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States cannot withdraw cases against MPs, MLAs--S.C.

A bench headed by CJI NV Ramana said this was a direction that has to be issued urgently in view of a report by the amicus curiae (lawyer to assist the court) flagging attempt by various state governments to drop charges against sitting and former legislators. The Supreme Court has issued directions, that no criminal case against MPs or MLAs can be withdrawn without an approval of the high court of the concerned state, in a move that significantly clips the powers of the state governments at a time when the top court has expressed grave concern over the criminalization of politics. "We deem it appropriate to direct that no prosecution against a sitting or former MPs or MLAs shall be withdrawn without the leave of the high court," ordered the bench, which also included justices Vineet Saran and Surya Kant, in a virtual clampdown on misuse of power by the state governments under Section 321 of the Criminal Procedure Code (Cr.P.C.) that authorizes a prosecutor to seek withdrawal of a criminal case against the accused.On the same day, another bench, comprising justices Rohinton F Nariman and BR Gavai,

CJI NV Ramana

warned that the nation is "losing its patience" in waiting for lawmakers to cleanse politics by making stronger laws to keep out those with criminal antecedents.Imposing monetary penalty on all major political parties for flouting its directives on disclosure of information about criminal background of their candidates during the 2020 Bihar assembly polls, Uttar Pradesh similarly chose to withdraw prosecution last year against political leader SadhviPrachi and three sitting MLAs - SangeetSom, Suresh Rana and KapilDev -- for making inflammatory statements during the 2013 Muzaffarnagar riots. The amicus cited news reports to state that withdrawal of prosecution was applicable to 76 criminal cases related to the riots.

अनुच्छेद 14 नकारात्मक समानता की परिकल्पना नहीं करता; यदि राज्य ने गलती की है, तो उसे उसी गलती को कायम रखने के लिए मजबूर नहीं किया जा सकता: सुप्रीम कोर्ट

सुप्रीम कोर्ट ने कहा है कि डेली रेटेड कर्मचारी सरकारी कर्मचारियों के साथ वेतनमान की समानता का दावा नहीं कर सकते हैं। कोर्ट ने आगे कहा कि याचिकाकर्ता संविधान के अनुच्छेद 14 को समानता के आधार पर लाभ का दावा करने के लिए लागू नहीं कर सकते यदि वे अन्यथा इस तरह के लाभ के हकदार नहीं हैं। कोर्ट ने कहा, कानून के निर्धारित प्रस्ताव के अनुसार संविधान का अनुच्छेद 14 अकेले सकारात्मक समानता की अवधारणा का प्रतीक है, न कि नकारात्मक समानता का। अवैधता और अनियमितता को कायम रखने के लिए इस पर भरोसा नहीं किया जा सकता है।

PENDENCY OF OLD CASES NEEDS TO BE TACKLED: CHIEF JUSTICE RAJESH BINDAL

In order to address the issue of pendency, Justice Bindal said.

Bar and Bench have to work together because they are two wheels of the same chariot .

NEED FOR JUDICIAL ACTIVISM

Supreme Court and other lower courts become activists and compel the authority to act and sometimes also direct the government and

government policies and also administration. It is a way through , which justice is provided to the disadvantaged and aggrieved citizens. Says Dr . S N Pandey , President of A.P.National Law Institute , a Round Table Conference on 24 Dec 2021 at Vijay Shree SabhagarViramKhand ,Gomti Nagar . Lucknow . He said that Judicial activism refers to the interference of the judiciary in the legislative and executive elds. It mainly occurs due to the nonactivity of the other organs of the government. In recent years, asthe incumbents of parliament have become less representative of the will of the people, there has been a growing sense of publicfrustration with the democratic process. That is why the Supreme Court had to expand its jurisdiction by, at times, issuing novel directions to the executive. In recent years law making has assumednew dimensions through judicial activism of the courts. Thejudiciary has adopted a healthy trend of interpreting law in socialcontext.

The Indian judiciary has been constitutionally vested with thepower of review to keep the Executive and Legislature withinconstitutional boundaries. In a kee note address Sri R .K . Mishra President , Forum For Law & Justice expressed that the Judiciary can strike down any law ,that is beyond Parliament's legislative competence or is violate ofthe Constitution. Similarly, it can strike down any Executive action, ifthere is any patent illegality or arbitrariness to it.While Articles 13, 21, 32, 226 and 227 encompass this power, Article 142 extends aunique, extraordinary power to our Supreme Court to do 'complete justice' in any matter before it.

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REVISE GUIDELINES ON PAROLE, FURLOUGH, PREMATURE RELEASE OF PRISONERS: MHA TO STATES

The Ministry of Home .Affairs , suggested new guidelines should include that parole and furlough may not be granted as a matter of routine and may be decided by a committee of officers and behavioral experts keeping in view all relevant factors, especially for inmates sentenced for sexual offences, serious crimes such as murder, child abduction and violence. The ministry said that terrorists, people involved in heinous crimes, riots, dacoity or those involved in smuggling of drugs should not be eligible for release on parole or furlough as it could have an adverse impact on society.

The Union home ministry ,said that release of prisoners on parole and furlough is not an "absolute right" and should be allowed only to selective prisoners on the basis of well-defined norms of eligibility while asking all the states and union territories to review the guidelines in this regard.The ministry said that terrorists, people involved in heinous crimes, riots, dacoity or those involved in smuggling of drugs should not be eligible for release on parole or furlough as it could have an adverse impact on society.Prisons come under the state governments and decisions to release prisoners on parole or remission in their imprisonment is taken by them on the basis of conduct , the MHA suggested new guidelines should include that parole and furlough may not be granted as a matter of routine and may be decided by a committee of officers and behavioral experts keeping in view all relevant factors, especially for inmates sentenced for sexual offences, serious crimes such as murder, child abduction and violence . Officials who didn't wish to be named said that the advisory has been sent to states/UTs as there are reports from different parts of the country that many of those released from jails due to the coronavirus pandemic on parole were indulging in crimes.

Referring to the Model Prison Manual, 2016, the MHA said prisoners whose immediate presence in the society may be considered dangerous or otherwise prejudicial to public peace should not be considered for release.The MHA said that prisoners convicted for heinous offences such as dacoity, terrorist crimes, kidnapping for ransom, smuggling of narcotic and psychotropic substances, "may not report back to the prison after completion of the furlough period and should not be released".

Editorial.....

NEED FOR Uniform Personal Laws

Dr. S.N.Pandey
Editor

The issue of Uniform Civil Code (UCC) has been a subject of debate amongst the lawyers, jurists, academia as also the judiciary and has been intermittently coming up before the courts. NYAY BHARTI ,an institution dedicated for LAW & KUSTICE has also raised the need for UNIFORM CIVIL LAWS and for it continuing with Seminars and Discussion from a long time. Article 44 of the Constitution continues to remain a directive because of political wrangling, the judiciary has imperceptibly made substantial advancements in this direction. To take a few examples, Shah Bano supreme court 1985, on maintenance for divorced Muslim wife; Sabani alias SairaBano, Supreme Court, 1987, on Muslim wife's right to separate maintenance from her husband who has entered into polygamous marriage, notwithstanding the fact that polygamy is permissible under Islamic law; And now a few days back a petition has been filed before the apex court The Court has sent notice to the ministry of home affairs, ministry of law and justice and ministry of women and child development. While article 44 of the Constitution provides for the attainment of uniform civil code as the goal, the Constitution mandates liberty and equality of all irrespective of caste, community, gender or religion. And it is common knowledge that a set of different personal laws governing people belonging to different religious beliefs cause hardship to women within their own law as also discriminate people belonging to different religions. It is significant to note that until a few decades back, the disparities, inadequacies and inequities between and within the personal laws were enormous; these have been reduced and the gaps diminished by pragmatic, liberal and practical approach of the judiciary. Strong pleas for reform and enactment of UCC have been made. In Jordan Diengdeh (1985), the Supreme Court, after reviewing the statutory personal laws of different communities, made a strong plea for UCC and sent a copy of the order to the ministry law and justice for proper action. In fact, such plea has been made by courts in various cases. Daniel Latifi, supreme court, 2001, on divorced Muslim wife's right to maintenance under the provisions of the Code of Criminal Procedure; ShayaraBano, supreme court, 2017,declaring triple talaq as unconstitutional; Ammini E J, 1995 Kerala,reading down section 10 of the Divorce Act(Christian law) and striking down a few words in the section as ultra vires being gender discriminatory; Saumya Ann Thomas, Kerala 2010 separation period of two years for obtaining divorce by mutual consent under section 10A, Divorce Act reduced to one year to bring it in conformity with other personal laws, and so on. However, despite endeavour by courts to avoid discrimination and give meaningful relief to parties irrespective of their religious affiliation, there are areas of concern where concerted move and clarity is required, e.g., on grounds of divorce there are still variations in different personal laws, Also specific provisions on marriage after conversion is required, especially in view of the fact that certain personal laws permit polygamy. Another issue in the context of uniformity in personal laws is the plethora of customary laws prevalent in our country with different rules, beliefs and faith some of which may not sound very fair and reasonable too but these have a legal sanction. What really is required is a reform in the different personal laws wherever required and not an imposition of one set of laws on the other.

PILLARS In Indian JUDICIARY

FIRST FEMALE JUSTICE IN S.C. FATHIMA BEEVI

FathimaBeevi is a name permanently etched into Indian history, a name every judicial aspirant is familiar with. She was the first woman to be appointed a Supreme Court Justice of India and the first woman to become a Supreme Court Justice in an Asian country. FathimaBeevi was born on 30th April, 1927 at Pathanamthitta, in the erstwhile state of Travancore (presently the Indian state of Kerala) to KhadejaBibi and AnnaveetilMeera Sahib, a government servant. She was the eldest of six sisters and two brothers. She completed her schooling from Catholicate High School in Pathanamthitta in 1943. She moved to Trivandrum for her higher education, staying there for six years. She completed a B.Sc. from University College, Thiruvananthapuram after which she enrolled herself to study law from Government Law College, Thiruvananthapuram. Initially, she wanted to study the sciences further, but her father possibly motivated by the success of Ms. Anna Chandy (the first female judge in India and also the first woman in India to become a High Court judge) who was working near their house, encouraged Beevi to study law instead. Fatima Beevi was one of the only five female students in her class in law school, a number that later dropped to three. However, this did not demotivate her, after obtaining her law degree in 1950, she gave the Bar Council of India exam and became the first woman to top the exam, and received the Bar Council gold medal, the first of her historic achievements.

Judicial career- FathimaBeevi enrolled as an advocate and began her career in the lower judiciary in Kerala on 14th November, 1950. After eight years, she took the job of the Munsiff at the Kerala Subordinate Judicial Services. As the years went by, she remarkably rose through the ranks, serving as the Subordinate Judge of Kerala (1968-72), The Chief Judicial Magistrate (1972-4), the District & Sessions Judge (1974-80), a Judicial Member of the Income Tax Appellate Tribunal (1980-83) and a Justice of the Kerala High Court in 1983. Through her long career, she handled various sessions and civil cases including those of riot and murder, breaking barriers to enter the pubic space as a decision maker. Finally on 6th October, 1986, within six months of retiring from the Kerala High Court, she became the first woman to be appointed a Supreme Court Justice of India. The significance of this achievement is best described in her own words, 'I have opened the door", she said in an interview with the Scroll. By being appointed to the Supreme Court she paved the way for women to pursue careers in a male dominated judiciary.

NEED FOR JUDICIAL ACTIVISM

Judicial Activism refers tothe process in which judiciary steps into the shoes of legislature andcomes up with new rules and regulations, which the legislatureought to have done earlier. Stringent, neutral, unbiased observationof the laws made by legislature and suggesting amendments so as to make them more constitutionally compatible and egalitarian canalso be termed as Judicial Activism. Judicial activism has arisen mainly due to the failure of the executive and legislatures to act. Secondly it has arisen also due to the fact thatthere is a doubt that the legislature and executive have failed to deliver the goods. Thirdly, it occurs because the entire system hasbeen plagued by ineffectiveness and inactiveness. The violation ofbasic human rights has also led to judicial activism. Due to themisuse and abuse of some of the provision of the constitution, judicial activism has gained signi??cance. Development of newissues such as: privacy in cyber space, right to life, environmental concerns, growing pollutions and when the legislature fails todischarge its responsibilities.

Sri Subhash Chandra Pandey, Standing Counsel,Bar Council of U P said that among three Organs of the Govt, Judiciary can be considered as a most pivotal institution which draws its powersfrom the constitution of India to act as a watch dog for the well-functioning of our democracy. Such an important Organ necessarily need to be active or show its activism whenever needed in the absence of responsible functioning of other organs.

An evolving and a maturing democracy gives space for creative avenues to attain a status of just society. Public Interest Litigation,

Innovative interpretation of constitution and progressive Verdicts etc., are few such avenues supported by judiciary to enrich the democratic principles of our country.Right from Gopalan Case of 1950s to the recent Environment friendly judicial activism verdicts, judiciary has played proactive role in remembering the responsibilities of Legislature and executive. It is true there are instances where judicial activism turned into judicialoverreach encroaching the spheres of other Organs. It is high time for judiciary to check its own path of activism to be progressive and wellconvinced and not to touch the border of overreach.

PERSONALITY &ACHIEVMENTS

Hon'ble Mr. Justice Rajesh Bindal, CHIEF JUSTICE OF HIGH COURT, ALLAHABAD/ U.P.

Rajesh Bindal is an Indian judge. Presently, he is the Chief Justice of Allahabad High Court. Honble Justice RAJESH BINDAL was born on 16th April, 1961 at Ambala City in the State of Haryana (India). He did LL.B. from Kurukshetra University in 1985 and joined profession in High Court of Punjab & Haryana in September 1985. He represented Chandigarh Administration before Central Administrative Tribunal for more than a decade till 2004 and Punjab & Haryana regions of Employees Provident Fund Organization before the High Court and Central Administrative Tribunal from 1992 till his elevation. He remained associated, on behalf of State of Haryana, in settlement of the dispute concerning Satluj Yamuna Water with State of Punjab before Hon'bleEradi Tribunal and Hon'ble the Supreme Court. Justice Bindal has represented Income-tax Department, Haryana region before the High Court. He was elevated as a Judge of High Court of Punjab & Haryana on March 22, 2006. Justice Bindal remained Chairman of the Committee constituted pursuant to Resolution No. 7 adopted in the Chief Justices' Conference, 2016 for framing Draft Rules for Electronic Evidence and submitted his report to Hon'ble the Supreme Court in November 2018. Being Chairman of a multi-member Committee constituted by Ministry of Women and Child Development to study Civil Aspects of International Child Abduction Bill, 2016, he submitted report accompanied by the recommendations and draft of the Protection of Children (Inter-Country Removal and Retention) Bill, 2018 to the Ministry in April 2018. During his tenure in Punjab and Haryana High Court, he disposed of around 80,000 cases. Before his transfer to High Court of Jammu and Kashmir, he was heading various Committees including Computer Committee, Arrears Committee. On transfer to High Court of Jammu and Kashmir, he took oath of office on 19th November, 2018. Before his transfer to High Court at Calcutta he was the Chairman of the Finance Committee, Building and Infrastructure Committee, Information Technology Committee, State Court Management Systems Committee in the High Court and also Chairman of J&K State Legal Service Authority. He was also the Chairman of the Committee constituted for conducting assessment for optimal use of technology by NALSA and the State Legal Services Authorities including use of Artificial Intelligence. He was also Member of the Committee constituted to go into the existing framework of LokAdalats and Mediation and to suggest ways for enhancing operational efficiency and plugging gaps, if any, or better application of these ADR mechanisms for weaker sections of the society.

Justice Bindal was appointed as Acting Chief Justice of the Common High Court for the Union Territory of Jammu and Kashmir and Union Territory of Ladakh,dated 8th December,2020. Further Transferred as a Judge of the High Court at Calcutta dated 31st December,2020 and was sworn in as a Judge of the High Court at

Calcutta on January 5, 2021. Appointed to perform the duties of the office of the Chief Justice of the High Court at Calcutta with effect from 29th April, 2021.Justice Bindal was elevated as Chief Justice of Allahabad High Court on 9 October 2021 and took oath on 11 October 2021. Date of Retirement is 15 April 2023 .JUSTICE BINDAL was on the two judge bench along with justice B.S. Walia , which quashed the Punjab Scheduled Caste and Backward Classes (Reservation in Services) Act, 2006. The legislation granted 20% reservations in promotions for Scheduled Castes and Scheduled Tribes in C and D category government services and 14% in A and B category government services

Dying Declarations and its relevancy in Criminal Justice

Dr. Mrs. Huma,
Advocate, High Court

The term dying declaration is derived from "Leterm Mortem", which means "Words before death". The basis "dying declaration" is derived from the Latin maxim "Nemomorituruspraesumiturmentire", which implies" a man will not meet his maker with a lie in his mouth".] In the case of Ulka Ram v. State of Rajasthan, it was held that, when a statement is made by a person pertaining to the cause of his death or circumstances leading to his death, such a statement is admissible in court and are compendiously called dying declaration. As per Section 32 of the Indian Evidence, dying declaration is the exception to the general rule of hearsay which renders the evidence inadmissible in Court. A dying declaration is considered credible and trustworthy evidence based upon the general belief that most people who know that they are about to die do not lie. A victim is an exclusive eye witness, thus the evidence cannot be excluded.A[ccording to Justice A.V.Chandrashekar Dying declaration is admitted in evidence. The principle on which it is admitted as evidence is indicated in the legal maxim 'nemomorituruspraesumiturmentire' which means a man will not meet his maker with a lie in his mouth. This is exactly the reason as to why courts have held that an accused can be convicted solely on the basis of 'Dying Declaration.' In fact, no corroboration is required since corroboration is only a rule of prudence and not a rule of evidence. By Justice A.V.Chandrashekar Dying declaration is admitted in evidence. The principle on which it is admitted as evidence is indicated in the legal maxim 'nemomorituruspraesumiturmentire' which means a man will not meet his maker with a lie in his mouth. This is exactly the reason as to why courts have held that an accused can be convicted solely on the basis of 'Dying Declaration.' In fact, no corroboration is required since corroboration is only a rule of prudence and not a rule of evidence.

Section 32 of the Indian Evidence Act, 1872, deals with dying declaration and it s extracted below: "32. Cases in which statement of relevant facts by the person who is dead or cannot be found etc. is relevant:- Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable, are themselves relevant facts in the following cases: (1) when it relates to cause of death- When the statement is made by a person as to the cause of his death, or as to any of 1 the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.' In the leading case of PAKALA ARAYAA SWAMI .v. EMPEROR (AIR 1939 PRIVY COUCIL p.47), it was held by the Privy Council that the statement made by the deceased to his wife just prior to leaving his house to go to Behrampur was a statement and one of the circumstances of the transaction which resulted in the death of the man. Therefore the 3 expression 'any of the circumstances of the transaction which resulted in his death' is necessarily wider in its interpretation than the expression 'the cause of his death.' it was held by the Privy Council that the statement made by the deceased to his wife just prior to leaving his house to go to Behrampur was a statement and one of the circumstances of the transaction which resulted in the death of the man. Therefore the 3 expression 'any of the circumstances of the transaction which resulted in his death' is necessarily wider in its interpretation than the expression 'the cause of his death

In the case of SATISHCHANDRA .v. STATE OF MADHYA PRADESH ([2014] 6 SCC p.723), it is observed by the apex court that the declaration cannot be rejected on that ground alone if the declaration is otherwise acceptable and meets the requirement of Section 32(1) of the Evidence Act. A magistrate is expected to record the statement in the absence of the police. Steps must be taken to see that no interested persons remain there while recording the declaration. Insofar as proof of oral dying declaration is concerned, the court should, as a matter of prudence, look for corroboration in order to know.

Broad principles have been laid down by the Hon'ble Apex Court in the case of ATBIR .v. GOVT. (CT OF DELHI) reported in [2010] 9 SCC 1 in paragraph 22 regarding to the oral evidence. Section 32(1) of the Evidence Act does not prescribe any statutory guideline in the matter of recording dying declaration, and considering the same while appreciating the evidence. But the Hon'ble apex court, in several leading decisions, while considering the facts of each case, has laid down some broad guidelines and thus they have become binding precedents under Article 141 of the Constitution of India. While evaluating the evidence, especially in criminal cases.

Several observation made by the apex court in the case of STATE OF U.P. .v. KRISHAGOPAL (AIR 1988 SC p.2154 - paragraph 13). The relevant observation is as follows: '…….

The concepts of probability, and the degrees of it,cannot obviously Sbe expressed in terms of units to be mathematically enumerated as to how many of such units constitutes proof beyond reasonable doubt,There is an unmistakable subjective element in the evaluation of the degree of probability and quantum of proof.

LEGAL VISION-

The Role of District Judiciary All Courts are independent.

The Constitution provides for three tier Judicial System of Courts. The Ground Floor is given to the District Courts. The High Courts occupy the First Floor. The Top-Floor is allotted to the Top Court - The Supreme Court. The importance of the Ground Floor cannot be undermined. Infact, it provides the foundation. If the foundation is strong, the strength will automatically flow up-wards. The District Judiciary plays an important role. The first interface of the people is at the level of District Judiciary. Even otherwise, the first contact is always with the entry point. Within reach.Yet good and effective service.Without hiccups and road blocks. No handicaps.The trust and the confidence of the people in the District Judiciary is the sine qua non of our Judicial System. One of the serious concern has been the District Judiciary. Article 235 of the Constitution. It speaks of control of High Courts over District Courts and Courts Subordinate thereto. The District Judiciary is one unit, a wholesome unit. The District Judiciary is divided into two parts. The District Courts and the Courts Subordinate thereto. At each level, the Court exercises statutory jurisdiction vested in it. In exercise of its jurisdiction, each Court is independent and is not subordinate or inferior to any other Court. There cannot be any interference so far as the exercise of jurisdiction is concerned. The order/judgment of each Court is subject to the statutory right of appeal. The appellate Courts can interfere with the orders / judgments if they are not found to be in accordance with law. The appellate jurisdiction does not render it to be a Subordinate Court. In short, the appellate Court can only consider the order/judgment which comes on appeal before it. The appellate Court, therefore, cannot interfere in the exercise of its jurisdiction unless the matter is on appeal before it.

All Courts are independent. No Court can claim jurisdiction of any kind over another Court. Accordingly, the expressions subordinate Courts and inferior posts militate against the exercise of independent jurisdiction of its own. These expressions are not in consonance with the dignity of the Court. They need to be avoided. In fact, there is no material available in the Constituent Assembly Debates as to why these expressions were specifically used. It seems, they were not subjected to meaningful debate and discussion.

Article - 144."Civil and judicial authorities to act in aid of the Supreme Court.

144. "Civil and judicial authorities to act in aid of the Supreme Court.-All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court."

Article 144 obliges all authorities in the country to act in aid of the Supreme Court. It is, therefore, not permissible in our constitutional scheme for any other authority to claim that power in exclusivity, or in supersession of the Supreme Court's verdict. Whatever be the controversy prior to the Supreme Court entertaining such a matter, it must end when the Court is seized of the matter for pronouncing its verdict and it is the constitutional obligation of every person and authority to accept its binding effect when the decision is rendered by the Supreme Court. It is also to be remembered that in our constitutional scheme based on democratic principles which include governance by rule of law, every one has to act and perform his obligations according to the law of the land and it is the constitutional obligation of the Supreme Court to finally say what the law is. There is no doubt that the Speakers and all others sharing their views are alive to this constitutional scheme, which is as much the source of their jurisdiction as it is of the Supreme Court and also conscious that the power given to each wing is for the performance of a public duty as a constitutional obligation and not for self-aggrandisement. Once this perception is clear to all, there can be no room for any conflict.

Under Article 142 decrees and orders of the Supreme Court are enforceable throughout the territory of India. As a follow up, Article 144 provides that civil and judicial authorities shall act in aid of the Supreme Court. For purposes of giving effect to the directions and decisions of the Supreme Court, all authorities, civil and judicial, in the territory of India, have been made in a way subordinate to the authority of the Supreme Court in as much as all these are required to "act in aid of the Supreme Court". Non-compliance of any directions of the Supreme Court by any civil or judicial authority may invite contempt of court proceedings and punishment.

Legal IQ

1. If a man marries a girl who is within his prohibited relationship and his custom does not permit such marriage, such a man would be punished under:
   (a) Section 17 of the Hindu Marriage Act, 1955
   (b) Section 18(a) of the Hindu Marriage Act, 1955
   (c) Section 18(b) of the Hindu Marriage Act, 1955 (d) No punishment for such marriages
   Ans. Answer is C.

2. Which section of the Hindu Marriage Act, 1955 provides that a child from a void marriage would be legitimate?
   (a) Section 11 (b) Section 13(a)
   (c) Section 12\ (d) Section 16
   Ans. Answer is D.

3. Under which of the following Articles of the Indian Constitution Parliament is empowered to legislate with respect to a matter in the State List in National Interest?
   (a) Article 249 (b) Article 250
   (c) Article 252 (d) Article 253
   Ans. Answer is A.

4. In which of the following cases the court has laid down that 'Right to life' does not include 'Right to die'?
   (a) State v. Sanjay Kr. Bhatia
   (b) Smt. GianKaur v. State of Punjab
   (c) R v. Holiday
   (d) P. Rathinam v. UOI
   Ans. Answer is B.

5. The question whether a bill is a money bill or not is decided by?
   (a) The Prime Minister
   (b) The Finance Minister
   (c) The President
   (d) The Speaker, LokSabha
   Ans. Answer is D.

6. Decision under 10th Schedule is taken by?
   (a) President
   (b) Chief Justice of India
   (c) Prime Minister
   (d) Presiding officers of Houses
   Ans. Answer is D.\

7. Which one of the following sections of Cr.P.C. deals with irregularities which vitiate proceeding?
   (a) Section 460 (b) Section 461
   (c) Section 462 (d) Section 468
   Ans. Answer is B.

8. Which of the following is not an essential element of a decree:
   (a) Conclusive determination of the rights of the parties
   (b) Formal expression of adjudication
   (c) An adjudication from which an appeal lies as an appeal from an order
   (d) The adjudication must have been given in a suit before the court
   Ans. Answer is C.

9. Which of the following fact is not relevant in civil and criminal cases under section 8 of the Indian Evidence Act
   (a) Motive (b) Attempt
   (c) Conduct (d) Preparation
   Ans. Answer is B.

Supervisory Power of HIGH COURT

Power conferred under Article 226 is supervisory in nature as the High Court does not act as a court of appeal while exercising its power under Article 226. The only work of the High Court is to examine whether the challenged action is lawful or not. In respect of lawfulness also law is more clear on the point of actions affecting and exceeding the jurisdiction and clear on supervisory power of High Court under Article 226. While exercising its supervisory power court can't go into the merits of the controversy as an appellate court can.In the given case it was held by the Supreme Court that while exercising the power under this Article court can not interfere in the policy decisions of the government unless their decisions or clearly opposing the constitutional laws.

Principles for Exercise of Jurisdiction

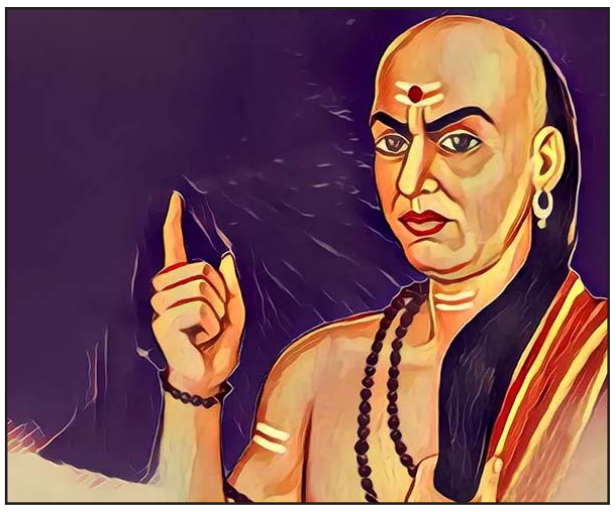
There are eight principles which regulate the exercise of jurisdiction under Article 226:-

Alternative remedy

As we have discussed above that Article 226 provides for a discretionary remedy and high court has the power to refuse the grant of any writ if its is satisfied that the aggrieved party have adequate alternative remedy. Remedies provided under this article can't be used as a substitute for other remedies. So, therefore it can be said that a writ under Article 226 can't be issued by the High Court in the case where there exists an equal, efficient and adequate alternative remedy unless there is any exceptional reason for dealing the matter under Article 226.

कौटिल्य के अनुसार राज्य रूपी शरीर के उपर्युक्त सात अंग होते हैं और ये सब मिलकर राजनीतिक सन्तुलन बनाए रखते हैं। राज्य केवल उसी दशा में अच्छी प्रकार कार्य कर सकता है जब ये सातों अंग पारस्परिक सहयोग तथा उचित रूप से अपना-अपना कार्य करें

कौटिल्य का सप्तांग सिद्धान्त :-



कौटिल्य ने अपने सप्तांग सिद्धान्त में राज्य के सात अंगों का उल्लेख किया है, जो निम्न प्रकार है

(1) स्वामी (राजा):-

कौटिल्य ने राज्य के अन्तर्गत स्वामी (राजा) को अत्यन्त महत्वपूर्ण स्थान दिया है। कौटिल्य के अनुसार राजा ऐसा व्यक्ति होना चाहिए जो उच्च कुल में जन्मा हो, धर्म में रुचि रखने वाला हो, दूरदर्शी हो,सत्यवादी हो, महत्त्वाकांक्षी हो, परिश्रमी हो,गुणीजनों की पहचान तथा उनका आदर करने वाला हो, शिक्षा प्रेमी हो, योग्य मन्त्रियों को रखने वाला तथा सामन्तों पर नियन्त्रण रखने वाला हो। कौटिल्य के अनुसार राजा में विवेक व परिस्थिति देखकर कार्य करने की क्षमता, प्रजा की सुरक्षा व पोषण की क्षमता, मित्र-शत्रु की पहचान तथा चापलूसों को पहचानने की योग्यता होनी चाहिए।

कौटिल्य के अनुसार राजा को सैन्य संचालन,सेना को युद्ध की शिक्षा,सन्धि, विग्रह, शत्रु की कमजोरी का पता लगाने की कुशलता, दूरदर्शी आदि गुणों से युक्त होना चाहिए। वह तेजस्वी, आत्मसंयमी, काम, क्रोध, लोभ, मोह आदि से दूर रहने वाला,मृदुभाषी किन्तु दूसरों की मीठी बातों में न आने वाला,दूसरों की हँसी न उड़ाने वाला होना चाहिए। कौटिल्य के अनुसार राजा को दण्डनीति, राज्य संचालन, सैनिक शिक्षा, मानवशास्त्र, इतिहास, धर्मशास्त्र, अर्थशास्त्र आदि विद्याओं का ज्ञाता होना चाहिए।

(2) अमात्यः-

कौटिल्य के अनुसार राज्य का दूसरा महत्त्वपूर्ण अंग अमात्य अथवा मन्त्री है,जिसके बिना राजा द्वारा शासन संचालन कठिन ही नहीं,असम्भव है। चूँकि राजकार्य बहुत अधिक होते हैं और राजा सब कार्य स्वयं नहीं कर सकता, अतः उसे ये कार्य अमात्यों से कराने चाहिए । कौटिल्य ने अमात्य का महत्त्व स्पष्ट करते हुए कहा है कि राज्य एक रथ है। जिस प्रकार रथ एक पहिये से नहीं चल सकता, उसी प्रकार मन्त्रियों की सहायता के बिना राजा अकेले राज्य का संचालन नहीं कर सकता। अमात्य की नियुक्ति के सम्बन्ध में कौटिल्य ने कहा है कि राजा को योग्य तथा निष्ठावान व्यक्तियों को ही अमात्य के पद पर नियुक्त करना चाहिए।

अपने सम्बन्धियों, सहपाठियों और परिचितों को भी अमात्य के पद पर नियुक्त नहीं करना चाहिए , यदि वे पदानुरूप योग्यता न रखते हों । प्रमादी, शराबी, व्यसनी, अहंकारी तथा वेश्यागामी व्यक्ति को भी अमात्य के रूप में नियुक्त नहीं करना चाहिए,क्योंकि ऐसा व्यक्ति विश्वास के योग्य नहीं होता और विभिन्न प्रलोभनों में फँसकर राज्य के गोपनीय तथ्यों को प्रकट कर देता है, जो राज्य और राजा, दोनों के लिए अहितकर सिद्ध होता है।

अमात्यों की संख्या कितनी हो, इसका निर्धारण करने का कार्य कौटिल्य ने राजा पर छोड़ दिया है। वह राजकार्य की आवश्यकतानुसार उनकी नियुक्ति कर सकता है। लेकिन कौटिल्य का सुझाव है कि राजकार्य हेतु मन्त्रणा करने वालों की संख्या सीमित होनी चाहिए, क्योंकि अधिक लोगों से की गई मन्त्रणा से गोपनीयता के भंग होने का खतरा रहता है।

कौटिल्य का यह भी सुझाव है कि राजा राजकार्य के संचालन हेतु अमात्यों से परामर्श करे, किन्तु यदि उसे उनके द्वारा दिया गया परामर्श राज्य हित के अनुकूल न लगे,तो ऐसी स्थिति में वह अपने विवेकानुसार निर्णय लेने हेतु स्वतन्त्र है।

(3) जनपदः-

कौटिल्य ने राज्य का तीसरा अंग जनपद बतलाया है। जनपद के अभाव में राज्य की कल्पना भी नहीं की जा सकती। इसके अन्तर्गत कौटिल्य ने जनता व भूमि को सम्मिलित किया है। उसका कहना है कि जनता को स्वामिभक्त, करों को चुकाने वाली व सम्पन्न होना चाहिए । भूमि के सम्बन्ध में कौटिल्य का कहना है कि उसमें वन, तालाब, खाने, नदी, उपजाऊ मिट्टी, सैनिक, किले, पर्वत, पशु और पक्षी होने चाहिए।

कौटिल्य ने जनपद की स्थापना का विस्तारपूर्वक वर्णन किया है। उसका मत है कि राजा को या तो दूसरे देशों से मनुष्यों को बुलाकर अथवा अपने राज्य की जनसंख्या बढ़ाकर नये जनपदों की स्थापना करनी चाहिए। प्रशासनिक दृष्टि से जनपद स्थानीय,द्रोणमुख,खार्वटिक और संग्रहण में बँटा होना चाहिए। एक गाँव की जनसंख्या के सम्बन्ध में कौटिल्य का मत है कि एक गाँव में कम-से-कम 100 और अधिक-से-अधिक 500 घर होने चाहिए।

(4) दुर्गः-

कौटिल्य ने कहा है कि राज्य के लिए दुर्ग भी उतने ही आवश्यक हैं जितनी जनता, भूमि अथवा राजा ।कौटिल्य के अनुसार आक्रमण करने की दृष्टि से और अपने राज्य की सुरक्षा के लिए दुर्ग आवश्यक हैं। दुर्ग मजबूत तथा सुरक्षित होने चाहिए, जिनमें भोजन-पानी और गोला-बारूद का उचित प्रबन्ध होना चाहिए।

सुरक्षा की दृष्टि से आवश्यक दुर्गों को कौटिल्य ने अग्र चार भागों में बाँटा है।

(i) औदक दुर्ग-चारों ओर से स्वाभाविक जल (नदी,तालाब आदि) से घिरा/ टापू की भाँति प्रतीत होने वाला दुर्ग। (ii) पार्वत दुर्ग-पर्वत की कन्दराओं अथवा बड़े-बड़े पत्थरों की दीवारों से निर्मित दुर्ग।

(iii) धान्वन दुर्ग-जल और घास रहित भूमि (मरुस्थल) में स्थित दुर्ग।

(द्व1) वन दुर्ग-चारों ओर दलदल अथवा काँटेदार झाड़ियों से घिरा दुर्ग।

(5) कोषः-

कौटिल्य ने कोष को भी राज्य का आवश्यक अंग बतलाया है, क्योंकि कोष राज्य की समस्त गतिविधियों का आधार है। कौटिल्य के अनुसार राजा को अपने कोष में निरन्तर वृद्धि करते रहना चाहिए। इस हेतु उसे कृषकों से उपज का छठा भाग,व्यापारिक लाभ का दसवाँ भाग,पशु व्यापार से अर्जित लाभ का पचासवाँ भाग तथा सोना आदि कर के रूप में प्राप्त करना चाहिए । कोष के सम्बन्ध में कौटिल्य का निर्देश है कि राजा को कोष धर्मपूर्वक एकत्रित करना चाहिए । कर उतने ही लगाने चाहिए जिसे जनता आसानी से दे सके।

(6) दण्ड (सेना):-

कौटिल्य दण्ड को राजा की एक उल्लेखनीय प्रकृति मानता है। दण्ड से तात्पर्य सेना से है। उनके अनुसार दण्ड राज्य की सम्प्रभुता को प्रदर्शित करता है। कौटिल्य के अनुसार राजा की शक्ति उसकी सेना,गुप्तचर विभाग, पुलिस तथा न्याय व्यवस्था में प्रकट होती है।

कौटिल्य का मत है कि राज्य की सुरक्षा के लिए सेना का विशेष महत्त्व है। जिस राजा के पास अच्छा सैन्य बल होता है,उसके मित्र तो मित्र बने ही रहते हैं,साथ ही शत्रु भी मित्र बन जाते हैं । सैनिक अस्त्र-शस्त्र प्रयोग में निपुण, वीर, स्वाभिमानी और राष्ट्रभक्त होने चाहिए। कौटिल्य के अनुसार सैनिकों को अच्छा वेतन व अन्य सुविधाएँ प्रदान करनी चाहिए, जिससे वे निश्चिन्त होकर देश-सेवा में तत्पर रहें।

(7) मित्र :-

सप्तांग सिद्धान्त के अन्तर्गत कौटिल्य ने कहा है कि राजा को अपने पड़ोसी राज्यों से मित्रता करनी चाहिए, जिससे आवश्यकता पड़ने पर उनकी सहायता प्राप्त की जा सके। मित्र वंश-परम्परागत, विश्वसनीय तथा हितैषी हों और राजा व उसके राज्य को अपना समझते हों । परन्तु कौटिल्य ने यह भी कहा है कि मित्र बनाने से पहले राजा को उन्हें परखना चाहिए, जिससे वे धोखा न दे सकें।

कौटिल्य के सप्तांग सिद्धान्त की आलोचना :-

कौटिल्य के सप्तांग सिद्धान्त की अग्रलिखित आधारों पर आलोचना की जाती है

(1) कौटिल्य के सप्तांग सिद्धान्त से हमें राज्य के शरीर सिद्धान्त का आभास मिलता है। आलोचकों के अनुसार राज्य को एक शरीर मानना अनुचित है।

(2) कौटिल्य ने दुर्ग,कोष,सेना और मित्र को राज्य का आवश्यक अंग माना है। यह बात सत्य है कि ये सभी अंग राज्य के लिए आवश्यक हैं परन्तु इन्हें राज्य का आधारभूत तत्त्व नहीं माना जा सकता। आलोचकों के अनुसार प्रत्येक राज्य में सेना पाई जाती है, उस पर बल दिया जाता है, किन्तु सेना के अभाव में किसी राज्य का अस्तित्व समाप्त नहीं हो जाता।

(3) आलोचकों के अनुसार सम्प्रभुता, सरकार, जनसंख्या और भूभाग आधुनिक राज्य के आवश्यक अंग हैं । परन्तु कौटिल्य ने कहीं भी इनका स्पष्ट वर्णन नहीं किया है।

(4) कौटिल्य द्वारा प्रतिपादित सप्तांग सिद्धान्त राजतन्त्रात्मक शासन के लिए ही उपयुक्त है। इसमें प्रजातन्त्र की पूर्ण उपेक्षा की गई है।

Polygraph - A LIE DETECTOR TEST

Neeraj K.Prajapati
Advocate High Court

A polygraph, is a device or procedure that measures and records several physiological indicators such as blood pressure, pulse, respiration, and skin conductivity while a person is asked and answers a series of questions. The belief underpinning the use of the polygraph is that deceptive answers will produce physiological responses that can be differentiated from those associated with non-deceptive answers. There are, however, no specific physiological reactions associated with lying, making it difficult to identify factors that separate those who are lying from those who are telling the truth. Polygraph examiners also prefer to use their own individual scoring method, as opposed to computerized techniques, as they may more easily defend their own evaluations.

In some countries, polygraphs are used as an interrogation tool with criminal suspects or candidates for sensitive public or private sector employment. US law enforcement and federal government agencies such as the FBI, NSA, and the CIA and many police departments such as the LAPD and the Virginia State Police use polygraph examinations to interrogate suspects and screen new employees. However, assessments of polygraphy by scientific and government bodies generally suggest that polygraphs are highly inaccurate, may easily be defeated by countermeasures, and are an imperfect or invalid means of assessing truthfulness. A comprehensive 2003 review by the National Academy of Sciences of existing research concluded that there was "little basis for the expectation that a polygraph test could have extremely high accuracy."

The control question test, also known as the probable lie test, was developed to overcome or mitigate the problems with the relevant-irrelevant testing method. Although the relevant questions in the probable lie test are used to obtain a reaction from people who are lying, the physiological reactions that "distinguish" lies may also occur in innocent individuals who fear a false detection or feel passionately that they did not commit the crime. Therefore, although a physiological reaction may be occurring, the reasoning behind the response may be different. Further examination of the probable lie test has indicated that it is biased against innocent subjects. Those who are unable to think of a lie related to the relevant question will automatically fail the test.

Testing procedure-The examiner typically begins polygraph test sessions with a pre-test interview to gain some preliminary information which will later be used to develop diagnostic questions. Then the tester will explain how the polygraph is supposed to work, emphasizing that it can detect lies and that it is important to answer truthfully. Then a "stim test" is often conducted: the subject is asked to deliberately lie and then the tester reports that he was able to detect this lie. Guilty subjects are likely to become more anxious when they are reminded of the test's validity. However, there are risks of innocent subjects being equally or more anxious than the guilty. Then the actual test starts. Some of the questions asked are "irrelevant" ("Is your name Fred?"), others are "diagnostic" questions, and the remainder are the "relevant questions" that the tester is really interested in. The different types of questions alternate. The test is passed if the physiological responses to the diagnostic questions are larger than those during the relevant questions.Criticisms have been given regarding the validity of the administration of the Control Question Technique. The CQT may be vulnerable to being conducted in an interrogation-like fashion. This kind of interrogation style would elicit a nervous response from innocent and guilty suspects alike. There are several other ways of administering the questions. Effectiveness Although there is some debate in the scientific community regarding the efficacy of polygraphs, assessments of polygraphy by scientific and government bodies generally suggest that polygraphs are inaccurate, may be defeated by countermeasures, and are an imperfect or invalid means of assessing truthfulness.

IMPROVE YOUR LEGAL KNOWLEDGE

4- The Supreme Court of India formulated the doctrine of eclipse in

(A) BhikajiNarainDhakrasVs State of M.P.www.netugc.com

(B) BashesharnathVs Income Tax Commissioner.

(C) State of W.B. Vs Anwar Ali Sarkar

(D) Maneka Gandhi Vs Union of India

Answer: (A)

8- The Supreme Court held in which of the following cases that preamble is not the part of the Constitution of India

(A) Berubaricase

(B) A. K. Gopalan case

(C) Balaji Case

(D) Minerva Mill's case

Answer: (A)

9- Article 16(4A) which gives power to the State to make laws regarding reservation in favour of Scheduled Castes and Scheduled Tribes was added by the

(A) 75th Amendment to the Constitution of India.

(B) 76th Amendment to the Constitution of India.

(C) 77th Amendment to the Constitution of India.

(D) 78th Amendment to the Constitution of India.

Answer: (C)

10- The protection and improvement of environment including forests and wild life of the country is

(A) Directive Principle of State Policy

(B) Fundamental National Policy

(C) Fundamental Duty of a Citizen

(D) Both Directive Principles of State Policy and Fundamental Duty of a Citizen

Answer: (D)

12- A resolution passed under Clause (1) of Article 249 shall remain in force for such period not exceeding

(A) Three months

(B) Six monthswww.netugc.com

(C) Nine months

(D) Twelve months

Answer: (D)

13- The President's rule under Article 356 of the

Constitution of India remains valid in the State

for maximum period of

(A) One month (B) Three months

(C) Six months (D) One year

Answer: (B)

14- The power of the Parliament to amend the

Constitution of India is a constituent power

laid down inArticle 368 by

(A) Twenty Fourth Amendment Act

(B) Twenty Sixth Amendment Act

(C) Forty Second Amendment Act

(D) Forty Fourth Amendment Act

Answer: (A)

15- Social, economic and political Justice is

(A) an idea enshrined in the Preamble to the Constitution of India

(B) guaranteed by Fundamental Rights in the Constitution of India

(C) a Directive Principle of State Policy taken into consideration while making enactments

(D) guaranteed to the people by the writs issued by the High Courts and Supreme Court

Answer: (A)

LEGAL PROCEDURE

Stages Of Criminal Cases In India Under Criminal Procedure Code, 1973

The criminal trials in India can be be broadly categorized into three stages namely; I e A. - Pre-trial stage . B. - Trial stage andC. - Post-trial stage

A. PRE-TRIAL STAGE -1. Commission of an offence (cognizable or non cognizable) , Information to police.Information of cognizable offence.And Information of non cognizable offence.

a. Information of cognizable offence : -Under Section 154 of the Code of Criminal Procedure, a FIR or First Information Report is registered. FIR puts the case into motion. A FIR is information given by someone (aggrieved) to the police relating to the commitment of an offense.b. Information of non cognizableoffence :In case of non cognizable offence N.C.R (non cognizable report) is registered by police under section 155 of Cr.P.C. but the police cannot start investigation or arrest the accused without theorder of a Magistrate having power to try such case.

2. COMPLAINT TO MAGISTRATE- Section 2 (d) of the Code of Criminal Procedure defines the term 'complaint as any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. On receipt of a complaint a Magistrate has several courses open to him.He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Section 200, Cr Thereafter if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint under Section 203, Cr PC. If in his opinion there is sufficient ground for proceeding he may issue process under Section 204, Cr PC.

However, if he thinks fit, he may postpone the issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding (Section 202, Cr PC).

3. Investigation by Police

Police conduct investigation for collection of evidence;Interrogation statement of accused;Statementof witnesses;Scientific analysis / opinion if required. During this time, at any stage decided by investigating agency, accused persons can be arrested.

LEGAL REMEDIES

WRIT OF PROHIBITION

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Writ of prohibition is issued to the court or any tribunal to bar them from doing something what they are about to do. This bar is applied whenever a subordinate court or tribunal hears the matter beyond their jurisdiction or on matters on which they have no jurisdiction. It is an extraordinary writ of preventive nature. It prevents courts, tribunal, quasi judicial bodies and other officers from exercising their power beyond their jurisdiction or exercising those powers which are not vested on them.

It is well settled law derived from decided cases that writ of prohibition lies not only in case of excess of jurisdiction or for abuse of judicial power but writ lies also in cases of where the actions are taken in contravention to the rules of Natural Justice.Initially it was used to limit the jurisdiction of ecclesiastial by restraining them from acting without or in excess of their jurisdiction and later it is used by common law courts.Writ of prohibition is issued to the court or any tribunal to bar them from doing something what they are about to do. This bar is applied whenever a subordinate court or tribunal hears the matter beyond their jurisdiction or on matters on which they have no jurisdiction. But the writ does not lie to correct the course, practice or procedure of inferior courts or tribunal, also to correct the wrong decision of inferior court on the merits because issue can be issued only when the subject matter of the plea is a question of law.

Writ of prohibition can't be issued when there is an error of law unless such error makes it go outside its jurisdiction. Therefore it is clear from this case that if there is want of jurisdiction then the matter is coram non judice and a writ of prohibition is lie otherwise on any other ground other than on point of jurisdiction writ of prohibition can't be issued.

Grounds for issuing writ of prohibition- Absence or excess of jurisdiction- where there is an absence of jurisdiction or total lack of lack of jurisdiction.Violation of natural justice- In case where the principle of natural justice have not been observed or if observed there is a violation of those principles. For example, if the opposite party have not been served with the notice and not been heard. Then the writ of prohibition can be issued.Unconstitutionality of Statute- whenever any tribunal or court proceed to act under law which is ultra vires or unconstitutional, a writ of prohibition can be issued against the proceedings. Infringement of Fundamental Right- where the impugned action is infringing any fundamental right of the petitioner then the writ of prohibition can be issued.Error of law Apparent on the face of Record

NatureProhibition is writ of right not a writ of course and is of preventive nature rather than corrective. The main object of this writ is to prevent unlawful assumption of jurisdiction. Therefore, writ does not lie in case of irregularity in exercise of jurisdiction or jurisdiction has been exercised improperly or erroneously. Availability of an alternate remedy does not create an absolute bar on issuance of a writ of prohibition.This writ can be issued during the proceedings are pending before a judicial and quasi-judicial body and if the proceedings have been terminated and authority became functus officio then in such cases writ of prohibition can't be issued. In such cases writ of certiorari may be issued.

Distinction between Certiorari and Prohibition - These two writs are that both these are issued at different stages of proceedings. One is issued to the inferior court when such court acted without any jurisdiction then the person against the proceedings are taking place can move to the superior court for a writ of prohibition. whereas on the other hand for a writ of certiorari court have to hear the matter and gives decision on that and the aggrieved party

can move to the superior court of issuance of writ.further the order may be passed for quashing the decision on the ground of want of jurisdiction.In cases where inferior court might have passed the order but the same does not completely dispose of the case so it might be necessary to apply both the writs- certiorari for quashing the decided issues and prohibition for barring further proceedings for continuing the case and deciding left issues. Like in cases where interim orders had been passed.Case- Hari Vishnu Kamath v Ahmad Ishaque - In the above case supreme court held that in cases where there is a requirement for prayer of certiorari as well as prohibition and the in the application not prayer of certiorari has been made then it would be open to the court to issue the writ and stop further proceedings which are affecting the decision.But in case the proceedings have ended then seeking for prohibition will be too late and writ of certiorari must be a proper remedy for quashing. Clearing on the point it was also held that writ of prohibition will lie when the proceeding are pending to a large extent and writ of certiorari will be issued when then case has been terminated in a final decision.Where the proceedings of inferior courts are partly within the jurisdiction and partly without it, Then the writ of prohibition will lie to the extent of excess of jurisdiction.Writ of certiorari has been defined as one of the most effective and efficient remedies taken from common law. Certiorari means "to certify".

LEGAL STUDY

Difference Between Appeal and Revision

Differences Between Appeal and Revision- 1)- The appeal is a constitutional right for an unsuccessful party in the court. Revision on the other hand is discretion of the court, meaning it can take place or not. 2) Hearing in the court - The appeal is a court hearing like any other while revision is not necessarily heard in the court. According to the Civil Procedure Code, a request is handled by a superior court to the previous court so it must not be a high court. A high court can only revise. 3) - Power of interference- In appeals, the courts have the power to interfere in any way but in revision the influence of intervention is limited. There is only one procedure involved in an appeal that is the hearing of the case. In revision, however, two methods are included, preliminary and final. 4) - Continuity - An appeal is a continuation of the court proceeding on a certain case while a revision is checking whether the legal actions were followed in the proceedings. 5) - Type of examination involved in Appeal and Revision - An appeal examines law basics and facts on the other hand revision entails examination of legal actions, jurisdiction and procedure followed to arrive at a decision. 6) Time limit - In an appeal a party is given a certain time limit to have filed an appeal which begins immediately a final decision is made by a lower court. In revision there is no time limit, a party can file for it any time though the time must be reasonable.

Appeal and revision are legal terms used in court. Though they seem similar they have certain differences; they represent two different types of applications that an individual can opt for after unsuccessful court hearing.The introduction of appeal and revision in court has helped many individuals receive a fair hearing. Through an appeal the case is heard again by a different court, this may lead to a new decision. In a revision, a high court checks whether legal actions were followed and that the court exercised regular jurisdiction. The unsuccessful party is supposed to file an appeal in the given time limit which begins when a lower court makes a final decision. Without the filing or late filing the appeal process is unsuccessful. The court determines whether to have a revision of a case or not. It is not a right of the party to have one. The high court only considers revision if it suspects some illegalities and non-exercise of jurisdiction. The process of revision involves rewriting and reworking which no time limit hence can be filed at any reasonable time.

What is an Appeal? - An appeal is whereby an individual petition for the case to be heard in a new court. In most cases, the case is heard on a higher court from the previous one. In simpler terms, an unsuccessful party in a case decides to take the case to a higher court to seek for reversal of a decision made by a lower court. The party that files an appeal believes that there were errors

SUBHASH C. PANDAY

made either on the laws or facts raised. The agenda of the higher court going to rehear the case which is commonly known as the appellate court is to review the decision previously made by another court by focusing on the legal issues and reasons that led to the decision. The party that files the appeal is known as the appellant and has the statutory right to an appeal. The appellant is required to register for an appeal with the supporting documents in the given time limit by statute for it to be successful. What Is a Revision?- Revision is the re-examination of legal actions. They may be some assumptions made illegally, non-exercise or exercise of jurisdiction irregularly by a lower court. In this case,, therefore, a higher court re examines the decisions made by a lower court to know whether all the legal actions were exercised. Unlike the appeal, revision is not a statutory right. The superior court therefore can decide to examine or not examine a decision made by a lower court. The main primary purpose of a revision is to make sure that justice has been administered properly and also to correct any errors that could have led to improper justice.

CONCEPT OF 'RIGHT TO LIFE'

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'Everyone has the right to life, liberty and the security of person.' There would have been no Fundamental Rights worth mentioning if Article 21 had been interpreted in its original sense. This Section will examine the right to life as interpreted and applied by the Supreme Court of India. Article 21 of the Constitution of India, 1950 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." 'Life' in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. Under the canopy of Article 21, so many rights have found shelter, growth, and nourishment. Thus, the bare necessities, minimum and basic requirements that are essential and unavoidable for a person is the core concept of the right to life.

In the case of Kharak Singh v. State of Uttar Pradesh[i], the Supreme Court quoted and held that: By the term "life" as here used something more is meant than mere animal existence. The provision equally prohibits the mutilation of the body by amputation of an armored leg or the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world. In Sunil Batra v. Delhi Administration[ii], the Supreme Court reiterated with the approval the above observations and held that the "right to life" included the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions.

Right To Live with Human Dignity - In Maneka Gandhi v. Union of India , the Supreme Court gave a new dimension to Art. 21 and held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Elaborating the same view, the Court in Francis Coralie v. Union Territory of Delhi[iv], observed that:

"The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self."Characterizing Art. 21 as the heart of fundamental rights, the Court gave it an expanded interpretation. Bhagwati J. observed: "It is the fundamental right of everyone in this country… to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

Right Against Sexual Harassment at Workplace- Art. 21 guarantees the right to life right to life with dignity. The court in this context has observed that: "The meaning and content of fundamental right guaranteed in the constitution of India are of sufficient amplitude to encompass all facets of gender equality including prevention of sexual harassment or abuse." Sexual Harassment of women has been held by the Supreme Court to be violative of the most cherished of the fundamental rights, namely, the Right to Life contained in Art. 21. In Vishakha v. State of Rajasthan[x], the Supreme Court has declared sexual harassment of a working woman at her work as amounting to the violation of rights of gender equality and rights to life and liberty which is a clear violation of Articles 14, 15 and 21 of the Constitution. In the landmark judgment, the Supreme Court in the absence of enacted law to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment.

Right Against Rape - Rape has been held to a violation of a person's fundamental life guaranteed under Art. 21. Right to life right to live with human dignity. Right to life, would, therefore, include all those aspects of life that go on to make life meaningful, complete and worth living.

In BodhisattwaGautam v. SubhraChakraborty[xii], the Supreme Court held that: "Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushed her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society, which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life with human dignity contained in Art 21".

Right to Reputation - Reputation is an important part of one's life. It is one of the finer graces of human civilization that makes life worth living. The Supreme Court referring to D.F. Marion v. Minnie Davis[xiii] in Smt. KiranBedi v. Committee of Inquiry[xiv] held that "good reputation was an element of personal security and was protected by the Constitution, equally with the right to the enjoyment of life, liberty, and property. The court affirmed that the right to enjoyment of life, liberty, and property. The court affirmed that the right to enjoyment of private reputation was of ancient origin and was necessary to human society."

PROHIBITIVE OR MANDATORY INJUNCTIONS

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In Halsbury's Laws of England, it is stated: "An injunction is a judicial remedy by which a person is ordered to refrain from doing or to do a particular act or thing. In the former case it is called a restrictive injunction, and in the latter a mandatory injunction." An injunction is prohibitory or restrictive in nature when a court forbids the commission of a wrong threatened, or the continuance of a wrongful course of action already begun. It contemplates a 'negative' act.

An order/decree of mandatory injunction is passed on the application of an injunction when a wrongful state of things is created by the defendant. The defendant has to put an end, or in other words has to undo his wrongful act by way of an active restitution of the former state of things. He is required to do a 'positive' act for this purpose. It is a legal obligation that needs to be fulfilled by the defendant. It can thus be said that it becomes mandatory or imperative for the defendant to act in accordance with the order of the court to rectify the wrong committed by him. A mandatory junction can further be perpetual or temporary in nature. A mandatory injunction in private law is a counterpart of mandamus in public law. Once the obligation to perform the public duty is established the performance of the duty is only a ministerial act and in such a case mandamus is available as of right and the court has no discretion to refuse it.

In a catena of cases it has been held that a mandatory injunction can be granted only to restore status quo and not to establish a new set of things. The court may in its discretion grant a mandatory injunction to prevent the breach complained of, and also to compel performance of the requisite acts. Mandatory injunctions can thus be granted to undo contractual breach as well tortious wrongs. These acts may comprise of pulling down of a building, destruction of copies produced by piracy of copyright and of trademarks, removal of trees on the defendant's land or the removal of overhanging branches, providing maintenance to the widow of the testator, to restore the building in its original condition, etc. U/S - 39 of the Specific Relief Act defines mandatory injunctions-Mandatory injunctions are granted to prevent the breach of an obligation and in so doing, it is necessary to compel the performance of certain acts which the court is capable of enforcing. The court may in its discretion grant a mandatory injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

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सेवा में,

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