

199. **Jurisdiction of High Court.** (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law—

- (a) on the application of any aggrieved party, make an order—
 - (i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or
 - (ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or
- (b) on the application of any person, make an order—
 - (i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or
 - (ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or
- (c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.

(2) Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged.

¹[(3) An order shall not be made under clause (1) on application made by or in relation to a person who is a member of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law.]

[x x x x x x x x x x]²

1 Subs. by Constitution (First Amendment) Act, 1974 w.e.f. 4 May 1974.
 2 Cls. 3-A, 3-B and 3-C omitted by PO No. 14 of 1985.

(4) Where—

- (a) an application is made to a High Court for an order under paragraph (c) of clause (1), and
- (b) the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to public interest ³[or State property] or of impeding the assessment or collection of public revenues, the Court shall not make an interim order unless the prescribed law officer has been given notice of the application and he or any person authorized by him in that behalf has had an opportunity of being heard and the Court, for a reasons to be recorded in writing, is satisfied that the interim order—
- (i) would not have such effect as aforesaid; or
- (ii) would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction.

⁴[(4A) An interim order made by a High Court on an application made to it to question the validity or legal effect of any order made, proceeding taken or act done by any authority or person, which has been made, taken or done or purports to have been made, taken or done under any law which is specified in Part I of the First Schedule or relates to, or is connected with, State property or assessment or collection of public revenues shall cease to have effect on the expiration of a period of six months following the day on which it is made:

Provided that the matter shall be finally decided by the High Court within six months from the date on which the interim order is made.]

Clause (4A) of Article 199 before its substitution by Constitution (Eighteenth Amendment) Act, X of 2010, ran as under:-

⁵[(4A) An interim order made by a High Court on an application made to it to question the validity or legal effect of any order made, proceeding taken or act done by any authority or person, which has been made taken or done or purports to have been made, taken or done under any law which is specified in part I of the First Schedule or relates to, or is connected with, ⁶[State property or] assessment or collection of public revenues shall cease to have effect on the expiration of a period of ⁷[six months] following the day on which it is made,

3 Added by P.O. 14 of 1985 w.e.f. 2 March 1985.

4 Subs. by Constitution (Eighteenth Amendment) Act, X of 2010.

5 Inst. by Constitution (Fourth Amdt.) Act 1975, w.e.f. 21 Nov. 1975.

6 Added by P.O. 14 of 1985 w.e.f. 2 March 1985.

7 Subs. by P.O. 14 of 1985 w.e.f. 2 March 1985.

[provided that the matter shall be finally decided by the High Court within six months from the date on which the interim order is made]⁸.]

“(4B) ***]

(5) In this Article, unless the context otherwise requires—

“person” includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or Tribunal established under a law relating to the Armed Forces of Pakistan; and

“prescribed law officer” means

- (a) in relation to an application affecting the Federal Government or an authority of or under the control of the Federal Government, the Attorney-General, and
- (b) in any other case, the Advocate-General for the Province in which the application is made.

Legis Change: Clause (4B) has been omitted by Legal Framework Order, 2002. Before its omission clause (4b) ran as under:

“(4B) Every case in which, on an application under clause (1), the High Court has made an interim order shall be disposed of by the High Court on merits within six months from the day on which it is made, unless the High Court is prevented from doing so for sufficient cause to be recorded.] * [Added by P.O. 14 of

1985 w.e.f. 2 March 1985]

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⁸ Subs. by Legal Framework Order, 2002. The words “unless the case is finally decided, or the interim order is withdrawn, by the Court earlier” omitted by *ibid.*

⁹ Clause 4-B, omitted by Legal Framework Order, 2002.

Chapter 1

NATURE, SCOPE AND EXTENT

1. Writ Jurisdiction of the High Court—
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1. Writ Jurisdiction of the High Court—Scope.

"The writ jurisdiction", declared Mr. Justice Kayani, "brings to a benighted morality the light that never was on sea or land. God is in His Heaven and all's right with the world—God was in His Heaven even before the writ jurisdiction, but all was not right with the world. Consequently, if you are spiritually inclined, you can say that the writ jurisdiction is the modern manifestation of God's pleasure, and the God's pleasure dwells in the High Court." In another case it has been observed, "mandamus and certiorari are flowers of paradise and the whole length and breadth of Pakistan is not wide enough to contain their perfume. God fulfills Himself in many ways and that we (Judges) are the humble instruments of His fulfillment." The writ jurisdiction is a modern manifestation of God's pleasure and that God's Pleasure dwells in the High Court. [PLD 2009 Lah. 22] Article 199 of the Constitution is an omnibus Article allowing remedy to an aggrieved person against violation of any provision of law or the Constitution. [2012 MLD 636] Constitution jurisdiction of High Court is meant to be exercised in cases where any individual brought his grievance with regard to the infringement of any accrued right by a public functionary. [2012 MLD 710] Article 199 of the Constitution has showered mandate upon the High Court to issue writs of all kinds. Said Article had made it clear that High Court has discretion to declare any act of officials to be without lawful authority. High Court being custodian of the fundamental rights of the citizens, is under obligation to shield against any invasion made on the guaranteed constitutional rights and protect the subject from discrimination, exploitation, colourable exercise of authority, bolted actions and mala fide proceedings. [2012 P Cr. L J 1075] High Court, as a forum for the entertainment of Constitution petition is created by the Constitution under Art. 199, therefore, when a High Court entertains a constitutional petition against an order, whether the same is judicial or administrative, it entertains the same in exercise of its original jurisdiction it is conferred upon the High Court through the Constitution. [PLD 2013 Lah. 157] When High Court exercises constitutional jurisdiction, its powers are not analogous to those of an Appellate Court. High Court although can strike down an order passed by a subordinate court or a Tribunal as without lawful authority and of no legal effect but it could not substitute its own judgment for that of the subordinate court or Tribunal. [2012 MLD 961] Provisions of Article 199 of the Constitution have been introduced to correct actions of government functionaries which suffer either from lack of jurisdiction or excess of jurisdiction. If citizens of the country are deprived of the guarantees given to them under the Constitution illegally or not in accordance with law, then Article 199 of the Constitution can always be invoked for redress. When impugned action is without jurisdiction mala fide, unlawful and passed in disregard of law and principles of natural justice, the same amounts to denial of justice. When any finding of fact is based on no evidence at all or ignoring material evidence or on consideration of inadmissible evidence or exercise of jurisdiction perversely or illegally causing palpable injustice, the jurisdiction of High Court can always be invoked under Art. 199 of the

Constitution to rectify the wrong and injustice occurred to a party. [2012 YLR 183] Order passed by Court of competent jurisdiction which is otherwise in accordance with law cannot be called in question in exercise of Constitutional jurisdiction under Article 199 of the Constitution. [2011 YLR 2616] Exercise of jurisdiction under this Article against an order is justified *inter alia* only if the order is a non speaking order and is violative of the basic law or it is suffering from infirmities affecting jurisdiction of Court or tribunal and it settles and issue finally to the extent of the said Court. [2011 YLR 1276] High Court cannot substitute lawful decision within ambit of conferred jurisdiction of Court below. [2011 YLR 1240] If a public functionary has acted in an unjust and oppressive manner High Court can exercise its Constitutional jurisdiction to grant relief to an aggrieved person keeping in view circumstances of each case. [2011 YLR 2429] When impugned action is without jurisdiction, *mala fide*, unlawful and passed in disregard of law and principle of natural justice the same amounts to denial of justice. When any finding of fact is based on no evidence at all or ignoring material evidence or on consideration of inadmissible evidence or exercise of jurisdiction perversely or illegally causing palpable injustice the jurisdiction of High Court can always be invoked under Article 199 of the Constitution to rectify the wrong and in justice occurred to a party. [2012 YLR 183] State or Government fails to live up to its commitments, assurances and guarantees, Court could enforce such incentive scheme and concessions, assurances and guarantee offered and acted upon at the motion of parties complaining of breach or violation thereof. Whenever State or Government, to lure or attract investment held out, gave assurance or represented to investors to provide certain incentives, tax holiday, concession in customs or excise duties, advantages, concession, licences and/or benefits etc. and acting on such sovereign incentive assurances, representations and guarantees any investor had made investments in any industrial undertaking it was obligatory on part of the State or the Government to ensure that it would live up to its sovereign representations, assurances, commitments, representation and guarantees, otherwise it would cause a serious dent in credibility of any State and or government. No State or Government could afford to breach such sovereign commitment, assurances and guarantees. If these were not fulfilled, such State and/or government would not only lose its face and credibility internationally and locally but also confidence and trust of investors would be shattered, which would not only be devastating for future of any State and or Government but had far reaching adverse impact and consequence immeasurable in terms of money. High Court directed the authorities to supply guaranteed quantity of natural gas to petitioner's plant strictly in accordance with contract. [PLD 2012 Sindh 50; PLD 2011 Pesh. 57 relv.]

From the perusal of the provision of Article 199 of the Constitution it is evident that there are three main parts noted in sub-Article (1) of Article 199 of the Constitution. Clause (a) of sub-clause (1) of Article 199 of the Constitution has conferred jurisdiction upon the High Court with regard to writs of certiorari, mandamus and prohibition, in clause (b) *habeas corpus* and writ of *quo warranto* are provided, while in clause (c) jurisdiction to enforce the fundamental rights conferred by Chapter 1 of Part II of the Constitution has been invested with the High Court. All these three main divisions have got interesting commencement with the words "on the application of any aggrieved party" in clause (a), "on the application of any person" in clause (b) and in case of clause (c) the words are "on the application of any aggrieved person". According to our own view, all these words noted in clauses (a) (b) and (c) of sub-Article (1) of Article 199 of the Constitution, have got important meanings and connotations. [PLD 2009 S.C. 284] While invoking extraordinary Constitutional jurisdiction of High Court petitioner has to establish:-

Firstly, that he has an aggrieved party as defined in Article 199(1)(a) of the Constitution;

Secondly, relief sought by petitioner is one which is legally entitled to seek under any provision of law, rules or regulations; and

Thirdly, for seeking relief prayed by him no other forum or remedy is available to petitioner.

Relief sought under this Article depends on existence of a fundamental or legal right of a person or a party and infringement of such right which may be a statutory right or a right recognize by law. [2012 MLD 97]

High Court is the Apex Court in a Province or in the case of Islamabad, of the capital territory, but they are creatures of the Constitution and they have only that jurisdiction which has been conferred by the Constitution or under any law for the time being in force. Article 175(2) specifically mandates, "no court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law." [PLD 2014 S.C. 1]

While exercising powers under Article 199(1) of the Constitution, Courts should always keep in view the following three parameters of their jurisdiction.

(i) A High Court is the apex court in the province or in the case of Islamabad, of the capital territory, but they are the creatures of the Constitution and they have only that jurisdiction which has been conferred by the Constitution or under any law for the time being in force. Article 175(2) specifically mandates "no court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law."

(ii) The power of the High Court under Article 199 is "subject to the Constitution" and it can make any of the following orders, "if it is satisfied that no other adequate remedy is available."

(i) "directing a person performing, within the territorial jurisdiction of Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or

(b) on the application of any person, make an order—

(i) directing that person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority; including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the "enforcement of

... was dismissed in circumstances. [2013 P.Cr.L.J. 1071]

Chapter 2

AGGRIEVED PERSON

1. **Aggrieved person.** It is *sine qua non* for invoking jurisdiction of High Court through Constitutional petition that petitioner must be an aggrieved person and he must have a *locus standi* for availing such jurisdiction, [PLD 2007 S.C. 386] which denotes a person who has suffered a legal grievance, against whom a decision has been pronounced which has wrongfully deprived him or wrongfully refused to him something which he as legally entitled to. Further requirement is that the person invoking Constitutional jurisdiction under Article 199 of the Constitution has to establish that any of his legal or fundamental rights guaranteed under the Constitution has been violated resulting in legal loss. [PLD 2007 S.C. 52] Words used in Article 199 of the Constitution are 'aggrieved person' and not 'party to proceedings'. [2012 YLR 174] Any person interested in performance of the functions by concerned authorities in lawful manner may move the Court. [2011 YLR 3087] In order to be an aggrieved person imperative for him to show any of his proprietary or personal right, as recognized by law, to be invaded or denied. Person unable to show any of his rights as recognized by law to be invaded or denied has no cause of action to seek any relief. [PLD 1978 S.C. 151] The right which is the

foundation of an application under Article 199 of the Constitution is a personal and individual right. The legal right may be a statutory right or a right recognize by law. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to perform relating to the right there must not be a right but a justiceable right in existence to give jurisdiction to the High Court in the matter. Unless whatever right personal or otherwise on which the application is based is established, no order can be issued under Article 199 of the Constitution. [2011 SCMR 848] The writ petitioner must establish direct or indirect injury to himself and substantial interest in the subject-matter of proceeding. [1979 SCMR 299] Mere possibility that a person can obtain property by making highest bid if a property is disposed of by public auction does not give such a potential bidder a vested right in property. Such person is not an aggrieved person and has no right to maintain a constitutional petition. [1987 SCMR 1577] A person cannot be held to be an aggrieved person unless he had a right in the performance of statutory functions by a person performing functions in connection with the affairs of the Federation or Province in respect of any right which he may have in relation to the performance of the said functions and if he did not have any right directly in the matter had no *locus standi* to maintain constitutional petition. [1994 CLC 2318] Where a person has any interest, may it be the smallest one, in the performance of legal duty of a person, functioning with affairs of Province or a Local Authority is an aggrieved person. [2006 P.Cr.L.J. 263] Expression "aggrieved person" would not confine to a person having strict legal right, but would extend to any person having a legitimate interest in performance of a public duty, particularly in cases relating to high rise buildings and protection of environment. Every resident of an area or even that of a town, had locus standi to ensure that building laws were followed in construction of buildings. Vires of law enabling regularization of buildings constructed in violation of the statute and Building Regulation, could be questioned by any citizen. [2004 CLC 1353] Person cannot be said to be an aggrieved, unless she has a right in the performance of statutory duty by a person performing functions in respect of any right which he can have in relation to performance of such functions. People who come to the Court with a non-serious approach and without doing their homework while they endeavor to point out impressive issue, would not add anything in the positive sense for the benefit of society. [2005 CLC 1778] Individual who claims to be aggrieved person can only be so if he can show in what way would the action of the other party would cause him personal loss. [2001 YLR 2403] Father incarcerated in prison under a wholly illegal order, his son is naturally afflicted by this tragedy, an aggrieved person to invoke quashment of the impugned order. [PLD 1970 S.C. 399] Fixation of annual rental value by Municipal Corporation occupier of premises an aggrieved person. [PLD 1971 S.C. 130] Aggrieved party for invocation of the constitutional jurisdiction of High Court has to establish not only a legal right but a right which is justiciable in a Court of law, in the absence of which no order can be issued under Article 199 of the Constitution. Incumbent upon the party invoking the constitutional jurisdiction High Court under Article 199 of the Constitution to satisfy that some illegal wrong had been inflicted or was about to be inflicted on the petitioner. [2002 CLC 147] Only a person whose rights had been infringed could file a petition, under provisions of Article 199 of the Constitution of Pakistan 1973, except the writ of habeas corpus and writ of *quo warranto* which could be invoked by any person. Person aggrieved must be a man who had suffered a legal grievance; a man against whom a decision had been pronounced which had wrongfully deprived him of something, or was wrongfully refused of something, which he had a right to demand or which had wrongfully affected his tile in something. In order that a person be considered an 'aggrieved person' within meaning of Article 199 of the Constitution, he must show that his legal right had been violated or that he had been deprived of

Fundamental Rights guaranteed under the Constitution or that he sought performance of legal duty by State functionaries and that non-performance of such duty was to result in loss of some personal benefits or advantage or curtailment of a privilege. [2003 CLC 1348] In order that a person be considered an "aggrieved person" within the meaning of Article 199 of the Constitution, he may not have a right in strict juristic sense but he must show that he had a personal interest in the performance of a legal duty. Legal Framework Order, 2002 amending the Constitution would affect the entire nation and the petitioner, a body of lawyers who were citizens of Pakistan and likely to be affected by the amendments, in Constitution, was the "aggrieved person". [PLD 2003 Lah 371] The right which is the foundation of an application under Article 199 of the Constitution is a personal and individual right. The legal right may be a statutory right or a right recognized by the law. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to perform relating to the right. There must not only be a right but a justifiable right in existence to give jurisdiction to the High Court in the matter. Unless whatever right personal or otherwise, on which application is based is established, no order can be issued under Article 199. It is incumbent upon party seeking constitutional remedy to show that such party has a clear legal right and that such is so clear as not to admit of a reasonable doubt or controversy. [PLD 2012 Sindh 425] Person being not an aggrieved party cannot invoke constitutional jurisdiction of High Court under this Article. [2008 CLD 830]

However, an aggrieved person must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived that person of something or wrongfully refused him something which he had a right to demand or wrongfully affected his title in something. [2001 CLC 514] or wrongfully affected his title in something. Person in order to be considered an 'aggrieved person' within the meaning of Article 199 of the Constitution, must show that his legal rights have been violated or that he has been deprived of the Fundamental rights guaranteed under the Constitution or that he seeks performance of the legal duty by the State functionaries and that non-performance of the duty is to result in loss of some personal benefit or advantage or the curtailment of a privilege. [2001 YLR 1088] Association having no personal legal right is not an aggrieved person/party thus not competent to invoke constitutional jurisdiction. [2001 YLR 916] Petitioner being the Collective Bargaining Agent cannot claim *locus standi* to involve the jurisdiction of High Court under Article 199 of the Constitution for the alleged violation of the legal or Fundamental Right of its members. [SBLR 2001 Kar 439] A bidder not depositing earnest money is not an aggrieved person entitled to invoke writ jurisdiction. [2004 CLC 249] Orders which are passed on the basis of universal principles, are applicable to all parts of the country, unless same are repugnant to any provision of statute or fundamental rights and as such cannot be interfered with. Petitioner, who had no personal interest in the matter, could not be treated as aggrieved person. [2007 CLC 1574] Impugned order found to be illegal, contrary to law or void *ab initio*. Remedies under departmental hierarchy, non-availing of. Aggrieved party in such case would be entitled to invoke constitutional jurisdiction of High Court. [2007 SCMR 1357] Person aggrieved must be a man who has suffered a legal grievance, against whom a decision has been pronounced, which has wrongfully deprived him of something or wrongfully refused him something or wrongful affected his title to something. [2014 CLC 130] Where bidding process was challenged by a person who had not participated in the bidding. Such person could not be considered as an "aggrieved person". [2014 CLC 174]

- 1.1 'On the application of any aggrieved person'. Inference which is clear from the said expression is that the provisions of Article 199 of the Constitution can be invoked and put into operation subject to application being made on behalf of aggrieved person. [2001 YLR 2403]
- 1.2 **Company financed and contracted by Government.** A company financed and controlled by Government would be regarded as investing joint stock companies with character of a person performing functions in connection with affairs of Federation. Constitutional petition was maintainable. [2007 CLD 578] Company is a separate entity distinct from its Directors and no shareholders/or Director of a company can be said to be the owner of any particular piece of a property in which the company has an interest. Such distinction has to be clearly observed between the company as a legal entity and its rights on the one hand and individual shareholders and their rights on the other. [2007 CLD 1210]
- 1.3 **Not aggrieved person.** Person not directly effected by the mere constitution of *Musalehati* Committee is not an aggrieved person" and has no *locus standi* to move constitution petition against such action. [PLD 2009 Lah. 1]
- 1.4 **Deputationist.** Civil servant has no vested right to complete deputation period and matter relating to terms and conditions of service he cannot be treated as, "a aggrieved person" provided he was placed in the same grade and status in the borrowing cradle which he was a joining before his status of deputationist. [2010 SCMR 378]
- 1.5 **Writ of quo warranto.** In order to maintain a writ of quo warranto the petitioner need no to be an aggrieved person. [PLD 2012 Sindh 232]
- 1.6 **Statutory body.** Courts generally apply the 'function test' to consider whether a statutory body is a 'person' within the meaning of Article 199 of the Constitution. [2013 SCMR 1707, PLD 2010 S.C. 676 ref.]

Chapter 3

ALTERNATE OR ADEQUATE REMEDY

1. Alternate remedy.
2. Revision.
3. Adequate remedy.
4. Remedy when bars writ jurisdiction.
5. Complaint.

1. **Alternate remedy.** Though there is no absolute bar in entertaining grievances of an aggrieved person in exercise of writ jurisdiction however, such discretion is to be exercise with circumspection and as an exception and not as a rule. In cases, where there is jurisdictional error, lack of authority and the alternate remedy is not efficacious, depending on facts and circumstances of each case, extraordinary jurisdiction can be invoked. High Court before exercising its extraordinary jurisdiction must be satisfied about the non-availability or inefficacy of alternate remedy provided under law, and once it is shown to the satisfaction of the High Court that alternate remedy is expedient, effective, then Courts would be reluctant to exercise writ jurisdiction, which is not meant to by-pass such authority to render such hierarchy as redundant and superfluous. Tendency to invoke writ jurisdiction by passing remedy provided under relevant statute was deprecated. Article 199 of the Constitution of Pakistan provides ample powers to the High Court to remedy a wrong by exercising the extra-ordinary constitutional jurisdiction. Once a party resorts to avail a remedy provided under the law, it

shall continue to avail the same in the same hierarchy and cannot be allowed to by-pass or abandon such remedy without any reasonable cause. [2011 MLD 1876] Where petitioner is equipped with an alternate remedy of filing a private complaint constitutional petition would not be maintainable. [2014 P.Cr.L.J. 162] However such remedy must not be less convenient, beneficial and effective than the one sought to be enforced under this article. Alternative remedy at the same time should be efficacious and speedy. In exceptional cases despite availability of alternate remedy High Court can exercise its extra ordinary constitutional jurisdiction conferred upon it under this Article. [PLD 2014 Sindh 22]

Under Art. 199 of the Constitution it was not obligatory for the High court to issue writ in every case especially when an adequate remedy in the form of a private complaint was available to the petitioner. Constitutional petition was dismissed, in circumstances. [2013 MLD 264] High Court is competent and has inherent powers to quash an F.I.R. in an appropriate case and it was not necessary to direct the accused to first exhaust and alternate remedy. [PLD 2013 Isl. 1] When there are extraordinary circumstances High Court is bound to protect the life, liberty, honour and dignity of every citizen. [PLD 2013 Isl. 1] Availability of alternate remedy is one of the limitations barring exercise of such jurisdiction by High Court. [2012 YLR 174] Law envisages that a petition under Article 199 of the Constitution would not be maintainable if the same has been filed without availing of an alternate remedy. Jurisdiction conferred under Article 199 of the Constitution is not an additional remedy provided by law. High Court while hearing a petition under Article 199 would have jurisdiction to interfere only if the petitioner had no other adequate remedy available. [2011 MLD 1402; 2005 YLR 3102] The alternate remedy available must be adequate, effective and efficacious and not merely illusory. [2011 MLD 1961] While exercising such extraordinary jurisdiction, the High Court must be satisfied about the non-availability or inefficacy of alternate remedy provided under the relevant law and once it is shown to the satisfaction of the High Court that alternate remedy provided under the law is expedient and effective, then the Courts would be reluctant to exercise writ jurisdiction. The parties cannot be allowed to by-pass such authority provided under the law for redressal of the grievance to render such hierarchy as redundant and superfluous. Such tendency is deprecated. High Court before exercising its extraordinary jurisdiction must be satisfied about the non-availability or inefficacy of alternative remedy provided under law, and once it is shown to the satisfaction of the High Court that alternate remedy is expedient, effective, then Courts would be reluctant to exercise writ jurisdiction, which is not meant to by-pass such authority to render such hierarchy as redundant and superfluous. Tendency to invoke writ jurisdiction by passing remedy provided under relevant statute was deprecated. [2011 MLD 1876 p.1885; 1999 SCMR 1881; 2003 SCMR 149] Bar on filing constitutional petition without availing alternate remedy can be ignored in exceptional cases in order to administer substantial between the parties. [2011 CLC 1498] If the order passed by a Court suffers from a defect of jurisdiction or is void order, in such circumstances the rule of availing remedy of appeal can be dispensed with. [2004 SCMR 400] High Court may not refuse to grant relief to an aggrieved party only on the ground that alternate remedy was available to petitioner. High Court may not refuse to strike impugned order down in exercise of its power under Article 199 of the Constitution, if it appears to be *ab initio* void, due to complete lack of jurisdiction or substantial defect in jurisdiction. [2011 CLC 1004; PLD 1972 S.C. 279; PLD 1975 S.C. 450 relv.] As such availability of alternate remedy would not bar jurisdiction of High Court to entertain petition when impugned order is void *ab initio*. [2011 YLR 2850]

Availability of alternate remedy would not constitute a bar upon jurisdiction of High Court to entertain constitutional petition and to exercise constitution jurisdiction, if the circumstances so warrant. [2009 CLC 862] Such remedy if counter productive would not bar exercise of constitutional jurisdiction by High Court in such matter. [2009 YLR 282] Where statute creates a right and also provides machinery for the enforcement of that right, the party complaining of breach of the statute must first avail of the remedy provided by the statute for such breach before he applies for a writ or order in the nature of writ. [2004 CLD 1407] Where an alternative remedy by way of direct complaint is available to the petitioner, he can not insist that High Court should exercise its Constitutional jurisdiction though not justified under circumstances of the case. [2004 YLR 2577] It is incumbent upon petitioner to have availed alternative remedies under the law before approaching High Court for redressal of grievance by invoking Constitutional jurisdiction under this Article. Once appeal is not filed before the Appellate Court then Constitutional petition or review would not be competent. [2006 SCMR 778] Where an alternate competent forum, regulatory authority to monitor the functioning of private institutions is available High Court on account of limitations of its authority under this Article cannot undertake such exercise. [2006 YLR 1216]

Rule of exhaustion of available remedies, though is not prescribed by Article 199 of the Constitution however, it is salutary criterion by which High Court regulates its proceedings. [2007 CLD 932] Presence of alternative remedy is neither a principle of law nor rule of thumb but one of practice. When impugned order is patently illegal or illegality is floating on the surface, to refuse interference under this Article would in fact amount to acting in aid of injustice and plea of availability of alternate remedy loses its legal significance. [2006 CLC 1902; 1999 SCMR 1981; PLD 1997 S.C. 304 relv.] Such rule however is not an inflexible and jurisdiction can be exercised when impugned order is without jurisdiction and alternate remedy is not efficacious. [2006 CLC 20] Constitution petition under Article 199 of the Constitution would be competent without exhausting all remedies if the impugned order was passed by a Court or Authority by exceeding its jurisdiction. [2004 CLD 260]

To disentitle a person from such an extraordinary relief the alternative remedy available must be a remedy in law, that is a *remedium juris* and one which not less convenient beneficial and effective. Once is establish that the remedy sought is for the performance of some public duty then relief by way of an extraordinary remedy of this nature is not to be denied merely because some other remedy under the general law is available, unless such alternative remedy can be considered to be equally in expensive, expeditious, beneficial and efficacious. [PLD 1966 S.C. 639] Alternative remedy ought to be equally efficacious and High Court is not divested of jurisdiction merely because such remedy exists. When the order impugned is claimed to be without jurisdiction the remedy by way of Constitutional petition rather than an appeal in the same hierarchy is more efficacious. [2005 YLR 252] Where the petition was admitted some 13 years back, the High Court held would be extremely unjust to require the petitioner to seek redress in an appeal. [2005 YLR 252] Where the petitioner have availed of an alternate remedy by way of civil suit it is not possible for the High Court to usurp the jurisdiction of a competent civil Court already seized of the matter. [2005 YLR 252]

Rule that High Court would not entertain a constitutional petition when other appropriate remedy was available, is not a rule of law barring jurisdiction of High Court. Such was a rule by which the Court would regulate the exercise of this own discretion. One of the well-recognized exceptions to that general rule is a case where an order is attacked on the ground that it is wholly without authority. In certain cases Superior Courts do not allow

petitioners to invoke constitutional petition on the ground of availability of an alternative remedy by way of appeal or otherwise, but on the other hand, in other cases, notwithstanding the pendency of an appeal or availability of an alternate remedy the Courts do not hesitate to exercise such constitutional jurisdiction and it could be expressed as a generally accepted principle, that just because an alternate remedy by way of appeal or otherwise was available to a petitioner, High Courts would not invariably decline to exercise their extraordinary constitutional jurisdiction. Mere availability of an alternate remedy would not debar High Court from exercising such jurisdiction. In cases of total lack or absence of jurisdiction of authority or apparent excess of jurisdiction, the Courts in general would not hesitate much in entertaining a constitutional petition, although an alternate remedy could well be available; in other cases, the Courts would generally direct the party to avail and exhaust the alternate remedies available first before entertaining constitutional petition, if in the opinion of the Courts the alternate remedy was an adequate remedy. [2007 MLD 770] Question of speed and expenses of the alternate remedy can be considered. [2007 MLD 770] Where impugned order suffers from lack of jurisdiction, insistence on availing of alternative remedy would be quite misplaced. [2007 MLD 995]

Availability of

[2002 S.C. 452]

ADEQUATE REMEDY

3. **Adequate remedy.** Use of phrase "adequate remedy" in Article 199 is subjected to the objective satisfaction of the Court, requiring the High Court to examine each and every case in its own given circumstances to satisfy itself as to whether the remedy was "adequate" or not. Primarily interpretation of law and Constitution, was the duty of superior judiciary, therefore, in such circumstances, despite availability of alternate remedy, High Court could entertain a matter directly in Constitutional jurisdiction. Mere availability of an alternate remedy was not sufficient to refuse entertaining a Constitutional petition. Case involving import questions of law expected to come before High Court for final resolution, could safely be said to be adequate and appropriate for invoking Constitutional jurisdiction of High Court under Article 199 of the Constitution. [2004 YLR 366] Availability of adequate remedy is not an absolute bar against the exercise of constitutional jurisdiction. High Court in exceptional cases can entertain the constitutional petitioner directly. [2009 MLD 99] Adequate or alternative remedy must be a remedy in law *i.e.*, *remedium juris* and must not be less convenient, beneficial and effective than the one sought to be enforced under Article 199 of the Constitution. [2004 YLR 2599] Where impugned action or order of public functionary was illegal, *mala fide*, without jurisdiction and void *ab initio*, then recourse to alterative remedies available under a statute would not be compulsory and aggrieved party could approach High Court directly. [2004 PTD (Trib.) 1979] Availability of alternate remedy would only be relevant to decide, whether discretion under Article 199 of the Constitution should be exercised or not,

which decision would be made on judicial application of mind to facts of each case. [2004 SCMR 1587] Availability of alternate remedy in form of a suit, is not a bar of jurisdiction by the Court in exercise of powers of judicial review under Article 199 of the Constitution, rather is a rule regulating its jurisdiction and convenience. [2004 CLC 1104]

The word "adequate remedy" connotes an efficacious, convenient, beneficial, effective and speedy remedy. It should be equally inexpensive and expeditious. To effectively bar the jurisdiction of the High Court under Article 199 of the Constitution, the remedy available under the law must be able to accomplish the same purpose, which is sought to be achieved through a petition under Article 199. The other remedy in order to be adequate must be equally convenient, beneficial and effective. The relief afforded by the ordinary law must not be less efficacious, more expensive and cumbersome to achieve as compared to that provided under Article, 199. [PLD 2012 Sindh 425]

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High Court will have to consider in each case the following test to be applied to determine the adequacy of the relief:-

- (i) If the relief available through the alternative remedy in its nature or extent is not what is necessary to give the requisite relief, the alternate remedy is not an "other adequate remedy" within the meaning of Article 199.
- (ii) If the relief available through the alternate remedy, in its nature and extent, is what is necessary to give the requisite relief, the "adequacy" of the alternate remedy must further be judged with reference to a comparison of the speed, expense or convenience of obtaining that relief through the alternate remedy with the speed, expense or convenience of obtaining it under Article 199. But in making this comparison, those factors must not be taken into account which would themselves alter if the remedy under Article 199 were used as a substitute for the other remedy.
- (iii) In practice the following steps may be taken:
 - (a) Formulate the grievance in the given case as a generalized category;
 - (b) Formulate the relief that is necessary to redress that category of grievance;
 - (c) See if the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent;
 - (d) If such a remedy is prescribed, the law contemplates that resort must be had to that remedy;
 - (e) If it appears that the machinery established for the purpose of that remedy is not functioning properly, the correct step to take will be a step that is calculated to ensure, as far as lies in the power of the Court that machinery begins to function as it should. It would not be correct to take over the function of that machinery. If the function of

another organ is taken over, that other organ will atrophy and the organ that takes over will break down under the strain;

- (f) If there is no other remedy that can redress that category of grievance in that way and to the required extent or if there is such a remedy but conditions are attached to it which for a particular category of cases would neutralize or defeat it so as to deprive it of its substance, the Court should give the requisite relief under Article, 199.
- (g) If there is such other remedy, but there is something so special in the circumstances of a given case that the other remedy which generally adequate, to the relief required for that category of grievance is not adequate to the relief that is essential in the very special category to which that belongs, the court should give the required relief under Article 199.
- (h) If the procedure for obtaining the relief by some other proceedings is too cumbersome or the relief cannot be obtained without delay and expense or the delay would make the grant of the relief meaningless, High Court would not hesitate to issue a writ if the party applying for it is found entitled to it, simply because the party could have chosen another course to obtain the relief which is due. [2011 SCMR 1813]

Where a particular statute provides self.-contained machinery for determination of questions arising under the statute and law provides a remedy by appeal or revisions to another Tribunal fully competent to give any relief, any indulgence to the contrary by High Court is bound to produce a sense of distrust in statutory tribunals. [2012 MLD 1173] Petitioner seeking relief under Article 199 of the Constitution has to show that he is an aggrieved person and it is also imperative for him to show that any of his proprietary or personal right as recognized by law has been invaded or denied. Any person, who fails to demonstrate such pre-requisites as recognized by law, has no *locus standi* or any cause of action to seek any relief under Article 199 of the Constitution. Legal right can be statutory right or a right recognized by law. [2012 MLD 1092]

Chapter 4

LACHES

1. Laches.
2. Laches—Employees of authority having non-statutory rules.
3. Law of limitation.
4. Criminal cases.
5. Issue of limitation not raised.
6. Court having no jurisdiction.
7. Cancellation of plots.
8. Reasonable time.

1. **Laches.** It is established principle of law that delay defeats equity and equity would aid vigilant and not indolent. [2013 MLD 287] Laches in simplest form mean failure of a person to do something which should have been done by him within reasonable time and is not synonymous with delay alone but it can be worked out to the disadvantage to another person in the matter of his right. No exception to the rule that delay in seeking remedy of appeal, review or revision beyond the period of limitation provided under the statute, in absence of reasonable explanation, cannot be condoned and in the same manner if remedy of Constitutional petition is not availed within reasonable time, the interference can be refused on the ground of laches. Laches cannot be equated with limitation and by itself is not a sufficient ground to non-suit a person if the equities are not against him and he has not been sleeping over his right or was not indolent. Question of laches in Constitutional petition is always considered in the light of conduct of the person invoking the Constitutional jurisdiction of High Court. Degree of negligence of petitioner, if any and that if by grant of relief being sought by him no injustice is caused to the opposite party, the Constitutional petition should not be dismissed merely on the ground of laches without examining the dictates of justice. Court, in suitable cases, in its discretionary jurisdiction, subject to offering of reasonable explanation, can condone delay in filing an appeal, review or revision, as the case may be, and similarly can also ignore delay, if any, in filing of Constitutional petition in the interest of justice. [2004 SCMR 400; 2004 YLR 1969; 2000 SCMR 1119] Laches per se would not be a bar to constitutional jurisdiction of High Court. Question of delay in filing constitutional petition would be examined with reference to facts of each case. Where facts of case and dictates of justice demanded, laches of several years could be over looked or laches of few months might be fatal. Delay would defeat equity. Equity would aid vigilant and not indolent. Superior courts refuse to come to the aid of a party having not been diligent, vigilant and acted in a prudent manner. [2013 MLD 287] It is very important to note that period of limitation or laches would not come in the way of injustice law aims to provide justice to the aggrieved for which the Superior Courts have been given ample opportunity to come to the rescue of such a person and the technicalities should not be allowed to hinder administration of justice where the Court comes to know its defeat in tyrannical and unlawful way allowing usurpation of title/property of innocent persons. [2011 YLR 2850] In the case of limitation delay of each day is to be explained by furnishing sufficient cause for enlargement of time and condonation of delay, whereas in filing of Constitutional petition lapse of time or question of laches is to be examined on equitable principles for the reason that the exercise of Constitutional jurisdiction is always discretionary with the Court and relief so granted is always in the nature of equitable relief. In case High Court comes to a conclusion that equity leans in favour of petitioner, the Court must exercise discretion in favour of such party. Issue of delay or laches is to be considered with reference to the facts of each case and no hard and fast rule can be laid down in this behalf.

[2005 SCMR 126] Question of delay/laches in filing constitutional petition has to be given serious consideration and unless a satisfactory and plausible explanation is forthcoming for delay in filing constitution petition, the same cannot be overlooked or ignored subject to fact and circumstances each case. [PLD 2007 S.C. 472] Question of delay or laches is to be considered with reference to the facts of each case and delay/laches could be overlooked in a Constitutional petition if the facts of the case and dictates of justice so warranted. [2005 CLC 694] Counsel for the petitioner not able to explain the laches and delay in approaching the Court to object impugned construction. High Court declined to interfere in the matter. [2008 YLR 2043] Laches could not stall enforcement of fundamental rights guaranteed under the Constitution. [PLD 2012 Lah 515]

There are two stages in dealing with the constitutional petition. There is no cavil to the proposition that the High Court, in exercise of its original jurisdiction, entertains the constitutional petition. In exercise of such jurisdiction, the High Court decides criminal, civil and other matters. The first stage of invoking the jurisdiction of the High Court in civil matter is the filing of petition. For that purpose petition will be governed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The Constitution does not provide any limitation for filing the petition as fundamental rights can be enforced at any time. Nevertheless, this does not mean that delay or laches on the part of the parties cannot be considered, but it is settled that the constitutional petition has to be filed within a reasonable time, however, the delay is not an absolute bar:-

- a) Where the delay is explained.
- b) In a petition for prohibition, where lack of jurisdiction is patent.
- c) Where an order, which professed to be final, was, in reality, provisional, or subject to revision, delay cannot be computed until the final order was made.
- d) Delay cannot be a bar where Government has been holding out hopes to the petitioner from time to time.
- e) Where the impugned order becomes vulnerable if it is continued beyond a temporary period, e.g., an order of requisition of a premises.

On the other hand, the Court would be more inclined to refuse relief under Article 199 on the ground of laches where, on account of the delay:-

- a) The opposite party has been induced to alter his position.
- b) Other interests have come into being.
- c) Where a suit, if brought on the same cause of action, would have been barred by limitation.

The consideration upon which the Court refuses to exercise its discretion where the petition is delayed is not limitation but matters relating to conduct of parties; an change in situation. The proper standard, however, seems to be whether in the circumstances of the case, the time that has elapsed can be said to be reasonable or there is proper explanation for the delay, therefore, the reasonableness of the delay in filing a writ petition is to be assessed by the Court having regard to the facts and circumstances of each case. Thus, the refusal to entertain belated causes is only a rule of discretion, not of law. There is no law of limitation which may directly apply to the institution of writ petitions and their dismissal on ground of limitation. If the High Court finds that the party invoking the constitutional jurisdiction is guilty of

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contumacious lethargy, inaction, laxity or gross negligence in the prosecution of a cause of fundamental right, it would be justified in non-suiting such person on the premises of laches. The provisions of Limitation Act, 1908 do not apply to the constitutional petition. Thus, the lapse of time that would have been considered as constituting delay, the proper view seems to be that no hard and fast rule can be laid down in the matter and each case has to be decided according to its circumstances, without adhering to any fixed period, long or short. [PLD 2007 Kar. 374]

principle of laches. [2013 YLR 300]

1.1 Question of laches not relevant. Where impugned action of authority is without jurisdiction and mala fide question of application of laches would not be relevant. [2013 MLD 433]

2. Laches—Employees of authority having non-statutory rules. Rules of Security and Exchange Commission of Pakistan were non-statutory and one petitioner retired in year, 2002, whereas remaining two retired in the year, 2007. Departmental representations were submitted by petitioners in January 2010, while petition was filed on 30-10-2010 without any justifiable reason for approaching High Court with such a delay, and therefore, petition suffered from laches. Calculation of pension dispute involved financial controversies, which could not be appreciated under constitutional jurisdiction. [2013 MLD 45]

3. Law of limitation. Law of limitation does not apply to the institution of Constitutional petition nor on its dismissal on the ground of limitation. If the law of limitation is not applicable Courts shall have discretion to consider the delay on the doctrine of laches but wherever the law of limitation is attracted the Court has no jurisdiction to relax the period of limitation except in accordance with the provisions of law in this behalf. All the laws including the law of limitation comes into operation automatically. Substantive right of review can be availed by a party u/s 114 r/w O. XLVII, R. 1 C.P.C. with all its merits and demerits, benefits and adverse affects advantages and disadvantages. It does not lie with the party to allege that he may be allowed to avail the substantive right of review under section 114, C.P.C., but without rigors of the law of limitation which otherwise is applicable. [PLD 2005 Kar. 164] No limitation is prescribed to invoke constitutional jurisdiction *albiet* question of laches would be relevant. [2010 YLR 295]

Strictly speaking there is no limitation for a Constitution petition and in exercise of Constitutional jurisdiction, High Court is competent to grant discretionary relief to the petitioner. [2011 YLR 3025]

3.1 Legal right. Legal rights cannot be curtailed by implication. [PLD 2002 S.C. 273]

4. Criminal cases. No limitation is prescribed in criminal prosecution but the longer a complaint is delayed the lesser becomes the chance of believing in its truth, particularly when it is based entirely upon oral evidence. [2010 SCMR 1816] Question of *laches* may also become relevant in such cases. [2010 YLR 295] When complaint is filed after a considerable delay which is not explained by a complainant then in such situation it raises suspicion as to its truthfulness. Delay in filing complaint is not by itself fatal except under very special circumstances. Complaint loses its truthfulness with length of delay more particularly when it is based on oral evidence. [2010 SCMR 105; 2003 SCMR 1466] Limitation would not run against a judgment passed without jurisdiction as said judgment is nullity in the eye of law. [2011 P.Cr.L.J. 411; 2006 YLR 366; 2008 P.Cr.L.J. 713 relv.]

4.1 Fraud. Limitation does not run against fraud. [2010 CLC 1790] In case of fraud limitation starts from the date of knowledge and not from the date when it is committed. Fraud remains fraud from its inception till its discovery. [PLJ 2010 Lah. 597] When whole proceedings are illegal and based on fraud, limitation does not come in the way of justice. [2012 CLD 1873]

5. Issue of limitation not raised. When limitation issue is not raised earlier, same would become devoid of force. [2010 PLC (CS) 1457]

6. Court having no jurisdiction. Limitation would not run against a judgment passed without jurisdiction as said judgment is nullity in the eyes of law. [2011 P.Cr.L.J. 411] Court not having jurisdiction would have no domain over a dispute both on factual and legal score. [PLD 2011 Kar. 508] No authority would have jurisdiction to sit in appeal against its own order. [2011 YLR 2907]

7. Cancellation of plots. Cancellation order of plots communicated to petitioners were intact and indirect challenge to those orders after lapse of period of about 12 years was neither permissible nor lawful. [PLD 2008 Lah. 261]

8. Reasonable time. Aggrieved person may invoke the jurisdiction of the High Court under Article 199 of the Constitution within "reasonable time" and "reasonable time" has been interpreted as 90 days. [2012 CLC 1729]