

THE IMPACT AND IMPLICATION OF ADMISSION OF WRITS IN INDIAN CONSTITUTION.

Mr.Razit Sharma*
Anjali*

ABSTRACT:

Admission is a necessary stage in procedure for adjudication of writ jurisdiction. It is a stage, which entertains the writs for hearing on merits. It is after the writ is admitted that the court proceeds for its appropriate adjudication on merits. The main issue to be discussed presently is — whether the discretion of such ‘admission’, in the manner it is presently exercised by the High Court, is capable of delivering justice? Whether this practice of ‘admission’ is discriminatory? Whether this concept of ‘admission’ is appropriate as per the provisions and philosophy of the constitution? When the members of the Constituent Assembly presented the Constitution of India to our nation, one of its primary and fundamental objectives was not only to provide a sovereign, democratic, republic state, but to secure for its citizens justice, liberty, equality and fraternity by administering adequate safeguards and legal protection in case of any abuse or infringement of any right. All our laws as we know derive their source and power from the constitution and the writ jurisdiction is one of the special safeguards conferred on the courts, specifically the supreme court and High courts, to act as guardians of justice while also ensuring that none of these laws infringe or abrogate upon the fundamental fabric of our democracy, which is the constitution of India.¹ Article 226 of the constitution, confers the High Courts’ wide powers to issue orders and writs to any person or authority. Before a writ or an order is passed, the party approaching the court has to establish that he has a right and that right is illegally invaded or threatened. High court can issue writ and directions, to any Government, authority or person even beyond its territorial jurisdiction, if the cause of action partly arises within its territorial jurisdiction. Wherever questions of facts are involved normally High Court does not exercise its power under article 226. Similarly, when an alternative remedy is available to the Petitioner, the Courts do not entertain petitions under Article 226. Also, when there is an inordinate delay in approaching the court, the court may not give relief acting under this article.

There are various types of Writs: – Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. Supreme Court under Article 32 of the Constitution can exercise similar

¹ <http://www.livelaw.in/evanescing-due-process-abuse-writ-jurisdiction-lieu-alternate-remedy> visited on 27.4.2018

powers.

The basic idea in conferring powers under Article 226 upon High Court is to see that the rule of law is maintained in the society. The executive Authorities are to be corrected whenever they transgress the limits of their power and encroach upon the rights of the citizen. Violations of human rights, natural rights etc., are instances where the High Courts' interfere using this powerful article of the constitution²

KEYWORDS: *Admission , Writs, Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari , Private, Limited.*

1.INTRODUCTION

A writ is a quick remedy against injustice, a device for the protection of the rights of citizens against any encroachment by the government authority. Writs originated in Britain where they were King's and Queen's " prerogatives " writs and were commands to the judicial tribunals or other bodies to do or not to do something . Since writs carried the authority of the crown they were to be obeyed. Later, writs came to be enjoyed by the judges of the King's bench . In India , the power to issue writs has been vested in the supreme court and the high court's. It is a speedy remedy and is made out available without going into avoidable technicalities. It is an extraordinary remedy which can be expected in special circumstances. The supreme court has been empowered to issue writs in the nature of mandamus , prohibition, certiorari and quo warranto for protecting the fundamental rights (Art.32 of the Constitution). Similarly power has been conferred on the High court's via Art.226 of the constitution . The High court's can issue the above writs for protecting the fundamental as well as statutory and common law rights.³ Writs were first introduced in India in 1774 by a Royal Charter of Britain. During this period, The East India Company started to be subjected to parliamentary control. The Charter created a Supreme Court at Calcutta and conferred on it the right to issue all writs as were issued in England. Subsequently, Supreme Courts of Judicature were added in Madras in 1800 and Bombay in 1823 with similar provisions. Later, the three supreme courts were replaced by High courts in the same places by the Indian High Courts Act of 1861, but the power to issue writs was confined only to those three high courts and that too within their jurisdictions only for writs of prohibition and certiorari. The other high courts in India created under the Act did not have any power to issue writs. Slowly, the authority to issue writs of Habeas Corpus and Mandamus was curtailed and taken away. This remained the scenario until 1950. In 1950, the Constitution of India came into effect. The authority to issue writs of a certain nature was provided in the

² <http://www.advocatekhaj.com> (visited on 28.4.2018)

³ Dr. Ashok K. Jain , Constitutional Law (Ascent publication) 4th edition, 2010

constitution to the Supreme Court under article 32 for the protection of Fundamental rights and to the High Courts under article 226 for the protection of fundamental rights as well. In 1950, the Constitution of India came into effect. The authority to issue writs of a certain nature was provided in the constitution to the Supreme Court under article 32 for the protection of Fundamental rights and to the High Courts under article 226 for the protection of fundamental rights as well as any other rights.

Writs may be issued against any organ of the government or any statutory creation. On the Subject of who may file a writ petition, The Supreme court in the landmark case Satyanarayana Sinha v. Lal & Co. has given itself jurisdiction to determine whether any person or group has locus standi to file a petition.⁴ **Article 32 of the constitution**

I. "Article 32. Remedies for enforcement of rights conferred by this part:

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, which ever may be appropriate, for the enforcement of any of the rights conferred by this part.
- (3) Without prejudice to the powers conferred on the Supreme Court by Clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under Cl. (2).
- (4) The right guaranteed by this Article shall not be suspended except as otherwise provided by this constitution."⁵

II. **"Article 226. Power of High Courts to issue certain writs —**

⁴ <http://www.indiastudychannel.com/resources/The-origin-development-and-role-of-writ-petition-in-India> (visited on 29-4-2018).

⁵ The constitution of India as ammended by The Constitution (one hundeed and first Amendment) Act,2016.

- (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, quo warranto and certiorari, or any of them for the enforcement of any of the right conferred by Part III and for any other purpose.
- (2) The power conferred by Cl. (1) to issue directions, orders or writs in any government, authority or person may be exercised by any High Court exercising jurisdiction in relation to the territories within 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 or in any proceedings relating to petition under Cl. (1) without—
 - (4) (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and 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 favour such order has been made or the counsel of such party, the High Court shall dispose of the application within the 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 the period, before the expiry of 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.
- (5.) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by Cl. (2) of Article 32.”⁶

2.Kinds of Writs:

The various types of writs permissible under the Constitution will now be enumerated and discussed.

Under the Constitution, the following kinds of writs can be issued by the courts: the writs of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto.

⁶ The constitution of India as amended by The Constitution (one hundred and first Amendment) Act,2016

2.1 Writ of Habeas Corpus:

Habeas Corpus is used to question the legality of any person's detention. This remedy is available only when other ordinary legal remedies have been exhausted or are found inadequate. Habeas Corpus has been celebrated as a bulwark of personal liberty and the 'first security of civil liberty'. The writ is remedial in nature and its objective is to secure the release of the illegally detained person. Habeas Corpus may be applied for by any person who is not a 'stranger', i.e., any person who has any relation to the detainee, be it lawyer, relative, friend, family member, activist group, or even the detainee himself may apply for a writ of Habeas Corpus. The writ of Habeas Corpus was famously used in India during the Emergency declared in 1975 to question the detainment of persons under the Maintenance of Internal Security Act, 1971. In the case of *Sunil bhatra v. Delhi administration*⁷ It has been held that the writ of habeas corpus can be issued not only for releasing a person from illegal detention but also for protecting prisoners from the inhuman and barbarous treatment.

2.2 Writ of Prohibition:

The writ of Prohibition is issued by a superior court to a court below it ordering it not to overstep its jurisdiction. One can apply for a writ of prohibition if one feels that the court which has taken on the case has no jurisdiction over it. On receiving the writ of prohibition, the court will not try the case. In this way, the case will be tried by the body which has jurisdiction to try the case. It is a preventive step. The Writ of Prohibition may only be used on judicial or quasi-judicial bodies. The writ of prohibition has a very ancient history and was present in the 11th century in England. In *Hari Vishnu Kamath v. Ahmad Ishaq*⁸ the Supreme Court explained the writ of Prohibition.

2.3 Writ of Quo Warranto:

The Writ of Quo Warranto is used to challenge the illegal occupation of a public office by any person. If the accused is unable to show that he or she has legitimately occupied the office, the person will be ordered to relinquish office.

Historically, the writ of Quo Warranto was used to check against the illegal use and occupation of any rights or authority conferred by the Cr.zown. The accused would be asked to produce the order of the king certifying his appointment. If unable to do so, he would be dispossessed of the office or rights. Quo Warranto may only be used when public offices are concerned. Any position in a private, i.e., non-governmental organization cannot be challenged by Quo Warranto. The Supreme Court explained the Writ of Quo Warranto in *University of Mysore v. Govinda Rao*⁹. Any person may file for writ of Quo Warranto if it is

⁷ AIR 1980 SC1795

⁸ AIR 1955 SCR(1)1104

⁹ AIR 1965 SC491

in the public interest . If however the writ is not being filed in the public interest, the person filing the writ must be personally aggrieved by the illegal occupation of the public office.

2.4 Writ of Certiorari:

The writ of Certiorari is used to verify the judgment of a particular case given by a lower court by a higher court. Certiorari acts as a supervisory role and not as an appellate role. The Higher court orders the lower court to give a record of the case including evidence etc. to the higher court and if it then finds any lapses it has power to quash the judgment. However, the writ of mandamus can be used if and only if the lower court has acted without jurisdiction or in excess of it.

2.5 Writ of Mandamus:

The writ of mandamus is a writ that is issued by a court compelling any person or governmental department to follow the law and perform any statutory duty required. Mandamus cannot apply to any private organization unless it is concerned with the performance of any statutory authority. The writ of mandamus has been used extensively for the protection or enforcement of rights or duties enjoined by statute. However, mandamus cannot be used to direct the law-making process, it can only be used to enforce laws and check their constitutional validity. Writ petitions have been used to enforce and protect the Fundamental rights of India. The makers of the constitution were nearly all for the implementation of writs to protect the fundamental rights of the citizens. Writs have seen wide usage especially in the checking of the lawful operation of government apparatus. Especially in India, they have been used to deliver speedy and efficient justice and uphold the fundamental rights of citizens as enjoined in the Constitution¹⁰.

3. BASIC STRUCTURE OF THE CONSTITUTION AND ADMISSION OF WRITS:

In view of the alarming consequences of the ‘admission’ resulting out of indefinite postponement of the hearing of the writ petition, its viability as well as reasonability has to be seen within the framework of the constitution. Its impingement on the essential features or the ‘basic structure’ of the constitution has to be seen. The main purpose of writ jurisdiction under Art. 32 and Art. 226 of the constitution are the enforcement and protection of fundamental rights. These rights have a special status and a place in the entire framework of the constitution. The protection and a sort of promise to ensure basic human rights liberty, justice, equality and fraternity, has been reflected in the preamble of the constitution and further expansion and delineation of these rights take place in part III and

¹⁰ <http://www.indiastudychannel.com/resources/The-origin-development-and-role-of-writ-petition-in-India> (visited on 29-4-2018)

IV of the constitution in the form of fundamental rights and Directive Principles. The political and social rights envisaged in this part of the constitution are the bedrock of the democracy in the country. To ensure the protection of fundamental rights the constitution of India has conceived two-fold provisions at two different levels. Under Art. 32 of the constitution the right to seek judicial remedy against these rights has been incorporated as a fundamental right itself, it has been further supplemented in the form of a constitutional guarantee under Art. 32(4), wherein it has been specifically provided that the rights provided under this Art. shall never be suspended. To supplement this protection, another constitutional provision has been provided under Art. 226 for protection of fundamental rights and other legal rights. These two provisions provide for judicial protection of these rights. Similarly, legislative indemnity has been provided under Art. 13 of the constitution which forbids the enactment of any law in violation of fundamental rights. Furthermore the concept of 'basic structure' as laid down in *Keshvanand Bharti v. State of Kerala*¹¹ prohibits even the parliament to make any amendment under Art. 368 in the fundamental rights, which may affect the basic structure of the constitution. Since these rights are to be enforced against the state, the definition of the state under Art. 12 of the constitution has been enlarged and expanded to a great extent in various judgments by the Supreme Court of India, so as to expand the scope of enforcement of fundamental rights against the state and its instrumentalities.

It is against this background that the concept of admission under study has to be seen. The long admission of writs, denying the protection of Art. 226 for an indefinite period, may be seen as an abrogation of this right. The fundamental rights occupying a place of pride in the constitutional scheme are allowed to be infringed indefinitely. The right provided under Art. 226 is virtually denied by such admission. This is the violation of the constitution and its basic structure. It is taking away of the power of judicial review provided under Art. 226 of the constitution. Bhagwati J. thus observed in this regard. The power of judicial review is an integral part of our constitutional system and without it, there will be no government of laws and the rule of law would become a teasing illusion and a promise of unreality. I am of the view that if there is one feature of our constitution which, more than any other, is basic and fundamental to the maintenance of democracy and the rule of law, it is the power of judicial review and it is unquestionably to my mind, part of the basic structure of the constitution. Of course, when I say this I should not be taken to suggest that effective alternative institutional mechanism or arrangements for judicial review cannot be made by parliament. But what I wish to emphasise is that judicial review is a vital principle

¹¹ (1973) 4 SCC 225.

of our constitution and it cannot be abrogated without affecting the basic structure of the constitution.

4.THE AMBIT OF COURT'S DISCRETIONARY POWERS :

4.1 Justice the Ultimate Goal

If to see closely through the philosophy animating Art.32,136,142 and 226 of the constitution of India.It comes out that the basic purpose of incorporating these provisions in the constitution was to impart justice under every circumstances.The Superior courts of adjudication under the provisions,therefore,while conducting judicial review ,have to see the net impact of their order on final outcome.if substantial justice results from even an erroneous order ,the court may restrain itself from undoing such erroneous or illegal order under its discretionary jurisdiction.It is because of the fact that discretion available with the court in such matters is to impart justice and not to snatch it away.The supreme court in the case of Employee's State Insurance Corporation¹² observed:-

“Issuance of a writ of Certiorari is a discretionary remedy.*Champalal binani v.CIT, West Bengal*¹².The High court and cosequently this court while exercising their extraordinary jurisdiction under Art.32 or 226 of the Constitution of India may not strike down and iillegal order although it would be lawful to do so.In a given case,the High court or this court may refuse to extend the benefit of a discretionary relief to the applicant .Furthermore ,this Court exercised it's discretionary jurisdiction under Article 136 of the constitution of india which need not be exercised in a case where the impugned judgement is found to be erroneous if by reason thereof substantial justice is being done.*S.O.S Shipping pvt. Ltd. V. Jay Container services Co. Pvt. Ltd.*¹³Such a relief can be denied, inter alia,when it would be opposed to public policy or in a case where quashing of an illegal order would revive another illegal one.This court also I exercise of it's jurisdiction under Art.142 of the Constitution of India entitled to pass such order which will do complete justice to the parties.”

4.2 DELAY AND DENIAL OF JUSTICE

It is axiomatic to say that justice delayed is justice denied, it is because justice is relevant only when it is delivered in time and if it is delayed it is not only negated but at times it becomes injustice. As a matter of fact, the very motivation and purpose of approaching the court is lost once the relevancy of relief sought is lost. A multiplicity of examples may be quoted wherein a delayed judgement has rendered the petition infructuous and irrelevant. In the matters related to service disputes, term

¹² AIR 1970 SC 645J

¹³2003 (4) SCC 44

appointments and election disputes their utility remains only when such matters are disposed of in time by the courts. If a writ petition is filed in the High Court related to such matter and if it is 'admitted' to be heard after more than a decade, the very purpose of filing such writ petitions would be lost in the labyrinth of time. The judgements in such cases are delivered mostly when the petitioner is either retired or expired or the required benefit has been accrued to him. Before writing more about it, it would be relevant to mention here a brief analysis of a few selected cases where judgements have been delivered after a long period of time. *Sohan Lal v.State of Punjab*¹⁴- The petitioner in this case retired in 1981 as a junior engineer from PWD,. B & R Amritsar (Punjab). After pursuing his case for retirement benefits with the department for eleven years he filed the writ petition in the year 1992. The High Court after hearing the case at motion stage decided to 'admit' it. In the meanwhile, the petitioner could get provisional pension but not other retirement benefits. It was ultimately decided in the year 2000 wherein the claim of the petitioner was accepted and he was found to be eligible for all the benefits and accordingly, the same was granted to him along with interest @ 12% PA for a period of 38 months prior to the date of filing of writ petition, till the actual payment was made to the petitioner. Normally a retiree approaches the court only after his efforts with the department are frustrated. In such cases if the High Court does not see through the sequence of events at the motion stage and admits the matter, the woes and worries of the retiree get sharper with the advancement of old age. The petitioner was made to wait for a period of another eight years and the actual relief could be available to him after a period of nineteen years of his retirement. Thus, inspite of his best efforts justice remained away from him for nineteen years out of which eight years were consumed in the court.

In a recent judgement in *Manoranjan Panda v. State of Orissa*.¹⁵ The High Court of Orissa while analysing the scope of Article 226 in relation to Article 12 of the constitution observed, "The language of Article 226 does not 'admit' of any limitation on the powers of the High Court for exercise of jurisdiction thereunder though by the various decisions of Apex court with varying and divergent views it has been held that jurisdiction under Article 226 can be exercised only when body or authority, decision of which is complained of was exercising its power in the discharge of public duty and that writ is a public law remedy. Therefore, the remedial measures both under Article 32 and Article 226 of the Constitution have to be framed and fashioned keeping in view the demands of the writ with the only target to impart justice. The attitude of the' court should be futuristic and imaginative rather than traditional and static. The role of the court has to be active and creative rather than

¹⁴ CWP No.4795 of 1992

¹⁵ AIR 2000 Ori36

static and passive. The positive attitude of the court alone could lead to new horizons of justice which are essentially required to meet with the growing challenges, with the growth and dynamism of the present social order.

4.3 Interest of justice and judicious discretion

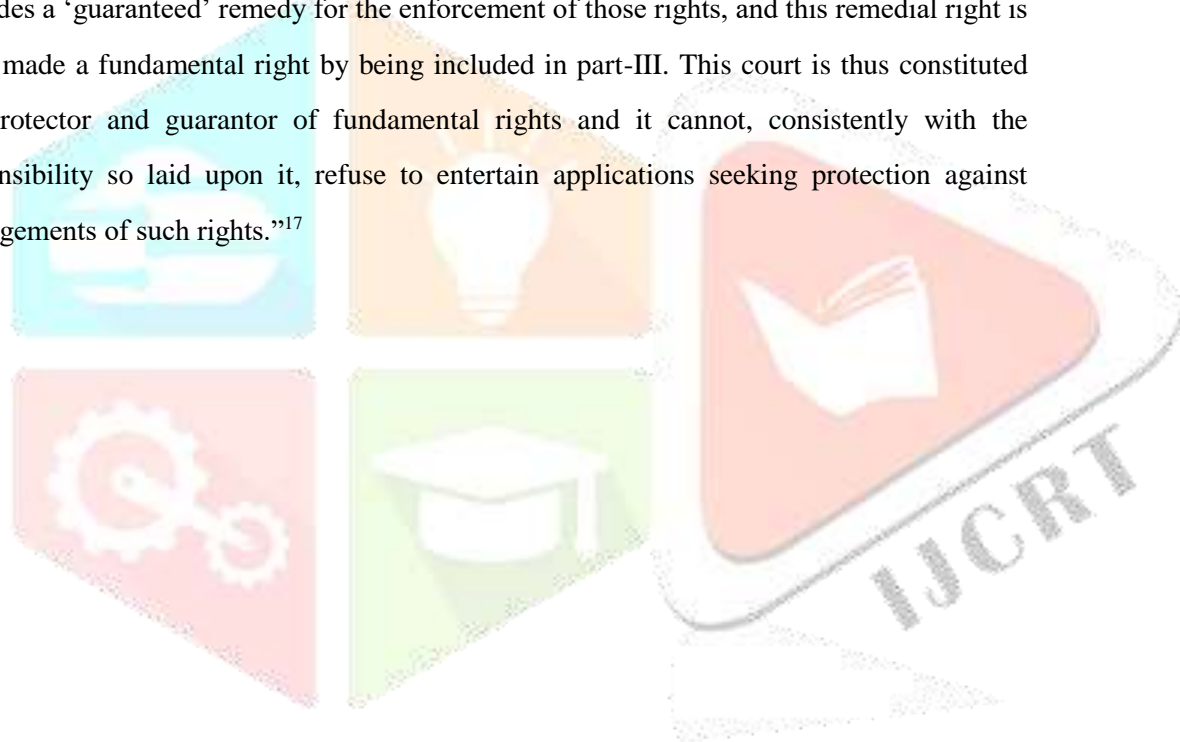
However, the important thing under the unwritten law is the interest of justice, judicious discretion and high traditions. The Constitution has no doubt given an open leverage to the writ courts in the matter of procedure. However, the same has been done with high expectations. The prime responsibility on the court is to impart justice in every circumstances. Therefore, when an open discretion has been left to the writ court, the same has been done with the noble cause i.e. the cause of justice. There has to be judicious discretion leading to a procedure which delays or debar justice would not be as per the spirit of magnanimity, the Constitution has extended the writs Court's. One instance may be quoted in this regard e.g. the admission of writ for an indefinite period without fixing the next date of hearing. The courts do it out of pure discretion but such discretion goes against the spirit of Constitution.

5. NON-DECISION AND NON-EXERCISE OF POWERS BY THE COURTS

After discussing at length the impact of 'admission' resulting in delay and denial of justice, we come to another impact of 'admission' in a different form. Here is a situation, wherein, even after prolonged admission, when the matter comes up before the High Court for final disposal, it is not finally decided on merits. The matter is disposed of in various forms wherein long-awaited decision on merits is not available to the petitioner. In certain situations the court just directs the petitioner to file a representation with the competent authority who would decide the representation within a time stipulated by the court. In some other cases, the court finds that the law had already been settled, but rather than deciding the matter on merits as per the law already settled, the court simply directs the respondents to take a decision as per law. In certain other situations after admission of the writs for 15-20 years, the court discovers that the matter suffers from some technical deficiency like delay and laches, involvement of disputed question of fact, availability of alternative remedy and non-joinder of necessary parties etc. *Sohan Singh v. State of Punjab*¹⁶: The petitioners' three in number, filed the writ petition for grant of promotion. After 6 adjournments at motion stage the writ was 'admitted'. The petitioners as well as the six private respondents retired in the meanwhile. The matter was finally heard and disposed off being infructuous on 04.11.1997. While deciding the case the court observed that both the parties had got relief

¹⁶ CWP No.3594 of 1982

under the orders of the Apex Court in *State of Haryana and others v. Shamsher Jang Bahadur (1972) SLR 441*. The facts of the judgement indicate that the petitioners were made to retire under the orders of 'admission'. The relief they got was under a judgement of the Supreme Court, which was delivered in the year 1972. The petition was filed after 10 years of reporting of the aforesaid judgement. In view of the law laid down by the Apex Court the writ petition could easily be disposed off at the motion stage in the year 1982. Had it been so, immediate relief would have been granted to the petitioners. But either the court was not briefed properly of the case law or the court could not look into the position of law involved in the writ petition due to various constraints. Under the same Background the observation of Patanjali Shastri J. in the context of Article 32 of the constitution may be seen as an initial reaction of the court regarding the scope of writ jurisdiction when he says: "Article 32 provides a 'guaranteed' remedy for the enforcement of those rights, and this remedial right is itself made a fundamental right by being included in part-III. This court is thus constituted the protector and guarantor of fundamental rights and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights."¹⁷



¹⁷ ROMESH Thapper V.State of Madras,A.I.R.1950 at pg.126

But again to return to the concept of 'admission' it may be safely said with due respect to the Hon'ble High Court that it is refusal of the court to hear the petition filed under Article 226. As submitted earlier Article 32 and 226 are analogous provisions of the constitution, if the Supreme Court cannot refuse to hear under Article 32, the High Courts are also not allowed to refuse such hearing. Such refusal in the form of indefinite 'admission' followed by non-decision on merits is against the provisions of the constitution and the spirit of law.

INEFFICIENCY AND UNFAIR PRACTICE

Since admission of writ petition takes a long period before it is finally decided, normally it results in inefficiency and in certain cases it invites unfair methods also. It is because of the long duration that the people try to get benefit unfairly and with malafide motives and they try to get, which in the normal process of law they could not have got. Before examining the matter in detail, the discussion of individual cases decided in this regard, would help to understand the way such things are allowed to happen:

*Savitri v. State of Haryana*¹⁸The writ petition pertained to the declaration of surplus land of the petitioner. To get the benefit under the Land Ceiling Act, the petitioner forged the date of death of the deceased, so as to bring it prior to the coming in to force of Hindu Succession Act, 1956. The matter was rejected in appeal under the statute. The CWP was filed in 1981 and it was dismissed on 17.12.1996. The facts of forgery were discovered by the court and accordingly it was dismissed. However, by virtue of the interim stay orders of the court, the petitioner was able to keep the land in his possession for a period of nearly 15 years. The admission of the writ enabled the petitioner to take advantage of the malpractice. Though the court dismissed the petition with a cost of Rs. 5000/-, however, it was not enough in comparison to the profits enjoyed by the petitioner. The timely disposal of writs ensures the principles of natural justice also to restore the rights of the people. As discussed earlier the right to be heard is one of the fundamental rules of natural justice and it is essential also to ensure the rule of law also. This right of hearing has to be seen in its effect and substance. The immediate hearing by the court in writs provides the real solace and shelter to those who move the court to get a particular issue decided. Notwithstanding the final outcome of these writs, the parties, when heard in time and the issue is decided accordingly, get a sense of real satisfaction.

6. UNCERTAINTY –IMPACT ON INDIVIDUAL AND SOCIETY

The long admission of writ petitions further results in a direct impact on both the individual and the society. One of the impacts, which directly affects the society, is the element of uncertainty regarding the status of law. When a particular point of law is raised in a writ petition and the same is admitted without settling down the law involved in it, it creates a sense of uncertainty regarding it. The interim relief, even if granted in admitted petitions, creates a sense of ad-hocism. It further results in a multiplicity of litigation. When law remains unsettled the sense of insecurity among the affected persons make them seek more and more recourse to the Court and resultantly, on a similar issue a number of petitions are filed, which sometimes involve hundred and thousands of petitioners. The courts are overflooded with such litigation and the number of such cases goes on increasing till the law is finally settled. It also creates another social conflict where the credibility of the entire system of governance involving the judicial remedy

¹⁸ CWP No.5117 of 1981

falls prey to it. Before discussing this issue further, a brief survey of a few such cases would be appropriate here, keeping in view the scheme and substance of the present study.

*M/s Modern Cold Storage v. State of Haryana*¹⁹

The land of the petitioner was notified under the Land Acquisition Act, 1894 on 10.01.1983 under Section 4 of the Act. He filed the writ petition against these proceedings in the year 1984. Dispossession of the petitioner was stayed at the motion stage and the writ petition was admitted. It was finally heard and dismissed on 25.02.2002. No merit was found in the case of the petitioner. However, the development plan of the state remained obstructed for 18 years. The petitioner not only enjoyed the possession of the land for 18 years under the stay orders of the court, but it also resulted in multiplicity of other consequences. The stay orders of the court attracted similar other writ petitions which increased the litigation against the state and an element of uncertainty was generated.

*Jagram v. State of Haryana*²⁰:- This writ petition was also filed against the Land Acquisition Proceedings wherein the land was to be acquired for a public purpose, namely, for construction of new green market, staff quarters and farmers rest-house at Nangal Chowdhary Tehsil Narnaul. The proceedings were stayed at the motion stage and the writ was admitted. It was finally heard and dismissed in 1997. In this matter also, the development scheme initiated by the state remained stalled for 15 years and the petitioner was able to enjoy the possession of the land for such a long period under the stay orders of the court.

Thus the law affects the society and the society affects the law. It is not only the formation of law that undergoes such affect but it is the adjudication of law also that comes under this effect. Therefore, the impact of any tendency or trend of law, whether it be positive or negative, is bound to affect the individual and the society. Public faith and confidence are essential elements. This can be generated only by timely and speedy delivery of justice. The element of uncertainty should have no place in the justice delivery system. When somebody approaches a court of law, his faith and confidence in the judicial system should be beyond any doubt. The failure of timely justice shocks the conscience of the common man who seeks justice and it may emasculate the credibility of the system itself. The matter becomes more serious when it concerns the higher judiciary. With these courts sitting at a higher pedestal, the hopes and expectations of the people are elevated to a higher level. The people anticipate and visualise a perfect system of justice at this level. Therefore, the standard of justice delivery system in higher courts has to be flawless. The failure of justice at this level is more hazardous to the society. If these courts fail to protect the rights of the people, the social unrest may engulf the entire set-up specially when the remedy under Article 226 is not available in the High Court, it leads to many social consequences. Those who are successful in bypassing or avoiding the judicial deterrent at such a high level, feel free to infringe the rights of the people without any check. Therefore, it is the public faith in the rule of law, which keeps the social movements within limits. The balance between the individual liberty and social demands may be nicely maintained only if the violations of rights are remedied in time.

¹⁹ CWP No. 226 of 1984 (Unreported)

²⁰ CWP No. 1962 of 1982 (Unreported)

Conclusion:

Thus given the above scenario of the pending cases in the High Courts and the number of available judges, it is indicative of the intensity of requirement of an early and result-oriented action. The ratio of institution and disposal may be a key to the solution of the problem. Though it is a hard fact that the increase in the number of judges cannot be obtained in one day. The process of appointment of a High Court judge has to cross various stages and channels before it actualizes. It is a lengthy process involving application of mind at various stages. It has to pass through a strenuous test along with the deliberations at a very high level. Therefore, the time required in this process is one of the important factors. The second aspect regarding the reduction of pendency of cases is to provide for necessary assistance to the judges in the adjudication of matters. It has been seen that the judges of the High Court work without appropriate assistance. Resultantly, the heavy load of work without assistance does not allow them to appreciate the facts of the cases properly. They cannot go through even the bare contents of the writ petitions and in such a situation the appreciation of law-point is very difficult. It is practically also not possible for a judge to go through hundreds of cases daily appearing before him. Apart from this, they have to dictate the judgments also which is equally time consuming and therefore qualitative justice cannot be delivered efficiently in the absence of proper assistance²¹ Next important step to be taken in this direction is the enhancement of alternative dispute resolution system. Although such methodology is already in existence in the form of 'Lok Adalats' at various stages of judiciary, but so far these 'Adalats' have only been able to resolve specific nature of disputes like the MACT compensation cases etc. Now coming to the 'admission' itself it is submitted that apart from the proposed remedies to mitigate the burden of writ petitions on the court, the most important thing to be done by the court itself, is to exercise the discretion in writ jurisdiction with great care and circumspection. It has been seen that the writ petition are being entertained in routine, without even properly identifying the subject matter of the writ petition and its desirability to be entertained. This leads to the avoidable increase in the number of writ petitions in the High Court and also violates the limitations of writ jurisdiction and encroaches upon the jurisdiction of the civil courts. The High Court may be more selective in this regard and the nature and scope of the writ jurisdiction has to be seen in its appropriate context. Notwithstanding the discretion of the High Court, there may be a self-disciplined exercise of such power. The limited number of writs would enrich the quality of justice.

²¹Information based on envisioning Justice in the 21 st century: Conference of the Chief Ministers and the Chief Justices of High Courts New Delhi on Sept. 18, 2004(visited on 3-05-2018)