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The Rule of Exhaustion of Alternative Remedy in reference with Article 226

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The present study analytically investigated the purpose of the application of the Rule of Exhaustion of Alternative Remedy, its relevant exceptions, and the Supreme Court's view on such application. As per Article 226 of the Constitution of India, the High Courts after taking a look at the facts and circumstances of a particular case may either exercise its powers provided under Article 226 or it may reject/dismiss a particular writ petition, in case an efficacious Alternative Remedy is available. The Doctrine means that in the presence of an appropriate alternative remedy no other things must be done, except resorting to such remedy. However, some valid exceptions to the rule were also enumerated by the Apex Court.

Keywords: *alternative remedy, judicial activism, fundamental rights, natural justice.*

INTRODUCTION

The regulations for the purpose of using the idea of Alternative Remedy by the Courts were propounded as a result of various judicial activities and interpretations. It was the concept of Judicial Activism in India that helped in developing the rule for the using up of Alternative Remedies by the Courts. The Doctrine means that in the presence of an appropriate alternative remedy no other things must be done, except resorting to such remedy. The Judicial System in

a country having the largest democracy plays a vital role in not only averting the arbitrariness of the administrative organ but also safeguarding the rights of its citizens. Articles 32[1] and 226[2] of the Constitution of India vest various powers to the Supreme Court and the High Courts (respectively) to issue writs for the enforcement of violated Fundamental Rights. However, while comparing the powers of the Supreme Court under Article 32, the High Court deals with a wide range of powers under Article 226 of the Constitution of India. For the purpose of issuance of a writ or order, the petitioner must satisfy that either his/her rights were **infringed** or are **endangered illegally**. The High Court possesses a discretionary power to either entertain or reject/dismiss a particular writ petition, in case an efficacious Alternative Remedy is available.

DEVELOPMENT OF THE RULE IN THE CONTEXT OF ARTICLE 226

As per Article 226 of the Constitution of India, the High Courts after taking a look at the facts and circumstances of a particular case may either exercise its powers provided under Article 226 or it may reject/dismiss a particular writ petition, in case an efficacious Alternative Remedy is available. Under Article 226, the rule is vehemently applied even in cases except for violation of Fundamental Rights. However, it is the High Court that is either convinced or not regarding the availability of adequate and efficacious alternative remedies. This must not be misconceived as an abuse of the powers by the High Court, but rather as a step to deliver speedy and adequate remedy. The Hon'ble Supreme Court of India has held in one of its judgments in the case of ***Mafatlal Industries Ltd. v Union of India,***[3]

"*So far as the jurisdiction of the High Courts under Article 226 of the Constitution, or of this Court under Article 32, is concerned, it remains unaffected by the provisions of the act. Even so, the Court would, while exercising the jurisdiction under the said Articles, have due regard to the legislative intent manifested by the provisions of the Act. The Writ petition would naturally be considered and disposed of*

[1] Constitution of India, art 32
[2] Constitution of India, art 226
[3] *Mafatlal Industries Ltd v Union of India* [1997] 5 SCC 536

in the light of and in accordance with the provisions……. This is for the reason that the power under Article 226 has to be exercised to effectuate the regime of law and not for abrogating it."[4]

The Hon'ble Apex Court, further in ***Sampath Kumar v Union of India***[5] , has restated the above mentioned principles and held that in order to exclude High Court from exercising its writ jurisdiction, the presence of an efficacious and effective Alternative Remedy is necessary. The Rule of using such alternative remedy bars the discretionary powers of the High Court.

EXCEPTIONS TO THE RULE

The High Court has imposed some of the restrictions upon itself where the presence of an efficacious and effective Alternative Remedy may bar its powers to entertain a writ petition. However, it was the case of ***Harbanslal Sahnia v Indian Oil Corpn. Ltd.***[6]**,** in which the Hon'ble Supreme Court carved out these exceptions and held that notwithstanding the availability of an efficacious and effective Alternative Remedy, the High Court has all the authority that it may exercise its writ jurisdiction in the following instances:

- In case of a petition filed for seeking relief against the infringement of Fundamental Rights, or
- In case of a petition filed for seeking relief against the violation of the Principle of Natural Justice, or
- In case of a petition filed for seeking relief against the orders or proceedings that are made wholly without jurisdiction, or
- In case of a petition filed for seeking relief by challenging the limits/jurisdiction of a particular act.

It would be pertinent to bring into light the reiteration of the above exceptions by the Supreme Court in the case of ***Bar Council Delhi v Surjeet Singh***[7]**,** the Court stated- In the cases where the Alternative Remedy is available against a dispute, the such remedy must be applied for the same, but if in case there is an absence of an effective alternative remedy or the availability of

[4] *Ibid*
[5] *Sampath Kumar v Union of India* [1987]1 SCC 124
[6] *Harbanslal Sahnia v Indian Oil Corpn. Ltd* [2003] 2 SCC 107
[7] *Bar Council Delhi v Surjeet Singh* [1980] AIR SC 1612

any such remedy may not be relied upon, in such cases the power of the High Court under Article 226 of the Constitution of India will still survive.

Further in one of its recent judgments in ***Radha Krishan Industries v State of Himachal Pradesh & Ors.***[8]**,** the hon'ble Supreme Court framed out the supra principles and said:

- As per Article 226 of the Constitution of India, the High Courts are empowered to entertain a writ petition against the violation of Fundamental Rights, or in any other case as it may seem fit.
- However, it is an exception to the powers enshrined under Article 226, that if in case there is the presence of an efficacious or effective alternative remedy to the dispute, the High Court may use its discretion of not entertaining such a petition.

The four exceptions laid down by the Apex Court are –

1. In case of a petition filed for seeking relief against the infringement of Fundamental Rights, or
2. In case of a petition filed for seeking relief against the violation of the Principle of Natural Justice, or
3. In case of a petition filed for seeking relief against the orders or proceedings that are made wholly without jurisdiction, or
4. In case of a petition filed for seeking relief by challenging the limits/jurisdiction of a particular act.

- Generally, the rule is that where an efficacious alternative remedy is available, the High Court should not entertain such petitions, but the rule of the alternative remedy itself never divests the Court of its powers to entertain a writ petition.
- Where there is a prescribed statute under which the concerned right is guaranteed, where the such statute itself prescribes the remedy, procedure of its enforcement, and liability, the Court has the discretion to disallow such petition without invoking its discretionary powers under Article 226.

[8] *Radha Krishan Industries v State of Himachal Pradesh & Ors* [2021] SCC OnLine SC 334

- Under instances where the question of facts are disputed, the High Court may decline such a petition, unless and until it seems fit to the High Court that the controversy requires its writ jurisdiction.

The Hon'ble Apex Court again in its recent judgment in ***Assistant Commissioner of State Tax v M/s Commercial Steel Ltd.***[9] ruled out such principles and exceptions regarding the Rule of Exhaustion of Alternative Remedy by the High Courts.

ALTERNATIVE REMEDY - A BAR ON THE HIGH COURTS

The relief sought by the High Court may be rejected on the following grounds:

Infringement of a non-fundamental right - As per Article 226 of the Constitution of India, the High Courts are empowered to entertain a writ petition against the violation of Fundamental Rights, or in any other case as it may seem fit.[10] The provisions of Article 226 make it mandatory for the High Courts to entertain a writ petition that is filed against the infringement of a Fundamental Right. However, in the case of violation of rights except for the Fundamental Rights, the High Court has the discretion to either entertain or decline such a petition. The consideration under which the High Court may decline a petition is that there is the availability of an adequate, efficacious, and reasonable alternative remedy to the victim. The dual nature of Article 226 provides contrary application of the law, i.e. the discretion of the High Courts to entertain a writ petition on one hand, and the rule of using up the alternative remedy on the other hand.

In cases where the dispute has a question concerning infringement or enforcement of Fundamental Rights, the High Courts have all the powers to entertain the writ, however, in the case of infringement of rights except Fundamental Rights, the enforcement of such writ is discretionary. The thing that is to be considered by the Courts while using their discretion is the existence of any effective, efficacious, or alternative remedy for the relief.

Statutory Relief - The common rule regarding the application of the powers under Article 226 is that, if the question of facts is lying under the provision of any particular statute, then the said

[9] *Assistant Commissioner of State Tax v M/s Commercial Steel Ltd* Civil Appeal No 5121 of 2021
[10] Constitution of India, art 226

statute must provide the relief for the enforcement of such right in order to firmly apply the Rule of Alternative Remedy. Under such circumstances where a remedy is available in the statute, the High Court may refuse such a writ petition.

ARTICLE 226 AND THE RULE OF ALTERNATIVE REMEDY

Part V of the Constitution of India inculcates Article 226 which states that the High Courts are empowered to entertain a writ petition against the violation of Fundamental Rights, or in any other case as it may seem fit. The High Court may issue writs for the enforcement of such rights in the form of *Habeas Corpus, Mandamus, Quo Warranto, Certiorari, Prohibition,* or any of them, against any individual or public official or the Government. Article 226 of the Indian Constitution empowers the High Court to entertain a writ petition not only against the violation of Fundamental Rights but also against the violation of any legal rights. Article 226 itself is guaranteed under the Indian Constitution as a Constitutional Right. As per the powers of the High Court provided under Article 226, it has the discretion to either entertain or reject/dismiss a writ petition.

The Hon'ble Supreme Court in its ruling in ***Bandhua Mukti Morcha v Union of India*** **(1984)**[11], stated that Article 226 has a much broader extent in comparison with Article 32, as Article 226, not only applies to instances where Fundamental Rights are violated, but also against the violation of legal rights. It is one of the basic rules under the Judicial System that in case of the presence of an Alternative Remedy, writs under Article 226 of the Indian Constitution would not stand maintainable. The Hon'ble Supreme Court and High Court continuously find it unacceptable when a Writ Petition is filed where a statutory Alternative Remedy is already present. Despite the presence of such a rule in the judicial system, there are four exceptions that would dismantle such a mandatory clause over the High Court. These are named as the **Valid Exceptions** to the Rule of Exhaustion of Alternative Remedy. If a petition has been filed concerning these exceptions, the High Court has the discretionary power that instead of the presence of an alternative remedy, it may entertain such a petition. The petitions filed regarding these exceptions would be maintainable under Article 226 of the Constitution of India. The

[11] *Bandhua Mukti Morcha v The Union of India* [1984] AIR 802, [1984] SCR (2) 67

general rule is, in the presence of an effective and efficacious alternative remedy, the relief may not be granted by the High Courts, and the petition is not maintainable (***Kanaiyalal Lalchand Sachdev and Ors. v State of Maharashtra and Ors***.)[12] However, such rule shall be exercised by considering the exceptions stated by the Hon'ble Supreme Court in ***Harbanslal Sahnia v Indian Oil Corpn. Ltd.***[13]

SUPREME COURT ON THE RULE OF EXHAUSTION OF ALTERNATIVE REMEDY

- ***Maharashtra Chess Association v Union Of India***[14]

Bench - Js. D.Y. Chandrachud & Indira Banerjee, J.J.

Held - Mere existence of alternative forums does not create any legal bar on High Court to exercise its Writ Jurisdiction." The availability or adequacy of the presence of an alternative remedy does not bar the discretionary powers of the High Court to entertain a writ petition. The High Court has imposed some of the restrictions upon itself where the presence of an efficacious and effective Alternative Remedy may bar its powers to entertain a writ petition. The only intention behind the such imposition of restriction is very much clear if the High Courts are to exercise their powers under Article 226 so widely, there may occur instances of misuse or abuse of such powers and which may further result in arbitrary mechanisms of the judicial systems.

- ***UPPTCL & Anr. v CG Power and Industry Solutions Ltd. & Anr.***[15]

Bench - Js. UU Lalit, Hon'ble M/S Banerjee, & Js. KM Joseph

Held - The Hon'ble SC held that the availability of alternative remedies ***does not*** prohibit HC from entertaining a writ petition. The Court while relying on Whirlpool Corp. and Gayatri Construction Co. & Ors.[16], held that the availability of an ***alternative remedy does not prohibit the HC from entertaining a Writ Petition***. It was observed that a High Court may entertain a writ petition notwithstanding the availability of an alternative remedy, particularly in the following instances-

[12] *Kanaiyalal Lalchand Sachdev & Ors v State of Maharashtra & Ors* MANU/SC/0103/201
[13] *Harbanslal Sahnia v Indian Oil Corpn. Ltd* [2003] 2 SCC 107
[14] *Maharashtra Chess Association v Union of India* [2019] SCC OnLine SC 932
[15] *UPPTCL & Anr v CG Power and Industry Solutions Ltd & Anr* SLP No 8630/2020
[16] *In re Whirlpool Corp & Gayatri Construction Co & Ors* [1998] (8) SCC 1

Petition filed for seeking relief against the infringement of Fundamental Rights, or

Petition filed for seeking relief against the violation of the Principle of Natural Justice, or

Petition filed for seeking relief against the orders or proceedings that are made wholly without jurisdiction, or

Petition filed for seeking relief by challenging the limits/jurisdiction of a particular act.

- ***Radha Krishna Industries v State of H.P. & Ors.***[17]

Held - As per Article 226 of the Constitution of India, the High Courts are empowered to entertain a writ petition against the violation of Fundamental Rights, or in any other case as it may seem fit. The High Court is having discretionary power over entertaining or not entertaining a particular writ petition.

- ***Assistant Commissioner State Tax v M/S Commercial Steel Ltd.***[18]

Held - The principles of Alternative Remedy and their valid exceptions were reiterated.

CONCLUSION

It had been a long time that a need for doctrine like Exhaustion of Alternative Remedy arose. The rules for the purpose of using the idea of Alternative Remedy by the Courts were propounded as a result of various Judicial activities and interpretations. It was the concept of Judicial Activism in India that helped in developing the rule for the using up of Alternative Remedies by the Courts. The Doctrine means that in the presence of an appropriate alternative remedy no other things must be done, except resorting to such remedy. The Supreme Court aptly favored the application of The Doctrine of Exhaustion of Alternative Remedy through its various decisions. However, some valid exceptions to the rule were also enumerated by the Apex Court. The Court says- *"Mere existence of alternative forums does not create any legal bar on High Court to exercise its Writ Jurisdiction."*[19] The ultimate intention behind the self-imposed restrictions (the presence of an efficacious and effective Alternative Remedy may bar its powers

[17] *Radha Krishna Industries v State of HP & Ors* [2021] SCC OnLine SC 334
[18] *Assistant Commissioner State Tax v M/S Commercial Steel Ltd* Civil Appeal No 5121 of 2021
[19] *Maharashtra Chess Association v Union of India* [2019] SCC OnLine SC 932

to entertain a writ petition) upon the High Court was that if the High Court are to exercise its powers under Article 226 so widely, they may occur instances of misuse or abuse of such powers and which may further result into arbitrary mechanisms of the judicial systems.