Philosophical foundation and present scenerio law constitutional administrative e...

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TOPIC: " Writ Jurisdiction: Philosophical Foundation and present scenerio"

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TABLE OF CONTENT

Contents

Table of Cases

Ashok Kumar Pandey v. State of W. B27BALCO Employess’s union v. union of India25Bandhua mukti morcha V. union of india27Bandhua Mukti Morcha V. Union of India28Bishan Das v State of Punjab6, 7Chiranjit Lal v. Union of India23D. C. Wadwa V. State of Bihar28Daryao v State6DAV College V state of Punjab23Devraj v. UOI13Dwarka Nath V. ITO17, 18Election commission v. Venkata Rao, 9Express Newspaper v Union of India7I. R. C. v Federation of Self-Employed2IB. Singh v. Union of India27Janata Dal v. H. S chowdhary25Janata Dal V. H. S Chowdhry28Janata Dal v. H. S. Chowdhary25K. R. Shenoy V. Udipi Municipal Council27Khajoor singh v. SDO, Khurja11Kochuni v State of Madras6Light Rly. Co. v. Indutrial tribunal13M. C Mehta V. Union of India27Manjula v. Pilay12Masthana sahib v. Chhief Comm. Pondichery9Mohd. Yasin v Town Area Committee10Nomani v Banwarlal5Official trustee, W. B v. Sachinandra Nath8Rai singhani v.

UOI13Raja soap factory v. santharaj8Raunaq Ltd. v. I. V. R. Construction Ltd26Ryots of Gorabandhu v Raja of Parla Kimedi5S. P. Gupta V Union of India27Somawanti v State of Punjab6State of H. P v. parent of student medical college26UP Electricity Supply co. v. Industrial Tribunal12

INTRODUCTION

Writs- meaning: " Etymologically the word writ means a written order. However, a writ is a remedial right for enforcement of the substantive rights. In England, the writs are issued by crown as the head of judicial system. There was no statutory source and the crown issued it by virtue of his " Prerogative". So, it was called in England prerogative writs namely, the writs of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto."[1]

WRITS IN GREAT BRITAIN

These writs are called prerogative writs in England Common Law as distinguished from " writs of right", such as, writ of summons which can be obtained by a suitor as a matter of right to commence a civil action in ordinary court of law. In England prerogative writ is issued only on some probable cause being shown to the satisfaction of the court why this extraordinary power of the Crown was called for to party’s assistance. Even though in England, there is no written constitution and the individual rights are not guaranteed by the Constitution as in India as the constitution of India guarantees certain rights are fundamental rights, yet even without declaration that they are fundamental , those individual rights are safeguard by means of prerogative writs. However, even in England due to tremendous increase of number of administrative bodies, since the Second World War,

leading to a greater interference with the rights of ordinary citizens, the law relating to judicial control over the administrative bodies has to be relaxed and many technical rules relating to the prerogative writs have been abandoned or modified so that the High Court can give greater Judicial relief in a larger number of cases.[2]By the Administrative of Justice (Miscellaneous Provision) Act 1938, the old and archaic procedure for issue of prerogative writs have been done away with it and instead of a simpler, cheaper and more expeditious procedure has been adopted. The Act provides that instead of " writs", orders in the nature of Mandamus, Prohibition and Certiorari shall be issued by the High Court and instead of writ Quo Warranto, the High Court would be entitled to issue injunction against the usurper to the office in question instead of asking him as to under what authority he is holding the office. But it is observed by Halsbury[3]that all these changes are , only in the form of procedure and these substitute orders will be issued in the same circumstances and on the same principles on which the old prerogative writs were issued. Thereafter, the Rules of Supreme Court 1977 which have later been codified with some modifications in the Supreme Court Act 1981 have made some procedural changes in the matter of issue of writs. They are as follows-(1) Reliefs by way of Mandamus, Prohibition, Certiorari, declaration and injunction have been joined together under the general head " judicial review" and for this an application lies in which claim of any or all of these reliefs in alternative or in addition to other relief arising out of the same matter may be filed. Because of this change no writ will fail on the technical preliminary grounds namely. As to whether the applicant has asked for appropriate writ.(2) Second important change in the procedure is that an

application for judicial review cannot be entertained except by leave of the court and unless the court considers that the applicant has " sufficient interest". In view of this codified expression of " sufficient interest" it has been possible for the court to widen the rules related to locus standi by making liberal interpretation of the expression " sufficient interest" and old theory locus standi has to some extent modified. Under the old concept of locus standi under the general principle relating to prerogative writ prior to 1977 Supreme Court Rules was that the applicant in a writ of Mandamus had to show that he had a specific right to ask for interference of the court, whereas the writ relating to Certiorari was more liberal and in such case " person aggrieved" had the extended meaning in which even strangers were allowed to apply in cases of vindication of public wrong or for enforcement of public right. These enlarged rules relating to Certiorari has been extended under the rules of the Supreme Court, to all remedies, including that of Mandamus in the realm of public law.[4]Therefore, Lord Diplock. In IRC v Federation of Self-employed has rightly observe-" It would, in any view. Be great lacuna in our system of public law if a pressure group-or even a single public spirited tax-payer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate from law and get the unlawful conduct stopped"[5]

LAW WRITS IN USA

The colonists from England settled in America brought with them the English Common Law and they were quite familiar with the use by their courts of " prerogative writs ". So the framers of constitution of USA assumed the existence of these prerogative writs and they wanted to safeguard those

writs from out of control of the Executive and Legislature. So, it was engrafted in Art. 9(2) of the Constitution safeguarding the writs of Habeas Corpus except in national emergencies, assuming that it was available without any constitutional guarantee . So far as other prerogative writs, there was no question of their suspension even in National emergencies. As regards the enforcement of the writs, the US constitution did not provide any remedy in the Constitution itself and for this purpose the Judiciary Act 1789 was passed Section 14 of that empowered all courts of United Nations " to issue writs of acire facias, Habeas Corpus, and all other writs nit specially provided for by the statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usage of law."

HISTORY OF WRITS IN INDIA-PRIOR TO CONSTITUTION

By the charters of the three Supreme Courts created in the presidency towns Calcutta, Bombay and Madras in pursuance of Regulating Act 1773 these three Supreme Courts of Calcutta, Bombay and Madras were vested with the powers of the court of King’s Bench which included the powers to issue prerogative writs. As successors of the Supreme Courts, the above three High Courts established in the presidency towns of Calcutta, Bombay and Madras established by the Charter Act 1861 inherited the powers of the Supreme Courts to issue three prerogative writs within the limits of their presidency towns, but they could not issue writs to persons, authorities or tribunals residing or situated outside the limits of the respective presidency towns.[6]Other High Courts had no power to issue writs at all prior to enforcement of Indian Constitution.[7]

INDIAN CONSTITUTION

ARTICLE 32

The Indian Constitution which was adopted and enacted on 26th day of November 1949 and has come into force on 26th January 1950 has not only in Part III of the Constitution has enumerated the fundamental or basic rights and has also made the remedial right for enforcement of such fundamental rights by issuing of writ itself a guaranteed fundamental right in Art 32(1) of the Constitution by declaring that the Right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part(i. e. Part III) is guaranteed[8]. The enforcement of such rights is by way of issuing directions or orders or writs including writs in nature of Habeas Corpus, Mandamus, Certiorari, whichever may be appropriate for enforcement of any of the rights conferred by Part III of the Constitution. About a century ago Dicey in Constitution Law has made it clear that abstract declaration of rights are of little value unless there are definite means machinery for which rights in case of any of those rights are violated by state or its officials can be enforced. He has expressed the view that even when such rights were guaranteed by a written constitution, such as, as in USA what is more important is not the declaration of the Rights as in Bill of Rights, but the means for enforcing those under the American Constitutional System.[9]The remedy in American system of Constitutional Law is provided by the Judiciary Act 1789, whereas in India it is provided in the highest Court of land i. e. Supreme Court under Art. 32(1) and the remedy itself is a guaranteed fundamental right which in Constitution Law is known as remedial fundamental right. Such remedial fundamental rights cannot be

suspended except as provided by the Constitution itself Art. 359 i. e. during emergency. As it is guaranteed fundamental right, it cannot be whittled down by any legislative enactment short of an amendment of the Constitution made in accordance with the procedure laid down in Art. 368 of the Constitution. By invoking that power the Indian Parliament only in one occasion by Fort-Fourth Amendment Act of 1978, with effect from 20th June 1979 the " the right of property" has been deleted from the purview of the fundamental right by deleting cl. (f) Art. 19 and Art. 31 of the Constitution. As judicial review is the basic structure of the Constitution any law which renders nugatory or aaillusory the exercise of power of the structure Supreme Court under Art. 32 of the Constitution is void except when the constitution itself shields ant law from challenge on the ground of violation of a fundamental right.[10]As the right to move to Supreme Court in violation of fundamental right is itself a fundamental right, the Supreme Court is constituted as the protector and guarantor of fundamental rights and it is the duty of the Supreme Court to grant relief under Art. 32 of the constitution when the existence of the fundamental right and its breach, actual or threatened. Is prima facie established, however, laudable the object of the respondent may be.[11]

ARTICLE 226 OF THE CONSTITUTION

Over and above this power of the Supreme Court under Art. 32 of the Constitution which is itself a fundamental right, all the High Courts in India have been empowered to issue directions, order or writs, including the writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari or any of them, for the enforcement of the rights conferred by Part

III and for any other purpose.[12]This power extends to issue such directions, orders or prerogative writs to any person or authority including the Government within their territorial jurisdiction. This power to issue writs and orders under Art. 226 of the Constitution belongs not only to three High Courts of Presidency Town of Calcutta, Bombay and Madras but also to all High Courts established in India within the meaning of Art. 214 of the Constitution. Even though not a fundamental right, Art. 226 of the constitution being a power granted by the constitution is not fettered by anything contained in any statutory provision. The power under Art. 226 as of Supreme Court under Art. 32(1) is not to issue the English prerogative writs but also to issue directions, orders or writs in the nature thereof. Moreover, over and above the enforcement of the fundamental rights the High Court has also the power to issue orders or writs in favor of any person, if he has a legal right and that the right has been illegally invaded or threatened. The expression " for the enforcement of any of the rights conferred by Part III and for and for any other purpose" has expanded the jurisdiction of the High Court so that it cannot only protect the fundamental rights but also any legal right of the petitioner if invaded or threatened to be invaded. Even such legal Right which can be protected by the High Court may be possessory right which is entitled to protection under s. 9 of the Specific Relief Act in the absence of any better title.[13]From this it follows that the general rule is that a person in lawful possession could not be ousted by the State without any due process of law unless it could point out some Specific provisions of law which authorized the state to recover possession without such process of law.[14]If writs of the constitution are not

provided people will have to subject themselves to the loss of valuable rights before the constitutionality of the Act of a government is tested in a suit, which might take years to be finally decided. It is also of the highest importance that the question whether a law is valid or not must be decided at the earliest moment. Any uncertainty about its validity will lead to great hardships. The object of the fundamental law will be frustrated if people have to serve sentences, pay fines or deny themselves the privileges given by the constitution for a long time under an invalid law. Without such prompt remedies election law may be so narrowed down as endanger free election and thereby suppress democracy. Lastly, if the constitutional rights and the power to punish disobedience of the court's order in contempt proceedings are not given by constitutional law, the state law may alter the effect of the fundamental rights to such an extent as to make them ineffective. Without such prompt machinery of enforcement, therefore, the Union and State Governments might conceivably lapse into a programmed inimical to freedom. The existence of a legal right in the constitution must necessarily imply a right in the individual to intervene in order to make the legal right effective. The writs of Mandamus in its English form, the writs of Prohibition, Certiorari, Quo Warranto and Habeas Corpus, and the power to commit the offenders for contempt of courts must therefore appropriately form part of this chapter.

TERRITORIAL JURISDICTION

GENERAL

Jurisdiction may be defined to be the power of authority of a court to hear and determine a cause, to adjudicate and exercise any judicial power in

relation to it. In other words, by jurisdiction is meant the authority which a court has to decide matters that are litigated before it to take cognizance of matters presented in a formal way for its decisions.[15]Thus, jurisdiction of a court means the extent of the authority of a court to administer justice prescribed with reference to the subject –matter, pecuniary value nad local limits.[16]Here we are concerned with the territorial jurisdiction of the Supreme Court and High Court to issue directions, orders or writs under article 32 and 226 of the constitution. India has a written constitution. Territorial jurisdiction of the supreme court and of the High Court has been define and dealt with in article 32 and 226 respectively.

TERRITORIAL JURISDICTION OF SUPREME COURT:

The powers of the supreme court under article 32 of the constitution are not circumscribed by any territorial limitation. It extends not merely over every authority with in the territory of India but also those functioning outside, the country, provided that such authorities are under the control of the government of India. However, the power conferred on the supreme court by part III of the constitution has to read in the conjunction with Article 142 of the constitution, which brings in a limitation as regards the territory in which the orders or directions of the Supreme Court could be enforced. There is really a anomaly or a discordance between the power of the Supreme Court under Article 32 read with 142 and the executability and the enforceability of its order under Article 142. In such a situation much would depend on the matter of the authority against whom the writ has to be directed, which is under the control of the government of India but functioning outside the territory of India. If the order was of an executive or administrative nature ,

relief could be granted to the petitioner under Article 32 by passing suitable orders against the government of Indian directing then to give effect to the decision of the Supreme Court by exercising their powers under Article 142 and 144[17]. However, if the order is of quasi-judicial nature, resort to the above procedure is not possible and the orders or direction of the Supreme Court could not be directly enforced.[18]

TERRITORIAL JURISDICTION OF HIGH COURT

Article 226 as its originally stood had two fold limitation on the jurisdiction of High Courts with regard to their territorial jurisdiction. Firstly, the power could be exercised " through the territories in relation to which it exercises jurisdiction", that is to say, the writs issued by the court cannot run beyond the territories subjected to its jurisdiction. Secondly the person or authority to whom the High Court is empowered to Issue such writs must be within those territories, which clearly implied that they must be amenable to its jurisdiction by residence or location within those territories.[19]

DIFFERENCE BETWEEN WRIT JURISDICTION OF SUPREMM COURT AND HIGH COURT.

The Supreme Court issues the Writ (under Art. 32) only in cases of the violation of the Fundamental Rights, whereas the High Courts (under Art. 226) can issue the writs not only for the enforcement of the Fundamental Rights but also for redressal of any other injury or illegality, provided certain conditions are satisfied. Thus in a way, the writ jurisdiction of the High Court is wider than the Supreme Court. Art. 32 imposes on the Supreme Court a duty to issue the Writs, whereas no such duty is imposed on the High Court by Art. 226. The jurisdiction of the Supreme Court extends all over the

country, whereas that of the High Court only to the territorial confines of the particular state and the Union Territory to which its jurisdiction extends. Article 226 of the Constitution of India is a discretionary remedy and the High Court has always the discretion to refuse to grant such a relief in certain circumstances even though a legal right might have been infringed. Availability of an alternative remedy is one of such considerations which the High Court may take into account to refuse to exercise its jurisdiction, but this principle does not apply to the enforcement of fundamental rights either under Article 32 or under Article 226 of the Constitution.[20]The Supreme Court in Mohd. Yasin v Town Area Committee[21]held that " an alternative remedy is not a bar to move a writ petition in the High Court to enforce a fundamental right. This is the only exception" In all other cases where no fundamental right is involved, it has been ruled that the High Court would not exercise its jurisdiction under Article 226 when an alternative, adequate, and efficacious legal remedy is available and the petitioner has not availed of the same before coming to the High Court. Of course, Article 226 is silent on this point; it does not say in so many words anything about this matter, but the Courts have themselves evolved this rule as a kind of self imposed restriction on their jurisdiction under Article 226.[22]

EFFECT OF SUPREME COURT DECISIONS

The net effect of the about decisions was that no high court other than the high court of Punjab before the constitution of the high court of Delhi had, no high court other than the high court of Delhi after the constitution of that high court had jurisdiction to issue any direction, order or writ to the union of India, because the seat of the government of India is located in new Delhi.

The situation cause great hardship and inconvenience to the persons deciding far away from Delhi even if they were aggrieved by some order passed by UOI and if their grievances were well founded. But as observe as Khajoor singh v. SDO, Khurja[23], the court didn’t ignore the express provision contained in the constitution, however the that may be a reason for making a suitable constitutional amendment in article 226.

OBJECT OF AMENDMENT

As discussed above the Supreme Court has held that the course of action was not at all relevant for the purpose on conferring jurisdiction of high court under Article 226 as it originally stood. The attempt to import the said concept by certain high courts was repealed by the SC. The only remedy according to the Sc was amendment in the constitution and accordinly by the constitution(15th amendment) Act, 1963, after clause (1), new clause (1-A), [renumbered as clause (2) by the constitution (42 nd amendment) Act, 1976] was added which read as under : 2. " The power conferred by clause 1 to issue direction orders or writs to any government, authority a person may also be exercise by any high court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such government or authority or the residence of the such person in not within those territories[24]". The underline object of the amendment was expressed in following words: Under the existing article 226 of the constitution the only High Court which has jurisdiction with respect to the central government is the Punjab High Court. This involve considerable hardship to litigants from different distinct places.[25]It is, therefore, proposed to amend article 226.

so that when any relief is sought again any government, authority or person for any action taken, the High Court within whose Jurisdiction the cause of action arises may also have jurisdiction to issue appropriate direction, orders or writs.[26]

EFFECT OF AMNEDMENT

The effect of the amendment is that it made the accrual of course of action and additional ground to confer jurisdiction to High Court under article 226. As joint committee observe: This clause will enable the high court within whose jurisdiction the cause of action arises to issue direction, orders or writs to any government, authority or person, notwithstanding that the seat of such government or authority or the residence of such person is outside the territorial jurisdiction of the high court.[27]The committee fells that the High Court within whose jurisdiction the cause of action arises in part only should also we vested with such jurisdiction[28]

TERRITORIAL JURISDICTION UPHELD: ILLUSTRARTIVE CASES:

In the following cases territorial jurisdiction of the High Court to entertain, deal with and decide petition under Article 226 of the constitution had been upheld. when a reference has been made by the Gov. of UP to the industrial tribunal and summons has been served on a party residing at Calcutta, the high court of Calcutta has jurisdiction to Issue writ against the Gov. of UP[29]when a person has been initially detain in Gujarat and during the continuance of the detention, the fresh order was served on him and the detention was continues in Rajasthan, the High Court of Gujarat has jurisdiction to issue a writ of Habeous Corbus since part of cause of an action

(initial detention) accrued in Gujarat.[30]Some of the hearing of industrial tribunal on a reference made at Delhi, took place in Delhi, a no. of workman concerned with the reference state in Delhi and the award of the tribunal was also published in Delhi. Therefore, a part of cause of action has arisen in Delhi against the award was clearly maintainable.[31]If an order is passed by an authority in state A but the said order is served in state B, the High Court in State B also has jurisdiction to decide the validity or otherwise the of the said order since part of the cause of the action has arises within the territorial jurisdiction of the High Court[32]. A central Gov. employees serving in H. P was removed by the Gov. of India. The High Court of H. P. has jurisdiction to entertain the petition against the said order[33]TYPE OF WRITSWrits are meant as prerogative remedies. The five writs incorporated under articles 32 and 226 are known as prerogative writs in English law because they were originated in the king's prerogative power of superintendence over the due observance of law by his officers and tribunals. Such prerogative writs are extraordinary remedies. When ordinary legal remedies seem inadequate, in exceptional cases, writs are applied.

Habeas Corpus

The meaning of the Latin phrase Habeas Corpus is 'have the body'. According to article 21, " no person shall be deprived of his life or personal liberty except according to the procedure established by law".[34]The writ of Habeas Corpus is in the nature of an order directing a person who has detained another, to produce the latter before the court in order to examine the legality of the detention and to set him free if there is no legal justification for the detention.[35]It is a process by which an individual who

has been deprived of his personal liberty can test the validity of the act before a higher court.[36]The objective of the writ of Habeas Corpus is to provide for a speedy judicial review of alleged unlawful restraint on liberty.[37]It aims not at the punishment of the wrongdoer but to resume the release of the retinue.[38]The writ of Habeas Corpus enables the immediate determination of the right of the appellant's freedom.[39]Article 22 of the constitution requires an arrested person to be produced within 24 hours of his arrest and failure to do so would entitle the person arrested to be released. The grounds of his arrest should also be informed to him. Even when the arrest is valid, failure to inform the grounds within a reasonable time would make the detention unconstitutional. In such cases, the writ of Habeas Corpus acts as a constitutional privilege.[40]If the court finds that there was no legal ground for the imprisonment of a person, it will pass an order to release him forthwith. The question before the court is whether the detention is lawful. In the writs of Habeas Corpus, the merits of the case or the moral justification for the imprisonment or detention are irrelevant. Any person whether he is guilty or not, is entitled to be set at liberty if his imprisonment is not as per law.[41]Who can apply? A writ of Habeas Corpus is issued to the authority or person who has detained the person.[42]The application for Habeas Corpus can be made by the prisoner himself or by any interested person other than a total stranger.[43]Even a letter to the court pointing out the illegalities of imprisonment or unlawful detention will be admitted. If the court gets any information from anyone, it can act suo moto in the interest of justice.[44]Procedure: An application for a writ of Habeas Corpus has to be made along with an affidavit describing the nature and

circumstances of the restraint.[45]If the court finds that a prima facie case for granting the request is evident, then it will issue a rule 'nisi' calling upon the authority concerned to show cause , on a specified date, why the writ should not be issued. If the cause shown is found to be insufficient, the court will issue the writ for the immediate release of the detained person. [46]Habeas Corpus and the emergency powers of the executive:[47]Various legislations have curtailed the power of this writ to a great extent. For example, the declaration of emergency and other national security laws etc. The executive has the power to detain a person on its discretion preventively. As per the existing national security laws, the grounds of arrest need not be revealed to the person arrested. In such instances, the judiciary has only very little scope for review. Similarly, Article 359 of the constitution empowers the president of India to suspend the right to move any court for the enforcement of any of the fundamental right, specified in his order. 2. CertiorariThe writ of Certiorari is generally issued against authorities exercising quasi-judicial functions.[48]The Latin word Certiorari means 'to certify'. Certiorari can be defined as a judicial order of the supreme court or by the high courts to an inferior court or to any other authority that exercise judicial, quasi-judicial or administrative functions, to transmit to the court the records of proceedings pending with them for scrutiny and to decide the legality and validity of the order passed by them.[49]Through this writ, the court quashes or declares invalid a decision taken by the concerned authority. Though it was meant as a supervisory jurisdiction over inferior courts originally, these remedy is extended to all authorities who issue similar functions.[50]The concept of natural justice and the requirement of

fairness in actions, the scope of Certiorari have been extended even to administrative decisions. Whether the decision is judicial or quasi judicial is irrelevant nowadays.[51]Certiorari is corrective in nature.[52]This writ can be issued to any constitutional, statutory or non statutory body or any person who exercise powers affecting the rights of citizens.[53]Grounds for Certiorari: The following are the grounds for Certiorari:. Lack of jurisdictionWhen the authority has no jurisdiction to take action, it is lack of jurisdiction. When an authority is improperly constituted or is incompetent to take action and if it acts under an invalid law, it will amount to lack of jurisdiction. Similarly when the authority acts without jurisdiction, fails to exercise the vested jurisdiction or acts in excess of the limits, there involves a defect of jurisdiction or power. The court can issue Certiorari to quash such orders.[54]Abuse of jurisdiction: If an authority abuses its jurisdiction, a Certiorari can be issued. When the authority exercises its power for improper purposes it is abuse of jurisdiction. Similarly if the authority acts in bad faith or ignores relevant points and facts or acts on some other considerations abuse of jurisdiction occurs and the writ of Certiorari becomes applicable.[55]Jurisdictional facts: A jurisdictional fact is that fact or facts upon which an authority's power to act depends. In the absence of jurisdiction for collateral facts an authority cannot exercise jurisdiction over a dispute and decide it. If the authority takes a decision on the wrong assumption of existence of jurisdictional facts, the order is liable to be quashed by the writ of Certiorari.[56]Error of law apparent on the face of record: A writ of Certiorari can be issued to quash an order if there is an error of law apparent on the record. An error is apparent on the face of record if it is self-evident i. e. if the error

can be ascertained by a mere perusal of the record without a detailed argument or further evidence. An error of law apparent on the face of the record is treated as an insult to the legal system. Ignorance or neglect of law, wrong proposition of law, inconsistency between the facts, law and the decision etc amount to errors of law.[57]Violation of the principle of natural justice: When there is a violation of the principle of natural justice, a writ of Certiorari can be issued. An authority is bound to observe the principles of natural justice. Anyone who decides a case must adhere to the minimum standards of natural justice. Hence when there occurs an infraction of fundamental right, the writ of Certiorari comes for restoration of that right. [58]3. ProhibitionThe grounds for issuing the writs of Certiorari and Prohibition are generally the same.[59]They have many common features too. The writ of Prohibition is a judicial order issued to a constitutional, statutory or non-statutory body or person if it exceeds its jurisdiction or it tries to exercise a jurisdiction not vested upon them. It is a general remedy for the control of judicial, quasi judicial and administrative decisions affecting the rights of persons.[60]Grounds: The writs of Prohibition and Certiorari are issued more or less on similar grounds. Absence or excess of jurisdiction : The writ if Prohibition prohibits an authority from exercising a jurisdiction not vested on it. When there is absence of jurisdiction or total lack of jurisdiction an authority cannot act. Violation of fundamental rights: When an authority acts in violation or infringement of the fundamental rights of a person, a writ of Prohibition can be invoked. Violation of the principles of natural justice: All authorities are to observe the principles of natural justice while exercising their powers. If an authority fails in this regard the decision of that authority

is liable to be quashed through the writ of Prohibition.[61]Statutes or laws against the constitution: When an authority tries to act under a statute or a law which is unconstitutional, the writ of Prohibition can be applied. Common features of Prohibition and Certiorari:[62]•Issued against any authority having judicial, quasi judicial or administrative jurisdiction.•Certiorari is issued to quash a decision already taken whereas Prohibition is issued when the matter is still pending before the authority. But even if the authority has taken a decision, the writ of Prohibition can be issued to stop the authority from enforcing the decision.•Certiorari can be applied for both prevention and cure whereas Prohibition is mainly for prevention.

4. Mandamus

The writ of Mandamus is a judicial remedy in the form of an order from the supreme court or high courts to any inferior court, government or any other public authority to carry out a 'public duty' entrusted upon them either by statute or by common law or to refrain from doing a specific act which that authority is bound to refrain from doing under the law.[63]For the grant of the writ of Mandamus there must be a public duty. The superior courts command an authority to perform a public duty or to non perform an act which is against the law. The word meaning in Latin is 'we command'. The writ of Mandamus is issued to any authority which enjoys judicial, quasi judicial or administrative power. The main objective of this writ is to keep the public authorities within the purview of their jurisdiction while performing public duties.[64]Conditions required for Mandamus•The petitioner must have the right to compel the performance of the duty. This writ cannot be invoked if the person complaining has no legal right.•There must be public

duty. That duty must be mandatory and not discretionary. But at the same time when a discretionary power is abused or improperly exercised, that would be treated as non exercise of discretion and the court can command the authority to exercise the discretion in accordance with law.[65]•The petitioner must have made a specific demand for the performance of the duty and the authority must have made a refusal to perform. Then only a writ of Mandamus can be sought.[66]•A civil liability arising under a contract cannot be enforced through Mandamus. The grant of Mandamus is discretionary. If there is unreasonable delay in filing the petition or if there is an adequate alternate remedy Mandamus may be refused by the court. [67]Grounds: The grounds for the writ of Mandamus are similar to those of Certiorari and Prohibition.[68]Lack of jurisdiction. Error of jurisdiction. Excess jurisdiction. Abuse of jurisdiction. Violation of the principles of natural justice. Error of law apparent on the face of the record etc. In the modern age, administrative agencies enjoy vast discretionary powers. Judicial review of the administrative actions often becomes necessary. The judicial review of administrative functions also comes under the scope of Mandamus. When an administrative authority who has the power of discretion fails to act bonafide or if it abuses or exceeds the jurisdiction and if it does not apply 'mind' in solving issues the writ of Mandamus acts as an extraordinary remedy. [69]Who can apply? Generally the affected person has the right to seek this remedy. Exceptions are:[70]The writ of Mandamus cannot be issued against the president or the governors of states. They cannot be insisted to exercise powers and to perform duties. The writ of Mandamus cannot be issued against the state legislature to prevent it from the execution of a law alleged

to be violative of the provisions of the constitution. The writ of Mandamus cannot be issued to an officer who acts on the orders of his superior. Grounds for refusal of Mandamus: Mandamus is a public law remedy and hence it cannot be used to enforce a civil liberty arising under contracts. If there is unreasonable delay in filing the petition and if there is another adequate alternate remedy, the writ of Mandamus cannot be issued.[71]In fact the writ of Mandamus is more purposeful than Certiorari or Prohibition It combines the aspects of both the writs to make an effective and better solution.

5. Quo Warranto

The word meaning of 'Quo Warranto' is 'by what authority'. It is a judicial order against a person who occupies a substantive public office without any legal authority. The person is asked to show by what authority he occupies the position or office. This writ is meant to oust persons, who are not legally qualified, fro substantive public posts.[72]The writ of Quo Warranto is to confirm the right of citizens to hold public offices. In this writ the court or the judiciary reviews the action of the executive with regard to appointments made against statutory provisions, to public offices.[73]It also aims to protect those persons who are deprived of their right to hold a public office. Conditions:[74]The following conditions are to be present if the writ of Quo Warranto is to be issued.•The office must be a 'public office'. All offices established by statutes or as per the provisions of the constitution and which carry out public duties are public offices.•It must be substantive in nature. A substantive office is independent and permanent. It must be held by an independent officer.•The holder must be in actual possession of the

office.•The person must have actual possession of the office. A person who has been elected or appointed to a particular post cannot be sued upon unless he has not accepted the post.•The holding of the post must be in contravention of law. The appointment of a person to a public office must be a clear violation of law. Irregularities in procedures etc cannot be taken as violation. Who can apply? Any member of the public can seek the remedy of Quo Warranto even if he is not personally aggrieved or interested in the matter.

POWER OF SUPREME COURT UNDER ART. 32 AND OF HIGH COURT UNDER ART. 226

However, this power under Art. 226 of the constitutions discretionary. It will be exercised only in furtherance of interest of justice and not merely on the making out a legal point. The supreme court has cautioned that whatever may have been the practice in the past, a time has come when the court should keep the larger public interest in mind while exercising their power of granting stay/injunction and the court has to weight the public interest vis-à-vis the private interest while exercising power under Art.[75]226 of the constitution. The supreme court made it clear that it ultimately a matter of balancing the competing interest and beyond this it is neither possible nor advisable to say.[76]As the jurisdiction of the supreme court under Art. 32 is exclusively limited to the enforcement of the fundamental right, it the validity of the provision of the statute is challenged not on the ground of contravention of the fundamental rights but on the other grounds the supreme court cannot grant that party aggrieved any remedy under Art. 32 and remedy lies in the filing a writ in the high court under Art. 226 of the

constitution.[77]Under the Art. 32 the supreme court is not directly concerned with the determination of the constitutional validity of a legislation except when such legislation affects or invades fundamental rights and if the question of challenge is the legislative competence of the legislature it is incumbent upon the person aggrieved to move the High Court under Art. 226 of the constitution.[78]

PUBLIC INTEREST LITIGATION

A novel and recent feature of Indian legal system is the rapid growth and development of public interest litigation (PIL). In several cases, Supreme court as well as many High Courts have entertained petitions as also letters and telegrams not only by person or persons who can be said to be " aggrieved" or " adversely affected" by any action or omission of the respondents but by person acting pro bono publico. Courts have also entertained PILs suo motu.[79]Judiciary, being the sentinel of constitutional statutory rights of citizens has a special role to play in the constitutional scheme. It can review legislation and administrative actions or decisions on the anvil of constitutional law.[80]For the enforcement of fundamental rights one has to move the Supreme Court or the High Courts directly by invoking Writ Jurisdiction of these courts. But the high cost and complicated procedure involved in litigation, however, makes equal access to jurisdiction in mere slogan in respect of millions of destitute and underprivileged masses stricken by poverty, illiteracy and ignorance. The Supreme Court of India, pioneered the Public Interest Litigation (PIL) thereby throwing upon the portals of courts to the common man.[81]

MEANING

The expression ‘ public interest litigation’ has not been defined either in the Constitution or in the general clauses act or in any other statute. In Stroud’s Judicial Dictionary[82], ‘ public interest is define thus: Public Interest – A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected." In Black’s law Dictionary, the expression ‘ public interest’ has been describe as follows:" Public Interest- Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights and libilities are affected. It does not mean anything so narrow as mere curiosity, or so as the interest or so the interest of particular localities, which may be affected by the matters in question. Interest shared by citizens generally affairs of local, national or local government....."[83]The term ‘ litigation’ means ‘ dispute’, a suit, a legal action including all proceeding there in, initiated in a court of law with the object of enforcing right or seeking relief[84]The council for Public interest law set up by the ford foundation of USA has given its broad definition:" Public interest law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interest. Such efforts have been undertaken in the recognition that the ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interest include the poor, environmentalist, consumers, racial and ethnic minorities, and others."[85]In

Janata Dal v. H. S chowdhary[86], Pandian J. defined ‘ public interest litigation’ thus:" lexically the expression PIL means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have a pecuniary interest or some interest by which their legal rights or liabilities are affected." Public interest litigation (PIL) is thus nothing more than the words themselves suggest, i. e. ‘ litigation in the interest of public at large’. It is a struggle by or on behalf of disadvantaged, to solve socio-economic problems arising from inequalities; it is a legal action or proceeding initiated for the protection or enforcement of rights of public at large.[87]

NEW JURISPRUDENCE

Pubic interest litigation in its present form constitutes a new meaning to our writs jurisprudence. It has acquired a significant degree of importance in the jurisprudence practiced by our courts and has evoked a lively, though somewhat controversial, response in legal circles, in the media and among the general public. In the United States, it is the name given to the efforts to provide legal representation to groups and interest that have been unrepresented or underrepresented in the legal process. This includes not only the poor and the disadvantage but ordinary citizens who, because they can’t afford lawyers to represent them, have lacked access to courts, administrative society their social and economic entitlements. It is highly effective weapon in the armoury of the law for reaching social justice to the common man[88].

ELEMENTS

In Raunaq Ltd. v. I. V. R. Construction Ltd.[89], the Supreme Court ruled that before entertaining PIL, the court must be satisfied that some element of public interest is involved. For such inquiry, the court may consider the following points: Public fund would be utilized; The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities; The public would directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously; The public would also be interested in the quality of the work undertaken or goods supplied by the renderer.[90]It was also observed that before entertaining a writ petition and passing interim orders, the court must carefully weigh conflicting interests. Only when comes to conclusion that there is an overwhelming public interest in entertaining the petition, the court may exercise its power.[91]In Ashok Kumar Pandey v. State of W. B.[92], the Apex Court stated that the time has come to weed out petitions which though titled as PIL, in essence something else. It is the duty of the court to do justice by promoting good faith and also by preventing crafty invasion. Hence, before passing any order on PIL, the court must be satisfied about (i) the credentials of the applicant; (ii) the prima facie correctness of the information given by him; and (iii) the information being specific and definite. The information should also show gravity and seriousness.[93]

REASONS FOR DEVELOPMENT

A number of factor are responsible for the rapid growth and development of public interest litigation. When a person has suffered any legal injury or

whose legal right interest are violated, because of his inability due to social or economic condition some other person can invoke assistance of the court for providing judicial remedy to the person injured. So that the legal injury doesn’t go underdressed and justice is done to him.[94]A player of the local authority can also challenge the illegal action of the authority. Being a tax payer, he is closely connected and interested in the proper administration of the local authority[95]The judicial function in primarily aimed at preserving legal order by confirming the legislative and executive organs of Government within their powers in the interest of public at large. The traditional doctrine of administration of justice and adversarial litigation cannot meet with the need of the society and public at large.[96]Strict rules of pleading do not apply to public interest litigation and a court of law, by adopting practical methods and exercising inquisitorial jurisdiction, made real justice to the cause.[97]Since there is no contesting parties as we understand in adversarial litigation , there is cooperation by all the parties before the court rather than contest and social problems, therefore, can be resolved easily and expeditiously keeping in view larger interest of the society.[98]

WHO MAY INSTITUTE A PIL

The primary and dominant object of PIL is to ensure observance of the provisions of the constitution and preservation of the rule of law. This can best be achieved by relaxing and liberalising the rule of standing and by allowing any person, association or organisation acting bona fide and pro bono public to approach a court.[99]In PIL, the crucial consideration for the court is intention, object or purpose of the petitioner in initiation of the

proceedings. The court should consider whether he is champion of the cause of the person he is representing. Restrictive rule as to standing are no doubt inimical to a healthy system of administration of justice.[100]But it is equally true that any person can't walk into the court and make any grievance of any nature against any person. A liberal rule relating to standing doesn't give lice to everyone to institute any proceeding irrespective of public interest.[101]PIL cannot be allowed to be invoked for personal profit or private gain or for political benefit or for oblique considerations. It also cannot be allowed to satisfy personal grudge.[102]A writ petitioner who comes to a court must come not only with clean hand but also with clean objective. It is the duty of the court exercising extraordinary jurisdiction to ensure that its process is not unscrupulous litigants under the attractive label of PIL[103]

CONCLUDING REMARKS

From the discussion, it is clear that PIL has not only arrived at has come to stay. The concept of PIL has been fostered by judicial activism and has served public interest in several fields. It has ensured basic human rights to poor, down-trodden, have-nots and handicaps of our country. It has also taken several issues of public importance and strengthened democracy and rule of law.[104]It should not, however, be forgotten that PIL has its own limitation. Ultimately, what is needed is social-economic change and in a hierarchical society organised around privilege, patronage and power it cannot be brought about just by few PIL actions, howsoever, well-in tensioned. It is a continuous, ardours task which only the social activist can undertake. PIL can at best serve as just one more weapon in the armoury of

the social activist.[105]It is rightly said" For the downtrodden of the world, we secure their rights by law, exactly as though as they have same privilege background as us, and then, outside the court room we leave them to their separate ways. Ours is not, however the universe which they inhabit. Their grim, hostile world, which recedes while we are present, returns with a vengeance. This is why our legal victories turn to be both pyrrhic and dangerous to poor. There is real danger if legal activist continue to interfere haphazardly, on a short-term, case wise basis with the life of down trodden. It is time we learn that it is not enough to expose the innumerable and appalling social evils through the court and the media. We must link up with social activists who alone can provide them with the ground support."[106]The ultimate guarantee or one’s right, however lies in self-assertion. The poor and the weak must, therefore the organised and made self reliant. A justice Bhagwati said:" We must always remember the social action litigation is necessary and valuable ally in the cause of the poor, development of the community self reliance and establishment of effective organisational structure through which the poor can combat exploitation and injustice, protect and defend their interest and secure their rights and entitlement."[107]