Course Name - B.A.LL.B 4TH sem/
LL.B 2nd sem

Subject - Constitution of India

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Concept - Jurisdiction of H.C

Introduction

The High Court is the highest court in a state in India. Articles 214 to 231 in the Indian Constitution talk about the High Courts, their organisation and powers. The Parliament can also provide for the establishment of one High Court for two or more states.

For instance, Haryana, Punjab and the Union Territory of Chandigarh have a common High Court. The northeastern states also have one common High Court. In addition, Tamil Nadu shares a High Court with Puducherry. Currently, there are 25 High Courts in India.

The High Courts of Calcutta, Madras and Bombay were established by the Indian High Courts Act 1861.

High Court Jurisdiction

The various kinds of the jurisdiction of the High Court are briefly given below:

Original Jurisdiction- All H.C's have original jurisdiction in relation to violation of Fundamental Rights.

Appellate Jurisdiction

- **In civil cases:** an appeal can be made to the High Court against a district court's decision.
- An appeal can also be made from the subordinate court directly, if the dispute involves a value higher than Rs. 5000/- or on a question of fact or law.
- **In criminal cases:** it extends to cases decided by Sessions and Additional Sessions Judges.
    - If the sessions judge has awarded an imprisonment for 7 year or more.
    - If the sessions judge has awarded capital punishment.

The jurisdiction of the High Court extends to all cases under the State or federal laws.

In constitutional cases: if the High Court certifies that a case involves a substantial question of law.

Court of Record

- High Courts are also Courts of Record (like the Supreme Court).
- The records of the judgments of the High Courts can be used by subordinate courts for deciding cases.
- All High Courts have the power to punish all cases of contempt by any person or institution.

Administrative Powers

1. It superintends and controls all the subordinate courts.
2. It can ask for details of proceedings from subordinate courts.
3. It issues rules regarding the working of the subordinate courts.
4. It can transfer any case from one court to another and can also transfer the case to itself and decide the same.
5. It can enquire into the records or other connected documents of any subordinate court.
6. It can appoint its administration staff and determine their salaries and allowances, and conditions of service.

Power of Judicial Review

High Courts have the power of judicial review. They have the power to declare any law or ordinance unconstitutional if it is found to be against the Indian Constitution.

A person whose right is infringed by an arbitrary administrative action may approach the Court for appropriate remedy. The Constitution of India, under Articles 32 and 226 confers writ jurisdiction on Supreme Court and High Courts, respectively for enforcement/protection of fundamental rights of an Individual. Writ is an instrument or order of the Court by which the Court (Supreme Court or High Courts) directs an Individual or official or an authority to do an act or abstain from doing an act.

Article 32(2) of the Constitution of India provides:'' The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of rights conferred by this part".

Article 32 is a fundamental right under Part -III of the Constitution. Under this Article, the Supreme Court is empowered to relax the traditional rule of Locus Standi and allow the public interest litigation (PIL) at the instance of public-spirited citizens. The Supreme Court can provide relief to various types of litigants such as bonded labour, undertrial prisoners, victims of police torture etc. The Supreme Court may also award exemplary damages by exercising its power under Article 32 as it has imposed in Bhim Singh's and Rudal Shah's cases.

Article 226(1) of the Constitution of India, on the other hand says," Notwithstanding anything in Article 32, every High Court shall have powers, throughout the territories in relation to which it

exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."

As is clear from the bare language, this Article guarantees an individual to move the High Court for enforcement of the fundamental rights as well as for any other purpose also i.e. for enforcement of any other legal right. Article 226 confers wide powers on the High Courts. It serves as a big reservoir of judicial power to control administration. Its power under Article 226 cannot be curtailed by legislation. Thus powers of High Courts conferred under Article 226 are wider as compared to powers conferred on the Supreme Court under Article 32 of the Constitution of India.

Both the Articles 32 and 226 provide five types of writs namely writ of habeas corpus, mandamus, prohibition, certiorari and quo-warranto. These are known as prerogative writs in English Law because they had originated in the King's prerogative power of superintendence over the due observance of law by his officers and tribunals. The prerogative writs are extra-ordinary remedies intended to be applied in exceptional cases in which ordinary legal remedies are not adequate.

Habeas Corpus

The expression "Habeas Corpus" is a Latin term which means 'to have the body'. If a person is detained unlawfully, his relatives or friends or any person can move the Court by filing an application under Article 226 in High Court or under Article 32 in Supreme Court for the writ of Habeas Corpus. The Court on being satisfied with the contents of the application, issues the writ. This writ is in the nature of an order calling upon the person who has detained another to produce the latter 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 confinement. The Court may also award exemplary damages. In Bhim Singh Vs State of Jammu& Kashmir, AIR 1986 SC 494, the Hon'ble Apex Court awarded the exemplary damages of Rs.50,000/-(At that time this was a very significant amount).

An application for habeas corpus can be made by any person on the behalf of the prisoner/detenu as well as the prisoner/detenu himself. Even a letter to the judge mentioning illegalities committed on prisoners in jail can be admitted. In Sunil Batra Vs Delhi Administration, AIR 1980 SC 1579, a convict had written a letter to one of the Judges of the Supreme Court alleging inhuman torture to a fellow convict. The late justice Krishna Iyer treated this letter as a petition of habeas corpus and passed appropriate orders. Courts can also act suo motu in the interests of justice on any information received by it from any quarter/source. The general principle is that a person illegally detained in confinement without legal proceedings is entitled to seek the remedy of habeas corpus.

However, the writ of habeas corpus is not issued in the following cases:
(i) Where the person against whom the writ is issued or the person who is detained is not within the jurisdiction of the Court.
(ii) To secure the release of a person who has been imprisoned by a Court of law on a criminal charge.
(iii) To interfere with a proceeding for contempt by a Court of record or by Parliament.

Thus writ of habeas corpus is a bulwark of personal liberty. I has been described as "a great constitutional privilege" or " first security of civil liberty". The most characteristic element of the writ is its peremptoriness i.e. a speedy and effective remedy for having the legality of detention of the person enquired and determined by the Court.

Mandamus:-

The expression 'Mandamus' is a Latin term which means " We Command". Mandamus is a Judicial order issued in the form of a command to any

Constitutional, Statutory or Non-Statutory authority asking to carry out a public duty imposed by law or to refrain from doing a particular act, which the authority is not entitled to do under the law. It is an important writ to check arbitrariness of an administrative action. It is also called 'Writ of Justice'

Mandamus demands some kind of activity on the part of the body or person to whom it is addressed. Thus, when a body omits to decide a matter which it is bound to decide, it can be commanded to decide the same. Where the Government denies to itself a jurisdiction which it has under the law or where an authority vested with the power improperly refuses to exercise it, mandamus can be issued. Thus, mandamus will not be issued unless the applicant has a legal right to the performance of legal duty of a public nature and the party against whom the writ is sought is bound to perform that duty.

The rule of Locus Standi is strictly followed in while issuing writ of mandamus. The petitioner has to prove that he has a right to enforce public duty in his favour. The petitioner can approach the High Court or Supreme Court for issuing the writ of mandamus on the following grounds:-

(i) Error of jurisdiction;
(a) Lack of jurisdiction
(b) Excess of jurisdiction

(ii) Jurisdictional facts;
(iii) Violation of the principles of natural justice i.e. principles of Rule against bias and Rule of Audi alterem partem;
(iv) Error of law apparent on the face of record

(v) Abuse of jurisdiction

It is a discretionary remedy and the High Court may refuse to grant mandamus where an alternative remedy is available for the redressal of the injury complained of. In the matter of enforcement of fundamental rights, however, the question of alternative remedy does not weigh so much with the Court since it is the duty of the High Court or the Supreme Court to enforce the fundamental rights. In India, mandamus will lie not only against officers who are bound to do a public duty but also against the Government itself as Article 226 and 361 provided that appropriate proceedings may be brought against the Government concerned. This writ is also available against inferior Courts or other Judicial bodies when they have refused to exercise their jurisdiction and thus to perform their duty

Further, 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 of his Office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.
(ii) Mandamus does not lie against a private individual or body whether incorporated or not except where the State is in collusion with such private party, in the matter of contravention of any provision of the Constitution or a Statute or a Statutory instrument.
(iii) It will not lie against the State legislature to prevent from considering enacting a law alleged to be violative of constitutional provisions.
(iv) It will not lie against an inferior or ministerial officer who is bound to obey the orders of his superiors
Thus, Writ of Mandamus is a general remedy whenever justice has been denied to any person.

C) Prohibition:-

The expression ‘prohibition’ literally means ‘to prohibit’. The Writ of Prohibition is a Judicial order issued by the Supreme Court or a High Court to an inferior Court or quasi-judicial body forbidding the latter to continue proceedings therein in excess of its jurisdiction or to usurp a jurisdiction with which it is not legally vested. Thus, object of the writ is to compel inferior courts to keep themselves within the limits of their jurisdiction.

Earlier, this writ was used to issue only to judicial and quasi-judicial bodies. But such requirement is no longer valid. With the expanding dimensions of natural justice and the requirement of fairness in administrative functions, the rigidity about prohibition has been liberalized. This writ can now lie to anybody, irrespective of the nature of function exercised by it, if any of the grounds on which the writ is issued is present.

The writ of prohibition can be issued on the following grounds:

(i) Absence or Excess of jurisdiction;

(ii) Violation of the principles of natural justice;

(iii) Unconstitutionality of a Statute;

(iv) Infraction of Fundamental Rights

Thus, writ of prohibition is available during the pendency of the proceedings and before the order is made. The object is to secure that the jurisdiction of an inferior court or tribunal is properly exercised and that it does not usurp the jurisdiction which it does not possess.

D) Certiorari:-

The expression “ certiorari” is a Latin word which means “ to certify”. This writ confers power on the Supreme Court and High Courts to correct illegality of their decisions. ‘Certiorari’ is a judicial order issued by the Supreme Court under Article 32 and/or by the High Court under Article 226 of the Constitution to an inferior Court or quasi-judicial or any administrative body to transmit to the Court of records of proceedings pending therein for scrutiny and decide the legality and validity of the orders passed by them. If the decision is bad in law, it is quashed.

The conditions necessary for the issue of the writ of certiorari are:-

(i) Any body of persons;

(ii) Having legal authority;

(iii) To determine questions affecting the rights of subjects;

(iv) Having the duty to act judicially;

(v) Act in excess of legal authority

The grounds on which the writ of certiorari may be issued are:

(a) Error of Jurisdiction

(i) Lack of jurisdiction

(ii) Excess of jurisdiction

(b) Abuse of jurisdiction

(d) Error of law apparent on the face of the record

(e) Violation of principles of natural justice

The purpose of the writ of certiorari is not only negative in the sense that it is used to quash an action but it contains affirmative action as well. It is preventive as well as curative in nature. The power of judicial review is not restricted where glaring injustice demands affirmative action.

In A.K. Kripak Vs Union of India, AIR 1970 SC 150, the Supreme Court issued the writ of certiorari to quash the selection list of the Indian Forest Service on the ground that one of the selected candidates was the ex-officio member of the selection committee.

E) Writ of Quo Warranto:- The Writ of 'Quo Warranto' questions the title as to the holder of an office. The term 'Quo Warranto' means 'what is your authority ' It is a judicial order asking a person, who occupies public office, to show by what authority s/he holds the office. If it is found that the holder of the office has no valid title, then this writ is issued to him to oust from the office.

Thus writ of Quo Warranto is a mode of judicial control in the sense that the proceedings review the actions of the administrative authority which appointed the person. The writ is issued to the person ousting him from holding a public post to which he has no right. It is used to try the civil right to a public post. Accordingly, the use of the writ is made in cases of usurpation of a public office and removal of such usurper. Conversely, it protects citizen from being deprived of public office to which he may have a right. A petition for the writ of Quo Warranto can be filed by any person though he is not an aggrieved person.
The conditions necessary for the issue of a writ of Quo Warranto are:
(i) The office must be public and it must be created by a statute or by the constitution itself.

(ii) The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another.

(iii) There has been a contravention of the Constitution or a statute or statutory instrument, in appointing such person to that office.

The fundamental basis of the proceeding of Quo Warranto is that the public has an interest to see that an unlawful claimant does not usurp a public office. It is, however, a discretionary remedy which the Court may grant or refuse according to the facts and circumstances of each case. Thus, it may be refused when it is vexatious or where it would be futile in its result or where the petitioner is guilty of laches or where there is an alternative remedy for ousting the usurper. In P.L. Lakhan Pal Vs A.N.Ray, AIR 1975 Del.66, the Delhi High Court refused to issue writ against Chief Justice of India, Justice Ray because it would be futile in its result as the three Judges senior to him already resigned. Justice Ray becomes the seniormost and as such can be re-appointed even it were assumed that the appointment of Chief Justice of India should be on the basis of seniority rule.

Conclusion: Thus it is clear that vast powers are vested with the Judiciary to control an administrative action when it infringes fundamental rights of the citizens or when it goes beyond the spirit of Grundnorm of our country i.e Constitution of India. It ensures the Rule of Law and proper check and balances between the three organs of our democratic system.The philosophy of writs is well synchronized in our Constitutional provisions to ensure that rights of citizens are not suppressed by an arbitrary administrative or Judicial action.

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