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Subject- Legislative and Quasi Judicial Powers of Administration

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Topic- CONSTITUTIONAL REMEDIES

CONSTITUTIONAL REMEDIES

I) **Constitutional Remedies available against an Administrative action-** Article 32, 136, 226 and 227 of Indian constitution provide strong powers to the Courts to control the administrative authorities if they exceed their limit to do what they should do, omit or abuse the powers given to them.

Art, 32 and 226 of the constitution provide remedies by way of writs. Under Article 32 (2) the Supreme Court of India is empowered to issue appropriate directions or orders or writs, including writs in the nature of habeas corpus, certiorari, mandamus, prohibition and quo-warrant which may be appropriate. The five writs specifically mentioned in Article 32 (2) are known as prerogative writs in English law.

Article 32- Article 32 provides a “guaranteed” remedy for the enforcement of those rights, and this remedial right is itself made a fundamental right by being included in Part III. Where there is no question of the enforcement of a fundamental right, Article 32 has no application.

Article 136- Under Article 136 of the constitution, the Supreme Court is empowered to grant special leave to appeal against an order or determination of not only court of law but also of tribunal.

Article 226- Under Article 226, the High-Court are empowered to issue directions, orders or writs including writs in the nature of habeas Corpus, mandamus, prohibition certiorari and quo-warrant for the enforcement of any of the rights conferred by Part III of the constitution or for any other purpose.

Article 227- Article 227 gives powers of superintendence over all courts and

tribunal by the High-Court thought the territories in relation to which they

exercise jurisdiction

II) Difference between Article 226 and Article 32

Article 226

1. Under this Article Court may issue writs.
2. Article 226 is not fundamental right.
3. During emergency the President of India cannot suspend this Article.
4. No doubt under Article 226 High Court may issue writs. But this jurisdiction is discretionary in nature therefore writs may be refused also.
5. High Courts no doubt grant or issue writs even for the enforcement of fundamental right yet it is not obligatory for them.
6. High Courts may take into consideration of the existence of other adequate legal remedy and decline to issue a writ if there exist other adequate legal remedy.

Article 32

1. Under Article 32 Supreme Court may issue writs.
2. Article 32 is itself a fundamental right.
3. Since Article 32 itself is a fundamental right therefore President of India may suspend it.
4. Article 32 itself is a fundamental right and constitution has granted a fundamental right to move to Supreme Court in case of breach of fundamental right.
5. In case of breach of fundamental right, a person may invoke jurisdiction of Supreme Court as a matter of right.
6. The Supreme Court cannot, on the ground of the existence of an adequate legal remedy, decline to entertain a petition under Article 32 for the right to move the Supreme Court for the enforcement of the rights conferred by Part III of the Constitution is itself a guaranteed right.

Types of Writs

Habeas corpus is a Latin term and it develop out of the prerogative writ of absubjiendum which literally means to have the body” and by which the people could secure their release from illegal. The writ can be issued on the application either-

- (a) Of the prisoner himself, or
- (b) Of any person on his behalf, or
- (c) Where the prisoner cannot act, then on the application of any person who believes him to be unlawfully imprisoned.

Who can apply for the writ of Habeas Corpus- The writ of habeas corpus can be made either by the person detained or any other person provided that he is not an utter stranger, but is at least a friend or relative of the imprisoned person.

Grounds of the writ of Habeas Corpus-As stated above, the writ of habeas corpus is a process by which a person who is confined without established procedure of law may secure a release from his confinement. The following grounds to seek a remedy by way of habeas corpus-

- (i) The person must be confined;
- (ii) petition for writ of habeas corpus may be filed either by the detainee or any person who is not a stranger but is a friend or relative of the person detained
- (iii) That the detention was mollified or for collateral purpose.
- (iv) That the order is defective e.g. misdescription of detainee failure to mention place of detention etc.
- (v) That the detainer has not applied his mind in passing the order of detention.
- (vi) That the ground supplied to the detainee was vague and indefinite.
- (vii) That the detention is illegal.
- (viii) That there was delay in furnishing ground.
- (ix) That there was delay in considering the Representation.
- (x) That orders of Detention are irregular.

Refusal of the writ of Habeas Corpus

- (i) Where the prisoner is detained outside the jurisdiction of the High-Court to which the application is made, the court will refuse the writ of habeas corpus.
- (ii) Where the effect of granting the writ would be to review the judgment of a Court which is open or which shows jurisdiction on its face.
- (iii) When the detention is found legal on the relevant date, the court refused to issue the writ of habeas corpus. Jagannath Hisra and other Vs. State of Orissa.
- (iv) Where the Court is of the opinion that the order of issuing writ defeats the ends of justice.

Circumstance in which the writ of habeas does not lie- The writ of habeas corpus will not lie in the following circumstances:

- (i) The writ of habeas corpus does lie where arrest and detention not giving grounds, is confirmed by remand order of the Magistrate in case falling under section 9 of the Punjab Security of State act.
- (ii) When a person is committed to jail custody by a competent court by an order

which *pria facie* not appear to be without jurisdiction or wholly illegal.

- (iii) When all the issue of the fact can be tricks in other proceedings, the writ of habeas corpus will not lie.
- (iv) Where a person has been convicted by a duly constitute tribunal, a writ of habeas corpus will not lie for questioning the validity of such conviction.
- (v) Where a person convicted or in execution under legal process including person in execution of a legal sentence after conviction on indictment in the usual course.
- (vi) Where a person undergoing a sentence of imprisoned imposed on him by a competent court, the writ of habeas corpus will not lie.
- (vii) Where the physical restraint is put upon a person under law, no habeas corpus will lie.
- (viii) Where the petithen has been filed is seeking others available remedy.

Statutory bar to writ of habeas corpus- Article 21 is the sole repository of rights to life and personal liberty against the state. And Art 22 provides a right of protection against illegal arrest and detention. But the President of India can issue a proclamation of emergency under Article 359 of the constitution and suspend of the fundamental rights. And when fundamental rights have been suspended, the writ of habeas corpus for the enforcement of such right is also not maintainable. When the fundamental rights were suspended under the Presidential order, no writ habeas corpus will lie.

Limitations on the issue of habeas Corpus- The following are the limitations on the issue o habeas corpus-

- (i) The habeas corpus cannot be use as a device to evade the ordinary law for the review revision or appeal of a judgment under which a person is imprisoned.
- (ii) That the application should be in a proper manner.
- (iii) That generally whenever there is an adequate alternative restraint remedy, habeas corpus should not be given.
- (iv) That for the issue of habeas corpus, the wrongful restraint must exist at the when the court has to make the rule absolute for its issue.

(ii)Writ of Mandamus-

Mandamus is an order issued by the king's Bench Division of compel the performance of a public duty.

Against whom the writ of mandamus can issue- Writ of Mandamus can be issue to or against any person holding a public office, a corporation on or an interior.

Who can apply for writ of Mandamus- No one can ask for a mandamus without a legal right. The legal right must be one which is judicially enforceable and legally protected. And a person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from a dong something –**Mani Subrat Jain Vs. State of Haryana 1977.**

Grounds of the Mandamus- The writ of mandamus can be issued on the following grounds:

- (i) That the petitioner must have a legal right.
- (ii) That such right must exist on the date of the petition.
- (iii) That such a legal right of the petitioner has been infringed.
- (iv) That the infringement of such legal right has been owing to non-performance of the corresponding duty by the public authority.

- (v) That the petitioner has demanded the performance of the legal duty by the public authority and the authority has refused to act.

- (vi) That there has been no effective alternative legal remedy. And the alternative remedy need not be a statutory remedy.
- (vii) The duty imposed on the public authority must be mandatory and not discretionary.
- (viii) Where there has been abuse of power.
- (ix) Violation of statutory provisions.
- (x) Mollified exercise of power.

Grounds on which Mandamus may be refuse-

- (a) That the act against which mandamus is sought has been completed and the writ, if issued, will be infractions.
 - (b) That the petition is Premature-E.I. Commercial Co. Vs. Collector 1957.**
 - (c) When it appears that it would be futile in its result. The court will refuse the writ were no benefit could arise from granting it.
 - (d) Where there is suppression or misstatement of material facts in the petition. Ibrahim vs. High-Court Commissioner 1951.**
 - (e) Where there is an alternative remedy which is adequate to meet the needs of the case.
 - (f) Where there is a long delay on the part of the petitioner in applying for mandamus.
 - (g) Where the petition is filed to get the contract enforced by a public servant independently of any statutory duty or obligation to the petitioner.
 - (h) Where the petition is filed to seek directions for the Tribunal to decide in first instance a mixed question of law and fact.
 - (i) Writ of mandamus is refused in respect of exercise of administrative functions.
 - (j) Mandamus would not issue for correcting mere errors of law.
 - (k) Writ of Mandamus will not issue to compel a person to institute legal proceedings- Nagpur Glass Works Vs. State of M.P. 1955.**
- Mandamus will also not lie against the Governor of a State directing him to recall nomination to the Legislative Council, and forbear from giving to the nominations.

Against whom a writ of Mandamus Cannot Lie-Normally a writ of mandamus cannot issue against a private individual.

Secondly, it will lie for the interference in the internal administration of the authority.

Thirdly, against the educational body, for the decision taken by the unfair means committee of the University after giving opportunity of hearing the examinee, the writ of mandamus will not issue.

(iii) Writ of Certiorari

Definition and Nature of the writ of Certiorari-Certiorari is an order or command issued by the High-Court to an inferior court or body exercising judicial or quasi-judicial functions to transmit the records of a cause or matter pending before them the High- Court in order that its legality may be investigated and if the order of an inferior court is found to be without jurisdiction or against the principle of natural justice, it is quashed.

It enables a Superior Court, a court of record, to correct the orders and the decisions of inferior courts and inferior Tribunals discharging judicial functions.

Against whom the writ of certiorari be Issued-It is well settled that writ of certiorari be issued against-

- (i) Any judicial or quasi-judicial authority acting in judicial manner;
- (ii) Any other authority which performs judicial functions and acts in a judicial manner.

The person who can apply for the writ of certiorari- In **Charanjit Lal Vs. Union of India**, it has been that an application for the issue of writ Article 32 or 226 can only be made by the aggrieved party and not by a stranger.

Necessary conditions for the issue of the writ of Certiorari- Writ of certiorari is issued when anybody or person-

- (a) Having legal authority,
- (b) To determine questions affecting rights or subjects,
- (c) Having duty to act judicially, either
 - (i) Acts in excess of its legal jurisdiction; or
 - (ii) Commits an error apparent on the face of the record or (iii) Acts in violation of the principles of natural justice.

Grounds of writ of Certiorari- The writ of certiorari can be issued on the following grounds:

- (a) That the impugned order is vitiated by error of want of jurisdiction, which includes-
 - (i) Excess of jurisdiction
 - (ii) Abuse of jurisdiction
 - (iii) Absence of jurisdiction.
- (b) That there was an error of law apparent on the face of the record and
- (c) That there had been a violation of principles of natural justice.

Grounds of refusal of the writ of certiorari- The writ of certiorari may be refused on the following grounds:

- (i) Where alternative remedy not availed.
- (ii) Futile writ-Where the writ is futile, it will be refused.

(iv) The writ of Prohibition

In the words of Prof. A.T. Markos:

“Prohibition is a judicial writ issued from a superior jurisdiction to an ecclesiastical or similar tribunal or an inferior temporal court including under the latter description, administrative authorities having a duty imposed on them to proceed judicially to prevent those tribunals from continuing their proceeding in excess of or abuse of their jurisdiction in violation of the rule of natural justice or in contravention of the laws of the land.

The writ of prohibition lies only when the inferior court or tribunal has not made a decision where as the writ of certiorari lies when the court or tribunal has made a decision.

Grounds for the writ of Prohibition

- (i) Absence of jurisdiction or excess of jurisdiction

- (ii) Violation of the Principles of Natural justice.
- (iii) Infringement of the Fundamental Rights.
- (iv) Contravention of the law of the land
- (v) Fraud.

Against whom the writ of Prohibition lies- The writ of Prohibition, like certiorari lies only against the judicial and quasi-judicial authorities. A writ of Prohibition can issue only in a case in which certiorari can be issued. In other words, the writ of Prohibition lies against-

(i) Judicial authorities; or

(ii) Quasi-judicial; or

(iii) Statutory body having judicial powers.

(v) The writ of Quo-warrant

The quo-warrant proceedings afford judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty. If the inquiry leads to the finding that the holder of the office has not valid title to it, the issue of the writ of quo-warrant ousts him from the office.

Who can apply for the writ of quo-warrant –information in the nature of quo-warrant would lie even at the instance of a relation who is not personally interested in the matter nor affected by the illegal assumption of the office by the opposite party.

Condition when the writ of quo-warrant will not lie–As state above, the writ of quo-warrant is discretionary in nature, the petitioner is not necessarily entitled to the issue of a writ. The writ of quo-warrant will not lie in the following cases;

(i) The writ of quo-warrant will not lie in respect of an office of a private nature.

(ii) Where there is acquiescence on the part of the petitioner, the writ of quo-warrant will not lie

(iii) When the office is abolished, no information in the nature of quo-warrant will lie.

(iv) Where it will be vexatious, the High-Court shall in 'its' discretion refuse to issue a writ of quo-warrant –**Bari Nath Vs. State of U.P.1965.**

(v) When the application for quo-warrant is a belated one 1964.

(vi) The writ of quo-warrant may also be refused if there is an adequate alternative remedy.

(vii) Where it will be futile.

(viii) The writ of quo-warrant will not lie in case of mere irregularity.