



E-ISSN: 2706-8927
P-ISSN: 2706-8919
www.allstudyjournal.com
IJAAS 2022; 4(1): 166-168
Received: 19-11-2021
Accepted: 23-12-2021

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Remedies Through Writs

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Abstract

A right without remedy for the enforcement of the rights is of little avail. Therefore, rights and remedies cannot be kept in separate compartments, and it is the nature of remedy which determines the nature of the right.² The framers of the Indian Constitutions were very much conscious about the existence of rights and protection thereof as well. Arts. 32 and 226 confer very wide powers on the Courts for the enforcement of any of the fundamental rights or any other legal rights. The reasons which led the framers of the Constitution to confer the powers on the courts to issue prerogative writs is explained by the Supreme Court in the following words.

Keywords: Protection, Constitution, writs, prerogative

Introductions

A careful perusal of Arts. 32 and 226 reveals the facts that they are couched in broad language and in the absence of any express provision in the Constitution or any other law the courts had, of necessity, to look into and follow the principles governing the grants of such writs in England. In spite of this broad language, the courts are to keep, while exercising their jurisdiction, to broad and fundamental principles underlying the prerogative writs in the English Law, without importing the procedural technicalities of the writs, which had developed in England. Since we did not import procedural technicalities of the English law, the result has been that we have a sort of single remedy to control administrative action. The courts enjoy a broad discretion in the matter of giving proper relief as warranted by the circumstances of the case. The court cannot only issue writs but also make any order or give any directions as it things appropriate. It can grant declaration or injunction if that be the proper relief. It would not throw out the petition simply on the ground that the proper writs or direction has not been prayed for in practice, it has become customary not to pray for any particular writ but merely to make a general requested to the court to issue appropriate order, direction or writ.

Review of Literature

Articles 32 and 226 of the Indian Constitution make provisions for the system of writ in country. Article 32 (1) guarantees the right to move the Supreme Court, by appropriate proceedings, for the enforcement of fundamental rights enumerated in the Constitution. For this purpose the Supreme Court, has under Art. 32(2), power to issue appropriate directions or others or writs including writs in the nature of Habeas Corpus, Quowarranto, Mandamus, Prohibition and Certiorari. Art. 226 (1), empowered every High Court notwithstanding anything in Art.32, throughout the territories in relation to which it exercise jurisdiction, to issue any person or authority, including in appropriate cases, any Government, within those territories direction, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Quowarranto, Prohibition and Certiorari for the enforcement of Fundamental Rights or for any other purpose.

Under Articles, 32 and 226, the Courts enjoy a broad discretion in the matter of giving proper relief if warranted by the circumstances of the case before them. The Courts may not only issue a writ but also make any orders, or give any direction, as it may consider appropriate in the circumstances, to give proper relief to the petitioner. It can grant declaration or injunction as well if that be proper relief.

Scope of Art. 32

Art 32 provides a guarantee, quick and summary remedy for the enforcement of fundamentals right. Any person complaining of inflation of any of his fundamental rights by an

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administrative action can go straight to the Supreme Court for vindication of his right, without being required to undergo to dilatory proceedings from the lower to higher court as one has to do in any ordinary litigation. Art 32 itself is a Fundamental Right and cannot, therefore, be diluted or whittled down by legislation, and can be invoked even when a law declares a particular administrative action as final. A remarkable feature of Art 32 is that it can be invoked only when there is an administrative action in conflict with a fundamental right.

Scope of Art 226 of Constitution

Art 226 empowers the High Court to issue writs in the nature of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo-warranto or any of them for the enforcement of Fundamental Rights or "for any other purpose." The meaning of term, for any other purpose is for the enforcement of any statutory or common law rights. In the sense, the jurisdiction of the High Courts under Art. 226, is wider than that of the Supreme Court under Art. 32. Further, while the Supreme Court may not intervene to rectify error of law within its jurisdiction, the High Court may.

As regards the inter relation of Art. 32 and 226 it is to be noted that the jurisdiction of the Supreme Court is independent of, and is in no way curtailed or qualified by, the High Court's jurisdiction. Therefore, a person, complaining of an infraction of his fundamental rights may go straight to the Supreme Court for relief and he is not obliged to go to the High Court first. But if a person first approaches a High Court for relief against an infringement of a fundamental rights, and his petition is dismissed there on merits, he can go to the Supreme Court only by way of appeal, and can not seek to move that Court under Art. 32 because of the principles of res judicata. Because of its broad ambit, Art 226 services a big reservoir of judicial power to control administrative action, and hundreds of writ petitions are moved in the High Courts every year challenging this or that action of the administration. Being a constitutional provision, the ambit of Art. 226 cannot be curtailed or whittled down by legislation, and even if a statute were to declare an administrative action as final, Art. 226 could still be invoked to challenge the same would still provide a means to resort to Courts against any action of the administration.

Exhaustion of Remedies

Ordinarily, availability of an adequate and efficacious alternative legal remedy is a ground for the Court to decline to exercise its writ jurisdiction.

This is not an absolute rule and some flexibility is practiced by the Court in this matter depending upon the circumstances of the case in which the writ jurisdiction under Art. 226 has been characterised as rule of Policy, convenience and discretion rather than a rule of law. Existence of alternative remedy is not regarded per se bar to issuing a writ, and the Court is not obliged, as a rigid norm, to always relegate the petitioner to the alternative remedy. This is more a matter of the self imposed restriction by the court on themselves. In *Venkateswaran v. Wadhvani*, The Supreme Court held that, if the petitioner has lost his remedy for no fault of his own, the High Court could take cognizance of the matter Art. 226, but would not do so when he was lost his remedy through his own fault. A High Court would readily issue the writ of certiorari even without

exhaustion of alternative remedy, in case of denial of natural justice. This principle does not apply to the enforcement of Fundamental Rights either under article 32 or 226. The Supreme Court has stated in a number of cases that Art. 32 is being itself a Fundamental Rights, mere existence of an alternative legal remedy is not a good and sufficient ground for it to throw out a petition for the enforcement of Fundamental Rights. Once the Supreme Court is satisfied that the petitioner's Fundamental Right is infringed, it is not only its right, but its duty as well to afford relief to him, the issue of an appropriate writ in such a case under Art-32 is not a matter of court's discretion. It can not refuse to give relief to him, and the petitioner need to establish that he has no other adequate remedy. Similarly, it has been held that an alternative remedy is not a bar to move a writ petition in the High Court to enforce a Fundamental Right. But the court may decline to exercise its jurisdiction under Art. 226, when an alternate, adequate and efficacious legal remedy is available and the petitioner has not a valid of the same before coming to the High Court. As stated above, there is no rule of law that the High Court should not entertain a writ petition where an alternative legal remedy is available. It is always a matter of discretion of the High Court, and if the discretion is exercised by the Court not unreasonably, or perversely, it is the settled practice of the Supreme Court not to interfere the exercise of discretion.

Period of Limitation

Arts 32 and 226, do not prescribe any period of limitation. What is the measure of delay? According to the Supreme Court.

'No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favor of a party who moves if after considerable delay and is otherwise guilty of laches. That a matter which must be left to the discretion of the Court, in this matter the discretion must be exercised judiciously and reasonably'.

In *R.S. Deodhar v. State of Maharashtra* a writ petition under Art. 32 filed after ten or twelve years of the accrual of the cause of complaint was still entertained by the Supreme Court, and it was held that.

"The Court may not inquire into belated and state claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition."

Conclusion

So one main difference between two remedies is that, prohibition is used while administrative process is in motion to prevent it from proceeding further. Certiorari on the other hand is used to quash the proceedings and is therefore issued when the administrative process has ended in a decision. However, these remedies may be applied simultaneously, certiorari to quash, the proceedings, and prohibition to stop tribunal from continuing to exceed its jurisdiction.

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to these writs must govern the issue of these writs here in so far as not opposed to our Constitution."

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