

CIVIL LEGAL REMEDIES

Dr. Ravulapati Madhavi
Associate Professor of Law
Dr. MCR HRDI

PROLOGUE

- UBI JUS IBI REMEDIUM denotes 'Where there is a Right, there is a remedy'.
- *Remedy denotes the manner in which a right is enforced or satisfied by a Court in case of its violation.*
- The person whose right is being infringed has a right to enforce the infringed right through an action before a court
- *The affected party should establish his/her substantive right infringed by the defendant in an action before a court of law.*

Types of Legal Rights

- Antecedent/Primary/Principal/Substantive **and** Remedial/Secondary/Accessory/Adjective.
- Perfect Rights **and** Imperfect Rights.
- Positive Rights **and** Negative Rights.
- Rights in Rem **and** Rights in Personam
- Proprietary (Real) Rights **and** Personal Rights.
- Rights in re propria **and** Rights in re aliena.
- Vested Rights **and** Contingent Rights.
- Legal Rights **and** Equitable Rights.
- Public **and** Private Right

TYPES OF REMEDIES

Remedies are bifurcated into **Judicial** and **Extra-Judicial** remedies.

- **Judicial Remedies** may broadly be classified into

1. **Constitutional Remedies**

(**Legal Remedies**)

2. **Statutory Remedies**

(**Civil, Criminal**)

3. **Equitable Remedies.**

CONSTITUTIONAL REMEDIES

- Constitutional remedies comprise of** remedies –
- (i) **through Prerogative writs** – Habeas Corpus, Certiorari, Mandamus, Prohibition and Quo-Warranto, by the constitutional courts i.e. Supreme Court and High Courts under Art-32 and 226, and
 - (2) **through orders under other Articles** like Art-131 to 136, 137(Curative Relief), 142, 227 etc.

STATUTORY REMEDIES

- A remedy granted **under the authority of a statute** is called Statutory Remedy.
- A statutory remedy is not inferior to a constitutional remedy.
- A relief which could not be procured through a writ could be obtained as a Statutory remedy. Ex: enforcement of payment of money.
- Many of the private law remedies like a civil suit to claim damages, a suit for injunction or declaration, are extended to public law as well.

Contd.....

Statutory remedies may be divided into

- a) Civil Remedies (General and Specific)
- B) Criminal Remedies. (Punishments, monetary compensation)

General Statutory Civil Remedies –

- Injunctions (Perpetual/Mandatory, Temporary)
- Declaratory Actions, Specific Performance, Restitution, Recovery of legal costs i.e. advocate fee, court expenses etc., Recovery of possession of property and
- Damages- liquidated, unliquidated & statutory etc (Include nominal, substantial, Penal or exemplary etc)

Contd....

Remedies under CONTRACTS:

- **Compensation for loss or damage by breach of contract**
- **Liquidated damages**
- **Specific Performance.**
- **Injunction**
- **Cancellation.**

Contd....

Remedies under SPECIF RELIEF ACT:

- **Recovery of possession.**
- **Specific Performance.**
- **Compensation.**
- **Rectification of Instruments.**
- **Rescission of Contract / Alternate Prayer**
- **Declaration.**
- **Injunction.**

Contd.

Remedies under TORTS:

JUDICIAL REMEDIES

- Damages
- Injunction
- Decree for Possession.

EXTRA-JUDICIAL REMEDIES.

- Self-help.
- Expulsion of trespasser
- Re-entry on land
- Reception of goods and chattels
- Distress Damage Feasant. (cattle pound)
- Abatement of Nuisance.

Specific Statutory Civil Remedies.

- S.C.R. is a remedy where a statute imposes a specific obligation on a person, or confers a power on an administrative body and provides a specific mechanism of its own to invoke the jurisdiction of a court in some way, at some stage of the proceedings and for some purposes.
- Ex. Sec-18 of Land Acquisition Act, 1894 – Right of the aggrieved party to require the matter to be referred to the Court by District Collector .
- S-6 of the Essential Commodities Act, 1955 – Appeal against the orders of confiscation to a designated judicial authority.

EQUITABLE REMEDIES

- Equitable remedies constitute the conscience of administration of justice. Law may fail justice, but Equity does not.

MAXIMS OF EQUITY

- Equity will not suffer a wrong to be without a remedy.
- Equity follows the law.
- Where there is equity, the law shall prevail.
- Where the equities are equal the first in time shall prevail.
- He who seeks equity, must do equity.
- He who comes into equity must come with clean hands.
- Delay defeats equity.
- Equity looks to the intent rather than to the form.
- Equality is Equity.
- Equity looks on that as done which ought to be done.
- Equity imputes an intention to fulfil an obligation.
- Equity acts in personam.

WRIT REMEDIES

- **HABEAS CORPUS** – A palladium of liberty of a common man.
- A prerogative **process to secure the liberty of a subject** through effective means- immediate release from unlawful and unjustifiable detention.
- It may be issued against an **administrative authority** and also against a **private person**.
- Not available to a person convicted by a court of competent authority.

Habeas Corpus contd..

- It is a bastion of liberty even within jails and a writ of versatile vitality and operational utility. (Sunil Batra (2) vs. Delhi Admn. (1980)
- ADM Jabalpur vs. Shivakant Shukla (Habeas Corpus case) (1976) – Majority decision held that habeas corpus would not be available for enforcement of fundamental rights during emergency. Justice Khanna dissented and observed that Art-21 is not the sole repository of Right to Life and personal liberty.
- In Kanu Sanyal vs. Dist. Magistrate, Darjeeling (1973) held that production of person (unlawfully detained) before court during proceedings is not necessary.
 - Since the State is obligated to protect the right to life and personal liberty of citizens, the remedy of habeas corpus directly impinges on the actions of administrative authorities.
 - This remedy became the source of “compensatory jurisprudence” too – cases from Rudal shah, Sebastian Hungray, Bhimsingh, Veena Sethi etc.

MANDAMUS

- Mandamus means **Command**. Judicial command from constitutional court directed to any judicial, quasi-judicial or administrative authority when the F.R. of an individual is infringed by an executive order or statutory order. It is used for public purposes and to compel performance of public duties.

Conditions for issue of Mandamus –

- The petitioner has a legally enforceable right to obtain performance of a legal duty.
- There must be a duty cast upon the administrative authority by law, and the duty is not discretionary.
- Non performance of duty by the administration is to be proved.

Mandamus contd....

- Mandamus lies to compel government to perform the promise though contained in non-statutory or executive instruction. (Union of India vs. Anglo Afghan Agencies. (1968)
- Mandamus can be issued when a person in authority –
Oversteps the limits of its power;
Fails to comply with the conditions laid down for the exercise of such powers. For ex. To discharge prisoners below 20 yrs and who completed 10 yrs of imprisonment. (Shri Nivas vs. Delhi Admn)
- Existence of statutory remedy is no bar to issue mandamus (State of Karnataka vs. Nagendrappa -1991)

Contd...

- Mandamus does not lie against a private individual unless he is acting under some public authority.
- It lies against a quasi-public body , for ex. Principal of an aided college.
- Mandamus may be denied when there is an alternative remedy.
- Court does not interfere with the exercise of administrative discretion i.e. refusal to renew licence. (Rameshwar Prasad vs. Dist. Magistrate). But illegal exercise of discretion i.e. excessive jurisdiction, malafides and influenced by extraneous considerations, may warrant mandamus remedy.
- Mandamus cannot be issued against State Legislature to prevent consideration of a Bill.

PROHIBITION

- Writ of Prohibition is primarily supervisory with an object to restrain courts or inferior tribunals from exceeding their limits of jurisdiction.

This writ is issued when the quasi-judicial bodies/tribunals or inferior courts –

- a) act without jurisdiction
- B) act beyond jurisdiction
- c) violate principles of natural justice
- D) proceed under an ultra-vires law
- E) violate a fundamental right of individuals.
- (TTD vs. Tallapaka Ananthacharyulu-2003; S.Govinda Menon vs. UOI – 1967)

CERTIORARI

Certiorari literally means “to be fully informed of”

- **Issued by a superior court to an inferior court/quasi-judicial bodies** requiring matters pending before them to be transmitted to the superior court.

Grounds of issue -

- if a judicial decision is intended to be questioned;
 - Want of jurisdiction / excess of jurisdiction / failure to exercise jurisdiction
 - Error of law apparent on the face of the record.
 - Disregard of principles of natural justice
 - Judicial character of duty has to be inferred from the nature of the duty itself and is not to be superadded by any provision of law granting power.
-
- **Madhavarao Scindia vs. UOI (1971) – Privy Purse case.**
 - **A.K.Kraipak vs. UOI ; Basappa vs. Nagappa (1954)**

QUO-WARRANTO

Quo-Warranto means “By what authority”

- This writ is in the nature of Injunction.
- The object of the writ is to prevent a person from wrongfully usurping and continuing in a public office.

Conditions for issue of the writ:-

- i. It must relate to a public office of substantive nature.
- li. Such office must be either constitutional or created under a statute.
- The person holding the office should not be legally qualified to hold the office or remain in office due to contravention of a constitutional or statutory provision.

Contd...

- This is a discretionary remedy which the court may grant or refuse if the application is actuated by ill will or malice or ulterior motive.
- B.Srinivasa Reddy vs. Karnatka Urban Water supply & Drainage Board Employees Assn(2006) – Petition filed challenging the appointment of Managing Director of Board.
- Ashok Pandey vs. Mayavati (2007) – seeking removal as they were members of Rajya Sabha. Petition dismissed as not contradictory Art-164.
- Similarly N.T.Ramarao's case . A.P.CM.

COMPENSATORY JURISPRUDENCE

- Remedial jurisdiction is revolutionized through writs with the liberalization of 'Locus Standi' principle and evolution of Public Interest Litigation/Social Action Litigation.
- Emergence of Compensatory jurisprudence in cases of infringement/infracture of fundamental rights of individuals – A relief to the victim and a responsibility or accountability on the part of the administration.
- Where the victims have sustained significant legal injury, the court awards compensation under Art-32 and 226.
- Rudal Shah vs. Bihar (1983) Rs. 35,000/- compensation for illegal detention/in carceration beyond the period of imprisonment.

Contd...

- Sebastian Hongray vs. UOI. – Army personnel shooting two men under suspicion – Dependent wives granted compensation of one lakh each.
- Delhi Domestic Working Women Union's case – domestic workers subjected to indecent sexual assault by army personnel.
- Bodhisatwa Gautam vs. S.Chakraborty (1996) – compensation to victim of rape by a private person.
- Chandrimadas case – gang rape of Bangladesh woman by railway employees.
- Nilabati Behera – 22 yr victim – Rs. 1,25,000=-
- Rs. 75,000/- compensation to mother whose 9 yr boy was killed in judicial custody in Saheli's case.
- LDA vs. MK Gupta – State is liable to pay compensation if a citizen sustains loss or injury by an arbitrary action of the State.

Curative Relief

- The concept of **Curative petition** emanates under **Art-137** which is a review on the orders of review of supreme court. Curative petition is entertained in exceptional circumstances. This judicial technique is meant to satisfy the object of “complete justice” under **Art-142**. Refer case of [Rupa Ashok Hurra vs. Ashok Hurra and Anr. \(2002 4SCC338\)](#)-
- to have relief against the final judgment/order of the Supreme Court, after dismissal of a [review petition](#).
- in order to prevent abuse of its process and to cure gross miscarriage of justice, **SC may reconsider its judgments in exercise of its inherent powers**

New trends

- **A new trend is being observed in western societies where civil remedies are sought to be applied to control criminal behavior in the society. This feature may pose serious legal issues and constitutional challenges.**
- **WRIT- A COMPASSIONATE COMPANION FOR INDIVIDUAL AND A CORROSIVE CONTROL OVER ADMINISTRATION.**
- **Every act of judicial expansion of the Art-21 and F.R. will impose a burden on state exchequer and impinges on the administrative function. However, no rivalry is to be construed between administrative machinery and judicial wing. Both the sovereign bodies are to be juxtaposed to meet the needs of growing public awareness of human rights philosophy.**

Thank.....