



Constitutional Jurisdiction of High Courts in Pakistan

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Abstract: The instant paper deals with the study, appreciation and analysis of Constitutional Jurisdiction of High Courts and allied matters in its letter and spirit in the light of explored ways by case-laws and other relevant rules and orders. High Courts in Pakistan issues authoritative directions under Article 199 of the Constitution of Islamic Republic of Pakistan in the shape of Writs categorized as Mandamus, Prohibition, Certiorari, Co-Warranto and Habeas Corpus to office holders functioning in connection with the affairs of Federation, Province or local authority and a check of judicial review over the ultra-vires acts or omissions is kept on such institutions. In case of violation of fundamental rights, such powers are unrestrained. Certain restrictions and limitations are imposed on the remedy. This paper is a simple understandable updated document for practicing point of view wherein procedure for enforcement mechanism and safeguard to the guaranteed fundamental Rights is also described.

Key Words: Pakistan, Writs, High Courts, Judicial Review, Constitution, Jurisdiction

I. INTRODUCTION

1.1 General Overview

As the creature of the Constitution, high courts in Pakistan are established pursuant to Chapter 1 of Part IV of the Constitution of the Islamic Republic of Pakistan 1973, which are empowered to use either appeal or original jurisdiction in various cognizable matters. In original jurisdiction, high courts derive their empowerment from constitutional script and other acts that confer authority. The Constitutional jurisdiction is known as High Court Constitutional Jurisdiction. Also known as "Writ Jurisdiction" or "Judicial Review" power. High Courts use its Original Constitutional Extraordinary Jurisdiction pursuant to Article 199 of the Constitution when no other adequate and effective remedy is provided elsewhere by law. By this remedy, the High Courts usually control inferior courts or public authorities in Pakistan that infringe peoples' legal or fundamental rights and maintain a fair balance between the rights of aggrieved citizens and state entities' activities. Constitutional jurisdiction is overriding and supreme in its nature, and any form of control that usually restricts the use of other judicial remedies in no way limits High Court's power. Through the Writ, the High Court gives orders to any holder of public office, or to any private person, to do something or to refrain from doing any act. The High Court thus ensures fairness in administrative actions. This is judicial authority to oversee the country's executive and lawmaking offices. In judicial review, the High Courts undertake to examine the actions of functioning states on the basis of the doctrine of 'ultra vires' or excess jurisdiction and quash the decision if it is excessive or not in conformity with established processes. The High Court must see if the law giving the office holder the right to control and the right to act is constitutionally lawful and ensure that the public entity/office holder does not act unfairly by suppressing their right domain. The rationality of the use of administrative, ministerial and legislative commands disturbing the legal privilege of persons is constantly challenged until and unless constitutional jurisdiction has been specifically barred, directly or indirectly, by the applicable prevailing rules or constitutional wording. Constitutional petition can be maintained on the pure question of law. Doubtful/disputed question of fact cannot be seen and/or dealt with under the Constitutional Jurisdiction and could not be adjudicated as such factual controversies required the recording of evidence to prove or disprove the fact that is not High Court's job in Writs.

The Supreme Court also uses its written jurisdiction under Article 184 of the Constitution, but the same can only be used in public interest litigation. Sub-Article 3 of Article 184 of the Constitution sets out the original jurisdiction of the Supreme Court and empowers it to assume jurisdiction over matters concerning a question of public significance relating to the execution of any fundamental rights of the people.

In Pakistan, the ratio of corruption and state functionaries' irregularities is high and illegal appointments are made, favoritism and nepotism prevail, and performance of genuine and valid rights is often denied by government officials and office holders. The system uses political influence, and merit is often ignored. People are missing and human rights are usually violated in Pakistan, and people are often reluctant to use this effective tool due to lack of knowledge in the form of constitutional jurisdiction for grievance redress.

II. EVOLUTIONARY PERIOD OF WRITS IN PAKISTAN

After independence, prior to the 1954 amendment to the Government of India Act 1935 as adopted by Pakistan, there was only S. 45 of the Specific Relief Act for presidential towns about issuing Writs alone, but in the rest of the country and in matters not covered by Section 45 in presidential towns as well, the position was that no court could issue a writ. The reason is that the subcontinent lay under foreign rule.

After division when Pakistan came into being in 1947, the Dacca High Court was the only court in the country authorized under Section 45 of the Specific Relief Act 1877 (PLD 1961 SC 237).

When Pakistan adopted the Government of India Act 1935 (Provisional Constitution Order 1947), no writing was set up. Inserted in 1954, S. 223-A empowered high courts to issue Writs.

In 1956, our country's first Constitution was outlined and the issuance of Writing powers as previously provided by 223-A was given to high courts by Article 170 with exact names of each writ.

The powers entrusted to the courts were broader in Article 170 than in the 1935 Act, 223-A.

The distinction concerning Pakistan's Constitution of 1956 and the adoption of the 1935 Act was that, under the 1935 Act, the federal court had no authority to write while, under Article 22 of the 1956 Constitution, the Supreme Court had vast authority to write even relating to fundamental rights.

The flaw in this way of legislation was that the range of those writings mentioned in both the referred constitutions had precedents and the entire dependency was on England and other nations' decided cases and books.

An important feature that differentiates the constitutions of 1973 and 1962 from previous constitutions is that there were no preconditions or limitations on the applicant to seek write relief under the 1935 and 1956 Constitution. In some matters, the 1962, 1972 (interim) and 1973 Constitutions made it compulsory for the applicant to be a 'aggrieved person' and no other effective existing relief should be used. In the later 1962, 1972 (interim) and 1973 Constrictions that did not exist in the previous Constrictions i.e. 1935 Government of India Act and 1956 Constitution, there were many other boundaries on the power of High Courts in temporary/interlocutory relief etc.

In 1962, Pakistan's second constitution was framed and enforced, where Article 98 took the preceding Constitution's room of Article 170, which authorized the High Courts to issue Writs. Writs were first given no specific names unlike previous constitutions.

The last and infield document of the 1973 Constitution has the same provision as the previous Constitution, in the form of Article 199, which gives high courts the Writ Jurisdiction. Article 199 of Pakistan's present constitution is the descendant of Article 98 of the 1962 Constitution, without any substantial change in language or substance.

2.1 Writ "A Discretionary Relief"

One of the key features of Article 199's remedy is that such relief is discretionary and cannot be requested as a matter of right because the word "may" was used in Article 199's text.

Relief under Article 199 of the Constitution being discretionary, High Court is empowered to decline relief sought in circumstances, considering the behavior of the petitioner who claimed relief. Discretion does not mean that High Court's powers are limited to the touchstone of the word discretion, but High Court's power is uncontrolled if it is once satisfied or proved that there is no other adequate relief available to the applicant and the case falls within Article 199.

Technicalities cannot prevent the High Court from assuming its constitutional jurisdiction and granting relief which, otherwise, a person is found entitled to obtain; however, relief on the principles of discretion in the constitutional jurisdiction is not to be refused where the fundamental rights of the grieved persons have apparently been violated.

Following are some situations where discretionary relief could be refused by Court:

- Malicious conduct of applicant.
- A party who himself placed hurdles in the way of smooth running of the proceedings of the Court.
- Who had acted contumaciously with sole object to prolong the litigation and to add the agonies of the respondent.
- Concealment of fact by applicant which comes subsequently in the notice of High Court.
- One who had not come up to the High Court with clean hands.

In a Lahore High Court judgment, it was observed that "Petitioner did not reveal in her Nikah Nama that it was her third marriage, which was sufficient to disentitle her to claim discretionary relief in the form of a constitutional petition" (2009 MLD 373).

In a case where a civil case was not disclosed by the High Court, the petitioner was ordered not to be entitled to discretionary relief in the High Court's extraordinary and equitable jurisdiction (1997 MLD 2382).

The Supreme Court held that "where the grant of aid and relief is unfair, immoral or contrary to the directives of good conscience and fair play, High Court is not bound to grant relief to such applicant simply because he is legally entitled to the same relief" (PLD 2001 S.C 415).

Karachi High Courts took a step forward and held that 'a person with a personal interest in the outcome or success of a constitutional quo-warranto petition may not fall within the scope of discretionary relief, and the High Court may investigate the motivation behind filing such a Writ application and decide on its sustainability. Applicants' primary motive in filing quo-warranto was not for the public good/welfare or to ensure that only a lawful appointee was to hold a public office, but to benefit themselves.' Quo-warranto was rejected (2018 PLC (CS) N 16).

2.2 Dominance of Other Constitutional Provisions over Article 199

Before High Court assumes constitutional jurisdiction, various limitations or trappings must be satisfied. 'Subject to the Constitution,' the first words used at the beginning of Article 199 indicate that provisions and powers under this Article may be used if other provisions or articles of the Constitution do not restrict or impose an embargo on such powers on the High Court. If the jurisdiction was not specifically or implicitly barred by another constitutional provision, then the High Court has the power to assume Writ jurisdiction.

Besides the Constitution, other acts fall within the domain of sub-constitutional laws and the same have no dominance over the constitutional jurisdiction and as such cannot be limited by any rule, regulation or whatever that is not part and parcel of the Constitution.

Article 175(2) of the Constitution clarified this matter categorically: 'No court shall have any jurisdiction except as conferred by the Constitution or under any law.'

Among other constitutional provisions are two main articles, Articles 212 and 225, which exclusively barred the constitutional jurisdiction. Article 212 empowers the legislature to set up administrative courts and tribunals to exercise jurisdiction over matters relating to the conditions of persons serving Pakistan, matters relating to claims arising from tortious acts of government, etc., and matters relating to the acquisition of enemy property, etc.

In the presence of Article 212, the High Court is prohibited from exercising jurisdiction in servant disciplinary matters, terms and conditions of service, transfer order, release of salaries with back benefits, moving to a higher level of service, upgrading of the post, etc. because special forums have been entrusted with jurisdiction for that purpose.

It was held in Muhammad Azam Khan's recent judgment that, "generally in the election process, High Court cannot interfere with Writs in view of Article 225. This is subject to an exemption where no legal remedy is available to an aggrieved person during or after the election has been completed against a blatantly illegal election decision, without jurisdiction being coram-non-judice (2000 CLC 1).

2.3 Exhaustion Rule in the Constitutional Writs

One of the important factors regulating the exercise of constitutional petition under Article 199 is the alternative remedy barring the exercise of High Court jurisdiction, but it is necessary that alternative

remedy be useful, effective and appropriate and not merely illusory and unreal. It must be a legal remedy, not less convenient and beneficial than the Writ.

High Court Constitutional jurisdiction cannot be used as a substitute for the statute's right of appeal, or to make the law redundant. If the revision or appeal relief is accessible, but the applicant has intentionally invoked the Constitutional Jurisdiction in place of appeal or revision, such petition cannot be maintained and will be dismissed.

Article 199 is not meant to avoid the jurisdiction of other statutory bodies of the Country or to reduce all the other laws of the land superfluous. High Court has been empowered to interfere in a problem in which no legal relief is provided to cope with the complaint of any aggrieved person or where the remedy provided by statute has been entertained by the applicant but still genuine grievance remains unresolved.

High Court in the situation of entire want or abuse of power by a statutory body, usually, would not stop hands to entertain Writ application if although a remedy in alternative is there for him.

Exhaustion rule is not an instruction of law which is excluding jurisdiction but a stipulation by which High Courts standardizes its Constitutional Jurisdiction and in exceptional cases the strict observance of the rule where appeal, review or revision may cause injustice in substance, therefore application of such rule would base on the situation of every event because this rule is not an absolute bar against the exercise of constitutional jurisdiction but a rule of convenience.

2.4 No Concept of Suo-Moto Action

The remedies available under Article 199 of the Constitution may be used by, and not otherwise, preferring an application to the Court. The word "application" was specifically used in Article 199, which indicates that the High Court does not have the power to take initiative on its own accord or on oral request, but the request must necessarily be filed to bring the proceedings into motion.

It is an established principle of law that the High Court does not use powers on its own motion/agreement to grant relief in constitutional proceedings; however, jurisdiction may be taken on a letter addressed or note put up identifying transgression of Fundamental Rights in addition to the methodology expressed by High Court rules and orders.

In numerous reported judgments of the apex court, it is held that High Court has no authority to initiated suo-moto notice and start proceedings without any application, however if we make analysis the blow examples, it can be said that the provision of writs is not followed it its letter and spirit in many matters and the jurisdiction has not been confined to the "applications" while the text of Article 199 and many case-laws are evident that this jurisdiction is available only on an application.

2.4.1 Analysis of Judgments on "Suo Moto Action by High Court"

In the reported case of 'Tariq Transport Company' it was held by the Ex-Chief Justice of Supreme Court in the Division bench decision that the High Court has no power of Suo Moto or to take a notice on his own accord. It was held that only information rendered to the High Court doesn't entitle the Court to start Certiorari or other similar nature proceedings. This view has subsequently re-affirmed in numerous judgment by the superior Court such as the cases of 'Ali Muhammad' and 'Akhtar Abbas', and now it is a settled principal that High Court has no such power to grant relief without filling application (PLD 1958 S.C 437).

Analysis: After perusal of certain matters it is evident that the High Court has taken many suo-moto actions and has not restricted its constitutional powers to "applications" only as required in numerous matters. A detail of some cases is as under:

- In High Court Bar Association reported case, Quetta High Court taken Suo Motu action related to the murder of twenty six persons by a banned extremist organization (Lashkar-i-Jangawi) in district Mastung of Baluchistan Province (PLD 2013 Quetta 75).
- In a state case against Director General FIA, ZARCO Exchange fraud case, suo-moto action under Article 199 was discussed and was practically taken (PLD 2010 Lahore 23).
- In a state case against Lahore Development, the Lahore High Court Lahore has taken the suo-moto notice of the child who was fell in the main hole and has died (2000 MLD 1055).

- On 17th of December 2009 High Court of Lahore after suo-moto notice into the Imanae Malik death case directed to insert section 302 of Pakistan penal code to the already lodged FIR against the doctors and proprietor of Doctors' Hospital. (Dawn June 19, 2012)
- Another example of suo-moto is the issuance of summon to careless Doctor of district Sargodha.
- Ex-Chief Justice of the Lahore High Court Lahore Mr. Justice Khuwaja

2.5 Functions Test

Courts generally apply the "function test" to consider whether a statutory body against whom the relief has been sought through constitutional petition is a "person" within the meaning of Article 199 of the Constitution. Such function test is essential because the Writs are not generally maintainable against the private person. Expression "performing functions in connection with the affairs of the Federation, province or local authority", clearly connotes governmental or State functions involving element of the use of public authority. Functions may be related to law and order situation which is the job of police or those may be functions concerning education, social welfare, public utility services, economic growth and other state enterprises of a commercial or industrial nature. Generally, such functions are deemed to be made by an entity who is directly appointed, controlled and financed by the state; either by Federation or by Province or local authority.

Government office holders are distinguished from the private entities because their activities are regulated by laws made by the State. Initial functions test must usually be; whether the entrusted functions/responsibility to office holder are in fact functions of the state; whether command and control of the body vests in substantial manner in the hands of state; and whether funds are provided by the State. If these conditions are satisfied, then person may be considered as 'person' in the meaning of Article 199, otherwise not.

2.5.1 Analysis of a judgment on "Functions test/maintainability"

Facts: In the Abdul Wahab reported case before Supreme Court, employees of the Habib Bank Limited challenged policy decision related to policy which was taken by the Board of Management of HBL vide which 308 employees of the HBL were compulsorily retired early and services of two employees were terminated paying them three months' dues.

Plea of the employees, regarding jurisdiction of High Court, was that the Federation retains a significant shareholding in the HBL in question and representation of the state is existing. Besides that, the bank was being regulated by and under the authority of the State Bank which is the statutory entity. that the HBL was a 'person' in the terms of Article 199(1)(c) as it is different from a 'usual private person, because the state is the owner and control authority of the HBL, therefore the High Court has power to issue appropriate Writ for all purposes as provided by Article 199(1)(c) of the Constitution.

Judgment: Six Judges Bench in the judgment held that HBL (Bank) majority shares are acquired by private persons, that the bank has privatized its shares, that those private foundation having shares are representing mainly the Board of management. Petitioners/employees were unable to show that the state had the bulk of shareholding, or majority representation in the board of management. State Bank of Pakistan was only a regulatory entity for all the banks in Pakistan as provided by the Ordinance No. LVII of 1962. Such Regulatory role and control of State Bank of Pakistan Could not cloth the HBL, with the rank of a 'person' or the 'authority' performing the function in connection with the affairs of the Federation. HBL in question is a private body for all objectives. Constitutional Petition of the employees was dismissed being not maintainable (2013 SCMR 1383).

Analysis: As Writ of Certiorari, prohibition and mandamus in the Constitutional matter is only maintainable if it is filed against the 'persons' who is performing functions in the connection of the affairs of Federation, province or local authority and not against a private person or entity. No constitutional petition is maintainable against a private person. In this judgment the writ of private bank employees was turned down on the touchstone of maintainability because it is a restriction on the constitutional Court that they generally apply the "function test" to consider whether a statutory body is a 'person' within the meaning of Article 199 or not. If it does not fall in the purview of 'person' then the Courts are not empowered to issue Writs and the aggrieved person ought to approach another forum if available for redressal.

III. APPLICABILITY OF “CIVIL PROCEDURE CODE” TO WRIT PROCEEDINGS

It is an established proposition of law that the provision of Civil Procedure Code 1908 is applicable with consideration of the respective differences, arising out of constitutional petition. Extent of applicability of C.P.C to constitutional petition having not been defined precisely, everything that could be done with civil suits, is being done with constitutional petitions. Declaration about rights and entitlement are being sought, permanent injunction are prayed for; petitions are amended like pleading in suit; legal heirs are joined in a petition filed by person; co-petitioners are joined and even proceedings in said petitions are sometimes passed against a person without his knowledge particularly he had been burdened with a liability, it would be a sufficient cause for reopening or vacating said order so far as they are not in conflict with High Court rules and orders. To conduct proceedings under constitutional jurisdiction, the procedure of Civil Procedure Code, 1908 is always resorted to, being general law of procedure.

As principles of Civil Procedure Code being applicable to the Constitutional proceedings, therefore second Constitutional petition qua the same subject-matter and relief is not maintainable and principle of Res-Judicata as envisaged in section 11 of CPC is applicable however where first writ petition not decided on merit but dismissed for non-prosecution does not hit by the principle of res-judicata. Principle of Constructive-Res Judicata is as much applicable to constitutional jurisdiction as in civil Suit. Principle of estoppel is also applicable to Writ proceedings. Order of the High Court passed in a constitutional petition alleged to be based on fraud and misrepresentation, has to be challenged by application before High Court under section 12(2) of CPC and not by a separate suit. The High Court has the right to review its own order under section 114 CPC passed in Writ proceedings. Writ can be filled in representative capacity as provided by Order 1 rule 8 of CPC. Writ can be restored in 30 days under order 10 rule 9 of CPC if dismissed in default.

3.1 Analysis “Whether Writ Jurisdiction is Original Civil Jurisdiction”?

Facts of the Case: In I.C.A No. 746 of 2011 title Muzamil Sultan versus Federation of Pakistan, the Division Bench of Ayesha A. Malik and Umar Ata Bandial dismissed the appeal filed against the interlocutory order in a Writ filed under section 15 of Code of Civil Procedure (Amendment Ordinance) 1980 section 15 instead of section 3 of Law Reforms Ordinance 1972 against the order of single Judge in Writ petition.

Legal matters involved: as per section 3 of Land Reforms ordinance whenever a question is finally disposed-off in a Writ petition by single Judge of High Court, such order can be challenged in intra-court-appeal before the division bench or larger bench but section 3 of Law Reforms Ordinance has imposed a restriction that interlocutory order cannot be challenged in intra-court appeal and such order is not appealable.

After the promulgation of Code of Civil Procedure (Amendment Ordinance) 1980, section 15 has provided the right of appeal against interim orders by a single Judge of that Court in exercise of its original Civil Jurisdiction.

Under section 15 permission of intra-court appeal has been granted against the interlocutory order subject to a condition if the interlocutory order made is in the exercise of original civil jurisdiction.

Analysis: Admittedly the High Court has original Jurisdiction in constitutional matters. There are numerous Judgments in which it is held that the proceeding under Writ is civil in nature and are original jurisdiction and Code of Civil Procedure is applicable according to the changing circumstances to the proceedings before the High Court.

In the above mentioned Judgment it was discussed thoroughly that whether the proceeding before High Court in writ proceedings is Original Civil Jurisdiction or not. It was held after discussing numerous pro and contra judgments that although the jurisdiction is original but not original Civil Jurisdiction and thus the appeal was dismissed being filled against the interlocutory order.

3.2 Time Frame for Filing Writs

Limitation Act 1908, which provides a specific time frame for filling each suit and application, is not applicable to the proceeding of Constitutional petitions before High Court; however, the principle of laches applies to such proceedings.

It is an established principle of law that delay defeats equity and equity would aid vigilant and not indolent. Different parameters have been prescribed for judging the question of limitation. In the case of

limitation delay of each day has to be clarified by providing satisfactory cause for extension of time, whereas in filling of constitutional petition matter of laches is to be considered on equitable and reasonable terms because of the reason the constitutional remedy is always discretionary and relief is always considered equitable. When the High Court comes to the conclusion that equity in a case leans in favour of the petitioner, then the court must exercise discretion in favour of such party. Issue of delay is to be handled keeping the facts of each case in mind and no rigid rules can be laid down in this behalf. Bar of limitation is a legal bar for award of remedy whereas laches works as a bar under equity (natural justice). Dictate of justice and equity and balance of legitimate rights are kept in view in applying the principle of laches. Aggrieved person may invoke the jurisdiction of the High Court under Article 199 of the constitution within "reasonable time.

In the 'Sheikh Wijahat Ali case it was held that reasonable time had been interpreted as 120 days or four months (2013 YLR 2132 Peshawar).

In Amjad Ali Khan case it was held that "aggrieved person is supposed to approach High Court in term of 199 within reasonable time and such time has been defined as six months" (2019 PLC (CS) 300).

In Safdar Ali Sahito case it was held that laches alone would not be sufficient ground to dismiss constitutional petition, unless equity leans in favour of contesting respondent (2011 PLC (CS) 956).

3.3 Territorial Jurisdiction

Each High in Pakistan has the power within their territorial jurisdiction and a matter should not be tackled if cause of action is accrued outside its territorial jurisdiction. Relief granted by the High Court while exercising its Constitutional Jurisdiction could not go beyond the provincial boundary and affect any other Province, area or its peoples. Where cause of action had accrued to a person, such person could invoke Jurisdiction of the court situated in such area. Where the impugned order had been passed by or under a Federal Ministry; the petitioner had a right to invoke the constitutional Jurisdiction of any High Court in any part of the country where the order has affected him. If part of the cause of action arises within the jurisdiction of a Court, that Court can exercise jurisdiction over the entire matter.

3.4 Right of Intra-Court Appeal

Right of Intra Court appeal to a Bench of two or more judges has been provided by "Law Reforms Ordinance 1972" in certain Cases against the orders passed in Writ Petition by the single judge of the High Court. Intra Court means in the same Court where the order has been provided.

Proviso of S. 3(2) of Law Reforms Ordinance has imposed a restriction of filling intra-court-appeal if at least one appeal or revision or review has been provided by law in inferior courts proceedings before filing writ in High Court in continuation.

In the given situation Intra-Court appeal is not maintainable if the appeal, revision or review has either availed or not but the same has been provided by law.

The aggrieved person can approach the Supreme Court in Leave to Appeal if right of leave to appeal has not been provided by Proviso of section 3 (2) of the said Act or the order has been passed by two or more judges in constitutional petition.

Similarly no appeal would lie from an interlocutory order or an order which did not dispose of the entire case before the court.

In the following cases intra Court appeal is not maintainable inter-alia when: -

- Order passed by more than one Judge of the High Court
- Where the Order assailed is not the final order.
- Order passed under Art.199 (1) (b) (i) which is related to Writ of Habeas Corpus.
- Where a remedy against the Original Order is provided before Writ in shape of Appeal, Revision or Review
- Interlocutory Orders
- Against an order in review against Writ.

Limitation Period to file ICA:

Article 151 of Limitation Act and Lahore High Court Rules and Orders Part V, Chapter 1, Part A, Rule 4 has provided 20 days as time limit for filing Intra-Court Appeal against the decree or final Order. The Time consumed in obtaining certified copy to be excluded in computation of limitation period as provided by Article 12 of the Limitation Act however there are contradictory views in the judgments of superior Court on the matter.

In Abdul Majeed Case it was held that “don’t wait for detailed judgment however in Muhammad Islam case a different view has been expressed” (PLD 2012 Lahore 112/ 2011 SCMR 8).

Under Lahore High Court Rules and Orders there is no need to affix order of High Court decision in intra-Court appeal.

In a case, the CPLA in Supreme Court has been entertained beside of the fact the petitioner has filed intra Court appeal in High Court and Leave to appeal in Supreme Court at the same time and subsequently has abandoned the intra Court Appeal (1998 PLJ 593).

As Leave to appeal in the Supreme Court provides 60 days Limitation therefore if Leave to appeal is filed beyond 20 days as provided for intra Court appeal on High Court level and subsequently the Leave to appeal is converted to Intra Court Appeal, such petition will not be entertainable being time barred.

The right of an Intra Court Appeal although cannot be supposed to equate with the right of an ordinary appeal because an appeal against a judgment is always preferred to the higher forum but on the other hand the scope of review is too not only narrow but is conditioned by certain limitations i.e., arithmetical and clerical mistakes in the decision, or error due to oversight or anything uneven because of accidental slip.

Besides that, the validity of Section 3 of Law Reforms Ordinance, 1972 is under doubts because in the Proviso to section 3 of the Law Reforms Ordinance, 1972 the words "Article 199" were introduced by an Act of 1975 which is statutory in nature while the order under article 199 is constitutional. Such Act of 1975 is in fact made equivalent to amendment in Constitution and in my opinion a constitutional amendment will be more appropriate to clarify the law and procedure of appeal against the order in Article 199.

3.5 Contempt of Court/Compliance of the Orders

Article 204 of the Constitution of Pakistan provides the power to the High Court in case of violation of any order. In Article 204 different situations are termed as contempt of the court and it was clarified that the exercise of power conferred on a Court by Article 204 may be regulated by law and, subject to law, by rules made by the court.

In exercise of the powers conferred by Article 204, the Contempt of Court Act 2012 was enacted which provided in section 4, the period of six months' punishment duration in case of disobeying or disregarding the order of High Court.

It was held in Mehdi Hassan case that when an order passed by the High Court in the exercise of Writ jurisdiction is not complied with, two procedures are open to the person aggrieved. He may pray for further directions when there can be a bona fide dispute as to what is the effect of the order or he may apply for action under the Contempt of Court Act. In the first case the Court may after determining the effect of its order give further directions for its enforcement. Such an order would not be an order in the exercise of its criminal jurisdiction. In the second case the Court may either find the respondent guilty or it may discharge him on the ground that the respondent acted in the bona fide belief that he was complying with the order of court though in fact he was disobeying it. Hence forth that person would know the effect of the order and if he still failed to comply with the order, the defense of bona fides would not be open to him in any application that may subsequently be filed under the Contempt of Courts Act (PLD 1960 751).

When an office holder is sentenced for contempt of court, can no longer retain the office. On 26 April the prime Minister of Pakistan Yousaf Raza Gilani was sentenced for contempt of court as he had refused to comply with the court order and later on 19 June 2012 he was disqualified from holding seat in the parliament and removed from the office. (Dawn June 19, 2012)

It is settled principle of law that contempt is always between the contemnor and the Court.

Contempt of Court proceedings are quasi-criminal, measure of proof of facts charged same as in criminal cases. Contempt proceedings cannot be used for compliance of order in writ but it will be used to sentence the contemnor if he has disregard the order or High Court

IV. CONCLUSION

Article 199 is the restructured and modified shape of the previous five earlier abolished constitutions Writs remedy, which is the most effective discretionary tool to control the office holders from capricious and ultra-vires acts and to provide safeguard to the fundamental rights throughout the County. It is recognized in every democratic state as distinguished from the inferior courts remedy and of high prerogative. Unlike Supreme Court powers, certain limitations and obligatory boundaries are imposed before assuming the Jurisdiction and complete procedure has been provided by civil procedure code and High Court rules and order which has been streamlined and simplified by the case-laws.

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