (para. 4) (Mad.).
55. *Narinder* v. *Union of India*, (1986) A.T.C. 414 (para. 12) (C.A.T., N.D.)
56. *Sathyamurthy* v. *Gen. Manager*, (1992) 22 A.T.C. 338 (para. 4) (Mad.).

(c) Casual labourers governed by r. 2001 of the Indian Rly. Establishment Manual;57 or those who are paid out of the Consolidated Fund of India.[58]

(d) Employees of Primary Agricultural Co-operative Societies.[59]

(e) Employees of an unapproved school run by officers of Government (Ordinance Factory), by local arrangement.[60]

(f) Ex-employees of the Central Government who got themselves absorbed in the Goa administration after Goa, part of the Union Territory of Goa, Daman & Diu was converted into a State.[61]

'Matters concerning recruitment'. 1. This expression is wide enough to include any stage from the date of filing of application for recruitment till the date of appointment.[62-63]

2. 'Recruitment' is not synonymous with the word 'appointment' but means the stage earlier to and leading to the appointment in service.[63]

Cls. (a), (b) (iii) : 'Civilian appointed to any Defence Service'. This means that the A.T. Act will regulate service matters of a 'civilian' even though he may be a part of the Defence Services or 'armed forces' as defined in s. 2 (a), *ante*. Such persons are called 'civilians in Defence Services'.[64]

Cls. (b)-(c) : 'Service matters'. This expression, as defined in s. 3(q), *ante*, means 'all matters relating to the *conditions of service*', as respects.....

(i) remuneration, pension and other retirement benefits;

(ii) tenure, including confirmation, seniority, promotion, reversion, premature retirement, superannuation;

(iii) leave of any kind;

(iv) disciplinary matters;

(v) any other matter whatsoever.

Explanation. The *Explanation* added to sub-sec. (1) by the amendment of 1986 leaves no doubt that employees in the service of a Union Territory would be amenable to the jurisdiction of an Administrative Tribunal under s. 14(1).[65]

Sub-sec. (2) : Jurisdiction over corporations, local authorities or societies, not controlled or owned by a State Government. 1. Corporations, etc., which are not owned or controlled by a State Government, shall come under the jurisdiction of the Administrative Tribunal, only if and when a notification under this sub-section is issued.[66] Till then, such corporations, e.g., the Delhi Development Authority;[66] the Kandla Port Trust;[67] the Pune Cantonment Board;[68] the I.C.A.R.[69] the Kendriya Vidyalaya Sangathan;[70] or the Navodaya Vidyalaya Samiti;[71] or the Indian Naval Canteen;[72] or the

57. *Vishnu* v. *S.D.A.C.*, (1992) 22 A.T.C. 151 (*152*) (Hyd).
58. *Rehmat* v. *Union of India*, (1989) 10 A.T.C. 656 (N.D., F.B.).
59. *Partap* v. *Lt.-Governor*, (1986) A.T.C. 486 (para. 3) (C.A.T., N.D.).
60. *Union of India* v. *Tejram*, (1991) 3 S.C.C. 11 (paras. 5-6).
61. *Baban* v. *State of Goa*, (1992) 20 A.T.C. 574 (*575*) (Bom.).
62. *Sunamoni* v. *Union of India*, (1987) 1 A.T.R. 19 (C.A.T., Cut.).
63. *Pratap* v. *State of Orissa*, (1986) 4 S.L.R. 357 (para. 4) Ori; *Gurdev* v. *State of Punjab*, (1968) S.L.R. 528 (P.&H.).
64. Cf. *Union of India* v. *Subramaniam*, A. 1976 S.C. 2433.
65. *Aggarwal* v. *Lt.-Governor*, (1987) 1 A.T.R. 469 (474) C.A.T. (Del.).
66. *Puri* v. *Union of India*, (1987) 1 A.T.R. 580 (C.A.T., Del.).
67. *Joseph* v. *Chairman*, (1987) 1 A.T.R. 127 (C.A.T., Ahd.).
68. *Ponnamma* v. *Union of India*, (1987) 1 A.T.R. 340 (C.A.T., Bom.)
69. *Murlidharan* v. *Yusaf*, (1987) 4 S.L.R. 438 (paras. 3-5) Mad.
70. *Bal Krishna* v. *K.V.S.*, (1986) A.T.C. 372 (C.A.T., Del.); *Narinder* v. *Union of India*, (1986) A.T.C. 414 (paras. 22-23) (C.A.T., N.D.).
71. *Thirupal* v. *Union of India*, (1993) 23 A.T.C. 3 (para. 6) (Jodh.).
72. *Radhakrishnan* v. *C.N.S.*, (1992) 20 A.T.C. 332 (paras. 5, 6) (Ern.)

International Airports Authority;[73] a Government company[74] will continue to be under the jurisdiction of the Civil Court,[66] even though they be an agency or instrumentality of the Government, for purposes of Art. 12.[70]

2. So long as such notification is not issued by the Government, the mere fact that the name of the Ministry of Human Resource Development is printed on the letter-head of the Samiti or that it is owned or controlled by the Government, does not make the autonomous body a Government Department or its employees holding any civil post under the Government.[71]

Where the Tribunal finds that it has no jurisdiction to entertain a case owing to absence of a notification under s. 14(2), it cannot dismiss the application but should return it to the applicant on the ground of absence of jurisdiction,[69] or retransfer[73] it to the Court from which it was received on transfer.[73]

Powers of Administrative Tribunal.—1. As stated earlier, the Administrative Tribunal is a substitute for the High Court in respect of service matters coming under the A.T. Act,[75] providing an equally efficacious alternative remedy for the adjudication of all disputes relating to such matters.

2. Hence, an Administrative Tribunal is competent to exercise all powers that belonged to the Civil Courts or to the High Court under Arts. 226-227 (subject, of course, to the provisions of the Act).[76-77]

Thus,

(a) The Tribunal can declare unconstitutional a statute or subordinate legislation relating to the dispute before it, which contravenes a provision of the Constitution, e.g., Arts. 14, 16.[77]

Unconstitutionality of laws.

(b) Whether a body would be an 'authority' within the meaning of Art. 12.[78]

(c) In a case where inquiry has been dispensed with under the 2nd Proviso to Art. 311(2), the Tribunal is competent to examine the legal justification for such dispensation.[79]

(d) It may decide questions of law, including preliminary pleas in bar, e.g., limitation;[80] non-joinder of paty;[81] territorial jurisdiction of the Tribunal;[82] *res judicata*.[83]

(e) Like the High Court under Art. 226, the Tribunal may grant a residuary relief which is just and proper in the interests of justice, even though not specifically asked for.[84]

Relief.

3. For the same reason that the jurisdiction of a Tribunal created under Art. 323A of the Constitution is a substitute for that of the High

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73. *Jagdish* v. *Union of India*, (1986) A.T.C. 789 (paras. 6-7) (C.A.T., Jab.); *Narinder* v. *Union of India*, (1986) A.T.C. 414 (para. 23) (C.A.T., N.D.).
74. *Monaharan* v. *C.P.O.*, (1993) 23 A.T.C. 1 (paras. 4-6) (Bang.).
75. *U.O.I.* v. *Parmanand*, (1989) 10 A.T.C. 30 (S.C.).
76. *Gupta* v. *I.A.A.I.*, (1986) A.T.C. 606 (para. 2) (C.A.T., N.D.)
77. *Chopra* v. *Union of India*, (1987) 1 A.T.R. 46 (S.C.); *Sampat* v. *Union of India*, (1987) 1 S.L.R. 182 (para. 8) S.C.; *Murlidharan* v. *Yusuf*, (1987) 4 S.L.R. 431 (para. 6) Mad.
78. *Ramachandra* v. *Gupta*, A. 1984 S.C. 541; *Chawla* v. *State of Haryana*, (1987) 4 S.L.R. 371 (para. 11) P.&H.
79. *Om Prakash* v. *Union of India*, (1986) 4 S.L.R. 251 (para. 12) (C.A.T., Jab.).
80. Cf. *Raghavan* v. *Secy.*, (1987) 4 S.L.R. 155 (C.A.T., Mad.).
81. Cf. *Jayaraman* v. *Heavy Vehicles*, (1987) 4 S.L.R. 208 (para. 8) (C.A.T., Mad.).
82. Cf. *Ram* v. *Union of India*, (1986) 4 S.L.R. 110 (paras. 6-7) (C.A.T., Jab.).
83. *Khasim* v. *G.M.*, (1986) 4 S.L.R. 753 (para. 2) (C.A.T., Mad.).
84. *Mallick* v. *Union of India*, (1993) 23 A.T.C. 760 (para. 9) (Bom.).

Court under Art. 226, the Tribunal should exercise its jurisdiction subject to the same constraints and norms as does a High Court observe under Art. 226[85] Thus,—

(a) The Tribunal cannot act as an appellate authority sitting in judgement over the orders of the competent administrative authority.[85]

It follows that it cannot interfere with an order of transfer of a transferable Government servant in the absence of *mala fides* or contravention of statutory provisions, but not on the ground of non-compliance with 'guidelines' which have no statutory force.[85, 86-87]

Procedure.

4. On the other hand, a Tribunal, not being a *court*, has larger powers to do justice to the party aggrieved. Thus—

(i) A Tribunal is not barred by the provisions of the Evidence Act.[88-89]

In order to discover the truth, the Tribunal may resort to the inquisitorial procedure, provided no principle of natural justice is violated.[88]

(ii) In coming to its decision, the Tribunal shall be guided solely by the principles of natural justice,[90] unfettered by anything in the Civil Procedure Code and shall have the power to regulate its own procedure [s. 22(1)].

Hence, the Tribunal can even adopt inquisitorial procedure, without however, offending the principles of natural justice.[92]

(iii) Unless the Tribunal, having regard to the circumstances of a particular case, choose to hear oral evidence, it shall ordinarily decide a case before it upon a perusal of documents and written representations and hearing oral arguments [s. 22(2)].

(iv) A plea of violation of statutory provision can be taken before the Tribunal though not taken in the petition.[88]

(v) A Tribunal can exercise powers of review, without being fettered by the provisions of O. 47, r. 1 of the C.P. Code,[91] though ordinarily it would apply its principles.[93]

(vi) Since s. 14(1) vests the Tribunal with the powers exercisable by 'all courts', the Tribunal is competent to go into questions of fact,[93] apart from cases of no-evidence.[94] It would not, however, interfere with the findings of the Inquiry Officer[95] or of a Departmental Committee[96] where they are not arbitrary or perverse[97] or *mala fide*,[95] and they are founded on some evidence.[95]

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85. *Union of India* v. *Abbas* (1993) 2 U.J.S.C. 324 (paras. 8-10).

86. *Bank of India* v. *Jagjit*, (1992) 1 S.C.C. 306.

87. But the Supreme Court directed the Government to follow guidelines in the matter of salary where denial of its benefit to the Petitioner would be discriminatory [*Jain* v. *Union of India*, (1993) 2 U.J.S.C. 3 (para. 6)].

88. *Gupta* v. *Engineer-in-Chief*, (1986) A.T.C. 69 (para. 11) N.D.; *Banerjee* v. *Union of India*, A.T.R. (1916) C.A.T. 12.

89. *Gokalanand* v. *Union of India*, A.T.R. (1987) 1 C.A.T. 229 (232) Cut.

90. *Sharma* v. *Union of India*, (1987) 1 S.L.R. 744 (para. 5) [C.A.T., Chand.].

91. *Lucas* v. *A.C.M.E.*, (1987) 3 S.L.R. 792 (para. 9) (C.A.T., Bang.).

92. *Banerji* v. *Union of India*, (1986) A.T.R. 12 (C.A.T., N.D.).

93. *Roshan* v. *Surveyor-General*, (1986) A.T.C. 273 (N.D.); *Anil* v. *P.P.M.*, A.T.R. (1987) 1 C.A.T. 112 (Cal); *Manindra* v. *Union of India*, (1986) 3 S.L.R. 148 (paras. 5-6) [C.A.T., Cal.]

94. *Padmanav* v. *Union of India*, A.T.R. (1987) 1 C.A.T. 129 (Cut.).

95. *Rajendran* v. *Union of India*, A.T.R. (1987) 1 C.A.T. 83 (86) Mad.

The Tribunal is competent to go into the facts and set aside the order passed by a disciplinary authority— Disciplinary matters.

Where the conclusion arrived at is arbitrary or perverse.[98]

On the other hand,—

The Tribunal will not interfere with a finding of fact of the Inquiry Officer where there was some evidence before him on the basis of which he could reasonably come to the conclusion that the charges against the Petitioner were proved.[75]

(vii) The Tribunal has jurisdiction, under s. 3(q), to interfere with the punishment awarded by the disciplinary and appellate authorities, where it is excessive[99] or disproportionate to the offence charged or it is founded on extraneous considerations.[100] In such cases, the Tribunal is competent to modify the punishment and itself award the proper punishment.[99] Punishment.

But, otherwise, the Tribunal will not interfere with punishment.[1]

The Tribunal can also quash the punishment where it offends the principle of double jeopardy;[2] or where it has been passed after reviewing an earlier order while the punishing authority had no power of review.[3]

(viii) The Tribunal would not ordinarily interfere with the decision of the competent authority to compulsorily retire an employee on the ground of unfitness, in the absence of *mala fides*,[4] or arbitrariness;[5] or unless it has been imposed for some misconduct, as a short-cut for initiating disciplinary proceedings;[6] or in the absence of any material on the record to show that compulsory retirement of the Petitioner was in the public interest.[7]

(ix) While the Tribunal is competent to set aside the final order passed in a disciplinary proceeding, on questions of fact or of law, it would not ordinarily interfere with discretionary orders (e.g., regarding engagement of a lawyer)[8] of a disciplinary authority, at an interlocutory stage. Interlocutory matters.

What the Tribunal cannot do.

However wide be the jurisdiction of the Tribunal, it cannot exercise any jurisdiction or power which no Court could exercise, e.g.,—

(a) To question the ground of satisfaction of the President under cl. (c) of the 2nd proviso to Art. 311(2).[9]

96. *Badrinath* v. *Union of India*, A.T.R. (1987) 1 C.A.T. 63 (para. 39) Mad.

97. *Nathoo* v *Union of India*, A.T.R. (1987) 1 C.A.T. 386 Jab.); cf. *Romakant* v. *State of U.P.*, (1982) S.C.C. 346.

98. *Rajendran* v. *Union of India*, (1987) 1 A.T.R. 83 (86) (C.A.T., Mad.).

99. *Chhote* v. *Union of India*, (1987) 4 S.L.R. 735 (paras. 17-18).

100. *Nathoo* v. *Union of India*, (1987) 1 A.T.R. 386 (C.A.T., Jab.).

1. *Mohan* v. *Union of India*, (1987) 1 S.L.R. 535 (para. 12) Jodh.

2. *Sharma* v. *Signal Inspector*, (1986) 4. S.L.R. 117 (para. 5) (C.A.T., All.); *Talukdar* v. *Union of India*, (1986) 4 S.L.R. 148 (para. 4) C.A.T., Cut.).

3. *Harihar* v. *Stata of Orissa*, (1987) 4 S.L.R. 328 (paras. 10, 13).

4. Cf. *Gurbax* v. *Union of India*, (1987) 4 S.L.R. 756 (paras. 14-15) (C.A.T., Jodh.)

5. *Suryanarayanamurthy* v. *Union of India*, (1987) 4 S.L.R. 255 (para. 16) (C.A.T., Mad.).

6. *Baijal* v. *Lt.-Governor*, (1987) 4 S.L.R. 224 (para. 3) (C.A.T., Del.).

7. *Dalwadi* v. *State of Gujarat*, (1987) 4 S.L.R. 505 (paras. 9-11).

8. *Barathapunian* v. *Union of India*, (1987) 1 A.T.R. 311 (C.A.T., Mad.).

9. *Union of India* v. *Tulsiram*, A. 1985 S.C. 1416; *Gopalan* v. *Union of India*, (1987) 4 S.L.R. 228 (paras. 3, 5) [C.A.T., Del.).

(b) To go into the merits of an administrative determination or policy decision[10] (as if sitting in appeal[11a]) in the absence of *mala fides,*[11] arbitrariness, colourable exercise of power or exercise of power without jurisdiction;[12] or discrimination[10] or a finding without any evidence at all.[12]

(c) Interim relief.[13]

(d) Cannot quash a *bona fide* decision of the competent authority to compulsorily retire an employee made after considering his entire record.[14]

(e) To direct the administrative authority to clear the efficiency bar or grant increments to the Petitioner which are matters committed to the authority by the fundamental Rules; of course, in case of irregularity or illegality, the Tribunal may be directed to *consider* the Petitioner's case in accordance with the Rules, within a reasonable time.[15]

On the same principle, sympathy or equity considerations would not enable the Tribunal to step into the domain belonging to the Executive,[16] under the law.

(f) To interfere with an order of transfer of a Government servant in the absence of *mala fides* or violation of statutory provisions.[17]

(g) Where the applicant has no *legally* enforceable right, the Tribunal will not direct the administrative authority to take action in matters relating to the morale and efficiency of the public service which are for the Government, in its wisdom to decide.[17]

"It is not legal nor proper for..... the Administrative Tribunal to issue *directions* or *advisory sermons* to the Executive in respect of the sphere which is exclusively within the domain of the Executive under the Constitution."[18]

(h) The jurisdiction of the Tribunal being akin to that of the High Court under Art. 226, the constraints and norms which the High Court observes while exercising that jurisdiction apply equally to this Tribunal, e.g., that it cannot substitute its own judgment for that of the inferior authority, as if sitting in appeal.[18a]

Sources of Tribunal's jurisdiction.

The jurisdiction of an Administrative Tribunal under the Act is threefold—

(a) Suits and proceedings transferred to it under s. 29 of the Act, which we have just seen; and

(b) S. 19 deals with the jurisdiction of a Tribunal to entertain an original application relating to service matters (in cases other than those transferred under s. 29).

(c) Appellate jurisdiction under s. 29A. [see *post*].

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10. *Union of India* v. *Syed,* (1992) 1 U.J.S.C. 590 (para. 13)—3 Judges.
11. *Biswanath* v. *Union of India,* (1987) 4 S.L.R. 627 (para. 56) [C.A.T., Pat.].
12. *Padmanav* v. *Union of India,* (1987) 1 S.L.R. 503 (para. 5) [C.A.T., Cut.; *Mohan* v. *Union of India,* (1987) 1 S.L.R. 535 (para 10)[C.A.T., Jodh.]; *Badrinath* v. *Union of India,* (1987) 1 S.L.R. 218 [C.A.T., Mad.].
13. See *Union of India* v. *Tejinder,* (1991) 4 S.C.C. 129 (130).
14. *Union of India* v. *Inderjit,* (1991) 16 A.T.C. 510 (paras. 7-8) S.C.
15. *Administrator* v. *Vora,* (1993) 23 A.T.C. 672 (paras. 3-4) S.C.
16. *B.D.T.M.M.* v. *U.O.I.,* (1993) 23 A.T.C. 257 (para. 6) N.D.
17. *Nair* v. *Union of India,* (1992) 20 A.T.C. 835 (paras. 22, 23) (Ern., F.B.).
18. *Mallikarjun* v. *State of A.P.,* (1990) 2 S.C.C. 707 (para. 11).
18a. *Union of India* v. *Abbas,* A. 1993 S.C. 2444 (para. 8).

Jurisdiction of Supreme Court under Art. 136 over orders of the Tribunal.

1. It has been seen that although the jurisdiction of all other Courts over an Administrative Tribunal has been taken away by s. 14(1), the jurisdiction of the Supreme Court under Arts. 32 and 136 have been kept intact.

In an appeal by special leave under Art. 136, the Supreme Court has interfered with orders of an Administrative Tribunal under the Administrative Tribunals Act, 1985, in the following cases, *inter alia*—

(a) Where the Tribunal has *misconstrued* the relevant law or Rule etc.[19]

(b) Where, in applying a Rule Government has committed discrimination or denial of fair play[20], in contravention of Arts. 14 and 16, and the Tribunal refused to interfere.

(c) Where the order is without the authority of law.[21]

(d) Where the Tribunal has exceeded its jurisdiction[21] by lifting the restrictions imposed by the relevant Government Notification.[22]

(e) Where the Tribunal has not applied its mind to the relevant Government Circular and whether the employee fulfilled the conditions thereof.[23]

(f) Where the order would interfere with Government policy, involving expenditure.[21]

(g) Where the order violates natural justice.

(h) Where the Tribunal has not applied its mind to the relevant Government Circular and whether the employee fulfilled the conditions thereof.[23]

(i) Where the Tribunal has acted in contravention of a Supreme Court judgment.[24]

(j) Where the Tribunal has misdirected itself on law, by quashing adverse remarks against a Government servant, merely on the ground that no reasons had been given by the authority in rejecting the Petitioner's representation against the remarks.[25]

(k) Where the Tribunal has granted interim stay in a disciplinary proceeding without considering the gravity of the charges.[26]

(l) Where the Bench was not properly constituted.[27]

Where the Court may not interfere.

In general, the Supreme Court would not interfere, under Art. 136, with an order of the Administrative Tribunal.

(a) Where substantial justice has been fulfilled by the order.[28]

19. *Chief Engineer* v. *Jagdish,* (1991) 2 U.J.S.C. 321 (para. 4); *H.P.S.E.B.* v. *Somdutt,* (1993) 1 U.J.S.C. 371 (paras. 4-6).
20. *Thiruvengadam* v. *Secy.,* (1993) 1 U.J.S.C. 689 (paras. 9, 13).
21. *Union of India* v. *Tejram,* (1991) 2 U.J.S.C. 174 (para. 6).
22. *Govt. of A.P.* v. *Ravinder,* (1992) 1 U.J.S.C. 74 (para. 5).
23. *State of Rajasthan* v. *Shiv,* (1992) 1 U.J.S.C. 192 (para. 9)
24. *C.A.G.* v. *Jagannathan,* (1992) 20 A.T.C. 549 (para. 6) S.C.
25. *Union of India* v. *Nambudiri,* A. 1991 S.C. 1216 (paras. 10-11).
26. *U.O.I.* v. *Saxena,* (1992) 21 A.T.C. 670 (para. 6) S.C.
27. *Union of India* v. *Sayed,* (1492) 1 U.J.S.C. 590 (para. 13).
28. *Union of India* v. *Singh,* 1990 (Supp.) S.C.C. 701 (para. 7).

(b) Where, considering the entire facts and circumstances, the Tribunal has given retrospective promotion to the applicant,[29] which had been deferred without valid grounds.

(c) Where the Tribunal has refused to dismiss the application on the ground of delay and laches,[29] where the applicant's representation was pending.

(d) The Supreme Court would not, ordinarily, interfere with a finding of Tribunal on a question of *fact*.[30]

15. Jurisdiction, powers and authority of State Administrative Tribunals.—(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court [* * *][46] in relation to,—

(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any Civil post under the State;

(b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, a person or civilian referred to in clause (b) of sub-section (1) of section 14] appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or any local or other authority under the control of the State Government or of any corporation *or society*[47] owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation *or society*[47] or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.

(2) The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities and corporations *or societies*[47] controlled or owned by the State Government :

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations [or societies][47].

(3) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society][47], all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court [****][46] in relation to,—

(a) recruitment and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society][47]; and

(b) all service matters concerning a person [other than a person referred

29. *State of M.P.* v. *Bani*, A. 1990 S.C. 1308 (paras. 4, 6-8).
30. *D.T.E.* v. *Sitadevi*, A. 1991 S.C. 308 (para. 6).

to in clause (b) of sub-section (1) of this section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society][47] and pertaining to the service of such person in connection with such affairs.

(4) For the removal of doubts, it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to, or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable.

Sub-sec. (1); Cl. (a) : 'Recruitment'.—See under s. 14(1)(a), *ante*.

16. Jurisdiction, powers and authority of a Joint Administrative Tribunal.—A Joint Administrative Tribunal for two or more States shall exercise all the jurisdiction, powers and authority exercisable by the Administrative Tribunals for such States.

17. Power to punish for contempt.—A Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise, and, for this purpose, the provisions of the Contempt of Courts Act, 1971, shall have effect subject to the modifications that—

(a) the references therein to a High Court shall be construed as including a reference to such Tribunal;

(b) the references to the Advocate-General in section 15 of the said Act shall be construed.—

(i) in relation to the Central Administrative Tribunal, as a reference to the Attorney-General or the Solicitor-General or the Additional Solicitor-General; and

(ii) in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal, for two or more States, as a reference to the Advocate-General of the State or any of the States for which such Tribunal has been established.

'As a High Court has'.

1. This expression gives the Tribunal jurisdiction the power to punish for its own contempt, but not the power under O. 39, r. 2A of the C.P. Code.[31]

2. But for the modifications specified in s. 17, above, the provisions of the Contempt of Courts, 1971 shall apply[32]. But as the Administrative Trial sits in Benches situated at different places, a contempt petition shall lie only before the same Bench which passed the original order or to which contempt the Petition relates.[33]

18. Distribution of business amongst the Tribunals and its Benches.—(1) *Where any Benches of a Tribunal are constituted*,[34] the appropriate Government may, from time to time, by notification, make provisions as to the distribution of the business of the Tribunal amongst the [***][35] Benches and specify the matters which may be dealt with by each Bench.

31. *Mal* v. *Jagdish*, (1987) 4 S.L.R. 792 (para. 3) (C.A.T., Jodh.).

32. As to the substantive law of contempt of Court, see C7, Vol. C, pp. 179 ff.; 11 Sh. 129; *Law of the Press* (3rd Ed.) pp. ff. and App.

33. *Ramachandran* v. *Godbale*, (1993) 23 A.T.C. 613 [para. 8 (Bang.)].

34. *Subs.* by the A.T. (Amendment) Act, 1986, s. 12, w.e.f. 22-1-1986.

35. *Omitted* by the A.T. (Amendment) Act, 1986, s. 12, w.e.f. 22-1-1986.

(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench of a Tribunal the decision of the Chairman thereon shall be final.

Explanation.—For the removal of doubts, it is hereby declared that the expression "matters" includes applications under section 19.

CHAPTER IV

PROCEDURE

19. Applications to Tribunals.—(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation.—For the purposes of this sub-section, "order" means an order made—

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation *or society*[36] owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation *or society*[36] referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) *in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government.*[37]

[37](3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

Sub-sec. (1) : Original application to Tribunal. 1. The conditions for entertaining an application under s. 19 are—

(i) The applicant as well as the subject-matter of the application must come under s. 15.

(ii) The applicant must be a 'person aggrieved' by the order of the Government or local authority etc., relating to such service matters [s. 19(1)].

(iii) The territorial jurisdiction established for a State shall relate to service matters relating to any civil service or post under that State [s. 15].

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36. *Ins.* by the A.T. (Amendment) Act, 1986 s. 13, w.e.f. 22-1-1986.
37. *Subs.* by the A.T. (Amendment) Act, 1986 s. 13, w.e.f. 22-1-1986

(iv) The cause of action has arisen after the 'appointed day' under the Act[38] which, in the case of the Tribunals at New Delhi,[38] New Bombay,[39] is 1-11-85.[40]

2. Apart from a petition for review, an independent application under s. 19 shall not lie for setting aside an earlier order of the Tribunal itself though it is competent to allow the Petitioner to convert such application into a petition for review.[41]

'Person aggrieved'.

A. The following have been held to come under this expression :

Widow of the deceased employee.[42]

B. The following have been held not entitled as 'person aggrieved', to apply under Art. 19(1)—

A person who has not been permitted to act as a 'Defence Assistant' (or helper) at a Departmental inquiry.[43] In such a case, it is only the delinquent employee who is entitled to apply to the A.T. Tribunal against the order complained of.[43]

Whether application in representative capacity lies.

1. This question has been left open by the Supreme Court.[44]

2. In this context, reference may be made to r. 4(5)(b) of the Central Administrative (Procedure) Rules, 1987 (*post*).

According to this Rule, where the persons aggrieved are numerous, an *association*[45] may with the leave of the Tribunal bring a single application, provided at least one affected person joins in the application in his individual capacity.[44-45]

'Order'.

1. This word includes a *notice* of termination of service of a temporary employee.[46]

2. But 'order', in this context, would not include an order of the Tribunal itself. No application under s. 19 would, therefore, lie to set aside an order of the Tribunal itself passed under s. 19, 29 or 29A.[87] The remedy of the party aggrieved would be to file a petition of review [s. 22(3)(f)] before the Tribunal or to appeal to the Supreme Court, by special leave, under Art. 136.[47]

3. The jurisdiction of the Tribunal under s. 19 is conditional upon an 'order' made by an authority by which the applicant has *been* aggrieved. Hence, an application to the Tribunal during the *inquiry stage* of a disciplinary proceeding would be premature.[48]

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38. *Bhatnagar* v. *Union of India*, (1986) A.T.C. 394 (paras. 3, 6) N.D.
39. *Paramu* v. *Union of India*, (1986) A.T.C. 514 (para. 5).
40. 6-10-86, in the case of Karnataka [*Kashma* v. *Union of India*, (1987) 1 S.L.R. 53 (para. 2) Knt.].
41. *John* v. *Addl. C.M.E.*, (1987) A.T.R. 612 (615-16) (C.A.T., Bang.).
42. *Sarla* v. *C.P.*, (1992) 21 A.T.C. 326 (para. 1) (N.D.).
43. *Venkataraman* v. *C.D.A.*, (1993) 23 A.T.C. 533 (paras. 5-7) (Bang.).
44. *B.C.E.W.A.* v. *U.O.I.*, A. 1991 S.C. 1016 (para. 3).
45. Cf. *B.C.G.O.U.* v. *U.O.I.*, (1992) 21 A.T.C. 468 (para. 1) (Bom.).
46. *Dinaprabha* v. *Officer-in-charge*, (1987) 4 S.L.R. 128 (para. 6) Knt.
47. *Lucas* v. *A.C.M.E.*, (1987) 3 S.L.R. 792 (paras. 3, 5).
48. *Kesarkar* v. *U.O.I.*, (1992) 22 A.T.C. 340 (Bom.).

Expl. (a) : 'Other authority'.

Authorities coming under this section are—

(a) Authority under the Payment of Wages Act, 1936.[49]

An application against the decision of that authority, under s. 19 of the A.T. Act, is not subject to the prerequisite of depositing the amount required by s. 17(1A) of the P.W. Act.[49]

Limitation for original application. See under s. 21, *below.*

20. Application not to be admitted unless other remedies exhausted.—(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

Exhaustion of all other remedies.

Sub-sec. (1) : 1. By reason of s. 20(1), the Tribunal shall not *ordinarily* admit an application under s. 19 where he has not availed of the remedies available to him under the relevant Service Rules, e.g., a departmental appeal.[50] But this is not an absolute bar.[51]

2. But where a final order has already been made in a departmental proceeding, an application under s. 19 shall not be entertained against the show-cause notice unless the final order is also challenged in the application.[52]

'Ordinarily'.

1. The word 'ordinarily' implies that the bar of exhaustion of remedies is not an absolute bar. The following are exceptional situations where this bar has *not* been applied :

(a) Where the impugned order is *ex facie* illegal,[53,54] no question of representation arises.

(b) Where the impugned order is tainted by bias or gross violation of natural justice.[54]

49. *Union of India* v. *Dinesh,* (1993) 23 A.T.C. 140 (para. 11) (All.).

50. *Rathore* v. *State of M.P.,* (1989) 4 S.C.C. 582 (para. 16)—7 Judges.

51. *Amar Nath* v. *Union of India,* (1987) 1 A.T.R. 353 (para. 5) Jodh.; *Suri* v. *Union of India,* (1987) 1 S.L.R. 805 (para. 6) [C.A.T. Del.].

52. *Himatlal* v. *U.O.I.,* (1993) 23 A.T.C. 6 (paras. 5-6) (Ahmed.).

53. *Appa* v. *Addl. Collector,* (1993) 23 A.T.C. 89 (para. 3) (Hyd.).

54. *Onkar* v. *Limaya,* A.T.R. (1987) 1 S.L.R. 246 (para. 3) (Ahmed).

(c) Where from the facts and circumstances, it appears that the appellate Authority had a closed mind, and an appeal would be only an empty formality, the Tribunal would entertain the application without insisting on the bar of non-filing of appeal[55] (or representation[56]).

(d) Where the applicant had previously been under suspension for a continuous period of some 17 years and an *ante-dated* order of suspension was imposed after he had been reinstated on acquittal by the Criminal Court.[57]

(e) Nor would departmental appeal be insisted upon where the impugned order is of a general nature applicable to a number of employees and has not been made specifically in regard to each affected employee.[58]

(f) In *emergent* situations, the requirement of exhaustion of departmental remedies may be *waived* by the Tribunal.[59]

Sub-sec. (2) : 1. A person shall be deemed to have exhausted all the remedies available to him, for the purposes of the foregoing rule,—

(a) If a *final order* has been made by the Government or the competent authority, rejecting an appeal or representation made by the applicant in connection with his grievance [s. 20(2)(a)]; or

(b) Where no such final order has been made, if a period of 6 months from the date of presenting such appeal or representation has expired.

(c) The Tribunal cannot exercise jurisdiction over any matter other than a 'service matter' within the meaning of s. 14(1), e.g., deduction from pay of an amount payable under a Civil Court decree.[60]

2. In view of this sub-section, the cause of action shall be taken to arise out from the date of the original adverse order but on the date when the order of the higher authority (where a statutory remedy is provided) entertaining the appeal or representation is made, and where no such order is made, though the remedy has been availed of, a 6-month's period from the date of preferring of the appeal or making of the representation shall be taken to be the date when the cause of action shall be taken to have first arisen (para. 20).[50]

3. Sub-sec. (1) makes it clear that the rule of exhaustion of remedies like appeal, representation or the like is provided by the relevant Service Rules.[61] Hence, where no such remedy is provided by law, repeated unsuccessful representations, *not provided by law*, will not come under this principle.[50]

4. But once a matter is held to be 'service matter', including recruitment, conditions of service, etc., the jurisdiction of the Administrative Tribunal will exclude that of the High Court and Civil Courts, even when the complaint of the Petitioner is not against any *order* but the *inaction* of the governmental authority concerned,[62] or the unconstitutionality of any law relating to such service matter.[63] The jurisdiction of the Tribunal over service matters is not supplemental to but a *substitute* for that of the High Court.[63]

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55. *Alfred* v. *Collector*, (1993) 23 A.T.C. 910 (*912*) (Ern.).
56. *Gupta* v. *U.O.I.*, (1992) 21 A.T.C. 493 (para. 3) (All.).
57. *Vasudeo* v. *Union of India*, (1987) 4 S.L.R. 693 (para. 9) (C.A.T., Jab.).
58. *N.R.U.* v. *Union of India*, (1993) 23 A.T.C. 926 (para. 11) (N.D.).
59. *Purushottam* v. *U.O.I.*, (1992) 21 A.T.C. 282 (para. 19) (N.D.).
60. *John* v. *Addl. C.M.E.*, A.T.R. (1987) 1 C.A.T. 612 (Bang.).
61. Cf. *Chopra* v. *Lt. Governor*, (1993) 23 A.T.C. 25 (N.D.).
62. *Kashma* v. *Union of India*, (1987) 1 S.L.R. 53 (para. 6) Knt.
63. *Chopra* v. *Union of India*, (1987) 1 S.L.R. 203 (para. 2) S.C.

'Shall no admit'.

The objection that the application under Art. 19 was not maintainable because the applicant has not exhausted his departmental remedies is not sustainable after the application *has been* admitted.[64]

21. Limitation.—A Tribunal shall not admit the application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made within one year from the date on which such final order has been made.

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the matter to which such order relates became a matter within the jurisdiction of the Tribunal; and

(b) no proceedings for the redressal of such grievances had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b) of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub- section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

Limitation for original application.

The Administrative Tribunals Act lays down a special provision of limitation (s. 21) for original applications made to it under s. 19.

1. By reason of s. 33 of the Administrative Tribunals Act and s. 29(2) of the Limitation Act, 1963, the provisions of, or the periods of limitation prescribed by the Limitation Act shall not apply to proceedings under s. 19 of the Administrative Tribunals Act.[65]

2. The periods of limitation prescribed by s. 21 are—

(i) Where a final order has been made by the Government or a competent authority, rejecting the application or representation authorised by the relevant Service Rules, for the redressal of his grievance—the application to the Tribunal under s. 19 shall be barred unless made within 1 year from the date of such final order of the Government or other competent authority [s. 21(1)(a)].[66]

64. *Ved* v. *U.O.I.*, (1992) 21 A.T.C. 358 (para. 7) (Chand.).

65. *Rathore v. State of M.P.*, A. 1990 S.C. 10 (paras. 21, 23)—7 Judges, overruling *Sitaram* v. *Mun. Board*, A. 1958 S.C. 1036.

66. *Paramu* v. *Union of India*, (1986) A.T.C. 514 (para. 5); *Charan* v. *Union of India*, A.T.R. (1987) 1 C.A.T. 625 (630) Jodh.

There is an *exception* [s. 21(2)] to the bar just mentioned—

If the order complained of was made during the period of 3 years preceding the date of establishment of the Tribunal (i.e. 1-11- 85)[67] and 1 year had already elapsed from the date of the order before 1-11-85, an application under s. 19 can still be made to the Tribunal within 6 months of the date of its establishment.

In other words, an application can be made to the Tribunal on or before 1-5-86 against a final order passed at any time after 1-11-82, except where the period of 1 year after the date of the impugned order expires after 1-5-86.[66] But no application can be filed before the Tribunal in respect of final orders passed prior to 1-11-82.[66]

(i) Thus, where the applicant makes his application before the Tribunal after more than six months [the grace period allowed by s. 29(2)], the application shall be barred by limitation unless cogent reasons have been advanced for condoning the delay.[68]

(ii) Where the impugned order was made 3 years before the establishment of the Tribunal, it would be barred by s. 29(2)(a).[69]

In other words, an application would be saved by this clause where the impugned order was made within 3 years immediately preceding the establishment of the Tribunal.[70]

Conversely, matters which were concluded more than 3 years before constitution of the Tribunal would be barred and any petition of review or the like, which is *not* contemplated by any Service Rule, cannot save the application before the Tribunal.[69] But, where a representation, authorised by the Rules, is made during the period of 3 years,[71] the limitation would be computed from the date of disposal of that representation.[72] Otherwise, the mere filing of a representation would not extend the period of limitation.[73]

Condonation of delay.

3. Sub-sec. (3) of s. 21 provides that an application filed beyond the period of limitation specified in cls. (a), (b) of sub-sec. (1) or in sub-sec. (2) may be entertained by the Tribunal, after condoning the delay, if the Tribunal is satisfied that there was *'sufficient cause'* as to why the applicant could not make the application before the Tribunal within the period of limitation as aforesaid.

What is 'sufficient cause' has been left to the determination of the Tribunal having regard to the circumstances of each case, and to the principles laid down in cases under s. 5 of the Limitation Act.[74]

A. The following have been held not to constitute 'sufficient cause'.—

(a) Successive representations would not suffice to condone inordinate delay.[75]

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67. 6-10-86, in the case of Karnataka [*Kashma* v. *Union of India*, (1987) 1 S.L.R. 53 (para. 2) Knt.].

68. *Vimla* v. *Union of India*, A.T.R. (1987() 1 C.A.T. 292 (Jab.).

69. *Husan* v. *Lt. Governor*, (1986) A.T.C. 367 (N.D.); *Ranghavan* v. *Secy.*, (1987) 4 S.L.R. 155 (para. 2) [C.A.T., Mad.].

70. *Devi Singh* v. *Union of India*, A.T.R. (1987) 1 C.A.T 27 (Jodh.).

71. *Raghavan* v. *Secy.*, (1987) 4 S.L.R. 155 (para. 2) [C.A.T., Mad.].

72. *Manohar* v. *Union of India*, (1986) A.T.C. 531 (para. 6) N. Bom.

73. *Charan* v. *Union of India*, (1988) 1 S.L.R. 40 (para. 5) (C.A.T., Jodh.).

74. *Hira Lal* v. *Director*, A.T.R. (1987) 1 C.A.T. 420 (para. 8) All.

75. *Sarjare* v. *State*, A.T.R. (1987) 1 C.A.T. 158 (para. 7) Jab.; cf. *Gian Singh* v. *High Court*, A. 1980 S.C. 1984.

(i) Where the applicant comes to the Tribunal after a long lapse of time after his departmental appeal was rejected, the fact of his making representations thereafter cannot excuse his laches which has allowed other persons to acquire rights and interests which should not be disturbed.[76]

(ii) The duration of pendency of representations cannot be excluded for condoning limitation where the applicant had made his earliest representation long after the date of his cause of action and was thus guilty of laches.[77]

(b) The period of pendency of a previous application before the Tribunal, which was withdrawn, cannot be a consideration for condoning the delay for filing a subsequent application, unless the previous application was withdrawn with permission of the Tribunal to move again.[78]

(c) Time spent by writ petition filed by a third party (even though he was a colleague of the Petitioner) before the Tribunal cannot be excluded for condonation of delay.[79]

B. On the other hand, the following have been held to be sufficient cause—

(a) Mistaken advice given by the applicant's lawyer is, as a rule, not a sufficient cause, but it may be accepted as a sufficient cause where the mistake on the part of the lawyer was *bona fide*, as distinguished from a mere device to cover the laches of the litigant.[74,80]

(b) The time taken in obtaining certified copies and the like would be excluded in computing limitation.[81]

(c) Delay of the Government in disposing of the applicant's representation which has been fruitful in other respects.[82]

(d) Where the applicant came to the Tribunal promptly after he had come to be affected by the impugned order.[83]

The limitation under s. 21 is not applicable to an application under s. 19 which is not against any *order* of the authority concerned but against its *inaction*. But the Tribunal can apply the general principles of laches and acquiescence.[84]

22. Procedure and powers of Tribunals.

(1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and *after hearing such oral arguments as may be advanced.*[81,85]

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76. *Devinder* v. *State of H.P.*, A.T.R. (1987) 1 C.A.T. 194 (H.P.); cf. *State of Orissa* v. *Pyarimohon*, (1977) 1 S.L.R. 255 (S.C.).
77. *Raghavan* v. *Secy.*, (1987) 4 S.L.R. 155 C.A.T. (Mad.).
78. *Kishan* v. *Div. R.M.*, (1987) 4 S.L.R. 188 (C.A.T., Jab.).
79. *Rafi* v. *Union of India*, (1986) A.T.C. 480 (Jab.).
80. *Matadin* v. *Narayanan*, A. 1970 S.C. 1953.
81. *Abdullais* v. *State of W.B.*, (1986) 3 S.L.R. 16 (para. 27) [C.A.T., Cal.].
82. *State of M.P.* v. *Bani*, (1990) Supp. S.C.C. 738 (para. 6).
83. *Union of India* v. *Singh*, (1990) Supp. S.C.C. 701 (para. 10).
84. *Kashma* v. *Union of India*, (1987) 1 S.L.R. 53 (para. 6) Knt.
85. *Subs.* by the A.T. (Amendment) Act, 1986, s. 15, w.e.f. 22-1-1986.

(3) A Tribunal shall have, for the purposes of *discharging its functions under this Act,*[81,85] the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
(e) issuing commissions[86] for the examination of witnesses or documents;
(f) reviewing its decisions;
(g) dismissing a representation for default or deciding it *ex parte*;
(h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
(i) any other matter which may be prescribed by the Central Government.

Sub-sec. (1) : 'Shall not be bound'.

This only means that the provisions of the C.P. Code shall not strictly apply to proceedings before the Tribunal. It does not, however, mean that those principles underlying the provisions of the Code which are consistent with natural justice shall not apply, e.g., *res judicata*.[87]

'Shall have power to regulate its own procedure.'

1. These words impart a flexibility to the procedure adopted by the Tribunal. Instances of the exercise of such power are—

(i) In a Petition for contempt against the administrative authority, even though the Petition is liable to be dismissed for failure to prove wilful default, the Tribunal may issue appropriate directions to the authority, in the interests of justice.[88]

(ii) It may condone delay in filing application for substitution of deceased Petitioner.[89]

Sub-sec. (3)(f); Review.

1. Since the powers of the Tribunal are the same as those of civil court under the C.P. Code, 1908, a Tribunal can ordinarily review its decision only if the provisions of O. 47, r. 1 of the Code are satisfied.[90]

Thus, it has been held that in view of the *Expl.* added to O. 47, r. 1 in 1977, though a change in the law made by a superior court shall be applicable to all *pending* cases, this will not be a good ground for review of the judgment in a case decided earlier.[91]

86. *Ram* v. *U.O.I.*, (.992) 20 A.T.C. 832 (para. 8) (N.D.).
87. *Venkateswara* v. *U.O.I.*, (1992) 21 A.T.C. 637 (para. 12) (Hyd.).
88. *Guru* v. *G.M.*, (1992) 20 A.T.C. 679 (paras. 10-11) (N.D.).
89. *Om Prakash* v. *U.O.I.*, (1992) 20 A.T.C. 362 (paras. 26-27) (N.D.).
90. *Satish* v. *Union of India*, (1993) 23 A.T.C. 562 (paras. 4, 12, 14-15) (Jodh.); *Biswas* v. *Union of India*, (1993) 23 A.T.C. 245 (*246-47*) (N.D.).
91. *Viswambaran* v. *S.D.I.*, (1992) 21 A.T.C. 733 (*734*) (Ern.).

As regards pending cases, the Tribunal may give proper directions to the Government.[92]

2. Tribunals have, however, held that they are *not bound* by the procedure laid down in the Code, as expressly provided in sub-sec. (1) of s. 22.[90] Extra powers by way of recalling or modifying its decisions have thus been gathered from—

(a) The principles of natural justice.[90]

(b) To rectify its own mistake which is patent, e.g., where it had dismissed an application as time-barred, overlooking the fact that the cause of action for the application had arisen before the coming into force of the A.T. Act, 1935.[92a]

(c) Other provisions of the Code, e.g., ss. 94(e), 151.[92]

3. It has, thus, been held that a Tribunal can exercise the following powers—

(i) To overcome practical difficulties faced by the administrative authority in implementing the decision of the Tribunal.[93]

(ii) To grant *interim stay* during pendency of application for review.[94]

(iii) To condone delay in filing Petition for review.[95]

23. Right of applicant to take assistance of legal practitioner and of Government etc., to appoint presenting officers.—(1) A person making an application to a Tribunal under this Act shall either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal.

(2) The Central Government or a State Government or a local or other authority or corporation, *or society*,[81, 96] to which the provisions of sub-section (3) of section 14 or sub-section (3) of section 15 apply, *may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised by it may present its case with respect to any application before a Tribunal.*[81,97]

24. Conditions as to making of interim orders.—Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless—

(a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and

(b) opportunity is given to such party to be heard in the matter :

Provided that a Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be

92. *Vikram* v. *Min. of Commerce*, (1992) 20 A.T.C. 774 (para. 9) (N.D.).
92a. *State of Orissa* v. *Sukanti*, A. 1993 S.C. 1650 (para. 9).
93. *Union of India* v. *Harilal*, (1993) 2 A.T.C. 43 (paras. 2, 6) (Ern.).
94. *Satish* v. *Union of India*, (1993) 23 A.T.C. 562 (para. 14) (Jodh.).
95. *D.R.M.* v. *Venkataraman*, (1992) 1 A.T.C. 771 (para. 2) (Hyd.).
96. *Ins.* by the A.T. (Amendment) Act, 1986, s. 16, w.e.f. 22-1-1986.
97. *Subs.* by the A.T. (Amendment) Act, 1986, s. 16, w.e.f. 22-1-1986.

adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order.[98]

Power to pass interim order.

1. This section implies that the Tribunal is competent to pass *interim* orders during the pendency of an application under s. 19, subject to the conditions laid down herein.[99]

2. But the Tribunal should be very cautious in granting *interim* stay in disciplinary proceedings at an interlocutory stage, where the imputations made against the applicant are serious.[100]

[1][**25. Power of Chairman to transfer cases from one Bench to another.**—*On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.*[81]

Decision to be by majority.

[1][**26.** *If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Tribunal who have heard the case, including those who first heard it.*[81,2]

27. Execution of orders of a Tribunal.—Subject to the other provisions of this Act and the rules, the order of a Tribunal finally disposing of an application *or an appeal shall be final and shall not be called in question in any court (including a High Court) and such order*[81,3] shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub-section (2) of section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed.

CHAPTER V

MISCELLANEOUS

28. Exclusion of jurisdiction of courts.—On and from the date from which any jurisdiction, powers and authority become exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, [*no court except*—

(a) *the Supreme Court; or*

98. Tribunal must be very cautious in granting an interim order to stay disciplinary proceedings [*Union of India* v. *Saxena*, (1992) 3 S.C.C. 124 (para. 6)

99. *Satish* v. *Union of India*, (1993) 23 A.T.C. 562 (para. 8) (Jodh.).

100. *Union of India* v. *Saxena*, (1992) 21 A.T.C. 670 (para. 6) S.C.

1. Secs. 25 and 26 *substituted* by the A.T. (Amendment) Act, 1986, s. 17, w.e.f. 22-1-1986.

2. Cf. *Prakash* v. *U.O.I.*, (1993) 23 A.T.C. 726 (paras. 1, 17) (Ahmed.).

3. *Ins.* by the A.T. (Amendment) Act, 1986, s. 18, w.e.f. 22-1-1986.

(b) *any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force,*

shall have][84,4] or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

'Court'. The following are 'Court' or authorities within the purview of this section :

(i) The Appellate Authority designated under the Payment of Wages Act, 1936.[5]

(ii) The Payment of Gratuity Act, 1972.[6]

29. Transfer of pending cases.—(1) Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal :

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court. [* * *][7]

(2) Every suit or other proceeding pending before a court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation, or *society,*[8] being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal :

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court. [* * *][7]

Explanation.—For the purposes of this sub-section "date with effect from which jurisdiction is conferred on a Tribunal", in relation to any local or other authority or corporation, *or society,*[9] means the date with effect from which the provisions of sub-section (3) of section 14 or, as the case may be, sub-section (3) of section 15 are applied to such local or other authority or corporation.

(3) Where immediately before the date of establishment of a Joint Administrative Tribunal any one or more of the States for which it is established, has or have a State Tribunal or State Tribunals immediately before the said date together with the records thereof shall stand transferred on that date to such Joint Administrative Tribunal.

Explanation.—For the purposes of this sub-section, "State Tribunal" means a Tribunal established under sub-section (2) of section 4.

(4) Where any suit, appeal or other proceeding stands transferred to a Tribunal under sub-section (1) or sub-section (2), the Tribunal may, on receipt of the records thereof, proceed to deal with such unit, appeal or other

4. *Subs.* by the A.T. (Amendment) Act, 1986, s. 19, w.e.f. 22-1-1986.
5. *Union of India* v. *Swarup,* (1989) 9 A.T.C. 167 (*168*) (Chand. F.B.).
6. *Union of India* v. *Basudev,* (1993) 23 A.T.C. 898 (Cal.).
7. *Omitted* by the A.T. (Amendment) Act, 1986, s. 20, w.e.f. 22-1-1986.
8. *Mal* v. *Jagdish,* (1987) 4 S.L.R. 792 (para. 2) (C.A.T., Jodh.).
9. *Ins.* by the A.T. (Amendment) Act, 1986, s. 20, w.e.f. 22-1-1986.

proceeding so far as may be, in the same manner as in the case of an application under section 19, from the stage which was reached before it stood so transferred or from any earlier stage or *de novo,* as the Tribunal may deem fit.

(5) Where any case stands transferred to a Joint Administrative Tribunal under sub-section (3), the Joint Administrative Tribunal may proceed to deal with such case from the stage which was reached before it stood so transferred.

[10][(6) Every case pending before a Tribunal immediately before the commencement of the Administrative Tribunals (Amendment) Act, 1987, being a case the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of any court, shall, together with the records thereof, stand transferred on such commencement to such court.

(7) Where any case stands transferred to a court under sub-section (6), that court may proceed to deal with such case from the stage which was reached before it stood so transferred.]

Jurisdiction of Tribunal by transfer from High Court.

Application under Arts. 226-227.

S. 29 of the Act transfers all proceedings before the High Court under Arts. 226-227, relating to service matters, which were pending on the date of establishment of the Tribunal (having local jurisdiction) under the Act,

On receipt of the records of a proceeding transferred under s. 29, the Tribunal shall treat it as if it were an original application under s. 19 and proceed in the same manner as such application from (a) the stage which was reached in the Court before such transfer, or (b) from any earlier stage, or (c) proceed *de novo,* as the Tribunal may deem fit [s. 29(4)(b)].

'Any other proceeding'.

This expression is wide enough to include contempt proceeding arising out of a proceeding before the Court relating to a service matter over which the Tribunal has jurisdiction.[8]

Limitation for transferred proceedings.

The Administrative Tribunal Act does not contain any provision as regards limitation applicable to proceedings transferred to a Tribunal under s. 29, and s. 21 applies only to original applications under s. 19.

But, by reason of s. 33 of the Act, the provisions of the Act shall prevail over the Limitation Act. Now the Tribunal is directed by s. 29(4)(b) to proceed with a transferred proceeding as an application under s. 19. Hence, it has been held by the New Delhi Tribunal that a transferred proceeding cannot be dismissed by the Tribunal on the ground that the suit was barred by limitation when it had been instituted in the Civil Court.[11]

The foregoing view of the New Delhi Tribunal does not appear to be sound because the Limitation Act will be excluded [by s. 29(2) or s. 33 of the A.T. Act] only if there is anything 'inconsistent' in the special Act. But, since the A.T. Act dose not provide for any period of limitation applicable to transferred proceedings, it would follow that a transferred proceeding must have to be dismissed by the Tribunal if the suit (which has been transferred) was barred under the Limitation Act when it had been instituted in the Civil Court.[12]

10. *Ins.* by Act No. 51 of 1987, s. 5, w.e.f. 22-12-1987.
11. *Bhatnagar* v. *Union of India,* (1986) A.T.C. 394 (para. 6).
12. *Ganpat* v. *Union of India,* (1986) A.T.C. 521 (paras. 7-8).

At any rate, the principle of laches is applicable to dismiss a transferred proceeding from the High Court.[13]

But the bar of laches, being discretionary, will not be applied by the Tribunal—

(a) Where the party offers sufficient explanation for the delay;[14]

(b) Where the Petitioner's fundamental right has been infringed, thereby constituting a continuing wrong.[15]

In adjudicating a proceeding transferred to it from the High Court, the Tribunal can exercise all the powers the High Court could under Arts. 226-227, including grounds of *ultra vires*, unconstitutionality of laws, enforcement of fundamental rights of the Petititoner[16] relating to service matters[16]

In such transferred proceeding, if any question as to jurisdiction of the Tribunal is raised, it is for the Tribunal itself to decide that question and only after the Tribunal reaches the conclusion that it has no jurisdiction under the Act to deal with the matter, that the case can be retransmitted[17] to the High Court or returned to the party for presentation to the proper court. The question cannot be disposed of under an administrative order.[16-18]

Jurisdiction of Tribunal over suits transferred from Civil Courts.

Suits relating to service matters which were pending before a Civil Court on the date of establishment of the Tribunal having jurisdiction stand transferred to the Administrative Tribunal having territorial jurisdiction, under S. 29 of the Act.[19]

Jurisdiction of Tribunal over proceedings transferred from other Courts and authorities.

The following are courts or authorities from which pending proceedings shall be transferred to a Tribunal under s. 29(1), provided[20] the proceedings relate to a 'service matter', and the Tribunal has jurisdiction over the controversy :

The Authority under the Payment of Wages Act, 1936.[20]

Provision for filing of certain appeals.

[21]*29A. Where any decree or order has been made or passed by any court (other than a High Court) in any suit or proceeding before the establishment of a Tribunal, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, and no appeal has been preferred against such decree or order before such establishment and the time for preferring such appeal under any law for the time being in force had not expired before such establishment, such appeal shall lie—*

(a) *to the Central Administrative Tribunal, within ninety days from the date on which the Administrative Tribunals (Amendment) Bill, 1986, receives*

13. *Chellaswamy* v. *Union of India*, 1 S.L.R. 496 (para. 15) [C.A.T., Mad.].
14. *State of Rajasthan* v. *Karam Chand*, A. 1965 S.C. 913.
15. *Gopal* v. *Union of India*, (1987) 3 S.L.R. 254 (para. 7) (C.A.T., Jab.).
16. *Surinder* v. *Union of India*, (1986) A.T.C. 656 (paras. 66-67) (C.A.T., N.D.).
17. Cf. *Gupta* v. *I.A.A.I.*, (1986) A.T.C. 606 (C.A.T., N.D.).
18. Cf. *Om Prakash* v. *U.G.C.*, (1986) A.T.C. 626 (para. 2) (C.A.T., N.D.).
19. Cf. *Kaptan* v. *Union of India*, (1986) 4 S.L.R. 545 (Del.); *Om Prakash* v. *U.G.C.*, (1986) A.T.C. 626 (para. 1).
20. *Union of India* v. *Dinesh*, (1993) 23 A.T.C. 140 (paras. 5-6) (All.).
21. *Ins.* by the A.T. (Amendment) Act, 1986, s. 21, w.e.f. 22-1-1986.

the assent of the President, or within ninety days from the date of receipt of the copy of such decree or order, whichever is later, or

(b) *to any other Tribunal, within ninety days from its establishment or within ninety days from the date of receipt of the copy of such decree or order, whichever is later.*

30. Proceedings before a Tribunal to be judicial proceedings.—All proceedings before a Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

31. Members and staff of Tribunal to be public servants.—The Chairman, Vice-Chairman and other members and the officers and other employees provided under section 13 to a Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

32. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central or State Government or against the Chairman, Vice-Chairman or other members of any Central, or Joint or State Administrative Tribunal, or any other person authorised by such Chairman, Vice-Chairman or other members for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

33. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

34. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the diffculty.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

35. Power of the Central Government to make rules—(1) The Central Government may, subject to the provisions of section 36, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the case or cases which shall be decided by a Bench composed of more than *two*[22] Members under clause (d) of sub-section (4) of section 5;

(b) the procedure under sub-section (3) of section 9 for the investigation of misbehaviour or incapacity of Chairman, Vice-Chairman or other Members;

(c) the salaries and allowances payable to, and the other terms and conditions of, the Chairman, Vice-Chairman and other Members;

(d) the form in which an application may be made under section 19, the documents and other evidence by which such application shall be accompanied and the fees payable in respect of *the filing of such application or for the service or execution of processes*;[21]

(e) the rules subject to which a Tribunal shall have power to regulate

22. *Subs.* by the A.T. (Amendment) Act, 1986, s. 22, w.e.f. 22-1-1986.

its own procedure under sub-section (1) of section 22 and the additional matters in respect of which a Tribunal may exercise the powers of a Civil Court under clause (i) of sub-section (3) of that section; and

(f) any other matter which may be prescribed or in respect of which rules are required to be made by the Central Government.

36. Power of the appropriate Government to make rules.—The appropriate Government may, by notification, make rules to provide for all or any of the following matters, namely:—

(a) the financial and administrative powers which the Chairman of a Tribunal may exercise over the[23] Benches of the Tribunal under section 12,

(b) the salaries and allowances and conditions of service of the officers and other employees of a Tribunal under sub-section (2) of section 13; and

(c) any other matter not being a matter specified in section 35 in respect of which rules are required to be made by the appropriate Government.

[24][**36A. Power to make rules retrospectively.**—The power to make rules under clause (c) of sub-section (2) of Section 35 or clause (b) of Section 36 shall include the power to make such rules or any of them retrospectively from a date not earlier than the date on which this Act received the assent of the President, but no such retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.]

37. Laying of rules.—(1) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(2) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

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23. *Omitted* by the A.T. (Amendment) Act, 1986, s. 23, w.e.f. 22-1-1986.
24. *Ins.* by the A.T. (Amendment) Act, 1988, s. 6.

APPENDIX III

Central Administrative Tribunal (Procedure) Rules, 1987

Notification No. G.S.R. 17(E)—(New Delhi, the 6th January, 1987).—In exercise of the powers conferred by clauses (*d*), (*e*) and (*f*) of sub-section (2) of section 35 and clause (*c*) of section 36 of the Administrative Tribunals Act, 1985 (13 of 1985) and in supersession of the Central Administrative Tribunal (Procedure) Rules, 1985, except as respects things done or omitted to done before such supersession, the Central Government hereby makes the following rules, namely—

1. *Short title and commencement.*—(1) These rules may be called the Central Administrative Tribunal (Procedure) Rules, 1987.

(2) It shall come into force on the Fifteenth day of January, 1987.

2. *Definitions.*—In these rules, unless the context otherwise requires,—

(*a*) "Act" means the Administrative Tribunals Act, 1985 (13 of 1985);

[1][(*b*) "agent" means person duly auhorised by a party to present an application, written reply, rejoinder or any other document on its behalf before the Tribunal;]

(*c*) "applicant" means a person making an application to the Tribunal under section 19;

(*d*) "Form" means a form specified in Appendix A;

(*e*) "legal practitioner" shall have the same meaning as is assigned to it in the Advocates Act, 1961 (25 of 1961);

[2][(*f*) "legal representative" means a person who in law represents the estate of the deceased person and includes a person or persons in whom the right to receive pensionary, retirement, terminal or other benefits or family pension vests;]

(*g*) "Registrar", in relation to the Tribunal, means the Registrar appointed to the Principal Bench and in relation to each of the other Benches of the Tribunal shall mean the Registrar appointed to whom the powers and functions of the Registrar may be delegated under clauses (2) and (3) of rule 28;

(*h*) "Registry" means the Registry of the Tribunal or of the Bench of the Tribunal, as the case may be;

(*i*) "section" means a section of the Act;

(*j*) "Transferred application" means the suit or other proceeding which has been transferred to the Tribunal under sub-section (1) or sub-section (2) of section 29;

(*k*) "Tribunal" means the Central Administrative Tribunal established under sub-section (1) of section 4 of the Act;

(*l*) the words and expression used and not defined in these rules, but defined in the Act shall have the same meanings respectively assigned to them in the Act.

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1. Substituted by G.S.R. 1000(E), dated 11.10.1988.
2. Substituted, *ibid.*

3. *Language of the Tribunal.*—[3][(1)] (*a*) The language of the Tribunal shall be English:

Provided that the parties to a proceeding before the Tribunal may file documents drawn up in Hindi, if they so desire:

Provided further that—

(*a*) a Bench may, in its discretion permit the use of Hindi in the proceedings; [4][* * *]

(*b*) the Bench, hearing the matter may in its discretion direct English translation of pleadings and documents to be filed;

[5][(*c*) the Benches [6][* * *] may, in their discretion, make final orders either in Hindi or in English.]

[7][(2) Notwithstanding anything contained in sub-rule (1), where a final order is made in Hindi, and authenticated English translation thereof shall simultaneously be prepared and kept on record.]

4. *Procedure for filing applications.*—(1) An application to the Tribunal shall be presented in Form I by the applicant in person or by an agent or by a duly authorised legal practitioner to the Registrar or any other officer authorised in writing by the Registrar to receive the same or be sent by Registered Post with Acknowledgement duly addressed to the registrar of the Bench concerned.

[8][(2) The application under sub-rule (1) shall be presented is triplicate in the following two compilations—

(*i*) *Compilation No. 1*: — application along with the impugned order, if any;

(*ii*) *Compilation No. 2*: — all other documents and annexures referred to in the application in a paper book form.]

(3) Where the number of respondents is more than one, as many extra copies of the application in paper-book form as there are respondents together with unused file size envelope bearing the full address of each respondent shall be furnished by the applicant:

Provided that where the number of respondents is more than five, the Registrar may permit the applicant to file the extra copies of the application at the time of issue of notice to the respondents.

(4) The applicant may attach to and present with his application a receipt slip in Form II which shall be signed by the Registrar or the officer receiving the application on behalf of the Registrar in acknowledgement of the receipt of the application.

(5) (*a*) Notwithstanding anything contained in sub-rules (1) to (3) the Tribunal may permit more than one person to join together and file a single application if it is satisfied having regard to the cause and the nature of relief prayed for that they have a common interest in the matter.

(*b*) Such permission may also be granted to an Association representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade/categories or persons on whose

3. Renumbered by G.S.R. 756(E), dated 18.10.1994.
4. Omitted, *ibid.*
5. Inserted, *ibid.*
6. Omitted by G.S.R. 41(E), dated 22.1.1996.
7. Inserted by G.S.R. 756(E), dated 18.10.1994.
8. Substituted by G.S.R. 1000(E), dated 11.10.1988.

behalf it has been filed [9][provided that at least one affected person joins such an application].

5. *Presentation and scrutiny of applications.*—(1) The Registrar, or the officer authorised by him under rule 4, shall endorse on every application the date on which it is presented or deemed to have been presented under that rule and shall sign the endorsement.

(2) If, on scrutiny, the application is found to be in order, it shall be duly registered and given a serial number.

(3) If the application, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Registrar may allow the party to satisfy the same in his presence, and if the said defect is not formal in nature, the Registrar may allow the applicant such time to rectify the defect as he may deem fit [9][where an application is received by registered post, the applicant shall be informed of the defects, if any, and he shall be required to rectify the same within such time as may be stipulated by the Registrar].

[10][(4) (*a*) If the applicant fails to rectify the defect within the time allowed under sub-rule (3), the Registrar may, by order and for reasons to be recorded in writing, decline to register the application and place the matter before the Bench for appropriate orders.]

(*b*) [11][* * *]

(5) [12][* * *]

[13][6. *Place of filing applications.*—(1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction—

(*i*) the applicant is posted for the time being, or

(*ii*) the cause of action, wholly or in part, has arisen:

Provided that with the leave of Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.]

7. *Application fee.*—Every application filed with the Registrar shall be accompanied by a fee of rupees fifty to be remitted either in the form of crossed demand draft drawn on a nationalised bank in favour of the Registrar of the concerned Bench and payable at the main Branch of that bank at the station where the seat of the said Bench is situate, or remitted through a crossed Indian Postal Order drawn in favour of the Registrar of the concerned Bench and payable at the post office of the station where the said Bench is situate:

Provided that where the Tribunal permit a single application to be filed, either by more than one person or by an Association, the fee payable shall be rupees fifty:

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9. Added by G.S.R. 1000(E), dated 11.10.1988.
10. Substituted, *ibid.*
11. Omitted by G.S.R. 99(E), dated 26.2.1991.
12. Omitted, *ibid.*
13. Substituted by G.S.R. 1000(E), dated 11.10.1988.

Provided further that where the Tribunal is satisfied that an applicant is unable to pay the prescribed fee on ground of indigence, it may exempt such an applicant from the payment of fee.

8. *Contents of application.*—(1) Every application filed under rule 4 shall set forth concisely under distinct heads the grounds for such application. Such grounds shall be numbered consecutively. Every application including any miscellaneous application shall be typed in double space on one side on thick paper of good quality.

(2) It shall not be necessary to present a separate application to seek an interim order or direction if in original application the same is prayed for.

(3) An applicant may, subsequent to the filing of an application under section 19 of the Act, apply for an interm order or direction. Such an application shall, as far as possible, be in Form III.

[14][(4) Where the applicant seeks condonation of delay, he shall file a separate application supported by an affidavit.]

9. *Documents to accompany the application.*—(1) Every application shall be accompanied by [15][the following documents]:

(*i*) an attested true copy of the order against which the application is filed;

(*ii*) copies of the documents relied upon by the applicant and referred to in the application;

(*iii*) an index of the documents.

(2) The documents referred to in sub-rule (1) may be attested by a legal practitioner or by a gazetted officer and each document shall be marked serially as Annexure A1, A2, A3 and so on.

(3) Where an application is filed by any agent, documents authorising him to act as such agent shall also be appended to the application:

Provided that where an application is filed by a legal practitioner, it shall be accompanied by a duly executed *'Vakalatnama'*.

10. *Plural remedies.*—An application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another.

11. *Service of notice and processes issued by the Tribunal.*—[16][(1) Notices to be issued by the Tribunal may be served by any of the following modes—

(*i*) service by the party itself;

(*ii*) by hand delivery (*dasti*) through process server;

(*iii*) by registered post 'with acknowledgement due';

[17][(*iv*) through the concerned head of Office of the same Department]:

Provided that if the Tribunal does not specify the mode of service, notice may be sent by registered post 'with acknowledgement due' and the provision of sub-rule (2) of rule 19A of Order V of First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply to such mode of service.]

(2) Where notice issued by the Tribunal is served by the party himself by hand delivery' (*Dasti,* he shall file with the Registry of the Tribunal, the acknowledgement together with an affidavit of service).

(3) Notwithstanding anything contained in sub-rule (1) the Tribunal

14. Inserted by G.S.R. 1000(E), dated 11.10.1988.
15. Substituted by *ibid.*
16. Substituted by *ibid.*
17. Substituted by G.S.R. 99(E), dated 26.2.1991.

may, taking into account the number of respondents and their places of residence or work and other circumstances, direct that notice of the application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appear just and convenient the Tribunal.

[18][(4) Notwithstanding anything contained in sub-rule (1), the Tribunal may, in its discretion, having regard to the nature of the case, direct the service of the notice on the Standing Counsel, authorised to accept the service, for any Department or Organisation of the Central Government, or an authority, a corporation, a body owned or controlled by the Central Government.

(5) Every notice issued by the Tribunal shall unless otherwise ordered, be accompanied by a copy of the application and a copy of the impugned order.]

(6) Every applicant shall pay a fee for the service of execution of processes, in respect of an application where the number of respondents exceeds five, as under:—

(*i*) a sum of rupees five for each respondent in excess of five respondents; or

(*ii*) where service is in such a manner as the Tribunal may direct under sub-rule (3) such a sum not exceeding the actual charges incurred in effecting the service as may be determined by the Tribunal.

(7) The fee for the service or execution of processes under sub-rule (3) shall be remitted in the manner prescribed in rule 7 within one week of the date of the order determining the fee or within such extended time as the Registrar may permit.

(8) Notwithstanding anything contained in sub-rules (1) to (4), if the Tribunal is satisfied that it is not reasonably practicable to serve notice of application upon all the respondents, it may, for reasons to be recorded in writing, direct that the application shall be heard notwithstanding that some of the respondents have not been served with notice of the application:

Provided that no application shall be heard unless:

(*i*) notice of the application has been served on the Central Government or the State Government if such Government is a respondent;

(*ii*) notice of the application has been served on the authority which passed the order against which the application has been filed; and

(*iii*) The Tribunal is satisfied that the interests of the respondents on whom notice of the application has not been served are adequately and sufficiently represented by the respondent on whom notice of the application has been served.

12. *Filing of reply and other documents by the respondents.*—(1) Each respondent intending to contest the application, shall file in triplicate the reply to the application and the documents relied upon in paper book form with the Registry within one month of the service of notice of the application on him.

(2) In the reply filed under sub-rule (1), the respondent shall specifically admit, deny or explain the facts stated by the applicant in his application and may also state such additional facts as may be found necessary for the

18. Substituted by G.S.R. 1000(E), dated 11.10.1988.

just decision of the case. It shall be signed and verified as a written statement by the respondent or any other person duly authorised by him in writing in the same manner as provided for in Order VI, rule 15 of the Code of Civil Procedure, 1908 (5 of 1908).

(3) The documents referred to in sub-rule (3) shall also be filed along with the reply and the same shall be marked as R1, R2, R3 and so on.

(4) The respondent shall also serve a copy of the reply along with documents as mentioned in sub-rule (1) on the applicant or his legal practitioner, if any, and file proof of such service in the Registry.

(5) The Tribunal may allow filing of the reply after the expiry of the prescribed period.

[19][(6) The Tribunal may permit the parties to amend the pleadings in the same manner as provided under Order 6, rule 17 of the Code of Civil Procedure, 1908 (5 of 1908).]

13. *Date and place of hearing to be notified.*—The Tribunal shall notify to the parties the date and the place of hearing of the application in such manner as the Chairman may by general or special order direct.

14. *Calendar of cases.*—(1) Each Bench shall draw up a calendar for the hearing of transferred cases and, as far as possible, hear and decide the cases according to the calendar.

(2) Every application shall be heard and decided as far as possible, within six months from the date of its registration.

(3) The Tribunal shall have the power to decline an adjournment and also to limit the time for oral arguments.

15. *Action on application for applicant's default.*—(1) Where on the date fixed for hearing of the application or an any other date to which such hearing may be adjourned the applicant does not appear when the application is called for hearing, the Tribunal may in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same:

Provided, however, where the case was disposed of on merits the decision shall not be responded except by way of review.

16. *Ex parte hearing and disposal of application.*—(1) Where on the date fixed for hearing the application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the application is called for hearing, the Tribunal may, in its discretion adjourn the hearing, or hear and decide the application *ex parte*.

[20][(2) Where an application has been heard *ex parte* against a respondent or respondents such respondent or respondents may apply within 30 days from the date of the order to the Tribunal for an order to set it aside and if such respondent or respondents satisfy the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing when application was called for hearing the Tribunal may make an order setting aside the *ex parte* order as against him or them upon

19. Added by G.S.R. 99(E), dated 26.2.1991.
20. Substituted by G.S.R. 99(E), dated 26.2.1991.

such terms as it thinks fit, and shall appoint a day for proceeding with the application:

Provided that where the *ex parte* order of the application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also:

Provided further that in cases covered by sub-rule (8) of rule 11, the Tribunal shall not set aside *ex parte* order of an application merely on the ground that it was not served upon a respondent or respondents.]

[21][17. *Application for review.*—(1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.

(2) A review application shall ordinarily be heard by the same Bench which has passed the order, unless the Chairman may, for reasons to be recorded in writing, direct it to be heard by any other Bench.

(3) Unless otherwise ordered by the Bench concerned, a review application shall be disposed of by circulation and the Bench may either dismiss the application or direct notice to the opposite party.

(4) When an application for review of any judgment or order has been made and disposed of, no further application for review shall be entertained in the same manner.

(5) No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise, and also those which are sworn on the basis of the legal advice. The counter-affidavit in review application will also be a duly sworn affidavit wherever any averment of fact is disputed.]

18. *Substitution of legal representatives.*—(1) In the case of death of a party during the pendency of the proceedings before the Tribunal, the legal representatives of the deceased party may apply within [22][ninety days] of the date of such death for being brought on record as necessary parties.

(2) Where no application is received from the legal representatives within the period specified sub-rule (1), the proceedings against the deceased party shall abate:

Provided that on good and sufficient reasons the Tribunal, on an application, may set aside the order of abatement and substitute the legal representatives.

19. *Adjournment of hearing.*—The Tribunal may if sufficient cause is shown at any stage of proceedings grant time to the parties or any of them and adjourn the hearing of the application. The Tribunal may make such order as it thinks fit with respect to the costs occasioned by the adjournment.

20. *Order to be signed and dated.*—(1) Every order of the Tribunal shall be signed by the Member or Members constituting the Bench, which pronounced the order.

(2) The orders shall be pronounced in open court.

[23][21. *Publication of orders.*—(1) The Tribunal may publish its decisions which are deemed fit for publication, in a report entitled "Indian Law Report Central Administrative Tribunal . . . . . 20 . . . ." (for short 'ILR . . . . . CAT. . . . . 20 . . .').

21. Substituted by G.S.R. 557(E), dated 4.9.1991.
22. Substituted by G.S.R. 1000(E), dated 11.10.1988.
23. Substituted by G.S.R. 564(E), dated 7.7.1994 (w.e.f. 7.7.1994).

(*ii*) Such of the order of the Tribunal as are deemed fir for publication in any other authoritative report or the press may be released for such publication on such terms and conditions as the Chairman may specify by general or special order.]

[24][22. *Communication of order to parties.*—(1) Every interim order, granting or refusing or modifying interim relief and final order shall be communicated to the applicant and to the concerned respondent or to their Counsels, either by hand delivery or by post free of cost:

Provided that unless ordered otherwise by a Bench, a copy of the final order need not be sent to any respondent who has not entered appearance:

Provided further that when the petitioner or the respondent is represented by a Counsel, under a single *Vakalatnama,* only one copy shall be supplied to such Counsel as named therein].

(2) If the applicant or the respondent to any proceeding requires a copy of any document or proceeding the same shall be supplied to him on such terms and conditions on payment of such fees as may be fixed by the Chairman by general or special order.

23. *Inspection of the records.*—(1) The parties to any case or their counsel may be allowed to inspect the record of the case on making an application in writing to the Registrar.

(2) Subject to such terms and conditions as may be prescribed by the Chairman by a general or special order a person who is not a party to the proceeding, may also be allowed to inspect the proceedings after obtaining the permission of the Registrar in writing.

24. *Order and directions in certain cases.*—The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.

25. *Registration of legal practitioner's clerks.*—(1) No clerk employed by a legal practitioner shall act as such in the Tribunal or be permitted to have access to the records and obtain copies of the orders of the Bench of the Tribunal in which the legal practitioner ordinarily practises unless his name is entered in the Register of Clerks maintained by the said Bench. Such clerk shall be known as a "Registered Clerk".

(2) A legal practitioner desirous of registering his clerk shall make an application to the Registrar in Form IV. On such application being allowed by the Registrar, his name shall be entered in the Register of Clerks.

(3) After registration of the clerk, the Registrar shall direct the issue of an identity card to him which shall be non-transferable and shall be produced by the holder upon request by an officer or other employee of the Tribunal authorised in this behalf. The identity card shall be issued under the signature of the Deputy Registrar of the Bench concerned.

(4) A register of all the clerks registered under sub-rule (2) shall be maintained in the office of the Registrar of each Bench.

(5) A legal practitioner shall have at a time not more than two registered clerks unless the Registrar by general or special order otherwise permits.

(6) Whenever a legal practitioner ceases to employ a registered clerk, he shall notify the fact at once to the Registrar by means of a letter enclosing therewith the identity card issued to his clerk by the Registry, and on receipt

24. Substituted by G.S.R. 1000(E), dated 11.10.1988.

of such letter the name of the said registered clerk shall be struck off from the register.

26. *Working hours of the Tribunal.*—Except on Saturdays, Sundays, and other public holidays, the office of the Tribunal shall, subject to any order made by the Chairman remain open from 9.30 a.m. to 6 p.m.

27. *Sitting hours of the Tribunal.*—The sitting hours of the Tribunal (including a vacation Bench) shall ordinarily be from 10.30 a.m. to 1.30 p.m. and 2.30 p.m. to 5 p.m. subject to any general or special order made by the Chairman, or by Vice-Chairman concerned with the prior approval of the Chairman.

28. *Powers and functions of the Registrar.*—(1) The Registrar shall have the custody of the records of the Tribunal and shall exercise such other functions as are assigned to him under these rules or by the Chairman or the Vice-Chairman of the Bench concerned by separate order.

(2) The Registrar may, with the approval of the Chairman or of the Vice-Chairman of the Bench concerned delegate to the Deputy Registrar any function or power required by these rules to be performed or exercised by the Registrar.

[25][(3) In the absence of the Registrar, the Deputy Registrar or any other officer to whom the powers and functions of the Registrar are delegated by the Chairman or Vice-Chairman, as the case may be, may exercise the powers and functions of the Registrar.]

(4) The official seal shall be kept in the custody of the Registrar.

(5) Subject to any general or special direction by the Chairman the seal of the Tribunal shall not be affixed to any order, summons or other process save under the authority in writing of the Registrar or the Deputy Registrar.

(6) The seal of the Tribunal shall not be affixed to any certified copy issued by the Tribunal save under the authority in writing of the Registrar or the Deputy Registrar.

29. *Additional powers and duties of Registrar.*—In addition to the powers conferred elsewhere in these rules, the Registrar shall have the following powers and duties subject to any general or special order of the Chairman or the Vice-Chairman of the Bench concerned, namely:—

(*i*) to receive all applications and other documents including transferred applications;

(*ii*) to decide all questions arising out of the scrutiny of the applications before they are registered;

(*iii*) to require any application presented to the Tribunal to be amended in accordance with the Act and the rules;

(*iv*) subject to the direction of the respective Benches, to fix the date of first hearing of the application or other proceedings and issue notices thereof;

(*v*) to direct any formal amendment of records;

(*vi*) to order grant of copies of documents to parties to the proceedings;

(*vii*) to grant leave to inspect the records of the Tribunal;

(*viii*) to dispose of all matters relating to the service of notices or other processes, applications for the issue of fresh notices and

25. Substituted by G.S.R. 1000(E), dated 11.10.1988.

for extending the time of filing such applications, to grant time not exceeding [26][30 days] for filing a reply or rejoinder if any, and to place the matter before the Bench for appropriate orders after the expiry of the aforesaid period;

(*ix*) to requisition records from the custody of any court or other authority;

[27][(*x*) to receive applications within ninety days from the date of death for substitution of legal representatives of the deceased parties during the pendency of the application];

(*xi*) to receive and dispose of applications for substitution, except where the substitution would involve setting aside an order of abatement;

(*xii*) to receive and dispose of applications by parties for return of documents.

30. *Additional powers of the Registrar of the Principle Bench.*—The Registrar of Principal Bench shall have the power to call for information and records and to inspect or cause to be inspected the registry of the other Benches under general or special orders as may be issued by the Chairman from time to time.

31. *Seal and emblem.*—The official seal and emblem of the Tribunal shall be such as the Central Government may specify.

32. *Dress of the Members and staff of the Tribunal.*—The dress for the Members of the Tribunal (including Chairman and Vice-Chairman) and Members of the staff of the Tribunal shall be such as the Chairman may specify.

33. *Dress of the parties.*—A legal practitioner or, as the case may be, a presenting officer shall appear before the Tribunal in his professional dress, if any, and if there is no such dress—

(*i*) if a male, in a closed collared coat and trousers or in a lounge suit;

(*ii*) if a female, in a saree or any other customary dress of a sober colour.

26. Substituted by G.S.R. 1000(E), dated 11.10.1988.
27. Substituted by G.S.R. 99(E), dated 26.2.1991.

APPENDIX A

[28][FORM I
(*See* Rule 4)

Application under section 19 of the Administrative Tribunals Act, 1985

Title of the Case:

Index

Sl. No.	Description of documents relied upon	Page No.
1.	Application	
2.		
3.		
4.		
5.		
6.		

Signature of the applicant

For use in Tribunal's Office
Date of filing
or
Date of Receipt by post
Registration No.

Signature of Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ... BENCH

A.B. (add description such as son of, resident of and place of employment or last employed)

APPLICANT

versus

C.D. (add description and the residential or official address on which the service of notices is to be effected on the respondent or respondents. The details of each respondent are to be given in a chronological order)

RESPONDENT

DETAILS OF APPLICATION:

1. Particulars of the order against which the application is made:

(Particulars of the order giving the details like the number, date and the authority which has passed the order, against which the application is made).

28. Substituted by G.S.R. 1000(E), dated 11.10.1988.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation:

The applicant further declares that the application is within the limitation period prescribed in section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case:

(Give here a concise statement of facts in a chronological order, each paragraph containing as nearly as possible a separate issue or fact).

5. Grounds for relief with legal provisions:

6. Details of the remedies exhausted:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc.

(Give here chronologically the details of representations made and the outcome of such representations with reference to the number of Annexure to be given in support thereof).

7. Matters not previously filed or pending with any other Court :

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

In case the applicants had previously filed any such application, writ petition or suit, the stage at which it is pending, and if decided, the list of the decisions should be given with reference to the number of Annexure to be given in support thereof.

8. Reliefs sought:

In view of the facts mentioned in para 6 above the applicant prays for the following relief(s):—

(Specify below the relief(s) sought explaining the grounds for such relief(s) and the legal provisions, if any, relied upon.)

9. Interim order, if any prayed for:

Pending final decision on the application, the applicant seeks the following interim relief:

(Give here the nature of the interim relief prayed for).

10. In the event of application being sent by registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so, he shall attach a self addressed Post-Card or Inland Letter, at which intimation regarding the date of hearing could be sent to him.

11. Particulars of Bank Draft/Postal Order filed in respect of the application fee.

12. List of enclosures:

1.

2.

3.

4.

VERIFICATION

I . . . . . (Name of the applicant) S/o, W/o,

D/o . . . . . ., age . . . . . working as . . . . . in the office of . . . . . ., resident of . . . . . do hereby verify that the cotents of paras . . . . . to . . . . . are true to my personal knowledge and paras . . . . . to . . . . . believed to be true on legal advice and that I have not suppressed any material fact.

Dated :
Place : Signature of the applicant]

FORM II
[*See* Rule 4(4)]

Receipt Slip

Receipt of the application filed in the Central Administrative Tribunal.....Bench by Shri/Kum./Smt. ..... in the Ministry/Department/Office of.....residing at.....is hereby acknowledged.

Date:
Seal:

For Registrar
Central Administrative
Tribunal.....Bench

FORM III
[*See* Rule 8(3)]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL. . . . . .BENCH

Misc. Application No.....of.....
in

Original Application No.....of 20.....

Transferred
XXX } .....Applicant (Applicant/Respondent)

v

YYY } .....Respondent (Respondent/Applicant)

Brief facts leading to the application :
Relief or Prayer :

VERIFICATION

I,.....(name of the applicant), S/o, D/o, W/o.....age.....working as.....in the office of.....resident of.....do hereby verify that the contents of para.....to.....are true on legal advice and that I have not suppressed

any material fact.

Place :
Date :

Signature of the Applicant
Signature of the Advocate

FORM IV

[*See* Rule 25(2)]

Application for the Registration of a Clerk

1. Name of legal practitioner on whose behalf the clerk is to be registered.

2. Particulars of the clerk to be registered.

(*i*) Full name :
(in capitals)
(*ii*) Father's Name :
(*iii*) Age and Date of Birth :
(*iv*) Place of Birth :
(*v*) Nationality :
(*vi*) Educational Qualifications :
(*vii*) Particulars of previous employment, if any :

Attested passport-size photograph to be pasted

I, ...(Clerk above named), do hereby affirm that the particulars relating to me given above are true.

Signature of Clerk

3. Whether the legal practitioner has a clerk already registered in his employ and whether the clerk sought to be registered is in lieu of or in addition to the clerk already registered.

4. Whether the clerk sought to be registered is hereby registered as a clerk of any other legal practitioner and, if so, the name of such practitioner.

I,.....(legal practitioner) certify that the particulars given above are true to the best of my information and belief and that I am not aware of any fact which would render unsuitable the registration of the said.....(name) as a clerk. Further, I enclose a Postal Order for Rs. 2.50 being the cost of Identity Card along with 2 passport-size photographs of the applicant duly attested by me.

Signature of the legal practitioner

Date:
To
The Registrar,
Central Administrative Tribunal,
.....Bench,
.....

APPENDIX IV

Central Administrative Tribunals (Contempt of Courts) Rules, 1992

In exercise of powers conferred by Section 23 of the Contempt of Courts Act, 1971 (Act 70 of 1971) read with Section 17 of the Administrative Tribunals Act, 1985 (Act 13 of 1985) and all other powers enabling it in this behalf and in supersession of all rules on the subject, the Central Administrative Tribunal hereby makes the following rules to regulate the proceedings under the said Act :

1. *Short title and commencement.*—(*i*) These rules may be called Contempt of Courts (CAT) Rules, 1992.

(*ii*) They shall come into force on the date of their publication in the Official Gazette.

2. *Definitions.*—In these rules unless there is anything repugnant to the subject or context :

(*a*) "Act" means the Contempt of Courts Act, 1971 (Act 70 of 1971);

(*b*) "Code" means the Code of Criminal Procedure;

(*c*) "Form" means the form set out in the appendix to these rules;

(*d*) "Member" means a Member, whether "Judicial" or "Administrative" and includes Vice-Chairman and Chairman;

(*e*) "Registrar" means Registrar of the Central Administrative Tribunal or its Benches where the contempt proceedings are taken and shall include Joint Registrar and Deputy Registrar, and the Section Officer authorised to discharge the functions of the Registrar;

(*f*) "Section" means a section of the Act;

(*g*) "Tribunal" means the Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 or the Bench thereof, where the proceedings are taken cognizance of;

(*h*) Words and expressions not defined in these rules shall have the same meaning as defined in the Act.

3. *Form of Motion.*—Every motion for initiating action for contempt of the Tribunal shall be in the form of a petition described as "Contempt Petition (Civil)" in respect of Civil Contempt and "Contempt Petition (Criminal)" in respect of Criminal Contempt.

4. *Parties to the Proceedings.*—The party who presents the petition shall be described as the "Petitioner" and the alleged contemner shall be described as the "Respondent."

5. *Contents of the Petition.*—The petition shall set out the following particulars :

(*i*)(*a*) Name (including as far as possible the name of the father/mother/husband), age, occupation and address of;

(*i*) the petitioner; and

(*ii*) the respondent.

If the alleged contemner is an officer, he shall be described by name and designation.

1. Notification No. G.S.R. 757(E), dated 8th September, 1992, published in the *Gazette of India,* Extraordinary, Pt. II, s. 3(1), dated 8th September, 1992, pp. 6-11, [Sl. No. 1/46/86-JA] [A].

(*b*) provision of the Act invoked and the nature of the contempt, "Civil" or "Criminal";

(*c*) the grounds and material facts constituting the alleged contempt including the date of alleged contempt, divided into paragraphs, numbered consecutively, along with supporting documents or certified/photostat (attested) copies of the originals thereof;

(*d*) the nature of the order sought from the Tribunal;

(*e*) if a petition has previously been made by him on the same facts, the details, particulars and the result thereof;

(*f*) the petition shall be supported by an affidavit verifying the facts relied upon except when the motion is by the Attorney-General or the Solicitor-General or the Additional Solicitor-General;

(*g*) every petition shall be signed by the petitioner and his Advocate, if any, and shall show the place and date;

(*h*) draft charges shall be enclosed in a separate sheet;

(*i*) in the case of "Civil Contempt" certified copy of the judgment, decree, order, writ or undertaking alleged to have been disobeyed shall be filed along with the petition;

(*j*) where the petitioner relies upon any other document(s) in his possession, or power, he shall file them along with the petition;

(*ii*) in the case of "Criminal Contempt" of the Tribunal other than a contempt referred to in Section 14 of the Act, the petitioner shall state whether he has obtained the consent of the Attorney-General or the Solicitor-General or the Additional Solicitor-General and, if so, produce the same, if not the reasons thereof;

(*iii*) the petitioner shall file three complete sets of the petition including the annexures in paper book form, duly indexed and paginated. Where the number of respondents is more than one, equal number of extra paper books shall be filed;

(*iv*) No fee shall be payable on a petition or any document filed in the proceedings.

6. *Taking cognizance.*—Every proceeding for contempt shall be dealt with by a Bench of not less than two Members :

Provided where the contempt is alleged to have been committed in view of, presence or hearing of the Member(s), the same shall be dealt with by the Member(s) in accordance with Section 14 of the Act.

7. *Initiation of proceedings.*—(*i*) Every petition for "Civil Contempt" made in accordance with these rules shall be scrutinised by the Registrar, registered and numbered in the Registry and then placed before the Bench for preliminary hearing.

(*ii*) Every petition for "Criminal Contempt" made in accordance with these rules and every information other than a petition, for initiating action for criminal contempt under the Act on being scrutinised by the Register (*sic* Registrar) shall first be placed on the administrative side before the Chairman in the case of the Principal Bench and the concerned Vice-Chairman in the case of other Benches or such other Member as may be

designated by him for this purpose and he considers it expedient and proper to take action under the Act, the said petition or information shall be registered and numbered in the Registry and placed before the Bench for preliminary hearing.

(*iii*) When *suo motu* action is taken, the statement of facts constituting the alleged contempt and copy of the draft charges shall be prepared and signed by the Registrar before placing them for preliminary hearing.

8. *Preliminary hearing and Notice.*—(*i*) The Bench if satisfied that a prima facie case has been made out, may direct issue of notice to the respondent; otherwise, it shall dismiss the petition or drop the proceedings.

(*ii*) The notice shall be in Form No. I and shall be accompanied by a copy of the petition or information and annexures, if any, thereto.

(*iii*) Service of notice shall be effected in the manner specified in the Central Administrative Tribunal (Procedure) Rules, 1987 or in such other manner as may be directed by the Bench.

9. *Compelling attendance.*—(*i*) The Tribunal may, if it has reason to believe, that the respondent is absconding or is otherwise evading service of notice, or has failed to appear in person in pursuance of the notice, direct a warrant, bailable or non-bailable, or his arrest, addressed to one or more Police Officers or may order attachment of property belonging to such person. The warrant and the writ of attachment shall be issued under the signature of the Registrar. The warrant shall be in Form No. II and shall be executed as far as may be, in the manner provided for execution of warrants under the Code.

(*ii*) The warrant shall be executed by the Officer or Officers to whom it is directed and may also be executed by any other Police Officer whose name is endorsed upon the warrant by the Officer to whom it is directed or endorsed.

(*iii*) Every person who is arrested and detained shall, if he cannot be produced before the Tribunal within twenty-four hours of arrest excluding the time necessary for the journey from the place of arrest to the Tribunal, be produced before the nearest Magistrate within the said period, who may authorise detention till such person is produced before the Tribunal.

(*iv*) Every person who is arrested and detained when produced before the Tribunal, may be released on bail on a bond for such a sum of money as the Tribunal thinks sufficient with or without sureties, with the condition that the person so released shall attend the Tribunal at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Tribunal :

Provided that the Tribunal may, if it thinks fit, instead of taking bail from such person, release him on personal bond for his attendance. The provisions of the Code shall, so far as may be, apply to all arrests made and bonds executed under the Rules.

10. *Appearance of the Respondent.*—Unless ordered otherwise by the Tribunal, whenever a notice is issued under these rules, the Respondent shall appear in person in the case of "criminal contempt" and in person or through

an Advocate in the case of "civil contempt", at the time and place specified in the notice and continue to attend on subsequent dates to which the petition is posted.

11. Reply by the Respondent.—The Respondent may file his reply duly supported by an affidavit on or before the first date of hearing or within such extended time as may be granted by the Tribunal.

12. Right to be defended by an Advocate.—Every person against whom proceedings are initiated under the Act, may as of right be defended by an Advocate of his choice.

13. Hearing of the case and trial—Upon consideration of the reply filed by the Respondent and after hearing the parties :

(*a*) if the respondent has tendered an unconditional apology after admitting that he has committed the contempt, the Tribunal may proceed to pass such orders as it deems fit;

(*b*) if the respondent does not admit that he has committed contempt, the Tribunal may,—

(*i*) if it is satisfied that there is a prima facie case, proceed to frame the charge in Form No. III (subject to modification or addition by the Tribunal at any time); or

(*ii*) drop the proceedings and discharge the respondent, if it is satisfied that there is no prima facie case, or that it is not expedient to proceed;

(*c*) the respondent shall be furnished with a copy of the charge framed, which shall be read over and explained to the respondent. The Tribunal shall then record his plea, if any;

(*d*) if the respondent pleads guilty, the Tribunal may adjudge him guilty and proceed to pass such sentence as it deems fit;

(*e*) if the respondent pleads not guilty, the case may be taken up for trial on the same day or posted to any subsequent date as may be directed by the Tribunal.

14. Assistance in the conduct of proceedings.—The Attorney-General/Solicitor-General/Additional Solicitor-General, or any other Advocate as may be designated by the Tribunal shall appear and assist the Tribunal in the conduct of the proceedings against the respondent.

15. Procedure for trial.—(*i*) Except as otherwise provided in the Act and these rules, the procedure prescribed for summary trials under Chapter XXI of the Code shall as far as practicable be followed in the trial of cases for contempt.

(*ii*) The Tribunal may, at its discretion, direct that evidence be produced in the form of affidavits.

(*iii*) The Tribunal may, either *suo motu* or on motion made for that purpose, order the attendance for cross-examination of a person whose affidavit has been filed in the matter.

(*iv*) The Tribunal may, at its discretion, direct any person to be examined as Tribunal witness.

(*v*) The Tribunal may make such order as it deems fit for the purpose of securing the attendance of any person to be examined as a witness and for discovery or production of any document.

16. Expenses of witnesses.—(*i*) Where any person is summoned by the

Tribunal to appear as a witness in any proceedings under the Act, the expenses of such witness as may be determined by the Tribunal shall be borne by the party who has cited him as a witness.

(*ii*) Where the Tribunal summons any witness other than the witnesses cited by the parties, his expenses as determined by the Tribunal shall be paid by the Registrar from the funds for contingencies.

17. Execution of sentence.—(*i*) If the respondent is found guilty and is sentenced to imprisonment other than imprisonment till rising of the Tribunal, a warrant of commitment and detention shall be made out in Form No. IV under the signature of the Registrar. Every such warrant shall remain in force until it is executed or cancelled by order of the Tribunal. The Superintendent of Jail specified in the order shall, in pursuance of the warrant, detain the contemner in custody for the period specified therein subject to such further direction as the Tribunal may give.

(*ii*) When the Tribunal awards a sentence of fine and the fine amount is not paid at once or within such time as may be granted by the Tribunal, the Registrar shall take action in any one of the ways provided in Section 421 of the Code.

(*iii*) Warrants to be issued under sub-rule (*ii*) shall be in Form Nos. V and VI, as the case may be.

(*iv*) The report of the action taken by the Superintendent of the Jail or the Police Officer or District Collector to whom the warrant under sub-rule (*iii*) might have been addressed shall be filed in the records of the case.

18. Execution of processes.—Processes issued by the Tribunal shall, except as otherwise specifically provided, be executed by the Superintendent of Police/Commissioner of Police, as the case may be.

19. Procedure on forfeiture of the Bond.—If any bond given for appearance of the respondent is forfeited due to his absence, the Tribunal may, after giving opportunity to the respondent or the surety, as the case may be, levy the whole or any part of the amount mentioned in the surety bond, as penalty and direct the same to be recovered as if it were a fine imposed on the respondent/surety under the Code.

20. Apology at any stage of the proceedings.—(*i*) If at any time during the pendency of the proceedings, the contemner tenders an apology, the same shall be placed expeditiously for orders of the Bench.

(*ii*) If the Tribunal accepts the apology, further proceedings shall be dropped.

21. Costs.—(*i*) The Tribunal may award costs as it deems fit in the circumstances of the case.

(*ii*) The costs so awarded shall be recovered in the same manner as a fine imposed under the Code.

22. Application of other Rules of the Tribunal.—In matters not specifically provided for in these rules, the procedure prescribed in the relevant rules of the Tribunal as amended from time to time shall *mutatis mutandis* apply to proceedings under these rules.

23. Application to pending proceedings.—These rules shall as far as practicable apply to pending proceedings.

FORM NO. I

[*See* Rule 13(*b*)(*i*)]

Notice to Respondent

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(Name of the Bench) Place

Contempt Petition Civil/Criminal No.....

Petitioner.....

Vs.

Respondent.....

(Here mention the name and address of the person to whom notice is being sent.)

Whereas information is laid/a petition is filed/motion is made by.....that you (here mention the gist of the accusation made in the information/petition/motion).....;

And whereas a petition has been registered for action being taken against you under the Contempt of Courts Act, 1971;

You are hereby required to appear in person or through a duly authorised advocate† on.....day of.....at.....and on subsequent dates to which the proceedings are adjourned, unless otherwise ordered by the Tribunal, and show cause why such action as is deemed fit under the Contempt of Courts Act, 1971 should not be taken against you.

Given under my hand and the seal of this Tribunal, this..... day of..... 20.....

Seal

Registrar
Central Administrative Tribunal

† Strike off whichever is not applicable.

FORM NO. II

[*See* Rule 9(*i*)]

Warrant of Arrest

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(Name of the Bench) Place

Contempt Petition Civil/Criminal No.....

Petitioner.....

Vs.

Respondent .....

To

.....

.....

(Name, designation and address of the Officer(s) authorised to execute the warrant.)

Whereas Shri/Smt.....of.....is charged with committing contempt of the Tribunal, you are hereby directed to arrest the said.....and to produce him/her before this Tribunal.

Herein fail not.

(If the Tribunal has issued a bailable warrant, the following endorsement shall be made on the warrant.)

If the said.....shall give bail in the sum of Rs.....with one surety in the sum of Rs.....(or two sureties each in the sum of Rs.....) to attend before this Tribunal on the.....day of.....19.....and to continue so to attend until otherwise directed by this Tribunal, he may be released.

Given under my hand and the seal of the Tribunal this.....day of.....19.....

Seal

Registrar
Central Administrative Tribunal

FORM NO. III

[*See* Rule 13(*b*)(*i*)]

Charge

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(Name of the Bench) Place

Contempt Petition Civil/Criminal No.....

Petitioner.....

Vs.

Respondent/s.....

Central Administrative Tribunal.....Bench hereby charges you.....(name of the alleged contemner) as under:–

That you, on or about.....day of.....at.....(here give the gist of the material.....allegedly constituting contempt) and thereby committed the contempt of this Tribunal punishable under Section.....(here give the relevant section of the Contempt of Courts Act, 1971), within our cognizance.

You are hereby directed to be tried by this Tribunal for the aforesaid charge.

Signature of the Hon'ble Member(s)

The charge was read over and explained to the alleged contemner and his plea was recorded as under :

(1) Do you plead guilty to the charge?

Answer :

(2) Do you have anything else to say?

Answer :

Signature of the alleged contemner

Signature of the Hon'ble
Member(s) presiding over the Bench

WARRANT OF COMMITMENT TO PRISON

FORM NO. IV

[*See* Rule 17(*i*)]

(Name of the Bench) Place

Contempt Petition Civil/Criminal No.....

Petitioner.....

Vs.

Respondent/s.....

To

The Superintendent

(Name of the Jail)

Place

Whereas the Central Administrative Tribunal.....Bench has on this.....day of.....adjudged.....(name/description of the contemner) guilty of wilful contempt of the Tribunal and sentenced to undergo simple imprisonment for.....(here specify the term) and/or to pay a fine of Rs..... and in default of payment of fine to undergo simple imprisonment for..... (specify the period).

This is to authorise and require you, the Superintendent of the..... Jail, to receive the said (name of the contemner) into your custody, together with this warrant and keep him safely in the said jail for the said period or for such period as may hereinafter be fixed by the order of this Tribunal and intimated to you. You are directed to return this warrant with an endorsement certifying the manner of its execution.

You are further directed that while the said.....is in your custody, produce the said.....before this Tribunal at all times when the Tribunal so directs.

Given under my hand and seal of the Tribunal this.....day of.....

Seal

Registrar

Central Administrative Tribunal

WARRANT FOR ATTACHMENT OF MOVABLES

FORM NO. V

[*See* Rule 17(*ii*) & (*iii*)]

(Name of the Bench) Place

Contempt Petition Civil/Criminal No.....

Petitioner.....

Vs.

Respondent.....

To

.....

.....

(Name and designation of the Police Officer or other officer authorised to execute the warrant.)

Whereas the Central Administrative Tribunal on (this day) has adjudged

(name and description of the contemner) guilty of wilful contempt of Tribunal and sentenced to pay a fine of Rs..... and whereas the said..... (name) although required to pay the said fine has not paid the same or any part thereof.

This is to authorise and require you to attach any movable property belonging to the said.....(name) which may be found within the district of..... and if within..... (state the number of days or hours allowed) next after such attachment, the said sum shall not be said to sell the movable property attached or so much thereof, as shall be sufficient to satisfy the said fine, returning this warrant, with an endorsement certifying that you have done under it, immediately upon its execution.

Given under my hand and the seal of the Tribunal this..... day of..... 19.....

Seal

Registrar
Central Administrative Tribunal

WARRANT OF ATTACHMENT BY DISTRICT COLLECTOR/DY. COMMISSIONER

FORM NO. VI

[*See* Rule 17(*ii*) & (*iii*)]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(Name of the Bench) Place

Contempt Petition Civil/Criminal No.....

Petitioner.....

Vs.

Respondent.....

To

The District Collector/Dy. Commissioner

.....District

Whereas the Central Administrative Tribunal on (this day) has adjudged (name and description of the contemner) guilty of wilful contempt of Tribunal and sentenced to pay a fine of Rs..... and whereas the said..... (name) although required to pay the said fine has not paid the said fine/the sum of..... being the part thereof.

This is to authorise and require you to realise the amount by execution according to civil process against the movable or immovable property or both of the respondent aforesaid in the manner provided by Section 421 of the Code of Criminal Procedure, 1973.

This order shall be deemed to be a decree and you the decree-holder within the meaning of the Code of Civil Procedure, 1908 and the order shall be executable as such decree.

Given under my hand and the seal of this Court this..... day of.... 19.....

Seal

Registrar
Central Administrative Tribunal

APPENDIX V

(Eng.) Parliamentary Commissioner Act, 1967 (as amended)

An Act to make provision for the appointment and functions of a Parliamentary Commissioner for the investigation of administrative action taken on behalf of the Crown, and for purposes connected therewith.

1. (1) For the purpose of conducting investigations in accordance with the following provisions of this Act there shall be appointed a Commissioner, to be known as the Parliamentary Commissioner for Administration.

(2) Her Majesty may by Letters Patent from time to time appoint a person to be the Commissioner, and any person so appointed shall.....hold office during good behaviour.

(3) A person appointed to be the Commissioner may be relieved of office by Her Majesty at his own request, or may be removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament.....

2. [Repealed].

3. (1) The Commissioner may appoint such officers as he may determine with the approval of the Treasury as to numbers and conditions of service.....

4. (1) Subject to the provisions of this section and to the notes contained in Schedule 2 to this Act, this Act applies to the Government departments, corporations and unincorporated bodies listed in that Schedule; and reference in this Act to an authority to which this Act applies are references to any such corporation or body.

(2) Her Majesty may by Order in Council amend Schedule 2 to this Act by the alternative of any entry or note, the removal of any entry or note or the insertion of any additional entry or note.....

(8) In this Act—

(a) any reference to a Government department to which this Act applies includes a reference to any of the Ministers or officers of such a department; and

(b) any reference to an authority to which this Act applies includes a reference to any members or officers of such an authority.

5. (1) Subject to the provisions of this section, the Commissioner may investigate any action taken by or on behalf of a Government department or other authority to which this Act applies, being action taken in the exercise of administrative functions of that department or authority, in any case where—

(a) a written complaint is duly made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and

(b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with a request to conduct an investigation thereon.

(2) Except as hereinafter provided, the Commissioner shall not conduct

an investigation under this Act in respect of any of the following matters, that is to say—

(a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative;

(b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law.

Provided that the commissioner may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it.

(3) Without prejudice to sub-section (2) of this section, the Commissioner shall not conduct an investigation under this Act in respect of any such action or matter as is described in Schedule 3 to this Act.

(4) Her Majesty may by Order in Council amend the said Schedule 3 so as to exclude from the provisions of that Schedule such actions or matters as may be described in the Order.....

(5) In determining whether to initiate, continue or discontinue an investigation under this Act, the Commissioner shall, subject to the foregoing provisions of this section, act in accordance with his own discretion; and any question whether a complaint is duly made under this Act shall be determined by the Commissioner.

6. (1) A complaint under this Act may be made by any individual or by any body of persons whether incorporated or not, not being

(a) a local authority or other authority or body constituted for purposes of the public service or of local government or for the purpose of carrying on under national ownership any industry or undertaking or part of an industry or undertaking;

(b) any other authority or body whose members are appointed by Her Majesty or any Minister of the Crown or government department, or whose revenues consist wholly or mainly of moneys provided by Parliament.

(2) Where the person by whom a complaint might have been made under the foregoing provisions of this Act has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained under this Act unless made by the person aggrieved himself.

(3) A complaint shall not be entertained under this Act unless it is made to a member of the House of Commons not later than twelve months from the day on which the person aggrieved first had notice of the matters alleged in the complaint; but the Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which made it proper to do so.....

7. (1) Where the Commissioner proposes to conduct an investigation pursuant to a complaint under this Act, he shall afford to the principal officer of the department or authority concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint.

(2) Every such investigation shall be conducted in private, but except as aforesaid the procedure for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Commissioner may obtain information from such persons and in such manner, and may make such inquiries as he thinks fit, and may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.....

(3) The conduct of an investigation under this Act shall not affect any action taken by the department or authority concerned or any power or duty of that department or authority to take further action with respect to any matters subject to the investigation;.....

8. (1) For the purposes of an investigation under this Act the Commissioner may require any Minister, officer or member of the department or authority concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purposes of any such investigation the Commissioner shall have the same power as the Court in respect of the attendance and examination of witnesses (including the administration of oaths or affirmations and the examination of witnesses abroad) and in respect of the production of documents.

(3) No obligation to maintain secrecy or other restrictions upon the disclosure of information obtained by or furnished to persons in Her Majesty's service, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purposes of an investigation under this Act; and the Crown shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(4) No person shall be required or authorised by virtue of this act to furnish any information or answer any question relating to proceedings of the Cabinet or of any committee of the Cabinet or to produce so much of any document as relates to such proceedings; and for the purposes of this sub-section a certificate issued by the Secretary of the Cabinet with the approval of the Prime Minister and certifying that any information, question, document or part of a document so related shall be conclusive.

(5) Subject to sub-section (3) of this section, no person shall be compelled for the purposes of an investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Court.

9. (1) If any person without lawful excuse obstructs the Commissioner or any officer of the Commissioner in the performance of his functions under the Act or is guilty of any act or omission in relation to any investigation under this Act which, if that investigation were a proceeding in the Court, would constitute contempt of court, the Commissioner may certify the offence to the court.....

10. (1) In any case where the Commissioner conducts an investigation under this Act or decides not to conduct such an investigation, he shall send to the member of the House of Commons by whom the request for an investigation was made (or, if he or she is no longer a member of that House, to such member of that House as the Commissioner thinks appropriate) a

report of the results of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation.

(2) In any case where the Commissioner conducts an investigation under this Act he shall also send a report of the results of the investigation to the principal officer of the department or authority concerned and to any other person who is alleged in the relevant complaint to have taken or authorised the action complained of.

(3) If, after conducting an investigation under this Act, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before each House of Parliament a special report on the case.

(4) The Commissioner shall annually lay before each House of Parliament a general report on the performance of his functions under this Act and may from time to time lay before each House of Parliament such other reports with respect to those functions as he thinks fit.

(5) For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—

(a) the publication of any matter by the Commissioner in making a report to either House of Parliament for the purposes of this Act;

(b) the publication of any matter by a member of the House of Commons in communicating with the Commissioner or his officers for those purposes or by the Commissioner or his officers in communicating with such a member for those purposes;

(c) the publication by such a member to the person by whom a complaint was made under this Act of a report or statement sent to the member in respect of the complaint in pursuance of sub-section (1) of this section;

(d) the publication by the Commissioner to such a person as is mentioned in sub-section (2) of this section of a report to that person in pursuance of that sub-section.....

11. (3) A Minister of the Crown may give notice in writing to the Commissioner, with respect to any document or information so specified in the notice, or any class of documents or information so specified, that in the opinion of the Minister the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest; and where such a notice is given nothing in this Act shall be construed as authorising or requiring the Commissioner or any officer of the Commissioner to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified.....

12. (1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say—

'action' includes failure to act, and any other expression connoting action shall be construed accordingly ..... 'person aggreived' means the person who claims or is alleged to have sustained such injustice as is mentioned in section 5(1) of this Act.....

(3) It is hereby declared that nothing in this Act authorises or requires the Commissioner to question the merits of a decision taken without malad-

ministration by a Government department or other authority in the exercise of a discretion vested in that department or authority.....

SCHEDULE 3

Matters not subject to investigation

1. Action taken in matters certified by a Secretary of State or other Minister of the Crown to affect relations or dealings between the Government of the United Kingdom and any other Government or any international organisation of States or Governments .....

2. Action taken in connection with the administration of the Government of any country or territory outside the United Kingdom which forms part of Her Majesty's dominions or in which Her Majesty has jurisdiction.

3. Action taken by the Secretary of State under [the Fugitive Offenders Act, 1967, or the Extradition Act, 1989].

4. Action taken by or with the authority of the Secretary of State for the purposes of investigating crime or of protecting the security of the State, including action so taken with respect to passports.

5. The commencement or conduct of civil or criminal proceedings before any court of law in the United Kingdom, of proceedings at any place under the Naval Discipline Act, 1957, the Army Act, 1955, or the Air Force Act, 1955, or of proceedings before any international court or tribunal.

6. Any exercise of the prerogative of mercy or of the power of a Secretary of State to make a reference in respect of any person to the Court of Appeal the High Court of Justiciary or the Court Martial Appeal Court.

7. Action taken [in relation to certain National Health Service matters subject to the investigation jurisdiction of the Health Service Commissioner].

8. Action taken in matters relating to contractual or other commercial transactions, whether within the United Kingdom or elsewhere, being transactions of a Government department or authority to which this Act applies or of any such authority or body as is mentioned in paragraph (a) or (b) of sub-section (1) of section (6) of this Act, not being transactions for or relating to—

(a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily;

(b) the disposal as surplus of land acquired compulsorily or in such circumstances as aforesaid.

10. (1) Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters, in reltion to-

(a) service in any of the armed forces of the Crown, including reserve and auxiliary and cadet forces;

(b) service in any office or employment under the or under any authority to which this Act applies; or

(c) [subject to minor exceptions listed in sub-paragraph 10(2)] service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken in such matters in vested in Her Majesty, any Minister of the Crown or any such authority as aforesaid.....

11. The grant of honours, awards or privileges within the gift of the Crown, including the grant of Royal Charters.

APPENDIX VI

MADHYA PRADESH LOKAYUKT EVAM UP-LOKAYUKT ADHINIYAM, 1981[1]

An Act to make provisions for the appointment and functions of certain authorities for the inquiry into the allegations against certain high dignitaries and for matters connected therewith.

Be it enancted by the Madhya Pradesh Legislature in the Thrity-second year of the Republic of India as follows:—

1. **Short title, extent and commencement.**—(1) This Act may be called the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981.

(2) It extends to the whole of the State of Madhya Pradesh.

(3) It shall come into force on such date as the State Government may, by notification, appoint.

2. **Definitions.**—In this Act, unless the context otherwise requires,—

(a) "Officer" means a person appointed to a public service or post in connection with the affairs of the State of Madhya Pradesh;

(b) "allegation" in relation to a public servant means any affirmation that such public servant,—

(i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm to any person;

(ii) was actuated in the discharge of his functions as such public servant by improper or corrupt motives;

(iii) is guilty of corruption: or

(iv) is in possession of pecuniary resources or property disproportionate to his known source of income and such pecuniary resources or property is held by the public servant personally or by any member of his family or by some other person on his behalf.

Explanation.—For the purpose of this sub-clause, 'family' means husband, wife, sons and unmarried daughters living jointly with him;

(c) "Up-Lokayukt" means a person appointed as an Up-Lokayukt under section 3;

(d) "action" means action by way of prosecution or otherwise taken on the report of the Lokayukt or Up-Lokayukt and includes failure to act; and all other expressions connecting action shall be construed accordingly;

(e) "Minister" means a member of the Council of Ministers by whatever name called for the State of Madhya Pradesh, that is to say, Deputy Chief Minister, Minister, Minister of State, Deputy Minister and Parliamentary Secretary but *shall not include Chief Minister*;

(f) ""Lokayukt" means a person appointed as the Lokayukt under section 3;

(g) "Public servant" means a person falling under any of the following categories, namely:—

(i) Minister;

1. So far as the Government of India is concerned, a Lokpal Bill was introduced in the Lok Sabha on June 17, 1977, which eventually lapsed. A fresh Lokpal Bill, with different contents, has been introduced in Parliament in 1985, which is now pending before a Joint Select Committee.

(ii) a person having the rank of a Minister but shall not include Speaker and Deputy Speaker of the Madhya Pradesh Vidhan Sabha and Neta Pratipaksha;

(iii) an officer referred to in clause (a);

(iv) an officer of an Apex Co-operative Society or District Co-operative Society within the meaning of clause (u) of section 2 of the Madhya Pradesh Co-operative Societies Act, 1960 (17 of 1961);

(v) (i) a Chairman or member of Board of Directors of a Government Company within the meaning of section 617 of the Companies Act, 1956;

(ii) President, Vice-President, Chairman, Vice-Chairman by whatever name called, General Manager and Secretary of a State level Corporation established by or under a Central or State Act and having jurisdiction throughout the State;

(h) "Competent authority" in relation to a public servant, means,—(i) in the case of a Minister or Secretary .... Chief Minister or during the period of operation of proclamation issued under Article 356 of the Constitution of India, the Governor,

(ii) in the case of any other public servant, such authority as may be prescribed;

(i) "Secretary" means the Chief Secretary, a Principal Secretary, an Additional Chief Secretary, and a Secretary to the Government of Madhya Pradesh and includes an Additional Secretary and a Special Secretary.

3. Appointment of Lokayukt and Up-Lokayukt.—(1) For the purpose of conducting investigations under provisions of this Act, the Governor shall, by warrant under his hand and seal, appoint a person to be known as the Lokayukt and one or more persons to be known as Up-Lokayukt;

Provided that,—

(a) the Lokayukt shall be appointed after consultation with the Leader of the Opposition in the Legislative Assembly, or if there be no such Leader, a person selected in this behalf by the Members of the Opposition in that House in such manner as the Speaker may direct;

(b) Up-Lokayukt, unless he has been a Judge of any High Court in India or has held the office of the Secretary to the Government of India or of Chief Secretary to any State Government :

Provided that no person shall be eligible for being appointed,—

(a) as Lokayukt if he has attained the age of sixty-six years; and

(b) as Up-Lokayukt if he has attained the age of sixty-three years.

(2) Every person appointed as Lokayukt or Up-Lokayukt shall, before entering upon his office, make and subscribe, before the Governor, or some person appointed in that behalf by him, an oath or affirmation in the form set out for the purpose in the First Schedule.

(3) The Up-Lokayukt shall be subject to the administrative control of the Lokayukt and, in particular, for the purpose of convenient disposal of investigations under this Act, the Lokayukt may issue such general or special directions as he may consider necessary to the Up-Lokayukt and may withdraw to himself or may make over any case to Up-Lokayukt for disposal.

4. Lokayukt or Up-Lokayukt to hold no other office.—The Lokayukt or Up-Lokayukt shall not be a member of Parliament or a member of the Legislature of any State and shall not hold any other office of trust

or profit or be an officer of a Co-operative Society and shall not be connected with any political party or carry on any business or practise any profession; and accordingly before he enters upon his office, a person appointed as the Lokayukt, as the case may be, shall,—

(a) if he is a member of Parliament or of the Legislature of any State, resign such membership; or

(b) if he holds any office of trust or profit, resign from such office; or

(c) if he is connected with any political party, sever his connection with it; or

(d) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or

(e) if he is practising any profession, suspend practice of such profession.

5. Term of office and other conditions of service of Lokayukt and Up-Lokayukt.—(1) Every person appointed as Lokayukt or Up-Lokayukt shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for re-appointment thereafter :

Provided that—

(a) Lokayukt or Up-Lokayukt may, by writing under his hand addressed to the Governor, resign his office and such resignation shall be effective as soon as it is tendered;

(b) Lokayukt or Up-Lokayukt may be removed from office in the manner specified in section 6.

(2) If the Office of Lokayukt temporarily falls vacant by reason of absence or because he is unable to perform the duties of his office, Up-Lokayukt, or if there are more than one, then such one of them as the Governor may, by order, direct, shall officiate as Lokayukt and perform the duties of office till the Lokayukt resumes back his duty:

Provided that a vacancy occurring in the office of the Lokayukt or as Up-Lokayukt shall be filled in as soon as possible but not later than six months from the date of occurrence of such vacancy.

(3) On ceasing to hold office, Lokayukt or Up-Lokayukt shall be ineligible for further employment (whether as Lokayukt or Up-Lokayukt or in any other capacity) under the Government of Madhya Pradesh or for any employment under, or office in, any such Co-operative Society, Government Company, or Corporation as is referred to in sub-clauses (iv) and (v) of clause (g) of section 2.

(4) There shall be paid to Lokayukt and Up-Lokayukt such salaries as are specified in the Second Schedule.

(5) The allowances and pension payable to, and other conditions of service of, Lokayukt or Up-Lokayukt shall be such as may be prescribed :

Provided that,—

(a) in prescribing the allowances and pension payable to, and other conditions of service of, Lokayukt, regard shall be had to the allowances and pension payable to, and other conditions of service of, a Judge of the Supreme Court or Chief Justice of a High Court;

(b) in prescribing the allowances, and pension payable to, and other conditions of service of, Up-Lokayukt, regard shall be had to the allowances and pension payable to, and other conditions of service of, a Judge of a High

Court or Secretary to the Government of India or the Chief Secretary to a State Government :

Provided further that the allowances and pension payable to, and other conditions of service of, Lokayukt or Up-Lokayukt shall not be varied to his disadvantage after his appointment.

6. Removal of Lokayukt.—(1) The Lokayukt shall not be reserved from his office except by an order of the Governor passed after an address by the Madhya Pradesh Legislative Assembly supported by a majority of the total membership of the Legislative Assembly and by a majority of not less than two-thirds of the members thereof present and voting has been presented to the Governor in the same session for such removal on the ground of proved misbehaviour or incapacity.

(2) The procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Lokayukt under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968 (51 of 1968), in relation to the removal of a Judge and, accordingly, the provisions of that Act shall, subject to necessary modifications, apply in relation to the removal of the Lokayukt as they apply in relation to the removal of a Judge.

7. Matter which may be enquired into by Lokayukt or Up-Lokayukt.—(1) Subject to the other provisions of the Act on receiving complaint or other information, Lokayukt may proceed to inquire into an allegation made against a public servant.

2. Subject to the general direction and control of the Lokayukt, the Up-Lokayukt shall enquire into the allegations against the officers and the remaining matters shall fall within the jurisdiction of the Lokayukt.

8. Matter not subject to enquiry.—The Lokayukt or an Up-Lokayukt shall not enquire into any matter—

(a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1950 (37 of 1950);

(b) which has been referred for inquiry under the Commissions of Inquiry Act, 1952 (60 of 1952); or

(c) relating to an allegation against a public servant, if the complaint is made after expiration of a period of five years from the date on which the conduct complained against is alleged to have been committed.

9. Provisions relating to complaints.—(1) Every complaint involving an allegation shall be made in such form as may be prescribed and shall be accompanied by a deposit of 25 rupees. The complainant shall also swear an affidavit in such form as may be prescribed before the Lokayukt or any officer authorised by the Lokayukt in this behalf.

2. Notwithstanding anything contained in section 10 or any other provision of the Act every person who wilfully or maliciously makes any false complaint under this Act shall, on conviction, be punished with rigorous imprisonment which may extend to two years or with fine which may extend to five thousand rupees or with both and the court may order that out of the amount of fine, such sum, as it may deem fit, be paid by way of compensation to the person against whom such complaint was made :

Provided that no court shall take cognizance under this section except on a complaint made by the Lokayukt or Up-Lokayukt, as the case may be :

Provided further that the complaint made under the signature and seal

of Lokayukt or Up-Lokayukt shall be deemed as formally proved and the evidence of Lokayukt and Up-Lokayukt shall not be necessary for the purpose.

10. Procedure in respect of inquiry.—Lokayukt or Up-Lokayukt shall in each case before he decides the procedure to be followed for making the enquiry provided that the principles of natural justice are satisfied.

11. Applicability of Evidence Act and Code of Criminal Procedure.—(1) The general principles of powers conferred by the Evidence Act, 1872 (1 of 1872), and Criminal Procedure Code, 1973 (2 of 1974), shall as nearly as may be, apply to the procedure of inquiry before Lokayukt or Up-Lokayukt in the matter of—

(a) summoning and enforcing the attendance of any person and his examination on oath;

(b) requiring the discovery and production of documents and proof thereof;

(c) receiving evidence of affidavit;

(d) requisitioning any public record or copy thereof, from any court or office;

(e) issuing commission for examination of witness or documents; and such other matters as may be prescribed :

Provided that no proceeding before the Lokayukt or Up-Lokayukt shall be invalidated only on account of want of formal proof if the principles of natural justice are satisfied.

2. Any proceedings before Lokayukt or Up-Lokayukt shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code, 1860 (45 of 1860).

3. The Lokayukt or Up-Lokayukt shall be deemed to be Court within the meaning of Contempt of Courts Act, 1971 (LXX of 1971).

12. Reports of Lokayukt or Up-Lokayukt.—(1) If after enquiry into the allegations, the Lokayukt or an Up-Lokayukt is satisfied that such allegation is established, he shall by report in writing communicate his findings and recommendations along with the relevant document, materials and other evidence to the competent authority.

(2) The competent authority shall examine the report forwarded to it under sub-section (3) and intimate, within three months of the date of receipt of the report, the Lokayukt or, as the case may be, the Up-Lokayukt, the action taken or proposed to be taken on the basis of the report.

(3) If the Lokayukt or the Up-Lokayukt is satisfied with the action taken or proposed to be taken on his recommendations, he shall close the case under information to the complainant, the public servant and the competent authority concerned. In any other case, if he considers that the case so deserves, he may make a special report upon the case to the Government and also inform the complainant concerned.

(4) The Lokayukt and the Up-Lokayukt shall present annually a consolidated report on the performance of their functions under this Act, to the Governor.

(5) If in any special report under sub-section (3), or the annual report under sub-section (4), any adverse comment is made against any public servant, such report shall also contain the substance of the defence adduced by such public servant and the comment made thereon by or on behalf of

the State Government or department concerned of the State Government or the public authority concerned, as the case may be.

(6) On receipt of a special report under sub-section (3), or the annual report under sub-section (4), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before the State Legislative Assembly.

(7) Subject to the provisions of section 10, the Lokayukt may at his discretion make available from time to time, the substance of cases closed or otherwise disposed of by him or by an Up-Lokayukt, which may appear to him to be of general public, academic or professional interest, in such manner and to such persons as he may deem appropriate.

12-A. Report in respect of complaint against Chief Minister.—(1) If the Chief Minister receives a report of the Lokayukt in respect of a complaint against himself, he shall, notwithstanding anything contained in section 12, along with his explanatory note, if any, forthwith submit it to the Governor.

(2) The Governor shall after perusal of the report and the explanatory note, if any, take such action as he may in his individual discretion deem fit or expedient to take and cause copies of the report, explanatory note, if any, and of the order passed by him to be laid on the Table of the State Legislative Assembly.

13. Staff of Lokayukt and Up-Lokayukt.—(1) The Lokayukt may appoint, or authorise an Up-Lokayukt or any officer subordinate to the Lokayukt or an Up-Lokayukt to appoint officers and other employees to assist the Lokayukt and the Up-Lokayukt in the discharge of their functions under this Act.

(2) The categories of officers and employees who may be appointed under sub-section (1), their salaries, allowances and other conditions of service and the administrative powers of the Lokayukt and Up-Lokayukt shall be such as may be prescribed, after consultation with the Lokayukt.

(3) Without prejudice to the provisions of sub-section (1), the Lokayukt or an Up-Lokayukt may for the purpose of conducting enquiries under this Act, utilise the services of—

(i) any officer or investigation agency of the State or Central Government with the concurrence of that Government, or

(ii) any other person or agency.

14. Secrecy of information.—(1) Any information, obtained by the Lokayukt or the Up-Lokayukt or members of their staff in the course of, or for the purpose of, any investigation under this Act, and any evidence recorded or collected in connection with such information shall be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), no Court shall be entitled to compel the Lokayukt or an Up-Lokayukt or any public servant to give evidence relating to such information or produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars,—

(a) for the purposes of the enquiry or in any report to be made thereon or for any action or proceedings to be taken on such report; or

(b) for purposes of any proceedings for an offence under the Official Secrets Act, 1923 (19 of 1923), or any offence of giving or fabricating false

evidence under the Indian Penal Code or for purposes of any proceedings under section 15; or

(c) for such other purposes as may be prescribed.

(3) An officer or other authority prescribed in this behalf may give notice in writing to the Lokayukt or an Up-Lokayukt, as the case may be, with respect to any document or information specified in the notice or any class of documents so specified in the notice or any class of documents so specified that in the opinion of the State Government, the disclosure of the documents or information or documents or information of that class would be contrary to public interest and where such a notice is given, nothing in this Act shall be construed as authorising or requiring the Lokayukt, the Up-Lokayukt or any member of their staff to communicate to any person any document or information specified in the notice or any document or information of a class so specified.

15. Protection.—No suit, prosecution or other legal proceeding shall lie against the Lokayukt or the Up-Lokayukt or against any officer, employee, agency or person referred to in section 13 in respect of anything which is in good faith done or intended to be done under this Act.

16. Lokayukt to make suggestions.—The Lokayukt, if in the discharge of his function under this Act, notices a practice or procedure which in his opinion affords an opportunity for corruption or maladministration, he may bring it to the notice of the Government and may suggest such improvement in the said practice or procedure as he may deem fit.

17. Power to make rules.—(1) The Governor may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

(2) All rules made under this section shall be laid on the table of the Legislative Assembly.

18. Removal of doubts.—For the removal of doubts it is hereby declared that nothing in this Act shall be construed to authorise the Lokayukt or an Up-Lokayukt to enquire into an allegation against—

(a) any member of the judicial service who is under the administrative control of the High Court under Article 235 of the Constitution of India;

(b) the Chairman or a member of the Madhya Pradesh State Public Service Commission.

19. Saving.—The provision of this Act shall be in addition to the provisions of any other enactment, or any rule of law under which any remedy by way of appeal, revision, review or in any other manner is available to a person making a complaint under this Act, in respect of any action, and nothing in this Act shall limit or effect the right of such person to avail of such remedy.

20. Transfer of complaints pending before Vigilance Commissioner and prohibition to entertain complaints disposed of prior to commencement of this Act.—(1) All complaints pending before the Vigilance Commissioner immediately before the commencement of this Act, shall, on such commencement, stand transferred to the Lokayukt or Up-Lokayukt, as the case may be, and shall thereupon be disposed of by the Lokayukt or Up-Lokayukt as if they were complaints entertained by him under this Act.

(2) No complaint disposed of by the Vigilance Commissioner prior to the commencement of this Act, shall be entertained by the Lokayukt or Up-Lokayukt under this Act :

Provided that the Lokayukt or Up-Lokayukt, as the case may be, if he considers it necessary so to do to meet the ends of justice, enquires into any complaint finally disposed of by the Vigilance Commissioner within a period of two years prior to the commencement of this Act.

THE FIRST SCHEDULE

[*See* section 3(3)]

I, ..., having been appointed Lokayukt/Up-Lokayukt do swear in the name of God/solemnly affirm that I will bear faith and allegiance to the Constitution of India as by law established, and I will duly and faithfully and to the best of my ability, knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will.

THE SECOND SCHEDULE

[*See* section 5(4)]

There shall be paid to the Lokayukt and the Up-Lokayukt in respect of time spent on actual service, salary at the following rates *per mensem*, that is to say:—

Lokayukt	4,000 rupees	Plus such perquisites and allowances as were last available to the incumbent during his service;
Up-Lokayukt	3,500 rupees	Plus such perquisites and allowances as were last available to the incumbent during his service;

Provided that, if the Lokayukt or an Up-Lokayukt at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service as the Lokayukt or, as the case may be, Up-Lokayukt shall be reduced—

(a) by the amount of that pension, and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

APPENDIX VII

LEGAL SERVICES AUTHORITIES ACT, 1987*

[(ACT NO. 39 OF 1987) (11th October, 1987)]

An Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

Be it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:–

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Legal Services Authorities Act, 1987.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act and for different States, and any reference to commencement in any provision of this Act in relation to any State shall be construed as a reference to the commencement of that provision in that State.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(*a*) "Case" includes a suit or any proceeding before a Court;

(*aa*) "Central Authority" means the National Legal Services Authority constituted under section 3;

(*aaa*) "Court" means a civil, criminal or revenue Court and includes any Tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions;

(*b*) "District Authority" means a District Legal Services Authority constituted under section 9;

(*bb*) "High Court Legal Services Committee" means a High Court Legal Services Committee constituted under section 8A;

(*c*) "Legal service" includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter;

(*d*) "Lok Adalat" means a Lok Adalat organised under Chapter VI;

(*e*) "notification" means a notification published in the Official Gazette;

(*f*) "prescribed" means prescribed by rules made under this Act;

(*ff*) "regulations" means regulations made under this Act;

(*g*) "scheme" means any scheme framed by the Central Authority, a State Authority or a District Authority for the purpose of giving effect to any of the provisions of this Act;

(*h*) "State Authority" means a State Legal Services Authority constituted under section 6;

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* Received the assent of the President on 11-10-1987, Act published in *Gazette of India*, 12-10-1987; Part II-S. 1, Ext. P. 1 (No. 55). For Statement of Objects and Reasons, see *Gazette of India*, 24-8-1980; Part II-S. 2, Ext. P. 28 (No. 39).

(*i*) "State Government" includes the administrator of a Union Territory appointed by the President under Article 239 of the Constitution.

(*j*) "Supreme Court Legal Services Committee" means the Supreme Court Legal Services Committee constituted under section 3A;

(*k*) "Taluk Legal Services Committee" means a Taluk Legal Services Committee constituted under section 11A.

(2) Any reference in this Act to any other enactment or any provision thereof shall, in relation to an area in which such enactment of provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

CHAPTER II

THE NATIONAL LEGAL SERVICES AUTHORITY

3. Constitution of the National Legal Services Authority.—(1) The Central Government shall constitute a body to be called the National Legal Services Authority to exercise the powers and perform the functions conferred on, or assigned to, the Central Authority under this Act.

(2) The Central Authority shall consist of—

(*a*) the Chief Justice of India who shall be the Patron-in-Chief;

(*b*) a serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman; and

(*c*) such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that Government in consultation with the Chief Justice of India.

(3) The Central Government shall, in consultation with the Chief Justice of India, appoint a person to be the Member-Secretary of the Central Authority, possessing such experience and qualifications as may be prescribed by that Government, to exercise such powers and perform such duties under the Executive Chairman of the Central Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority.

(4) The terms of office and other conditions relating thereto, of members and the Members-Secretary of the Central Authority shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(5) The Central Authority may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions under this Act.

(6) The officers and other employees of the Central Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(7) The administrative expenses of the Central Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the Central Authority, shall be defrayed out of the Consolidated Fund of India.

(8) All orders and decisions of the Central Authority shall be authenticated by the Member-Secretary or any other officer of the Central Authority duly authorised by the Executive Chairman of that Authority.

(9) No act or proceeding of the Central Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the Central Authority.

3A. Supreme Court Legal Services Committee.—(1) The Central Authority shall constitute a committee to be called the Supreme Court Legal Services Committee for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the Central Authority.

(2) The Committee shall consist of—

(*a*) a sitting Judge of the Supreme Court who shall be the Chairman; and

(*b*) such number of other members possessing such experience and qualifications as may be prescribed by the Central Government, to be nominated by the Chief Justice of India.

(3) The Chief Justice of India shall appoint a person to be the Secretary to the Committee, possessing such experience and qualifications as may be prescribed by the Central Government.

(4) The terms of office and other conditions relating thereto, of the members and Secretary of the Committee shall be such as may be determined by regulations made by the Central Authority.

(5) The Committee may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions.

(6) The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India.

4. Functions of the Central Authority.—The Central Authority shall perform all or any of the following functions, namely:—

(*a*) lay down policies and principles for making legal services available under the provisions of this Act;

(*b*) frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act;

(*c*) utilise the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;

(*d*) take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills;

(*e*) organise legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats;

(*f*) encourage the settlement of disputes by way of negotiations, arbitration and conciliation;

(*g*) undertake and promote research in the field of legal services with special reference to the need for such services among the poor;

(*h*) to do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IVA of the Constitution;

(*i*) monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act;

(*j*) provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities, from out of the amounts placed at its disposal for the implementation of the legal services schemes under the provisions of this Act;

(*k*) develop, in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions;

(*l*) take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures;

(*m*) make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour; and

(*n*) co-ordinate and monitor the functioning of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees and voluntary social service institutions and other legal services organisations and give general directions for the proper implementation of the legal services programmes.

5. Central Authority to work in co-ordination with other agencies.— In the discharge of its functions under this Act, the Central Authority shall, wherever appropriate, act in co-ordination with other governmental and non-governmental agencies, universities and others engaged in the work of promoting the cause of legal services to the poor.

CHAPTER III

STATE LEGAL SERVICES AUTHORITY

6. Constitution of State Legal Services Authority.—(1) Every State Government shall constitute a body to be called the Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to, a State Authority under this Act.

(2) A State Authority shall consist of—

(*a*) the Chief Justice of the High Court who shall be the Patron-in-Chief;

(*b*) a serving or retired Judge of the High Court, to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman; and

(*c*) such number of other members, possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(3) The State Government shall, in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service, not lower in rank than that of a District Judge, as the Member-Secretary of the State Authority, to exercise such powers and perform such duties under the Executive Chairman of the State Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority:

Provided that a person functioning as Secretary of a State Legal Aid and Advice Board immediately before the date of constitution of the State

Authority may be appointed as Member-Secretary of that Authority, even if he is not qualified to be appointed as such under this sub-section, for a period not exceeding five years.

(4) The terms of office and other conditions relating thereto, of members and the Member-Secretary of the State Authority shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) The State Authority may appoint such number of officers and other employees as may be prescribed by the State Government, in consultation with the Chief Justice of the High Court, for the efficient discharge of its functions under this Act.

(6) The officers and other employees of the State Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(7) The administrative expenses of the State Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the State Authority shall be defrayed out of the Consolidated Fund of the State.

(8) All orders and decisions of the State Authority shall be authenticated by the Member-Secretary or any other officer of the State Authority duly authorised by the Executive Chairman of the State Authority.

(9) No act or proceeding of a State Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the State Authority.

7. Functions of the State Authority.—(1) It shall be the duty of the State Authority to give effect to the policy and directions of the Central Authority.

(2) Without prejudice to the generality of the functions referred to in sub-section (1), the State Authority shall perform all or any of the following functions, namely:—

(*a*) give legal services to persons who satisfy the criteria laid down under this Act;

(*b*) conduct Lok Adalats including Lok Adalats for High Court cases;

(*c*) undertake preventive and strategic legal aid programmes; and

(*d*) perform such other functions as the State Authority may, in consultation with the Central Authority, fix by regulations.

8. State Authority to act in co-ordination with other agencies, etc., and be subject to directions given by the Central Authority.—In the discharge of its functions the State Authority shall appropriately act in co-ordination with other governmental agencies, non-governmental voluntary social service institutions, universities and other bodies engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority may give to it in writing.

8A. High Court Legal Services Committee.—(1) The State Authority shall constitute a Committee to be called the High Court Legal Services Committee for every High Court, for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the State Authority.

(2) The Committee shall consist of—

(*a*) a sitting Judge of the High Court who shall be the Chairman; and

(*b*) such number of other members possessing such experience and qualifications as may be determined by regulations made by the State Authority,

to be nominated by the Chief Justice of the High Court.

(3) The Chief Justice of the High Court shall appoint a Secretary to the Committee, possessing such experience and qualifications as may be prescribed by the State Government.

(4) The terms of office and other conditions relating thereto, of the members and Secretary of the Committee shall be such as may be determined by regulations made by the State Authority.

(5) The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

(6) The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

9. District Legal Services Authority.—(1) The State Government shall, in consultation with the Chief Justice of the High Court, constitute a body to be called the District Legal Services Authority for every District in the State to exercise the powers and perform the functions conferred on, or assigned to, the District Authority under this Act.

(2) A District Authority shall consist of—

(*a*) the District Judge, who shall be its Chairman; and

(*b*) such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(3) The State Authority shall, in consultation with the Chairman of the District Authority, appoint a person belonging to the State Judicial Service not lower in rank than that of a subordinate Judge or Civil Judge posted at the seat of the District Judiciary as Secretary of the District Authority to exercise such powers and perform such duties under the Chairman of that Committee as may be assigned to him by such Chairman.

(4) The terms of office and other conditions relating thereto, of members and Secretary of the District Authority shall be such as may be determined by regulations made by the State Authority in consultation with the Chief Justice of the High Court.

(5) The District Authority may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

(6) The officers and other employees of the District Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(7) The administrative expenses of every District Authority, including the salaries, allowances and pensions payable to the Secretary, officers and other employees of the District Authority shall be defrayed out of the Consolidated Fund of the State.

(8) All orders and decisions of the District Authority shall be authenticated by the Secretary or by any other officer of the District Authority duly authorised by the Chairman of that Authority.

(9) No act or proceeding of the District Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of, the District Authority.

10. Functions of District Authority.—(1) It shall be the duty of every District Authority to perform such of the functions of the State Authority

in the District as may be delegated to it from time to time by the State Authority.

(2) Without prejudice to the generality of the functions referred to in sub-section (1), the District Authority may perform all or any of the following functions, namely:—

(*a*) co-ordinate the activities of the Taluk Legal Services Committee and other Legal Services in the District;

(*b*) organise Lok Adalats within the District; and

(*c*) perform such other functions as the State Authority may fix by regulations.

11. District Authority to act in co-ordination with other agencies and be subject to directions given by the Central Authority etc.—In the discharge of its functions under this Act, the District Authority shall, wherever appropriate, act in co-ordination with other governmental and non-governmental institutions, universities and others engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority or the State Authority may give to it in writing.

11A. Taluk Legal Services Committee.—(1) The State Authority may constitute a Committee, to be called the Taluk Legal Services Committee, for each taluk or mandal or for group of taluks or mandals.

(2) The Committee shall consist of—

(*a*) The Seniormost Judicial Officer operating within the jurisdiction of the Committee who shall be the *ex officio* Chairman; and

(*b*) such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

(3) The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.

(4) The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) The administrative expenses of the Committee shall be defrayed out of the District Legal Aid Fund by the District Authority.

11B. Functions of Taluk Legal Services Committee.—The Taluk Legal Services Committee may perform all or any of the following functions, namely:—

(*a*) co-ordinate the activities of legal services in the taluk;

(*b*) organise Lok Adalats within the taluk; and

(*c*) perform such other functions as the District Authority may assign to it.

CHAPTER IV

ENTITLEMENT TO LEGAL SERVICES

12. Criteria for giving legal services.—Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is—

(*a*) a member of a Scheduled Caste or Scheduled Tribe;

(*b*) a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;

(*c*) a woman or a child;

(*d*) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);

(*e*) a person under circumstances of underserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(*f*) an industrial workman; or

(*g*) in custody, including custody in a protective home within the meaning of clause (*g*) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a juvenile home within the meaning of clause (*j*) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986), or in a psychiatric hospital or pshychiatric nursing home within the meaning of clause (*g*) of section 2 of the Mental Health Act, 1987 (14 of 1987); or

(*h*) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a Court other than the Supreme Court, and less than twelve thousand rupees or such other higher amount as may be prescribed by the Central Government if the case is before the Supreme Court.

13. Entitlement to legal services.—(1) Persons who satisfy all or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a *prima facie* case to prosecute or to defend.

(2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.

CHAPTER V

FINANCE, ACCOUNTS AND AUDIT

14. Grants by the Central Government.—The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Central Authority, by way of grants, such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

15. National Legal Aid Fund.—(1) The Central Authority shall establish a fund to be called the National Legal Aid Fund and there shall be credited thereto—

(*a*) all sums of money given as grants by the Central Government under section 14;

(*b*) any grants or donations that may be made to the Central Authority by any other person for the purposes of this Act;

(*c*) any amount received by the Central Authority under the orders of any Court or from any other source.

(2) The National Legal Aid Fund shall be applied for meeting—

(*a*) the cost of legal services provided under this Act including grants made to State Authorities;

(*b*) the cost of legal services provided by the Supreme Court Legal Services Committee;

(c) any other expenses which are required to be met by the Central Authority.

16. State Legal Aid Fund.—(1) A State Authority shall establish a fund to be called the State Legal Aid Fund and there shall be credited thereto—

(a) all sums of money paid to it or any grants made by the Central Authority for the purposes of this Act;

(b) any grants or donations that may be made to the State Authority by the State Government or by any person for the purposes of this Act;

(c) any other amount received by the State Authority under the orders of any court or from any other source.

(2) A State Legal Aid Fund shall be applied for meeting—

(a) the cost of functions referred to in section 7;

(b) the cost of legal services provided by the High Court Legal Services Committee;

(c) any other expenses which are required to be met by the State Authority.

17. District Legal Aid Fund.—(1) Every District Authority shall establish a fund to be called the District Legal Aid Fund and there shall be credited thereto—

(a) all sums of money paid or any grants made by the State Authority to the District Authority for the purposes of this Act;

(b) any grants or donations that may be made to the District Authority by any person, with the prior approval of the State Authority, for the purposes of this Act;

(c) any other amount received by the District Authority under the orders of any court or from any other source;

(2) A District Legal Aid Fund shall be applied for meeting,—

(a) the cost of functions referred to in sections 10 and 11B;

(b) any other expenses which are required to be met by the District Authority.

18. Accounts and audit.—(1) The Central Authority, State Authority, or the District Authority (hereinafter referred to in this section as "the Authority"), as the case may be, shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the income and expenditure account and the balance-sheet in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authorities shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority concerned to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the auditing of the accounts of an Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the auditing of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authorities under this Act.

(4) The accounts of the Authorities, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon, shall be forwarded annually by the Authorities to the Central Government or the State Governments, as the case may be.

(5) The Central Government shall cause the accounts and the audit report received by it under sub-section (4) to be laid, as soon as may be after they are received, before each House of Parliament.

(6) The State Government shall cause the accounts and the audit report received by it under sub-section (4) to be laid, as soon as may be after they are received, before the State Legislature.

CHAPTER VI

LOK ADALATS

19. Organisation of Lok Adalats.—(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(2) Every Lok Adalat organised for an area shall consist of such number of—

(*a*) serving or retired judicial officers; and

(*b*) other persons,

of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualifications of other persons referred to in clause (*b*) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (*b*) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

(*i*) any case pending before, or

(*ii*) any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the Lok Adalat is organised:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

20. Cognizance of cases by Lok Adalats.—(1) Where in any case referred to in clause (*i*) of sub-section (5) of section 19,—

(*i*) (*a*) the parties thereof agree; or

(*b*) one of the parties thereof makes an application to the Court, for referring the case to the Lok Adalat for settlement and if such Court is *prima facie* satisfied that there are chances of such settlement; or

(*ii*) the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat,

the Court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub-clause (*b*) of clause (*i*) or clause (*ii*) by such Court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under

sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (*ii*) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the Court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a Court.

(7) Where the record of the case is returned under sub-section (5) to the Court, such Court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).

21. Award of Lok Adalat.—(1) Every award of the Lok Adalat shall be deemed to be a decree of a Civil Court or, as the case may be, an order of any other Court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the Court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any Court against the award.

22. Powers of Lok Adalat or Permanent Lok Adalat.—(1) The Lok Adalat or Permanent Lok Adalat shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—

(*a*) the summoning and enforcing the attendance of any witness and examining him on oath;

(*b*) the discovery and production of any document;

(*c*) the reception of evidence on affidavits;

(*d*) the requisitioning of any public record or document or copy of such record or document from any Court or office; and

(*e*) such other matters as may be prescribed.

(2) Without prejudice to the generality of the powers contained in sub-section (1), every Lok Adalat or Permanent Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

(3) All proceedings before a Lok Adalat or Permanent Lok Adalat shall be deemed to be judicial proceedings within the meaning of section 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat or

Permanent Lok Adalat shall be deemed to be a Civil Court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

CHAPTER VI-A

PRE-LITIGATION CONCILIATION AND SETTLEMENT

22A. Definitions.—In this chapter and for the purposes of sections 22 and 23, unless the context otherwise requires,—

(*a*) "Permanent Lok Adalat" means a Permanent Lok Adalat established under sub-section (1) of section 22B;

(*b*) "public utility service" means any—

(*i*) transport service for the carriage of passengers or goods by air, road or water; or

(*ii*) postal, telegraph or telephone service; or

(*iii*) supply of power, light or water to the public by any establishment; or

(*iv*) system of public conservancy or sanitation; or

(*v*) service in hospital or dispensary; or

(*vi*) insurance service,

and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this chapter.

22B. Establishment of Permanent Lok Adalats.—(1) Notwithstanding anything contained in section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.

(2) Every Permanent Lok Adalat established for an area notified under sub-section (1) shall consist of—

(*a*) a person who is, or has been, a District Judge or Additional District Judge or has held judicial office higher in rank than that of a District Judge, shall be the Chairman of the Permanent Lok Adalat; and

(*b*) two other persons having adequate experience in public utility service to be nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be, the State Authority,

appointed by the Central Authority or, as the case may be, the State Authority, establishing such Permanent Lok Adalat and the other terms and conditions of the appointment of the Chairman and other persons referred to in clause (*b*) shall be such as may be prescribed by the Central Government.

22C. Cognizance of cases by Permanent Lok Adalat.—(1) Any party to a dispute may, before the dispute is brought before any Court, make an application to the Permanent Lok Adalat for the settlement of dispute:

Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:

Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:

Provided also that the Central Government, may, by notification, increase

the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any Court in the same dispute.

(3) Where an application is made to a Permanent Lok Adalat under sub-section (1), it—

(*a*) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(*b*) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(*c*) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

(4) When statement, additional statement and reply, if any, have been filed under sub-section (3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(6) It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.

22D. Procedure of Permanent Lok Adalat.—The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872).

22E. Award of Permanent Lok Adalat to be final.—(1) Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

(2) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a Civil Court.

(3) The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.

(4) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.

(5) The Permanent Lok Adalat may transmit any award made by it to a Civil Court having local jurisdiction and such Civil Court shall execute the order as if it were a decree made by the Court.

CHAPTER VII

MISCELLANEOUS

23. Members and staff of Authorities, Committees and Lok Adalats to be public servants.—The members including Member-Secretary or, as the case may be, Secretary of the Central Authority, the State Authorities, the District Authorities, the Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees and officers and other employees of such Authorities, Committees and the members of the Lok Adalats or the persons constituting Permanent Lok Adalats shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

24. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against—

(*a*) the Central Government or State Government;

(*b*) the Patron-in-Chief, Executive Chairman, members of, Member-Secretary or officers or other employees of the Central Authority;

(c) Patron-in-Chief, Executive Chairman, member, Member-Secretary or officers or other employees of the State Authority;

(*d*) Chairman, Secretary, members or officers or other employees of the Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees or the District Authority; or

(*e*) any other person authorised by any of the Patron-in-Chief, Executive Chairman, Chairman, member, Member-Secretary referred to in sub-clauses (*b*) to (*d*),

for anything which is in good faith done or intended to be done under the provisions of this Act or any rule or regulation made thereunder.

25. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

26. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which this Act receives the assent of the President.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

27. Power of Central Government to make rules.—(1) The Central Government in consultation with the Chief Justice of India may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the number, experience and qualifications of other members of the Central Authority under clause (c) of sub-section (2) of section 3;

(*b*) the experience and qualifications of the Member-Secretary of the Central Authority and his powers and functions under sub-section (3) of section 3;

(*c*) the terms of office and other conditions relating thereto, of members and Member-Secretary of the Central Authority under sub-section (4) of section 3;

(*d*) the number of officers and other employees of the Central Authority under sub-section (5) of section 3;

(*e*) the conditions of service and the salary and allowances of officers and other employees of the Central Authority under sub-section (6) of section 3;

(*f*) the number, experience and qualifications of members of the Supreme Court Legal Services Committee under clause (*b*) of sub-section (2) of section 3A;

(*g*) the experience and qualifications of Secretary of the Supreme Court Legal Services Committee under sub-section (3) of section 3A;

(*h*) the number of officers and other employees of the Supreme Court Legal Services Committee under sub-section (5) of section 3A and the conditions of service and the salary and allowances payable to them under sub-section (6) of that section;

(*i*) the upper limit of annual income of a person entitling him to legal services under clause (*h*) of section 12, if the case is before the Supreme Court;

(*j*) the manner in which the accounts of the Central Authority, the State Authority or the District Authority shall be maintained under section 18;

(*k*) the experience and qualifications of other persons of the Lok Adalats organised by the Supreme Court Legal Services Committee specified in sub-section (3) of section 19;

(*l*) other matters under clause (*e*) of sub-section (1) of section 22;

(*la*) the other terms and conditions of appointment of the Chairman and other persons under sub-section (2) of section 22B;

(*m*) any other matter which is to be, or may be, prescribed.

28. Power of State Government to make rules.—The State Government in consultation with the Chief Justice of the High Court may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(*a*) the number, experience and qualifications of other members of the State Authority under clause (*c*) of sub-section (2) of section 6;

(*b*) the powers and functions of the Member-Secretary of the State Authority under sub-section (3) of section 6;

(*c*) the terms of office and other conditions relating thereto, of members and Member-Secretary of the State Authority under sub-section (4) of section 6;

(*d*) the number of officers and other employees of the State Authority under sub-section (5) of section 6;

(*e*) the conditions of service and the salary and allowances of officers and other employees of the State Authority under sub-section (6) of section 6;

(*f*) the experience and qualifications of Secretary of the High Court Legal Services Committee under sub-section (3) of section 8A;

(*g*) the number of officers and other employees of the High Court Legal Services Committee under sub-section (5) of section 8A and the conditions of service and the salary and allowances payable to them under sub-section (6) of that section;

(*h*) the number, experience and qualifications of members of the District Authority under clause (*b*) of sub-section (2) of section 9;

(*i*) the number of officers and other employees of the District Authority under sub-section (5) of section 9;

(*j*) the conditions of service and the salary and allowances of the officers and other employees of the District Authority under sub-section (6) of section 9;

(*k*) the number, experience and qualifications of members of the Taluk Legal Services Committee under clause (*b*) of sub-section (2) of section 11A;

(*l*) the number of officers and other employees of the Taluk Legal Services Committee under sub-section (3) of section 11A;

(*m*) the conditions of service and the salary and allowances of officers and other employees of the Taluk Legal Services Committee under sub-section (4) of section 11A;

(*n*) the upper limit of annual income of a person entitling him to legal services under clause (*h*) of section 12, if the case is before a Court, other than the Supreme Court;

(*o*) the experience and qualifications of other persons of the Lok Adalats other than referred to in sub-section (4) of section 19;

(*p*) any other matter which is to be, or may be, prescribed.

29. Power of Central Authority to make regulations.—(1) The Central Authority may, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(*a*) the powers and functions of the Supreme Court Legal Services Committee under sub-section (1) of section 3A;

(*b*) the terms of office and other conditions relating thereto, of the members and Secretary of the Supreme Court Legal Services Committee under sub-section (4) of section 3A.

29A. Power of State Authority to make regulations.—(1) The State Authority may, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(*a*) the other functions to be performed by the State Authority under clause (*d*) of sub-section (2) of section 7;

(*b*) the powers and functions of the High Court Legal Services Committee under sub-section (1) of section 8A;

(*c*) the number, experience and qualifications of members of the High Court Legal Services Committee under clause (*b*) of sub-section (2) of sec. 8A;

(*d*) the terms of office and other conditions relating thereto, of the members and Secretary of the High Court Legal Services Committee under sub-section (4) of section 8A;

(*e*) the terms of office and other conditions relating thereto, of the members and Secretary of the District Authority under sub-section (4) of section 9;

(*f*) the number, experience and qualifications of members of the High Court Legal Services Committee under clause (*b*) of sub-section (2) of section 8A;

(*g*) other functions to be performed by the District Authority under clause (*c*) of sub-section (2) of section 10;

(*h*) the terms of office and other conditions relating thereto, of members and Secretary of the Taluk Legal Services Committee under sub-section (3) of section 11A.

30. Laying of rules and regulations.—(1) Every rule made under this Act by the Central Government and every regulation made by the Central Authority thereunder shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(2) Every rule made under this Act by a State Government and every regulation made by a State Authority thereunder shall be laid, as soon as may be after it is made, before the State Legislature.

APPENDIX VIII

THE CONSUMER PROTECTION ACT, 1986[1]

[Act No. 68 of 1986]

[*24th December, 1986*

(As Amended by Act 50 of 1993 and Act 62 of 2002)

An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:

CHAPTER I

Preliminary

1. Short title, extent, commencement and application.—(1) This Act may be called the Consumer Protection Act, 1986.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date[2] as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.

(4) Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services.

1. Published in the *Gazette of India, Extraordinary*, Part II, dated 26.12.1986.
2. Chapters I, II & IV of the Act enforced, w.e.f. 15.4.1987; Chapter III, w.e.f. 1.7.1987.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

[1][(*a*) "appropriate laboratory" means a laboratory or organisation—

(*i*) recognised by the Central Government;

(*ii*) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or

(*iii*) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;]

[2][(*aa*) "branch office" means—

(*i*) any establishment described as a branch by the opposite party; or

(*ii*) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;]

(*b*) "complainant" means—

(*i*) a consumer; or

(*ii*) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956), or under any other law for the time being in force; or

(*iii*) the Central Government or any State Government, who or which makes a complaint;

[3][(*iv*) one or more consumers, where there are numerous consumers having the same interest;]

[4][(*v*) in case of death of a consumer, his legal heir or representative;]

(*c*) "complaint" means any allegation in writing made by a complainant that—

[5][(*i*) an unfair trade practice or a restrictive trade practice has been adopted by [6][any trader or service provider];]

(*ii*) [7][the goods bought by him or agreed to be bought by him] suffer from one or more defects;

(*iii*) [8][the services hired or availed of or agreed to be hired or availed of by him] suffer from deficiency in any respect;

[9][(*iv*) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price—

(*a*) fixed by or under any law for the time being in force;

(*b*) displayed on the goods or any package containing such goods;

(*c*) displayed on the price list exhibited by him by or under any law for the time being in force;

(*d*) agreed between the parties;

(*v*) goods which will be hazardous to life and safety when used are being offered for sale to the public,—

(*a*) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(*b*) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

(*vi*) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;]

with a view to obtaining any relief provided by or under this Act;

(*d*) "consumer" means any person who—

(*i*) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid and partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(*ii*) [10][hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [10][hires or avails of] the services for consideration paid or promised,

or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [11][but does not include a person who avails of such services for any commercial purpose;]

[12][*Explanation.*—For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;]

(*e*) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

(*f*) "defect" means any fault, imperfection, or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or [13][under any contract, express or implied or] as is claimed by the trader in any manner whatsoever in relation to any goods;

(*g*) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

(*h*) "District Forum" means a Consumer Disputes Redressal Forum established under clause (*a*) of section 9;

(*i*) "goods" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930);

[14][(*j*) "manufacturer" means a person who—

(*i*) makes or manufactures any goods or parts thereof; or

(*ii*) does not make or manufacture any goods but assembles parts thereof made or manufactured by others; or

(*iii*) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer;]

[15][(*jj*) "member" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;]

(*k*) "National Commission" means the National Consumer Disputes Redressal Commission established under clause (c) of section 9;

(*l*) "notification" means a notification published in the Official Gazette;

(*m*) "person" includes,—

(*i*) a firm whether registered or not;

(*ii*) a Hindu undivided family;

(*iii*) a co-operative society;

(*iv*) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;

(*n*) "prescribed" means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act;

[16][(*nn*) "regulation" means the regulations made by the National Commission under this Act;

(*nnn*) "restrictive trade practice" means a trade practice which tends to bring about manipulation of price or its conditions of delivery or

to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—

(*a*) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;

(*b*) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services;]

(*o*) "service" means service of any description which is made available to potential [17][users and includes, but not limited to, the provision of] facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, [18][housing construction,] entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

[19][(*oo*) "spurious goods and services" means such goods and services which are claimed to be genuine but they are actually not so;]

(*p*) "State Commission" means a Consumer Disputes Redressal Commission established in a State under clause (*b*) of section 9;

(*q*) "trader" in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;

[20][(*r*) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(1) the practice of making any statement, whether orally or in writing or by visible representation which,—

(*i*) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(*ii*) falsely represents that the services are of a particular standard, quality or grade;

(*iii*) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(*iv*) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(*v*) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(*vi*) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(*vii*) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(*viii*) makes to the public a representation in a form that purports to be—

(*i*) a warranty or guarantee of a product or of any goods or services; or

(*ii*) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(*ix*) materially misleads the public concerning the price at which a product or like products or goods or services have been, or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(*x*) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.—For the purposes of clause (1), a statement that is—

(*a*) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(*b*) expressed on anything attached to, inserted in, or accompanying an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(*c*) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation.—For the purpose of clause (2), "bargaining price" means—

(*a*) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(*b*) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(3) permits—

(*a*) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that

something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;

(*b*) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

[21][(3A) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.

Explanation.—For the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspapers in which the scheme was originally advertised;]

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services;

[22][(6) manufacture of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services.]

(2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

1. Subs. by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
2. Ins., *ibid.*, w.e.f. 18.6.1993.
3. Ins., *ibid.*, w.e.f. 18.6.1993.
4. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
5. Subs. by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
6. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
7. Subs. for "the goods mentioned in the complaint", by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
8. Subs. for "the services mentioned in the complaint", *ibid.*, w.e.f. 18.6.1993.
9. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
10. Subs. for "hires" by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
11. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003
12. Subs., *ibid.*, w.e.f. 15.3.2003.
13. Ins. by C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
14. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
15. Ins. by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
16. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
17. Subs., *Ibid.*, w.e.f. 15.3.2003.
18. Ins. by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
19. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
20. Subs. by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
21. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
22. Ins., *Ibid.*, w.e.f. 15.3.2003.

3. Act not in derogation of any other law.—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

CHAPTER II

Consumer Protection Councils

4. The Central Consumer Protection Council.—(1) [1][The Central Government shall], by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).

(2) The Central Council shall consist of the following members, namely:—

(*a*) the Minister in charge of the [2][consumer affairs] in the Central Government, who shall be its Chairman, and

(*b*) such number of other official or non-official members representing such interests as may be prescribed.

1. Subs. for "The Central Government may" by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
2. Subs. for "the Department of Food and Civil Supplies" by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.

5. Procedure for meetings of the Central Council.—(1) The Central Council shall meet as and when necessary but [1][at least one meeting] of the Council shall be held every year.

(2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

1. Subs. for "not less than three meetings", by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.

6. Objects of the Central Council.—The objects of the Central Council shall be to promote and protect the rights of the consumers such as,—

(*a*) the right to be protected against the marketing of goods [1][and services] which are hazardous to life and property;

(*b*) the right to be informed about the quality, quantity, potency, purity, standard and price of goods [1][or services, as the case may be], so as to protect the consumer against unfair trade practices;

(*c*) the right to be assured, wherever possible, access to a variety of goods [1][and services] at competitive prices;

(*d*) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;

(*e*) the right to seek redressal against unfair trade practices [1][or restrictive trade practices] or unscrupulous exploitation of consumers; and

(*f*) the right to consumer education.

1. Ins. by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.

7. The State Consumer Protection Councils.—(1) [1][The State Government shall], by notification, establish with effect from such date as

it may specify in such notification, a Council to be known as the Consumer Protection Council for.....(hereinafter referred to as the State Council).

[2][(2) The State Council shall consist of the following members, namely:

(*a*) the Minister in-charge of consumer affairs in the State Government who shall be its Chairman;

(*b*) such number of other official or non-official members representing such interests as may be prescribed by the State Government;

[3][(c) such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.]

(3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.]

1. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
2. Subs. for sub-section (2) by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
3. Ins. by. the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

8. Objects of the State Council.—The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (*a*) to (*f*) of section 6.

[1][**8A. The District Consumer Protection Council.**—(1) The State Government shall establish for every district, by notification, a council to be known as the District Consumer Protection Council with effect from such date as it may specify in such notification.

(2) The District Consumer Protection Council (hereinafter referred to as the District Council) shall consist of the following members, namely:—

(*a*) the Collector of the district (by whatever name called), who shall be its Chairman; and

(*b*) such number of other official and non-official members representing such interests as may be prescribed by the State Government.

(3) The District Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The District Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.]

1. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

[1][**8B. Objects of the District Council.**—The objects of every District Council shall be to promote and protect within the district the rights of the consumers laid down in clauses (*a*) to (*f*) of section 6.]

1. Ins. by the C.P.(Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

CHAPTER III

Consumer Disputes Redressal Agencies

9. Establishment of Consumer Disputes Redressal Agencies.— There shall be established for the purposes of this Act, the following agencies, namely:—

(*a*) a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government [1][***] in each district of the State by notification:

[2][Provided that the State Government may, if it deems fit, establish more than one District Forum in a district;]

(*b*) a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government [1][***] in the State by notification; and

(*c*) a National Consumer Disputes Redressal Commission established by the Central Government by notification.

1. The words "with the prior approval of the Central Government", omitted by C.P. (Am.) Act, 1993, w.e.f. 18.6.1993.
2. Proviso added by the C.P. (Am.) Act, 1993 (w.e.f. 18.6.1993).

10. Composition of the District Forum.—[1][(1) Each District Forum shall consist of,—

(*a*) a person who is, or has been, or is qualified to be, a District Judge, who shall be its President;

[2][(*b*) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:—

(*i*) be not less than thirty-five years of age,

(*ii*) possess a bachelor's degree from a recognised university,

(*iii*) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that a person shall be disquilified for appointment as a member, if he—

(*a*) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or

(*b*) is an undischarged insolvent; or

(*c*) is of unsound mind and stands so declared by a competent court; or

(*d*) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(*e*) has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(*f*) has such other disqualifications as may be prescribed by the State Government.]]

[3][(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:—

(*i*) The President of the State Commission—Chairman,

(*ii*) Secretary, Law Department of the State—Member,

(*iii*) Secretary in-charge of the Department dealing with consumer affairs in the State—Member:]

[4][Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.]

[2][(2) Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifictions and other conditions for appointment mentioned in clause (*b*) of sub-section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee:

Provided further that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned:

Provided also that a person appointed as the President or as a member before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.]

(3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the District Forum shall be such as may be prescribed by the State Government:

[4][Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum.]

1. Subs. by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
2. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
3. Ins. by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
4. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

11. Jurisdiction of the District Forum.—(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed [1][does not exceed rupees twenty lakhs].

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,—

(*a*) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or [2][carries on business or has a branch office, or] personally works for gain; or

(*b*) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or [3][carries on business or has a branch office], or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or [4][carry on business or has a branch office], or personally works for gain, as the case may be, acquiesce in such institution; or

(*c*) the cause of action, wholly or in part, arises.

1. Subs. for "does not exceed rupees five lakhs" by C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
2. Subs. for "carries on business or", by C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
3. Subs. for "carries on business", *ibid*, w.e.f. 18.6.1993.
4. Subs. for "carries on business", *ibid*, w.e.f. 18.6.1993.

[1][12. **Manner in which complaint shall be made.**—(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by—

(*a*) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(*b*) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;

(*c*) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(*d*) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this sub-section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

Explanation.—For the purposes of this section, "recognised consumer association" means any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force.]

1. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

13. [1][**Procedure on admission of complaint**].—(1) The District Forum shall, [1][on admission of a complaint], if it relates to any goods,—

[1][(*a*) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;]

(*b*) where the opposite party on receipt of a complaint referred to him under clause (*a*) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (*c*) to (*g*);

(*c*) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant,

seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

(*d*) before any sample of the goods is referred to any appropriate laboratory under clause (*c*), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

(*e*) the District Forum shall remit the amount deposited to its credit under clause (*d*) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (*c*) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;

(*f*) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;

(*g*) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (*f*) and issue an appropriate order under section 14.

(2) The District Forum shall, if the [2][complaint admitted] by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,—

(*a*) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(*b*) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (*a*) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,—

(*i*) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or

(*ii*) [2][*ex parte* on the basis of evidence] brought to its notice by the complainant, where the opposite party omits or fails to take any action to represent his case within the time given by the Forum;

[3][(*c*) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.]

(3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

[3][(3A) Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:

Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:

Provided further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act:

Provided also that in the event of a complaint being disposed of after the period so specified, the District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.

(3B) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.]

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—

(*i*) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(*ii*) the discovery and production of any document or other material object producible as evidence;

(*iii*) the reception of evidence on affidavits;

(*iv*) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(*v*) issuing of any commission for the examination of any witness; and

(*vi*) any other matter which may be prescribed.

(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

[4][(6) Where the complainant is a consumer referred to in sub-clause (*iv*) of clause (*b*) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.]

[5][(7) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.]

1. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
2. Subs. *Ibid.*, w.e.f. 15.3.2003.
3. Ins., *Ibid.*, w.e.f. 15.3.2003.
4. Added by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
5. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

14. Finding of the District Forum.—(1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to [1][do] one or more of the following things, namely:—

(*a*) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(*b*) to replace the goods with new goods of similar description which shall be free from any defect;

(*c*) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

(*d*) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party:

[2][Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;]

[3][(*e*) to [4][remove the defects in goods] or deficiencies in the services in question;

(*f*) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

(*g*) not to offer the hazardous goods for sale;

(*h*) to withdraw the hazardous goods from being offered for sale;

[2][(*ha*) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(*hb*) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or services provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(*hc*) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;]

(*i*) to provide for adequate costs to parties.]

[5][(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

[4][Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.]

[6][(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.]

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

1. Subs. for "take" by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
2. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
3. Clauses (*e*), (*f*), (*g*), (*h*), & (*i*) inserted by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
4. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
5. Subs by Act 34 of 1991, w.e.f. 15.6.1991.
6. Ins. by Act 34 of 1991, w.e.f. 15.6.1991.

15. Appeal.—Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

[1][Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent of that amount or twenty-five thousand rupees, whichever is less.]

1. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

16. Composition of the State Commission.—(1) Each State Commission shall consist of,—

(*a*) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

[1][Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;]

[2][(*b*) not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

(*i*) be not less than thirty-five years of age;

(*ii*) possess a bachelor's degree from a recognised university; and

(*iii*) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent of the members shall be from amongst persons having a judicial background.

Explanation.—For the purposes of this clause, the expression "persons having a judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment as a member, if he—

(*a*) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or

(*b*) is an undischarged insolvent; or

(*c*) is of unsound mind and stands so declared by a competent court; or

(*d*) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(*e*) has in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or

(*f*) has such other disqualifications as may be prescribed by the State Government.]

[3][(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely:—

(*i*) President of the State Commission—Chairman;

(*ii*) Secretary of the Law Department of the State—Member;

(*iii*) Secretary in-charge of the Department dealing with Consumer Affairs in the State — Member:

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(1B) (*i*) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.

(*ii*) A Bench may be constituted by the President with one or more members as the President may deem fit.

(*iii*) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.]

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service [4][****] of, the members of the State Commission shall be such as may be prescribed by the State Government:

[5][Provided that the appointment of a member of whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.]

[6][(3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (*b*) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the State Commission shall also be eligible for re-appointment in the manner provided in clause (*a*) of sub-section (1) of this section:

Provided also that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.]

1. Proviso added by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
2. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
3. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
4. Omitted the words "including tenure of office", by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
5. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
6. Subs., *ibid*, w.e.f. 15.3.2003.

17. Jurisdiction of the State Commission.—[1][(1)] Subject to the other provisions of this Act, the State Commission shall have jurisdiction,—

(*a*) to entertain—

(*i*) complaints where the value of the goods or services and compensation, if any, claimed [2][exceeds rupees twenty lakhs but does not exceed rupees one crore]; and

(*ii*) appeals against the orders of any District Forum within the State; and

(*b*) to call for records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

[3][(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

(*a*) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(*b*) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or

(*c*) the cause of action, wholly or in part, arises.]

1. Renumbered by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
2. Subs. for "exceeds rupees five lakhs but does not exceed rupees twenty lakhs" by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f.15.3.2003.
3. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

[1][17A. Transfer of cases.—On the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.]

1. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

[1][17B. **Circuit Benches.**—The State Commission shall ordinarily function in the State Capital but may perform its functions at such other place as the State Government may, in consultation with the State Commission, notify in the Official Gazette, from time to time.]

1. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

18. **Procedure applicable to State Commission.**—[1][The provisions of sections 12, 13 and 14 and the rules made thereunder] for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

1. Subs. for "The procedure specified in sections 12, 13 and 14 and under the rules made thereunder" by the C.P. (Am.) Act, 1993, w.e.f. 18.6.1993.

[1][18A. . . . . .]

1. Omitted by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

19. **Appeals.**—Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (*i*) of clause (*a*) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

[1][Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent. of the amount or rupees thirty-five thousand, whichever is less.]

1. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

[1][19A. **Hearing of appeal.**—An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission:

Provided that no adjournment shall be ordinarily granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission:

Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act:

Provided also that in the event of an appeal being disposed of after the period so specified, the State Commission or the National Commission,

as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.]

1. Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

20. Composition of the National Commission.—(1) The National Commission shall consist of,—

(*a*) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President:

[1][Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of India;]

[2][(*b*) not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

(*i*) be not less than thirty-five years of age;

(*ii*) possess a bachelor's degree from a recognised university; and

(*iii*) be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affiars or administration:

Provided that not more than fifty per cent. of the members shall be from amongst the persons having a judicial background.

Explanation.—For the purposes of this clause, the expression "persons having a judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment, if he—

(*a*) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

(*b*) is an undischarged insolvent; or

(*c*) is of unsound mind and stands so declared by a competent court; or

(*d*) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(*e*) has, in the opinion of the Central Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(*f*) has such other disqualifications as may be prescribed by the Central Government:

Provided also that every appointment under this clause shall be made by the Central Government on the recommendation of a Selection Committee consisting of the following, namely:—

(*a*) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India—Chairman;

(*b*) the Secretary in the Department of Legal Affairs in the Government of India—Member;

(*c*) Secretary of the Department dealing with Consumer Affairs in the Government of India—Member.]

[3][(1A)(*i*) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.

(*ii*) A Bench may be constituted by the President with one or more members as the President may deem fit.

(*iii*) If the members of Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.]

(2) The salary or honorarium and other allowances payable to and the other terms and conditions of service [4][***] of the members of the National Commission shall be such as may be prescribed by the Central Government.

[5][(3) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another terms of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (*b*) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the National Commission shall also be eligible for re-appointment in the manner provided in clause (*a*) of sub-section (1):

Provided also that a member may resign his office in writing under his hand addressed to the Central Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 2002 shall continue to hold such office as President or member, as the case may be, till the completion of his term.]

1. Proviso inserted by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
2. Subs. by the C.P. (Am.), 2002 (62 of 2002), w.e.f. 15.3.2003.
3. Ins. *Ibid.* w.e.f. 15.3.2003.
4. Omitted the words "including tenure of office", by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
5. Subs. by the C.P. (Am.), 2002 (62 of 2002), w.e.f. 15.3.2003.

21. Jurisdiction of the National Commission.—Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(*a*) to entertain—

(*i*) complaints where the value of the goods or services and compensation, if any, claimed exceeds [1][rupees one crore]; and

(*ii*) appeals against the orders of any State Commission; and

(*b*) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by

law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

1. Subs. for "rupees twenty lakhs" by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

[1][**22. Power and procedure applicable to the National Commission.**—(1) The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.

(2) Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.

22A. Power to set aside *ex parte* orders.—Where an order is passed by the National Commission *ex parte* against the opposite party or a complainant, as the case may be, the aggrieved party may apply to the Commission to set aside the said order in the interest of justice.

22B. Transfer of cases.—On the application of the complainant or of its own motion, the National Commission may, at any stage of the proceeding, in the interest of justice, transfer any complaint pending before the Dsitrict Forum of one State to a District Forum of another State or before one State Commission to another State Commission.

22C. Circuit Benches.—The National Commission shall ordinarily function at New Delhi and perform its functions at such other place as the Central Government may, in consultation with the National Commission, notify in the Official Gazette, from time to time.

22D. Vacancy in the office of President.—When the office of President of a District Forum, State Commission, or of the National Commission, as the case may be, is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the seniormost member of the District Forum, the State Commission or of the National Commission, as the case may be:

Provided that where a retired Judge of a High Court is a member of the National Commission, such member or where the number of such members is more than one, the seniormost person amongst such member, shall preside over the National Commission in the absence of President of that Commission.]

1. Secs. 22A, 22B, 22C, 22D along with sec.22 substituted for earlier sec. 22 by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f.15.3.2003.

23. Appeal.—Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (*i*) of clause (*a*) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain and appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

[1][Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent of that amount or rupees fifty thousand, whichever is less.]

1. Ins. by the C.P. (Am) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

24. Finality of orders.—Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

[1][**24A. Limitation period.**—(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.]

1. Ins. by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.

[1][**24B. Administrative control.**—(1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely:—

(*i*) calling for periodical returns regarding the institution, disposal, pendency of cases;

(*ii*) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;

(*iii*) generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

(2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1).]

1. Ins. by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.

[1][**25. Enforcement of orders of the District Forum, the State Commission or the National Commission.**—(1) Where an interim order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.]

1. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

26. [1][**Dismissal of frivolous or vexatious complaints.**—Where a complaint instituted before the District Forum, the State Commission or, as the case may be, the National Commission is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.]

1. Subs. by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.

27. Penalties.—[1][(1)] Where a trader or a person against whom a complaint is made [2][or the complainant] fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person [2][or complainant] shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both:

[3][. . . . .]

[4][(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973.

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.]

1. Renumbered by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
2. Ins., by the C.P. (Am.) Act, 1993 (50 of 1993), w.e.f. 18.6.1993.
3. Omitted by by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.
4. Ins., *ibid*, w.e.f. 15.3.2003.

[1][**27A. Appeal against order passed under section 27.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) an appeal under section 27, both on facts and on law, shall lie from—

(*a*) the order made by the District Forum to the State Commission;

(*b*) the order made by the State Commission to the National Commission; and

(*c*) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission:

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appeallant had sufficient cause for not preferring the appeal within the period of thirty days.]

1. Ins. by the C.P.(Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

CHAPTER IV

Miscellaneous

28. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the members of the District Forum, the State Commission or the National Commission or any officer or person acting under the direction of the District Forum, the State Commission or the National Commission for executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder.

[1][**28A. Service of notice, etc.**—(1) All notices, required by this Act to be served, shall be served in the manner hereinafter mentioned in sub-section (2).

(2) The service of notices may be made by delivering or transmitting a copy thereof by registered post acknowledgment due addressed to opposite party against whom complaint is made or to the complainant by speed post or by such courier service as are approved by the District Forum, the State Commission or the National Commission, as the case may be, or by any other means of transmission of documents (including FAX message).

(3) When an acknowledgment or any other receipt purporting to be signed by the opposite party or his agent or by the complainant is received by the District Forum, the State Commission or the National Commission, as the case may be, or postal article containing the notice is received back by such District Forum, State Commission or the National Commission, with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in sub-section (2) when tendered or transmitted to him, the District Forum or the State Commission or the National Commission, as the case may be, shall declare that the notice had been duly served on the opposite party or to the complainant:

Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgment has been lost or mislaid, or for any other reason, has not been received by the District Forum, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.

(4) All notices required to be served on an opposite party or to complainant shall be deemed to be sufficiently served, if addressed in the case of the opposite party to the place where business or profession is carried and in case of complainant, the place where such person actually and voluntarily resides.]

1. Ins. by the C.P.(Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

29. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

[1][(3) If any difficulty arises in giving effect to the provisions of the Consumer Protection (Amendment) Act, 2002, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of the Consumer Protection (Amemdment) Act, 2002.

(4) Every order made under sub-section (3) shall be laid before each House of Parliament.]

1. Ins. by the C.P.(Am.) Act 2002 (62 of 2002), w.e.f. 15.3.2003.

[1][**29A. Vacancies or defects in appointment not to invalidate orders.**—No act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.]

1. Ins. by Act 34 of 1991, w.e.f.15.6.1991.

[1][**30. Power to make rules.**—(1) The Central Government may, by notification, make rules for carrying out the provisions contained in clause (*a*) of sub-section (1) of section 2, clause (*b*) of sub-section (2) of section 4, sub-section (2) of section 5, sub-section (2) of section 12, cluase (*vi*) of sub-section (4) of section 13, clause (*hb*) of sub-section (1) of section 14, section 19, clause (*b*) of sub-section (1) and sub-section (2) of section 20, section 22 and section 23 of this Act.

(2) The State Government may, by notification, make rules for carrying out the provisions contained in clause (*b*) of sub-section (2) and sub-section (4) of section 7, clause (*b*) of sub-section (2) and sub-section (4) of section 8A, clause (*b*) of sub-section (1) and sub-section (3) of section 10, clause (*c*) of sub-section (1) of section 13, clause (*hb*) of sub-section (1) and sub-section (3) of section 14, section 15 and clause (*b*) of sub-section (1) and sub-section (2) of section 16 of this Act.]

1. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

[1][**30A. Power of the National Commission to make regulations.**—(1) The National Commission may, with the previous approval of the Central Government, by notification, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may make provisions for the cost of adjournment of any proceeding before the District Forum, the State Commission or the National Commission, as the case may be, which a party may be ordered to pay.]

1 Ins. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

[1][**31. Rules and Regulations to be laid before each House of Parliament.**—(1) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament,

while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(2) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.]

1. Subs. by the C.P. (Am.) Act, 2002 (62 of 2002), w.e.f. 15.3.2003.

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