REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 1

PUBLISHED BY AUTHORITY

No. 21] NEW DELHI, MONDAY, MAY 18, 1964/VAISAKHA 28, 1886

Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW

(Legislative Department)

New Delhi, the 18th May, 1964/Vaisakha 28, 1886 (Saka)

The following Act of Parliament received the assent of the President on the 16th May, 1964, and is hereby published for general information:—

THE ADVOCATES (AMENDMENT) ACT, 1964

NO. 21 OF 1964

[16*th May*, 1964]

An Act further to amend the Advocates Act, 1961.

BE it enacted by Parliament in the Fifteenth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Advocates (Amendment) Act, 1964.

Amendment of section 3.

25 of 1961.

2. In section 3 of the Advocates Act, 1961 (hereinafter referred to as the principal Act),—

(*a*) in sub-section (2), in clause (*b*), for the words "roll of the State Bar Council", the words "electoral roll of the State Bar Council" shall be substituted;

(*b*) to sub-section (2), the following proviso shall be added, namely:—

"Provided that as nearly as possible one-half of such elected members shall, subject to any rules that may be made in this behalf by the Bar Council of India, be persons who have for at least ten years been advocates on a State

roll, and in computing the said period of ten years in relation to any such person, there shall be included any period during which the person has been an advocate enrolled under the Indiar Bar Councils Act, 1926.";

38 of 1926

(c) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(4) An advocate shall be disqualified from voting at an election under sub-section (2) or for being chosen as, and for being, a member of a State Bar Council, unless he possesses such qualifications or satisfies such conditions as may be prescribed in this behalf by the Bar Council of India, and subject to any such rules that may be made, an electoral roll shall be prepared and revised from time to time by each State Bar Council.

(5) Nothing in the proviso to sub-section (2) shall affect the term of office of any member elected before the commencement of the Advocates (Amendment) Act, 1964, but every election after such commencement shall be held in accordance with the provisions of the rules made by the Bar Council of India to give effect to the said proviso.".

Amendment of section 4.

3. In section 4 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) The term of office of a member of the Bar Council of India elected by the State Bar Council shall,—

(i) in the case of a member of a State Bar Council who holds office *ex officio*, be two years from the date of his election; and

(ii) in any other case, be for the period for which he holds office as a member of the State Bar Council:

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

Amendment of section 8.

4. In section 8 of the principal Act,—

(a) for the words "Bar Council", the words "State Bar Council" shall be substituted;

(b) for the words "elected to each such Council", the words, brackets and figures "elected to each such Council (reconstituted on the expiry of the term of office of the elected members of the State Bar Council under section 54)" shall be substituted.

5. For section 9 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 9.

"9. (1) A Bar Council shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to sub-section (2) of section 3 and who are not members of the Council, and the senior-most advocate amongst the members of a disciplinary committee shall be the Chairman thereof. Disciplinary committees.

(2) Notwithstanding anything contained in sub-section (1), any disciplinary committee constituted prior to the commencement of the Advocates (Amendment) Act, 1964 may dispose of the proceedings pending before it as if this section had not been amended by the said Act.".

6. After section 10 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 10A.

"10A. An elected member of a Bar Council shall be deemed to have vacated his office if he is declared by the Bar Council of which he is a member to have been absent without sufficient excuse from three consecutive meetings of such Council, or if his name is, for any cause, removed from the roll of advocates or if he is otherwise disqualified under any rule made by the Bar Council of India.". Disqualification of members of Bar Council.

7. In section 15 of the principal Act, in sub-section (2),— Amendment of section 15.

(a) for clause (a), the following clause shall be substituted, namely:—

"(a) the election of members of the Bar Council including the conditions subject to which persons can exercise the right to vote, the preparation and revision of electoral rolls, the manner in which election shall be held and the manner in which results of election shall be published;";

(b) in clause (e), for the words "Bar Council", the words "State Bar Council" shall be substituted.

8. In section 16 of the principal Act, to sub-section (4), the following proviso shall be added, namely:— Amendment of section 16.

"Provided that where any such senior advocate makes an application before the 31st December, 1965 to the Bar Council maintaining the roll in which his name has been entered that

he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly.".

Amendment of section 17.

9. In section 17 of the principal Act, in sub-section (3), for the words "and such seniority shall be determined", the words "and, subject to any rule that may be made by the Bar Council of India in this behalf, such seniority shall be determined" shall be substituted.

Amendment of section 18.

10. In section 18 of the principal Act, to sub-section (1), the following proviso shall be added, namely:—

"Provided that where any such application for transfer is made by a person against whom any disciplinary proceeding is pending or where for any other reason it appears to the Bar Council of India that the application for transfer has not been made *bona fide* and that the transfer should not be made, the Bar Council of India may, after giving the person making the application an opportunity of making a representation in this behalf, reject the application.".

Amendment of section 20.

11. In section 20 of the principal Act, in sub-section (3), for the words "Entries in each part of the common roll shall be in the order of seniority and such seniority shall be determined as follows", the words "Entries in each part of the common roll shall be made in such manner as the Bar Council of India thinks fit and the seniority of an advocate on the common roll shall be determined as follows" shall be substituted.

Substitution of new section for section 22.

12. For section 22 of the principal Act, the following section shall be substituted, namely:—

Certificate of enrolment.

"22. There shall be issued a certificate of enrolment, in the prescribed form—

(*i*) by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act; and

(*ii*) by the Bar Council of India to every person whose name is entered in the common roll without his name having already been entered in any State roll.".

Amendment of section 24.

13. In section 24 of the principal Act,—

(*A*) in sub-section (*1*),—

(*a*) in clause (*c*),—

(*i*) in sub-clause (*iii*), the words "or elsewhere" shall be omitted;

(*ii*) after sub-clause (*iii*), the following sub-clause shall be inserted, namely:—

"(*iv*) in any other case, from any University outside the territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India; or";

(*b*) in clause (*d*),—

(*i*) the words "after such training" shall be omitted;

(*ii*) in the proviso, for paragraph (*i*), the following paragraph shall be substituted, namely:—

"(*i*) a person who has obtained a degree in law from any University in India on the results of an examination held before the 31st day of March, 1964 or such other later date as may be prescribed, or a barrister who was called to the Bar before such date, or a barrister who, having qualified after that date, has received such practical training in law as may be recognised in this behalf by the Bar Council of India;";

(*B*) in sub-section (*2*), for the words "a vakil, pleader or an attorney who is a law graduate, or who is not a law graduate but was entitled to be enrolled as an advocate of a High Court immediately before the appointed day under any law then in force,", the words "a vakil or a pleader who is a law graduate" shall be substituted;

(*C*) after sub-section (*2*), the following sub-sections shall be inserted, namely:—

"(*3*) Notwithstanding anything contained in sub-section (*1*) a person who—

(*a*) before the 31st day of March, 1964, has, for at least three years, been a vakil or a pleader or a mukhtar, or was entitled at any time to be enrolled under any law then in force as an advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union territory; or

(*b*) before the 15th day of August, 1947, has been an advocate of any High Court in any area which was comprised within India as defined in the Government of India Act, 1935; or

(*c*) before the 1st day of April, 1937, has been an advocate of any High Court in any area which was com-

prised within Burma as defined in the Government of India Act, 1935; or

(*d*) is entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf,

may be admitted as an advocate on a State roll if he—

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

(*ii*) fulfils the conditions specified in clauses (*a*), (*b*), (*e*) and (*f*) of sub-section (*1*).

(*4*) Notwithstanding anything contained in sub-section (*1*), a person who has been an attorney of any High Court may be admitted as an advocate on a State roll if he makes an application for such enrolment in accordance with the provisions of this Act and fulfils the conditions specified in clauses (*a*), (*b*), (*e*) and (*f*) of sub-section (*1*), but the right of such a person to plead or to act on the original side of the High Court at Calcutta or the High Court at Bombay shall be subject to any rules that may be made in that behalf by that High Court.".

Amendment of section 26.

14. In section 26 of the principal Act,—

(*a*) in sub-section (*1*), after the words, brackets and figures "sub-sections (*2*) and (*3*)", the words "and to any direction that may be given in writing by the State Bar Council in this behalf" shall be inserted;

(*b*) to sub-section (*1*), the following proviso shall be added, namely:—

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

(*c*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) Where the enrolment committee of a State Bar Council has refused any application for admission as an advocate on its roll, the State Bar Council shall, as soon as may be, send intimation to all other State Bar Councils about

such refusal stating the name, address and qualifications of the person whose application was refused and the grounds for the refusal."

Insertion of new section 26A.

15. After section 26 of the principal Act, the following section shall be inserted, namely:—

Power to remove names from roll.

"26A. The Bar Council of India or any State Bar Council may remove from the common roll or the State roll, as the case may be, the name of any advocate who is dead or from whom a request has been received to that effect.".

Amendment of section 28.

16. In section 28 of the principal Act, in clause (*b*) of sub-section (*2*), the words "after such training" shall be omitted.

Amendment of section 35

17. To section 35 of the principal Act, the following *Explanation* shall be added, namely:—

'*Explanation.*—In this section, the expressions "Advocate-General" and "Advocate-General of the State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.'.

Amendment of section 37.

18. In section 37 of the principal Act, in sub-section (*1*), for the words, brackets and figures "under sub-section (*3*) of section 35", the words and figures "under section 35" shall be substituted.

Insertion of new sections 48A and 48B.

19. After section 48 of the principal Act, the following sections shall be inserted, namely:—

Power of revision.

"48A. (*1*) The Bar Council of India may, at any time, call for the record of any proceeding under this Act which has been disposed of by a State Bar Council or a Committee thereof, and from which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of such disposal and may pass such orders in relation thereto as it may think fit.

(*2*) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

Power to give directions.

48B. (*1*) For the proper and efficient discharge of the functions of a State Bar Council or any Committee thereof, the Bar Council of India may, in the exercise of its powers of general supervision and control, give such directions to the State Bar Council or any Committee thereof as may appear to it to be necessary, and the State Bar Council or the Committee shall comply with such directions.

(2) Where a State Bar Council is unable to perform its functions for any reason whatsoever, the Bar Council of India may, without prejudice to the generality of the foregoing power, give such directions to the *ex officio* member thereof as may appear to it to be necessary, and such directions shall have effect, notwithstanding anything contained in the rules made by the State Bar Council.".

Amendment of section 49

20. In section 49 of the principal Act,—

(*a*) for clause (*a*), the following clauses shall be substituted, namely:—

"(*a*) the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council including the qualifications or disqualifications of voters, and the manner in which an electoral roll of voters may be prepared and revised by a State Bar Council;

(*ab*) qualifications for membership of a Bar Council and the disqualifications for such membership;

(*ac*) the time within which and the manner in which effect may be given to the proviso to sub-section (2) of section 3;

(*ad*) the manner in which the name of any advocate may be prevented from being entered in more than one State roll;

(*ae*) the manner in which the seniority among advocates may be determined;

(*af*) the category of persons who may be exempted from undergoing a course of training and passing an examination prescribed under clause (*d*) of sub-section (*1*) of section 24;

(*ag*). the class or category of persons entitled to be enrolled as advocates;

(*ah*) the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court;";

(*b*) for clause (*i*), the following clauses shall be substituted, namely:—

"(*i*) general principles for guidance of State Bar Councils and the manner in which directions issued or orders made by the Bar Council of India may be enforced;

(*j*) any other matter which may be prescribed:".

Insertion of new section 49A.

21. After section 49 of the principal Act, the following section shall be inserted, namely:—

Power of Central Government to make rules.

"49A. (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act including rules with respect to any matter for which the Bar Council of India or a State Bar Council has power to make rules.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) qualifications for membership of a Bar Council and disqualifications for such membership;

(*b*) the manner in which the Bar Council of India may exercise supervision and control over State Bar Councils and the manner in which the directions issued or orders made by the Bar Council of India may be enforced;

(*c*) the class or category of persons entitled to be enrolled as advocates under this Act;

(*d*) the category of persons who may be exempted from undergoing a course of training and passing an examination prescribed under clause (*d*) of sub-section (*1*) of section 24;

(*e*) the manner in which seniority among advocates may be determined;

(*f*) the procedure to be followed by a disciplinary committee of a Bar Council in hearing cases and the procedure to be followed by a disciplinary committee of the Bar Council of India in hearing appeals;

(*g*) any other matter which may be prescribed.

(*3*) Rules under this section may be made either for the whole of India or for all or any of the Bar Councils.

(*4*) If any provision of a rule made by a Bar Council is repugnant to any provision of a rule made by the Central Government under this section, then, the rule under this section, whether made before or after the rule made by the Bar Council, shall prevail and the rule made by the Bar Council shall, to the extent of the repugnancy, be void.

(*5*) Every rule 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 successive sessions, and if

before the expiry of the session in which it is so laid or the session immediately following, 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.".

Amendment of section 54.

22. In section 54 of the principal Act,—

(*i*) the words "the Bar Council of India and" shall be omitted and shall be deemed always to have been omitted;

(*ii*) the following proviso shall be inserted and shall be deemed always to have been inserted, namely:—

"Provided that such members shall continue to hold office until the State Bar Council is reconstituted in accordance with the provisions of this Act.".

Amendment of section 55.

23. In section 55 of the principal Act, for clause (c), the following clauses shall be substituted, namely:—

"(c) every mukhtar practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879, or any other law, who does not elect to be, or is not qualified to be, enrolled as an advocate under this Act; 18 of 1879

(*d*) every revenue agent practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879, or any other law;". 18 of 1879.

Amendment of section 58.

24. In section 58 of the principal Act, in sub-section (4), for the words "the issue and renewal", the words "the renewal or the issue by way of renewal" shall be substituted.

Insertion of new sections 58A and 58B.

25. After section 58 of the principal Act, the following sections shall be inserted, namely:—

Special provisions with respect to certain advocates.

"58A. (*1*) Notwithstanding anything contained in this Act, all advocates who, immediately before the 26th day of July, 1948, were entitled to practise in the High Court in Allahabad or the Chief Court in Oudh and who under the provisions of the United Provinces High Courts (Amalgamation) Order, 1948 were recognised as advocates entitled to practise in the new High Court of Judicature at Allahabad but whose names were not formally entered on the roll of advocates of that High Court merely

by reason of the non-payment of the fee payable to the Bar Council of the said High Court, and all advocates who were enrolled as such between the said date and the 26th day of May, 1952, shall, for the purposes of clause (*a*) of sub-section (*1*) of section 17, be deemed to be persons who were entered as advocates on the roll of the said High Court under the Indian Bar Councils Act, 1926 and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Uttar Pradesh.

38 of 1926.

(*2*) Notwithstanding anything contained in this Act, all advocates who, immediately before the 10th day of October, 1952, were entitled to practise in the High Court of Hyderabad but whose names were not formally entered on the roll of advocates of that High Court merely by reason of the non-payment of the fee payable to the Bar Council of the said High Court shall, for the purposes of clause (*a*) of sub-section (*1*) of section 17, be deemed to be persons who were entered as advocates on the roll of the said High Court under the Indian Bar Councils Act, 1926 and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Andhra Pradesh or of Maharashtra.

38 of 1926.

(*3*) Notwithstanding anything contained in this Act, all advocates who, immediately before the 1st day of May, 1960, were entitled to practise in the High Court of Bombay and who applied to get their names entered on the roll of advocates of the High Court of Gujarat under the provisions of section 8 of the Indian Bar Councils Act, 1926 but whose names were not so entered by reason of the repeal of the said provision shall, for the purposes of clause (*a*) of sub-section (*1*) of section 17, be deemed to be persons who were entered as advocates on the roll of the High Court of Gujarat under the said Act and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Gujarat.

38 of 1926.

(*4*) Notwithstanding anything contained in this Act, all persons who, immediately before the 1st day of December, 1961, were advocates on the roll of the Court of Judicial Commissioner in any Union territory under any law in force in that territory shall, for the purposes of clause (*a*) of sub-section (*1*) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926 and every such person may, on an application made in this behalf, be admitted as an advocate on the State roll maintained in respect of that Union territory.

38 of 1926.

Special provision relating to certain disciplinary proceedings.

58B. (*1*) As from the 1st day of September, 1963, every proceeding in respect of any disciplinary matter in relation to an existing advocate of a High Court shall, save as provided in the first proviso to sub-section (*2*), be disposed of by the State Bar Council in relation to that High Court, as if the existing advocate had been enrolled as an advocate on its roll.

(*2*) If immediately before the said date, there is any proceeding in respect of any disciplinary matter in relation to an existing advocate pending before any High Court under the Indian Bar Councils Act, 1926, such proceeding shall stand transferred to the State Bar Council in relation to that High Court, as if it were a proceeding pending before the corresponding Bar Council under clause (*c*) of sub-section (*1*) of section 56: 38 of 1926.

Provided that where in respect of any such proceeding the High Court has received the finding of a Tribunal constituted under section 11 of the Indian Bar Councils Act, 1926, the High Court shall dispose of the case and it shall be lawful for the High Court to exercise for the purpose all powers conferred on it under section 12 of the said Act as if that section had not been repealed: 38 of 1926

Provided further that where the High Court has referred back any case for further inquiry under sub-section (*4*) of section 12 of the said Act, the proceeding shall stand transferred to the State Bar Council in relation to the High Court as if it were a proceeding pending before the corresponding Bar Council under clause (*c*) of sub-section (*1*) of section 56.

(*3*) If immediately before the said date there is any proceeding in respect of any disciplinary matter pending in relation to any pleader, vakil, mukhtar or attorney, who has been enrolled as an advocate on any State roll under the Act, such proceeding shall stand transferred to the State Bar Council on the roll of which he has been enrolled and be dealt with under this Act as if it were a proceeding arising against him thereunder.

(*4*) In this section "existing advocate" means a person who was enrolled as an advocate on the roll of any High Court under the Indian Bar Councils Act, 1926 and who, at the time when any proceeding in respect of any disciplinary matter is initiated against him, is not enrolled as an advocate on a State roll under this Act. 38 of 1926.

(5) The provisions of this section shall have effect, notwithstanding anything contained in this Act.".

R. C. S. SARKAR,
Secy. to the Govt. of India.

IndiaCode

PRINTED IN INDIA BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1964

IndiaCode