

Article 226: Empowering The Empowered

Abhishek Mohan Goel¹

Abstract:-

India is one of the oldest civilizations of the world and its cultures and traditions are very rightly stated in the quote, “India is the cradle of the human race, the birthplace of human speech, the mother of history, the grandmother of legend and the great grandmother of tradition”²

India has been one of the oldest surviving democracies as well and one of the most important factor which has helped this great nation to sustain itself from falling for the last 5,000 plus years is its judiciary system or the system of equal justice. Long before the Indian Constitution was conceived and Article 14 was even thought of, India which was an amalgamation of both small and big princely states, had its own unique form of delivering justice to the people who called these states their homes. There were no judges but the kings and no benches but the committee or a ‘sabha’ which comprised of the learned people who were there in each of the princely states. Their system of justice deliverance was based on values and traditions and had little or nothing to do with the rule of law. In fact these Kings preferred to make their own laws and amend them according to their own suiting. However, no one was ever aggrieved after the king pronounced his verdict, as he was looked upon as God by his statesmen. Kings like the great Chattrapati Shivaji Maharaj and Krishnadeva Raya were some of the kings who took keen interest in the welfare of their people and ensured that they personally intervened in the matters which were of public importance and which affected the public directly, therefore giving birth to the things like “suomotu”³ and primitively inventing a model of “writ jurisdiction”. However things changed and instead of these kings, came the British who with them brought their own rules of law which helped them successfully rule this country for nearly 250 years. First Indian Court was opened in Calcutta by the British and was called as the “High Court of Judicature at Fort William”⁴. This court was headed by Hon’ble Mr. Justice Barnes Peacock who was bestowed with a Knighthood soon after. When the British left India, a new Constitution was adopted this comprised of 395 Articles, which also made it the largest written constitution of the world. While some of the

¹Student, 2nd Year B.BA. LLB. New Law College, Bharati Vidyapeeth (Deemed to be) University, Pune.

²MARK TWAIN.

³ON ITS OWN MOTION.

⁴NOW, THE CALCUTTA HIGH COURT

Precedent : A Publication of Jus Dicere Center of Research In Law

articles dealt with things like the State, Property, and Citizenship etc. One article dealt with empowering the Judiciary system of this old yet new democracy on which the sun of the British Empire had just set. This article was Article 226. This paper talks about the said Article in a holistic way and is an attempt to present the crux of the Indian Judiciary in a subtle and a lucid manner.

Introduction

India is an ancient land with a Justice delivery system which dates back to the mythological ages. All the rulers who have set foot in this divine land or who have ruled here have got to their credit a number of things in which delivering justice to the needy was perhaps foremost.

Right from King Rama who was hailed by all as one of the most dutiful son and a compassionate ruler to King Akbar who never discriminated while delivering justice to his subjects, it can be said the crux of the spirit of India lies in ensuring equality and providing justice to everyone.

Article 14 of the Constitution of India, ensures equality in front of the law to every individual who is legally qualified to call himself an Indian. The Indian Judiciary System as any other Judiciary System in the world, functions to interpret the law and apply it in the name of the State apart from providing a resolution to various conflicts brought under its notice. India perhaps is the only country where people from different backgrounds, cultures and religions co-exist in such a great number, the onus of ensuring them peace and justice completely lies on the Government of the day and the Judiciary. Sometimes there are some problems which require judicial attention and are not able to get it because they are not reported anywhere. To get better off with such situations, Article 226 was added in the Constitution of India, which is the biggest of its kind in the world on the 26th of January 1950.

The High Courts of India under section 226 of the Indian Constitution are empowered to issue orders and writs to any person or authority and in some cases even the government pertaining to the matters which fall under its jurisdiction.

The Article 226 of the Constitution of India says:-

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises 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, prohibition, 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.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in

Precedent : A Publication of Jus Dicere Center of Research In Law

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 such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without - (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favor such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is /closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

Inception Of Writs In The World And In India

The word “writ” is a gift to this word by the British Monarchs who used it to refer to the authority letters issued by them under the Monarchy’s seal. “Writs” were taken very seriously even then as they were seen to be as the direct orders issued to them by the Monarchy itself.

In the medieval England, the local courts worked at mercy of the local barons as they were the administrators of these courts because the courts were being run in their estates. Right above these courts in terms of Jurisdiction were the Royal Courts which derived its authority and were administered by the King. In order to be present in the King’s court for trial, a person needed a ‘writ’ or a royal formal order which commanded him to be present before the King’s Court on a specified date and time to get Justice. Because these writs were normally dealing with issues of common grievances, it came to be called as “Writs of Course”

Writs in India are one of the many blessings of the people who came to it as traders but eventually left after ruling it for more than 250 years. The Royal Charter of Britain was the

first document which brought writs to India in the year 1774. The East India Company was persistent on developing a parliamentary control over India citing the problems within the Indian princely states. The British took full advantage of it and established The Supreme Court of Calcutta immuned by the Charter and gave it full rights to issue writs as in England. The British, now wanting to expand its control over India, established two more Supreme Courts at Madras and Bombay Presidencies in the years 1800 and 1823 respectively.

The term Supreme Court was replaced by High Courts in all the Presidencies under the the Indian High Courts Act of 1861 and more High Courts were established all along the country. Even though a lot of other High Courts mushroomed in the country, the writ jurisdiction which was very selective was only conferred to the three erstwhile Supreme Courts at Calcutta, Madras and Bombay. No other High Court created under the act cited above was allowed to issue writs. Slowly, the authority to issue writs was curtailed and taken away in the matters pertaining to Habeas Corpus and Mandamus from the Three Senior most Courts in India as well. This situation persisted till the British left India and a new Constitution was adopted by the Indians in the year 1950.

With the coming of the Constitution of India, writ jurisdiction was restored back to the Supreme Court under article 32 and to all the other High Courts under article 226. This was mainly done to ensure that the basic Human and fundamental rights of all the subjects of this newly independent company are duly protected and safe guarded.

The constitution of India also gives a mention to the various kinds of writs which are permissible and can be issued by the Courts. They are as follows:-

1. Writ of Habeas Corpus

Habeas Corpus is a term which is used to question the legality of a person's detention. It can be seen as a last resort and is only available when all the other legal remedies have exhausted.

2. Writ of Prohibition

The writ of Prohibition is issued by a Superior Court to a lower court, ordering it not to overstep its Jurisdiction in matters cited in front of the court. On getting the writ of prohibition, the lower court ceases to try the case as it gets above its jurisdiction.

3. Writ of Quo Warranto

This writ is to challenge any illegal occupation of a public office by any person. If the person fails to prove that he has legally occupied the office, he will be ordered to relinquish his office.

4. Writ of Certiorari

This writ power is used to verify any judgment given by a lower court by a higher court. This is a supervisory power and not an appellate one.

5. Writ of Mandamus

This writ which is issued by a court compelling any person or governmental entity to follow law and carry out statutory duty as required.

Landmark Cases Pertaining To Writ Jurisdiction In India

India is one of those countries in the world, which has an old yet robust Justice Delivery system. Indian Judiciary can rightly be said to have an iron fist with a velvet glove. More often than not the Justice delivered by India has got praised all over the world and have been cited by many irrespective of which country they belong to.

Writ jurisdiction given to the Indian Courts under Article(s) 32 and 226 of the Constitution of India is a power which has enabled it to help sustain this great country a lot of times. There have been many instances where the Indian Courts have gone onto walk the extra mile and give historic judgments which are cited as a Landmark in the Judicial Fraternity worldwide.

Some of these cases are:-

1. ADM Jabalpur Vs. Shivkant Shukla⁵

Popularly known as the Habeas Corpus case, this case has been one of the most game changing cases in the history of Indian Judiciary. In this case, the Court was approached with a contention that whether the Rights of a person to approach the respective High Courts gets quashed during a state of emergency with the suspension of the Fundamental Rights. The case was duly heard by a Constitutional Bench of the Supreme Court of India and the court pronounced the Judgment in which a Presidential Order was cited and it was confirmed that no individual has got any *locus standi* to move any writ petition to any High Court under article 226 of the Indian Constitution during an Emergency.

2. Vishnu Kamath Vs. Ahmad Ishaque⁶

⁵(1976) 2 SCC 521; AIR 1976 SC 1207.

⁶AIR 1955 SC 233.

Precedent : A Publication of Jus Dicere Center of Research In Law

This case was pertaining to an Election Petition in which the Court intervened and held that the High court has got the power Under Article 226 of the Indian Constitution to quash any order passed by a subordinate court (in this case the Election Tribunal) which the court feels has passed an order outside its Jurisdiction, the writ of Certiorari.

3. **University of Mysore Vs. Govinda Rao**⁷

In this case, the University of Mysore advertised some posts for Professors and Readers. The respondent approached the High Court under Article 226 challenging the appointment of a person and to show under what authority was he holding the office of a Reader in English, writ of mandamus. The High Court set aside the appointment as it was held that the person appointed did not fulfill the requisitions which were annexed with the advertisements.

4. **Satyanarayan Sinha Vs. Lal & Co.**⁸

In this case, the petitioner filed a case challenging the grant of a lease of mining to the respondent. The court observed that since the petitioner had no personal interest or *locus standi* in the lease and was not there in person in the Court. The Court had no jurisdiction under Article 32 or 226 of the Constitution of India to entertain the matter under its writ jurisdiction and the matter was not maintainable.

Conclusion

In conclusion, it is important to lay stress on the fact that India has been a land of Justice and ensuring it to the masses has been something which has been flowing in our blood since forever. The techniques of the Indian Judiciary might be a little old in comparison to other systems globally but it still is perhaps one of the best and the number of people it has given justice to, it more than the population of a lot of the so called “First world” countries of today. “Justice and equality are the two wheels of the same wagon, if one ceases the other curbs its motion. Hence, for the attainment of the utmost justice, absolute equality amongst everyone is a must.”

⁷1965 AIR 491, 1964 SCR (4) 576.

⁸1973 AIR 2720.