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The Doctrine of Exhaustion of Alternate Remedy: A Conceptual Analysis

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ABSTRACT

The Constitution of India enables an aggrieved persons to approach the High Courts and Supreme Court under the aegis of Article 226 and article 32 respectively for the enforcement of rights. The judicial activism has given birth to the doctrine of existence of alternate remedy whereby the High Courts and Supreme Court can refuse to entertain a petition in cases where an alternate and equally effective alternate remedy exists. The paper tries to analyse the nature and scope of doctrine and its applicability in pretext of Indian Constitutional Setup. It then discusses the situation where alternate remedy bars relief under article 226 and 32 of the constitution and it also examines the exceptions to the application of the doctrine. It concludes by establishing the gaps that exist between theory and practice for the enforcement of fundamental rights.

Keywords: *Alternate remedy, Article 32, Article 226, writ, fundamental rights.*

I. INTRODUCTION

The doctrine of exhaustion of alternative remedies is one of the remarkable features in the functioning of Constitutional Courts. The doctrine is bolstered on the principle that a litigant must approach the lowest forum that in the hierarchy of the judicial structure so as to ensure that exquisite judicial resources at the higher level and the lower level as well as at the specialized level are not squandered in the wake of a forum shopping exercise.

The doctrine is a consequence of judicial creativity and convenience. In general parlance, it is described as a self-imposed limitation on the jurisdiction powers of the Court. The core justification for the exercise of the principle is premised on the concept of justice for all. The practice ensures that justice is delivered by a forum in a meticulous manner without usurping its jurisdiction. The doctrine is of great relevance in prevalent times when pendency of cases has increased in Courts. The practice provides the judicial burden to be borne by the most suitable fora.

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II. THE DEVELOPMENT OF DOCTRINE IN THE CONTEXT OF ARTICLES 32 AND 226

Articles 32 and 226 of the Constitution have been formulated specifically for the enforcement of fundamental rights. Moreover, Article 32 is itself a fundamental right. It is difficult to visualize a situation in which the court can refuse to admit a writ petition. The petition is, after all, only for the enforcement of fundamental rights. In M/s Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad,[2] the Hon'ble Court held that, once the violation of the fundamental right is established, it is not only the right and power but the duty and obligation of the Supreme Court to see that the petitioner's fundamental right is protected and safe-guarded. The same principle is applicable to Article 226 as well.[3] Therefore, in safeguarding the core Constitutional principles, the use of doctrine has been discarded by the Courts.

However, it does not imply that the High Court or the Supreme Court will entertain a writ petition under Articles 226 or 32 in every case where a petition involves the violation of a fundamental right. The violation has first to be proved. The Supreme Court has to be satisfied that the fundamental right of the petitioner has been infringed.

(A) Application under Article 32

The application of the rule of exhaustion of alternate relief under Article 32 has met strong criticism. This is because the Article is itself fundamental right, and therefore, cannot be denied under any circumstances.[4] The bedrock of right to approach Supreme Court is the rule is convenience.

However, the conservative school of thought advocates the usage of article in restricted sense so as to ensure that the effectivity of remedy stays meaningful. In case of P.N. Kumar v. Municipal Corporation of Delhi,[5] the Hon'ble Supreme Court redirected the petitioner to approach the High Court under Article 226 on the reasoning that the scope of Article was much wider. However, from the scrutiny of the judgment, it also appears that the reasoning for the refusal of entertaining petition could stem from reasons of convenience and efficiency. In fact, the problem of mounting arrears was specifically cited as a plausible reason for the necessary exercise of the doctrine. If that is the case, it is perhaps not possible to reconcile such a convenience doctrine with something as essential to the Constitution as fundamental rights.

The Hon'ble Supreme Court has, on many occasions, refused to take up matters for which an

[2] M/s Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, AIR 1969 SC 556.
[3] Himmatlal v. State of Madhya Pradesh, AIR 1954 SC 403.
[4] INDIA CONST. art. 32.
[5] P.N. Kumar v. Municipal Corporation of Delhi, (1987) 4 SCC 609.

alternative remedy was available.[6] In Satish Chandra v. Registrar of Cooperative Societies,[7] the remedy under Article 226 was specifically stated as the alternative remedy, and the petition under Article 32 was consequently dismissed. Where the vires of the statute is capable of being examined by the High Court, the Supreme Court has usually redirected the petitioner to pursue that course of action, before petitioning under Article 32.[8] The Court has considered the meaning of the words "appropriate proceedings" in Article 32 as its discretion to approach its decision.

It is generally accepted rule that the Supreme Court, in a petition under Article 32, will not entertain questions of fact. The justification for the establishment of rule is that the special authorities that have been set up with the ideology that they would be able examine facts in an explicit manner and provide appropriate relief and relieve the Constitutional Courts to safeguard the fundamental rights of citizens. The dictum was applied in case of M/s Nebha and Co. v. State of Gujarat,[9] where a petition under Article 32 was not allowed because statutory remedies existed to determine questions of fact.

In this manner, some generally accepted exceptions have been built up. However, the onus remains on special circumstances that are to be seen, in each case. The decision to apply the rule depends on the scope of the Article, and the circumstances that bring the case within it. The refusal to entertain a merit-worthy petition under Article 32 fails to find sustenance in the present constitutional set up.[10] However, neither the existence of an alternative remedy nor the fact that the petition raises disputed questions of fact, justifies the rejection of a petition under Article 32.[11]

(B) Application under Article 226

Unquestionably, the scope of Article 226 is wider than that under Article 32, since the latter is confined only to the realm of fundamental rights. However, the Supreme Court has opined that this wider jurisdiction has no effect on the general consensus that the High Court will not "*permit this extraordinary jurisdiction to be converted into a civil court under the ordinary law*."[12]

[6] PR Radhakrishna Naidu v. Government of Andhra Pradesh, (1977) 1 SCC 56.
[7] Satish Chandra v. Registrar of Cooperative Societies, (1994) 4 SCC 332.
[8] Louise Fernandes v. Union of India, (1988) 1 SCC 201.
[9] M/s Nebha and Co. v. State of Gujarat, (1986) 2 SCC 319.
[10] Mrs. Y. Theclamma v. Union of India ((1987) 2 SCC 516.)
[11] K.K. Kochunni v, State of Madras, AIR 1959 SC 725.
[12] Shwetambar Sthanakwasi Jain Samiti v. Alleged Committee of Management, Sri R.J.1. College, Agra (1996) 3 SCC 11.

The rule is vociferously applied even when the right in question is not a fundamental right.[13] However, the High Court should be convinced that an adequate remedy exists, not one that is dilatory and does not provide reasonably quick relief. This should not be misconstrued as an abdication of power, rather as a move towards making the power more effective. Jeevan Reddy, J. held in Mafatlal Industries Ltd. v. Union of India,[14]

> *"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 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."*[15]

This principle was further brought to light by the decision in S.P Sampath Kumar v. Union of India,[16] where the Constitution Bench held that any law excluding the jurisdiction of the High Courts under Article 226 must leave in its wake another effective alternative institutional mechanism or authority to fulfil the basic feature of judicial review.

III. WHEN EXISTENCE OF AN ALTERNATE REMEDY BARS RELIEF

The tenet stems from rule of policy, convenience, and discretion rather than a rule of law.[17]The contrivance has never been practiced in strict sense but has been increasingly gaining prominence in Courts for disallowing cases. The paramountcy of discretion is an established practice since the evolution of doctrine in the 1950s. The jurisdiction of High Courts under Article 226 of the Constitution is discretionary in nature. Therefore, a relief can always be declined if the circumstances dictate so.

(A) Infringement of a non-fundamental right

Article 226 empowers every High Court to issue writs, directions or order for the below mentioned purposes:

1) For enforcement of a fundamental right

[13] Ramachandra Ganpat Shinde v. State of Maharashtra, (1993) 4 SCC 216; Ashoka Marketing Ltd. v. Punjab National Bank, (1990) 4 SCC 406; M/s Textile Supply Co. v. Income Tax Officer, 1989 Supp (2) SCC 575; Rajendra Sareen v. State of Haryana, (1973) 3 SCC
[14] Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536.
[15] *Id.*
[16] S.P Sampath Kumar v. Union of India, (1987) 1 SCC 124.
[17] State of Uttar Pradesh v. Mohammad Nooh, AIR 1958 SC 86.

2) For any other purpose[18]

As far as protection of fundamental rights are concerned, the High courts are bound to enforce them. However, in cases of infringement of rights other than fundamental rights, the enforcement of such rights under article 226 is discretionary. One of the considerations for the exercise of such discretion is existence or availability of an alternate, suitable, adequate and equally efficacious remedy to the distressed individual.[19] The wide power under Article 226 has actually been recognized as limited, in a sense, by the rule of exhaustion.[20] Somewhere between these twin concepts of judicial discretion and limitation in the same rule, lies the scope of the rule itself.

It is extremely difficult to get a petition under Article 226 admitted if no fundamental right has been violated, and an alternative remedy exists. The violation should be proved. In Gujarat University v. N.U. Rajguru,[21] a Division Bench of the Supreme Court, speaking through K.N.Singh, J., held that "*the right to vote, contest or dispute election is neither a fundamental nor common law right, instead it is a statutory right regulated by the statutory provisions."*

The judiciary has justified the self-imposed rule of exhaustion in this context, on the ground that "*persons should not be encouraged to circumvent the provisions made by a statute providing for a mechanism and procedure to challenge administrative action taken thereunder."*[22] In addition, the power under Article 226 is discretionary in nature, and that allows the judiciary plenty of scope to apply this rule.

1. Equally Efficacious Relief

In Union of India v. T.R. Verma[23], the Hon'ble Supreme Court held,

> *"It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ."*[24]

The Court further stated, *"when such remedy exists, it will be a sound exercise of discretion*

[18] INDIA CONST. art. 226.
[19] Veerappa v. Raman & Raman Ltd., AIR 1952 SC 192; State of U.P. v. Mohd. Nooh, 1958 SC 86, 93-94; Venakateswaran v Wadhwani, AIR 1961 SC 1506; Abraham v ITO, AIR 1961 SC 609; Shivram v ITO, AIR 1964 SC 1095,1099; STO v. Shiv Ratan, AIR1966 SC 142,144; Champalal v. CIT, (1971) 3 SCC 20, 22-23; Titaghur Paper Mills v. State of Orissa, (1983) 2 SCC 433, 437-41.
[20] K.K.Shrivastava v. Bhupendra Kumar Jain, (1977) 2 SCC 494
[21] Gujarat University v. N.U. Rajguru, (1987) Supp SCC 512.
[22] M.P. JAIN & S.N. JAIN, PRINCIPLES OF ADMINISTRATIVE LAW 434 (4th ed., Wadhwa and Company 1986).
[23] Union of India v. T.R. Verma, AIR 1954 SC 207.
[24] *Ibid*.

to refuse to interfere in a petition under Article 226, unless there are good grounds therefore."[25]

The Court in exercise of the discretion has to consider the nature of the alternative remedy available. The Court cannot dismiss any petition on the ground merely that an alternative remedy exists. This was further explained in Ram and Shyam Company v. State of Haryana[26], where the High Court had dismissed the petition on the ground that an alternate remedy was available to the petitioner in form of appeal to a higher officer or the State Government. However, prior to dismissal of appeal, the Court failed to analyze the efficacy of the remedy. The order in question was passed by the Chief Minister of the State and therefore, any appeal to the State administration would be useless. The Hon'ble Supreme Court by setting aside the order of the High Court held *"An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits".*[27]

Therefore, the alternate remedy should be adequate and efficacious. In other words, it should be possible to get relief, and that relief should be sufficient.

(B) Statutory Relief

The general rule suggests that where a statute creates a right or a liability and at the same time also prescribes the remedy or procedure for the enforcement of such right or liability, then the relief provided by that remedy must be resorted before invoking the extraordinary and prerogative writ jurisdiction under Article 226.[28]

Thus, in the aggrieved individual has right to file an appeal,[29] review,[30] reference[31] or

[25] *Ibid*.
[26] Ram and Shyam Company v. State of Haryana, (1985) 3 SCC 267.
[27] *Ibid.*
[28] Attorney General of Trinidad v. Gordan Grant & Co., 1935 AC 532; State of U.P. v. Mohd. Nooh, AIR 1958 SC 86; Abraham v. ITO Kottavam. AIR 1961 SC 609; Thansingh Nathmal v. A. Majid, Superintendent of Taxes. AIR 1964 SC 1419; State of M.P. v. Bhailal. AIR 1964 SC 1006. 1011; Bhopal Sugar industries v. STO, AIR 1967 SC 549. 551-52; Chaudhary Raghubans v. State of UP., (1972) 4 SCC 769; Premier Automobiles v. Kamalikar S. Wadke. (1976) I SCC 496; Delhi Cloth & Gen. Mills Co. Ltd. v. CTO. (1976) 3 SCC 443; Titaghur Paper Mills v. State of Orissa, (1983) 2 SCC 433; Minor Irrigation & Rural Engg. Services v. Shangoo Ram, (2002) 5 SCC 521; State of Bihar v. Jain Plastic's & Chemicals Ltd., (2002) 1 SCC 216; Karnataka Chemical Industries v. Union of India. (2000) 10 SCC 13; Todi Industries Ltd. v. Union of India. (1999) 9 SCC 230; Charan Singh v. Collector of Central Excise, (1999) 9 SCC 17; Central Coalfields Ltd. v. State of Jharkhand, (2005) 7 SCC 492.
[29] Rashid Ahmed v. Municipal Board, Kairana. AIR 1950 SC 163, 165; British India Steam Navigation Co. v. Jasjit Singh, AIR 1964 SC 1451, 1453; STO v. Shiv Ratan. AIR 1966 SC; Customs Collector v. Shantilal, AIR 1965 SC 197 142; Bhopal Sugar Industries v. STO. AIR 1967 SC 549. 551-52; Champalal v. CIT., (1971) 3 SCC 20, 22-23; Asst. Collector of Central Excise v. Dunlop India Ltd., (1985) 1 SCC 260; Ashok Marketing Ltd. v. Punjab National Bank. (1990) 4 SCC 406 para 71; Central Coalfields Ltd. v. State of Jharkhand, (2005) 7 SCC 492.
[30] Tirlak Singh v. Distt. Magistrate, Lucknow, (1976) 3 SCC 726, 728-30; Vellaswamy v. IGP. Madras, (1981) 4

revision[32] under the genesis of an enactment, the Hight Court may refuse to entertain a petition under Article 226.

In Venkateswaran v. Wadhwani,[33] the Hon'ble Court held,

> *"Normally a writ of mandamus is not issued if other remedies are available. There would be stronger reason for following this rule where the obligation sought to be enforced by the writ is created by a statute and that statute itself provides the remedy for its breach. It should be the duty of the courts to see that the statutory provisions are observed and, therefore, that the statutory authorities are given the opportunity to decide the question which the statute requires them to decide*."[34]

(C) Other relief

In a situation where a relevant statute does not provide explicitly for a remedy, the High Court may consider whether any other alternate relief is available to the aggrieved person. Whether such alternate solution is appropriate, sufficient and equally effective would depend on the facts and circumstances of each case.[35] The burden of proving that the alternate remedy is not suitable in terms of adequacy and efficacy lies on the applicant.[36]

In case of Gupta Warehouse v. State of Madhya Pradesh,[37] The High Court held that it has no jurisdiction under Article 226 of the Constitution of India if alternate remedy is available. The petitioner had filed this petition before a Bench of Subodh Abhyankar, J., under Article 226 of the Constitution of India against the order passed by the respondent. The respondent had directed that preference should be given to the warehouses of MP Warehousing and Logistic Corporation if allotment of warehouses occurs and after exhausting the same, other warehouses of private parties may be used, which were taken on rent. Petitioner submitted that he had taken a loan from State Bank of India for construction of a warehouse and since the order of preference to the warehouses of MP Warehousing and Logistic Corporation only was passed, petitioner could suffer undue loss despite entering into an agreement with the Warehousing Corporation. Thus, impugned order was not justified. The High Court found

SCC 247.

[31] Basanta Kumar v. Eagle Rolling Mills Lid., AIR 1964 SC 1260.

[32] Hirday Narain v. ITO, (1970) 2 SCC 352; ITC Ltd. v. Union of India. (1998) 8 SCC 610; State of H.P. v. Prithvi Chand, (1996) 2 SCC 37; Shyam Kishore v. Municipal Corps. of Delhi, (1993) I SCC 22; Sheela Devi v. Jaspal Singh, (1999) 1 SCC 209.

[33] Venkateswaran v. Wadhwani, AIR 1961 SC 1506.

[34] *Id*., at p. 1511.

[35] State of Uttar Pradesh v. Mohammad Nooh, AIR 1958 SC 86; Rohtas Industries v. Rohtas Iindustries Staff Union, (1976) 2 SCC 82, 88.

[36] Chhaganlal v. Asstt. Custodian, AIR 1956 Sau 47; Chettiar v Kaleshwar Mills, AIR 1957 Mad 309.

[37] Gupta Warehouse v. State of Madhya Pradesh, 2019 SCC OnLine MP 98.

the arbitration clause in the agreement between petitioner and respondents according to which the validity of impugned order is a dispute and petitioner should have gone for arbitration. Accordingly, since there was an alternate remedy available, the present petition was dismissed as the Court could not invoke its jurisdiction under Article 226.

In Hantey Gyatso Kazi v. State of Sikkim,[38] The Court held that alternate remedy under Sikkim Greenfield Airport Act, 2018 renders writ petition unsustainable**.** A Single Judge Bench disposed of a writ petition on carefully observing that an alternative remedy under the Sikkim Greenfield Airport, Pakyong (Settlement of Claims for Loss and Damages) Act, 2018 is available for claiming compensation by filing a claim petition thereunder. In the present petition, the petitioner had started to construct his house on a plot at Karthok Block, Pakyong, East Sikkim. He had constructed a protective wall in order to withstand the natural calamities. Petitioner on completion of the construction of ground floor found that all the walls of the ground floor had developed many major and minor cracks. The Counsel for the petitioner submitted that the damaged building was assessed by the Buildings and Housing Department, Government of Sikkim for Rs 65,41,062 and he was entitled to the same from the State Authority. High Court's order for complying with same was not adhered to which led to the filing of the contempt petition before this Court. An additional submission was that the respondents had paid compensation to other affected persons except for the petitioner.

Thus, the Court reached a conclusion by stating that the petitioner is entitled to compensation for the loss and damage suffered by him, but same cannot be awarded to him by issuing direction in this petition due to the alternative remedy available to him under the Sikkim Greenfield Airport, Pakyong (Settlement of Claims for Loss and Damages) Act, 2018.

In Jayanti Prasad Gautam v. Pragya Gautam,[39]A Single Judge Bench rejected a petition filed a father against the order of Principal Judge (Family Courts) whereby he was directed to pay monthly maintenance to his daughter. The petitioner was directed to pay a sum of Rs 11,000 as litigation expenses and Rs 10,000 as interim maintenance to his daughter every month. Aggrieved thereby, he preferred the present petition. The Court referred to Manish Aggarwal v. Seema Aggarwal,[40] wherein it was held that Section 24 to 27 of the Hindu Marriage Act, 1955 was appealable under Section 19(6) of the Family Courts Act, 1984. It was held by the High Court that the reasons which prevailed in Manish Aggarwal for holding interim maintenance under Section 24 Hindu Marriage Act, 1955 to be appealable under Section

[38] Hantey Gyatso Kazi v. State of Sikkim, 2018 SCC OnLine Sikk 233.
[39] Jayanti Prasad Gautam v. Pragya Gautam, 2018 SCC OnLine Del 11535.
[40] Manish Aggarwal v. Seema Aggarwal, 2012 SCC OnLine Del 4816.

19(1) of the Family Courts Act equally apply to grant of interim maintenance under Section 20 of Hindu Adoption and Maintenance Act, 1956. Furthermore, once the legislature has prescribed a remedy of appeal, the principle that Writ Court should abstain from exercising jurisdiction when an alternative remedy is available comes into play. In light of the above, the petition was rejected.

IV. EXCEPTIONS TO THE DOCTRINE

The existence of alternate remedy is not an absolute bar for granting relief under article 226 but "*is a thing to be taken into consideration in the matter of granting writs*."[41] Exceptions to the rule of exhaustion under Article 226 have been laid down by the Supreme Court, in a Division Bench ruling, in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai.[42] The generally accepted exceptions include:

1. The writ prayed is for the enforcement of fundamental rights.
2. There has been a violation of the principles of natural justice.[43]
3. The authority lacks jurisdiction.
4. The vires of the statute, under which the authority acts, is challenged.[44]

Similar views were recapitulated by the Apex Court in case of Collector of Customs v. Ramchand Sobhraj Wadhwani[45] and Harbanslal Sahnia & Anr v. Indian Oil Corporation Ltd & Ors.[46] The hon'ble Court affirmed that an alternative remedy does not operate as a bar. Also, in the case of Satwati Deswal v. State of Haryana and Others,[47] the Apex Court cited the exceptions laid down in the case of Collector of Customs v. Ramchand Sobhraj Wadhwani,[48] and held that a writ petition can be held to be maintainable even if an alternative remedy is available to an aggrieved party where the court or tribunal lacks inherent jurisdiction or enforcement of fundamental right is in question; or if there had been a violation of principle of natural justice or where vires of the Act are under interrogation.

The Constitution Bench of the Hon'ble Supreme Court in the prominent case of K. K. Kochuni v. State of Madras,[49] after referring to Rashid Ahmed v. Municipal Board, Kairana [50]

[41] Rashid Ahmed v. Municipal Board, Kairana. AIR 1950 SC 163, 165; Union of india v. T.R. Varma, AIR 1957 SC 882, Babu Ram v. Zila Parishad, (1969) 1 SCR 518.
[42] Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1.
[43] M/s Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad (AIR 1969 SC 556).
[44] Bal Krishna Agarwal (Dr) v. State of Uttar Pradesh ((1995) 1 SCC 614).
[45] Collector of Customs v. Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506.
[46] Harbanslal Sahnia & Anr v. Indian Oil Corporation Ltd & Ors., 2003 (2) SCC 107.
[47] Satwati Deswal v. State of Haryana and Others, 2010 (1) SCC 126.
[48] Collector of Customs v. Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506.
[49] K. K. Kochuni v. State of Madras, AIR 1959 SC 725, 730.

and Romesh Thappar v. State of Madras,[51] precisely made the following instructive interpretations:

> *"Even if the existence of other adequate legal remedy may be taken into consideration by the High Court in deciding whether it should issue any of the prerogative writs on an application under Article 226 of the Constitution as to which we say nothing now—this court cannot on a similar ground decline to entertain a petition under Article 32 for the right to move this Court by appropriate proceedings for the enforcement of the rights conferred by Part III of the Constitution is itself a guaranteed right…The mere existence of an adequate alternative legal remedy cannot per se be a good and sufficient ground for throwing out a petition under Article 32 if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is prima facie established on the petition*."[52]

The above principle was meticulously applied by the Hon'ble Supreme Court in in the decision by a 7-judge bench decision of L. Chandra Kumar v. Union of India,[53] where the exclusion of jurisdiction of the High Court by the formulation of Administrative Tribunal was examined. The Hon'ble court explicitly clarified that the tribunals could not to be equated with High Courts, and also added that the doctrine of exhaustion of alternate remedy applied only as far as the approach to the Court of first instance was involved. The Court struck down Article 323-A (2)(d) and Article 323-B (3)(d) of the Constitution, to the extent that they permitted the exclusion of jurisdiction of the High Court. Thus, the High Court could be approached directly as the Court of first instance only in cases where the alternate quasi-judicial body formulated under the statute was in question.

The Apex Court in M/s Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad,[54] stated two broad exceptions to the application of the doctrine, namely:

1. The authority is acting under provision of law which is ultra vires.
2. There is violation of the principles of natural justice.

Apart from these, the doctrine loses its application in cases where factual situations where

[50] Rashid Ahmed v. Municipal Board, Kairana, AIR 1950 SC 163.
[51] Romesh Thappar v. State of Madras, AIR 1950 SC 124.
[52] *Supra* note 48.
[53] L.Chandra Kumar v. Union of India, (1995) 1 SCC 400.
[54] M/s Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, AIR 1969 SC 556.

there is a mistake evident on the face of record,[55] or where the alternate remedy that is available to the aggrieved is not equally efficacious.[56] In case of Rakhaldas Mukherjee v. S.P. Ghose,[57] Sinha, J., stated that whether the alternative remedy is equally efficacious or adequate is a question of fact that needs to be determined in each case. Therefore, an additional exclusion exists in cases where the alternative remedy is not adequate or efficacious. The alternate relief is held to be not efficient in a situation where the alternative remedy is too costly or ineffective or entails such delay that the applicant would be irreparably prejudiced that the whole object of the remedy might prove to be worthless.[58]

Another recognized exception, which is subjected to the facts of each case, is that where the issue raised in the petition is of constitutional or of public importance, and the interest of general public is involved in the subject matter. Hence, the Court before dismissing a writ petition on the ground of existence of substitute relief must consider the nature of the alternative remedy available. The court should not dismiss the petition merely because it appears that an alternate remedy exists.[59]

V. CONCLUSION

The doctrine of exhaustion of alternative remedies is thus borne out of necessity. In the wake of mounting piles of arrears and backlogs, the judiciary has categorically no other option but to exercise its discretion and apply the rule. Thus, the rule is undisputedly applied wherever, the Court is satisfied that a bare minimum is available i.e. an alternative remedy that is at least as effective as that under its jurisdiction. Although there is no material constitutional basis for such a dismissal of a writ petition, it is in fact in the interests of justice that the courts are forced to tread such a step.

This jurisprudence seems to be a healthy development in a sense that it is a measure in the consonance of the ongoing tribunal formulation in the country, although in an indirect manner. The explicit encouragement of dispute settlement at these supplementary fora has just on the cusp. This is perhaps in alignment with the events that have been taking place in the United States of America over the years. The English system, although aware of the doctrine, seems cautious and reluctant to apply it.

[55] State of Uttar Pradesh v. Mohammad Nooh, AIR 1958 SC 86; Carl still v. state of Bihar, AIR 1962 SC 1615, 1620.
[56] Ram and Shyam Company v. State of Haryana, (1985) 3 SCC 267; Collector of Central Excise and Land Customs, Shillong v. Sana Warmal Purohit, 1968 SCN 80(Case No. 104).
[57] Rakhaldas Mukherjee v. S.P. Ghose, AIR 1952 Cal 171.
[58] Commr. Of Police v. Gordhandas, AIR 1952 SC 1571, Chief Commissioner v, Radhe Shyam, AIR 1957 SC 304, 308; Calcutta Discount Company v. ITO, AIR 1961 SC 372, 380.
[59] *Supra* note 48.

In the majority of cases in the last fifty years, the courts have given the benefit of doubt to the rule, in the absence of any extenuating circumstances. This is true to such an extent that the higher judiciary has no option but to exercise such a standard of review that will only raise suspicion if something blatantly against the fundamental conceptualization is held by the alternative remedial fora. This is also encouraging from one point of view, because the decentralization of the judiciary seems to have taken place at last, though ironically, out of necessity.

The clear-cut conflict between fundamental rights and the rule of exhaustion is as yet unresolved. It is perhaps arguable that if literally understood, the utility of the right would radically reduce if the exhaustion rule were not put in place. Nevertheless, there seems to be no legally sound basis for the denial of a remedy that is guaranteed by the Constitution.

Today, the status of a writ petition is very different from that prevailing several decades ago. The modalities involved to get relief through a writ petition are based more on lawyering tactics than sound legal arguments. If a writ petition is admitted under Article 32 or 226, it could take several years to come up for hearing. Sometimes watchful members of the judiciary employ the tactic of not admitting the petition and yet aiding the petitioner by keeping the file on record and giving orders for meaningful action to be taken, and for the supervision of those orders.

But this draws the attention away from the debate on whether one should approach the court for relief under a writ petition. The concept of a writ was created in the present manner because it was meant to provide expeditious and effective relief to the aggrieved party. Yet, we see a situation today, which is a case of justice delayed and denied. There have to be careful methods employed so that the petition is not admitted but interim relief is provided, which should not go so far as to admit the case. On the other hand, there are tribunals, which are gaining in expertise, and will consequently be able to fulfil the requirement perhaps even better than the higher judiciary can, armed with that special knowledge. However, it is still problematic to obtain interim relief from the tribunals.

The judiciary has to tread a thin line while applying the rule of exhaustion. This is especially true in recent times, when there have been tendencies to transfer cases to regular courts from tribunals, and from tribunals to arbitration. One example of the latter was seen in Skypak Couriers Ltd. v. Tata Chemicals Ltd.[60] The National Consumer Disputes Redressal Commission was censured for trying to refer the dispute for consensual adjudication and then

[60] Skypak Couriers Ltd. v. Tata Chemicals Ltd., (2000) 5 SCC 294.

making the decision.

The circumstance of necessity aids it in deciding, if not reasoning. However, the all-important facts of a case are the real aids to the court in determining the application of the rule. Even the recognized exceptions to the rule are subject to exception themselves in certain contingencies. Therefore, it would be wise to lean on the wisdom of the court to guide it in the application of the rule, and safeguard it from any pitfalls that may arise because of the nature of the rule arising out of convenience. Constitutional safeguards should be sufficient control for that discretion.

The judicial activism has given itself the rule under which it can refuse relief under its auspices, and resembles the international law rule of *competence de la competence*. It is conceivably wrong to think this an excessive use of the Court's power. Rather, it is easier to consider that the court is taking such a view because of the severe constraints on its time, considering that judicial time is its most precious asset. After all, in how many situations is it observed that the courts willingly deny themselves jurisdiction in a case? The common criticism about the wave of judicial activism is that the courts seem to have impinged on the functions of the legislature and the executive. In this context, it is reassuring to find that the judiciary is actually conceding, at some stage, non-final jurisdictional power over a dispute to another forum.

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