

The Chronicle Evolution of Prerogative Writs in the United Kingdom and in India: Are Prerogative Writs Immune from the Doctrine of Delay and Laches?

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I. INTRODUCTION AND FACTUAL BACKGROUND

It is well known that in England prerogative writs were issued as a written royal command order under the royal seal by the King’s Bench at England which consisted of Barons and High Ecclesiastical personnel who were vested with administrative, judicial and legislative powers.¹ The true nature of prerogative writs under English law vests the power to the Crown Courts which is akin to a magic wand for rectifying any prejudicial action like non-payment of outstanding dues arising from a contract, fraud or misrepresentation upon aggrieved person or compelling the performance of public duty to bring up the body of the imprisoned person who is kept in private detention etcetera.

In contrast, the true nature of writs in India is completely different to its English counterpart. In India, initially, only a limited number of courts were vested with the power to grant the writ of habeas corpus. However, this scenario completely changed after the advent of the Indian Constitution which laid down the powers to the High Court and Supreme Court to issue “*direction, orders or writs, including*

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¹ Edward Jenks D.C.L., ‘The Prerogative Writs in English Law’ (1923) 32(6) *Yale Law Journal* 523.

writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*.”² This provision has become a characteristic feature of public law litigation in India. The issue that this paper considers is the challenge faced by the prerogative writs under English jurisdiction and the writ petitions under Indian jurisdiction from its renaissance to date and later tests that whether there is any specific period of limitation that applies to writ petitions in India and to prerogative writs in United Kingdom. The paper will also consider the application of the doctrine of laches to the writ jurisdiction of Indian courts and English courts.

Salmond in his *Jurisprudence* states that the laws come to the assistance of the vigilant and not of the sleepy.³ The Doctrine of laches rests on the acquiescence of the continues sleeping over the legal right by the neglecting conduct portrayed by the aggrieved person and this conduct is equated to the waiver of the legal right by the aggrieved person.⁴

As per the *Halsbury’s laws of England*, the policy of the limitation acts, courts have expressed its intent for the existence of a statute of limitation which can be applied on a) long dormant claims leading to abundant cruelty than the justice in them, b) loss of evidence by the defendant in disproving the sanctity of the stale claim of the claimant at a belated stage, c) bona fide persons approaching courts with the reasonable diligence.⁵

In Section II and Section III, this article describes the evolution of the writs under English law and Indian law respectively. Section IV and Section V attempts to answer the question whether writs are immune from the applicability of doctrine of delay and laches under English Law and Indian Law through an extensive analysis of the judicial precedents. Section VI seeks to conclude this article and discuss the contrasting nature of adjudication of writs in Indian and English jurisdiction which are hit by delay and latches.

II. PREROGATIVE WRITS UNDER ENGLISH LAW

The relevance of issuing writs through the King’s Court through the activation of their extra judicial powers was due to the non-recognition of certain rights by the Common law courts as those courts only recognized rights which were mentioned in the English statutes which were prevalent during that time. This restrained the hands of the Common law courts to grant certain other reliefs which

² The words cited above is mentioned under Article 226 (1) of the Indian Constitution 1950 which grants the power to High Courts and similarly to the Supreme Court under Article 32 of the Indian Constitution 1950.

³ *Pundlik Jalam Patil (Dead) by Lrs v Executive Engineer Jalgaon Medium Project and anr* (2008) 17 SCC 448.

⁴ *UP Jal Nigam and anr v Jaswant Singh and anr* (2006) 11 SCC 464.

⁵ *Halsbury’s Laws of England* (4th Edn, 2010) vol.28, para 605.

were outside the purview of those well-recognized statutes like the Debtor's act 1869, the Forgery act 1861, Prevention of Crime act 1908 etcetera.⁶ The nature of these writs used to revolve around the interests of the Crown alone. After the commencement of twelfth century, the nature of the writs became '*De Cursu*'⁷ as the prerogative writs were availed to the public after making an appropriate payment in the form of prescribed fees. The process of filing this kind of writ was known as '*purchase of writ*' and since it established a royal supremacy therefore, it was termed as '*prerogative writs*'. Some of the prerogative writs were restrained for the welfare of English citizens and those prerogative writs were strictly reserved for the royal application by the crown and the crown had the only discretion to exercise those writs for any special favoured suitor. The distinguished feature between prerogative writs in those days and the other Common Court orders was that the former was an unquestionable written command and whereas the latter was a mere hasty questionable and non-binding spoken command. .⁸

The prerogative remedies in England witnessed a setback as there was a stagnant declination in its application during and after the second world war. As Professor H.W.R Wade has observed; "during and after the Second World War a deep gloom settled upon administrative law, which reduced it to the lowest ebb at which it had stood for centuries".⁹

Similarly, in the inaugural Hamlyn lecture entitled "*Freedom under Law*" in 1949, Lord Denning argued that: "Our procedure for securing our personal freedom is efficient; our procedure for preventing the abuse of power is not. Just as the pick and shovel are no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date machinery by declarations, injunctions for negligence. ...".¹⁰ His Lordship was inclined towards the view that the prerogative writ of habeas corpus was the sole remedy which was efficacious in protecting the personal freedom of English citizens as the other remedies failed to cope with recent developments in the law and society.¹¹

The deficiency in the appropriate application of prerogative writs was

⁶ Shodhganga, 'Nature and Scope of Writ Jurisdiction - A Historical Perspective' (*Shodhganga*, 31 December 2016) <https://shodhganga.inflibnet.ac.in/bitstream/10603/132538/5/05_chapter%202.pdf> (accessed 26 April 2020).

⁷ *Black's Law Dictionary* (2nd edn, 1910) "De Cursu proceedings are incidental proceedings which are conducted on summons or motion and they are distinguished from summary proceedings. Writs de cursu are distinguished from prerogative writs."

⁸ Edward Jenks D.C.L (n 1).

⁹ Henry William Rawson Wade and Christopher F. Forsyth, *Administrative Law* (5th edn, OUP 1982).

¹⁰ The Hamlyn Revisited The British Legal System Today, *Freedom under Law* (Hamlyn Lectures Thirty-Fifth Series, 1983).

¹¹ Christopher Forsyth and Nitish Upadhyaya, "The Development of the Prerogative Remedies in England and India: The Student Becomes the Master?", 2013 25(2) NLSI. Rev. 168, 77–85.

primarily procedural as the remedy through prerogative writs were not available as an alternative, there was no finding or service of interrogatories, the limitation period for exercising prerogative writs was short lived (three months or six months) and the appropriate authorities failed to arrive to the conclusion for allocating a proper writ under suitable body. Further, oral evidence or cross examination in any case was dormant and it hampered the tenets of natural justice as it demanded specific inspection of the issues in a case.¹² Naturally, litigants were infuriated as a result of deficiencies in the wording of Order 53 of the Supreme Court rules lead to the applicability of ordinary writ action as a tool for vindication of their rights against the relevant bodies. This approach led to the side lining of prerogative remedies¹³ and this action was the reason behind the revival of English administrative law in the 1960s and 1970s wherein a plethora number of writs were filed seeking a declaration or injunction actions instead of prerogative reliefs.¹⁴

The renaissance of prerogative writs under English Law began in 1977 when Order 54¹⁵ of the Code of Civil Procedure rules was reformed and the doors for the application of judicial review were opened.¹⁶ This led to a transformation in the application of prerogative writs as the remedies were available in alternative. This step pushed prerogative writs to the forefront of administrative law. The rebirth of Order 54 introduced the concept of ‘*Judicial Review Process*’¹⁷ which was the appropriate solution to clear the previous hinderances and it further granted the flexibility to the English courts to adjudicate significant factual disputes whilst protecting the sanctity of public authorities. In *O’Reilly v. Mackman*¹⁸, the House of Lords shed some light on the usage of the writs and judicial review. In that case, the Court held that a writ action challenging a decision of a public authority will be non-maintainable and will be termed as an abuse of process of the court as the writs are formed for exercising private law procedure and an appropriate procedure to challenge an order of public authority lies under judicial review.

The English courts initially need to designate the issue between the disputant parties under an appropriate writ and later perform their role of the efficacious

¹² Henry William Rawson Wade and Christopher F Forsyth, *Administrative Law* (10th edn, OUP 2009) 549, 550.

¹³ Forsyth and Upadhyaya, (n 11) 77–85.

¹⁴ *Anisimic Ltd v Foreign Compensation Commission*, [1969] 2 AC 147; *Padfield v Minister of Agriculture, Fisheries and Food*, [1968] AC 997; *Congreve v Home Office*, [1976] QB 629.

¹⁵ Part 54 of Code of Civil Procedure Rules 1998 talks about Judicial Review and Statutory Review.

¹⁶ Wade and Forsyth (n 12) 549, 550.

¹⁷ Judicial Review is a form of court proceedings usually in administrative court wherein the court reviews the decision or an action of the public authority. It can only be exercised when no other remedy is available.

¹⁸ (1982) 3 All ER 1124.

adjudication of the dispute for granting a necessary order. Therefore, judges were assigned with the task to allocate the issues under one specific type of the Prerogative writs out of the six types of prerogative writs which were available to the litigants under English law. Those were a) habeas corpus, b) quo warranto, c) certiorari, d) mandamus, e) procedendo and f) prohibition. The writ of habeas corpus is a non-discretionary remedy and the other five remedies were discretionary. In this sense, they were truly ‘prerogative’ orders.¹⁹ With the passage of time, the writ of quo warranto and procedendo became obsolete but the applicability of other writs are in subsistence to date and the orders passed under the writ of mandamus came to be known as ‘*mandatory orders*’ which is currently mentioned under Rule 8 of Civil Procedure Rules 1998 whereas the writ of certiorari came to be known as ‘*quashing orders*’ which is defined under Rule 9 of Civil Procedure Rules 1998, and the writ of prohibition was known as ‘*prohibiting orders*’ which is defined as Rule 10 of Civil Procedure Rules 1998. The writs of scire facias and ne exeat existed for a short time under English law. The writ of scire facias was a judicial writ which was enforced on a matter of record which casted an obligation towards the person or authority against whom the writ is filed to show cause for not enforcing, annulling or vacating that particular matter of record.²⁰ The writ of scire facias became obsolete and it was abolished under The Crown Proceedings Act 1947.

The writ of ne exeat regno or ne exeat republica is a writ which is issued for a significant purpose of restricting a person from leaving the jurisdiction under which the court has the authority and powers to adjudicate disputes when there is an action pending.²¹ The pertinence of this writ can be traced from the case of *Tomlinson v. Harrison*,²² wherein Lord Eldon stated this writ to be a ‘*High Prerogative Writ*’ which was to be applied with great caution and jealousy as it involved private rights. Nowadays, this writ is only applied under the ambit of section 6²³ of the Debtors’ Act 1869.²⁴

¹⁹ Lambert M. Surhone, Mariam T. Tennoe and Susan F. Henssonow, ‘Prerogative Writ’ (Betascript Publishing 2010).

²⁰ Merriam Webster, *Scire Facias* <<https://www.merriam-webster.com/dictionary/scire%20facias>> (accessed 4 July 2020).

²¹ Merriam Webster, “ne exeat republica”, <<http://www.merriamwebster.com/dictionary/ne%20exeat%20republica>> (accessed 4 July 2020).

²² (1802) 8 Ves. 32 at 33

²³ The Section 6 of the Debtors Act 1869 confers powers to High Court to arrest the defendant under certain circumstances when he plans to quit England.

²⁴ Pratibha Bansal, ‘Writs in Indian Constitution’ (*iPleaders*, 14 August 2019) <<https://blog.iPLEaders.in/writ/>> (accessed 7 July 2020).

III. THE HISTORICAL TRANSFIGURATION OF WRITS UNDER INDIAN LAW

Writs evolved in India after the establishment of the Supreme Court in Calcutta by a Charter in 1774. The Supreme Court in India was established in Madras and Bombay through a charter with analogous provisions in 1801 and 1823 respectively. The Supreme Courts were vested with the power to issue Writs as per the provisions of the respective charters. These Supreme Courts enjoyed similar powers which were given to the King's Bench in England. The Supreme Courts initially could only issue the writ of habeas corpus. The Supreme Courts were later replaced by presidency High Courts in 1862 under High Courts Act 1861. These presidency High Courts had on its own assumed that they only had inherited the powers of issuing writs as they were the succeeding courts to the three Supreme Courts and the rest of the High Courts in India remained powerless to issue writs. The legislative provisions granting these presidencies High Courts to issue writs under their respective jurisdictions were vested under Section 45 of the Specific Relief Act 1877 and section 491 of Code of Criminal Procedure 1923. Section 45 enabled the Presidency courts to issue a writ of mandamus under the original civil side to a public officer, corporation or an inferior court of justice whereas the significance of Section 491 to the Presidency High Courts enabled them to issue a writ of habeas corpus which was eventually extended to all the High Courts in India.

The preliminary issue arising for the Presidency High Courts while exercising their exclusive royal power to issue writs was with their respective jurisdictions. This issue was considered by High Court of Madras in *Re: R. Nataraja Iyer*,²⁵ wherein the division bench was unable to reach a decisive conclusion as one of the judges on the bench was of the opinion that a writ of certiorari cannot be issued on an officer beyond its original civil jurisdiction and the other judge opined that the High Courts are vested with the power to issue a writ of certiorari on any judicial order passed by the mofussil. The view of the latter judge was followed by the High Courts in numerous cases while issuing a writ of certiorari.²⁶ Therefore, the extraordinary powers were only granted to presidency High Courts for issuing writs, instead of all the High Courts which were established under High Courts Act 1861 and this action created an imbalance among all the High Courts.²⁷

²⁵ (1912) ILR 36 M 72.

²⁶ *Penugonda Venkataratnam and anr v The Secretary of State for India* (1931) 60 MLJ 25; *MM Chetty v Board of Revenue, Madras* (1931) ILR 55 M. 137; *Zamindarini Mandasa v Ryots of Mandasa Zamindar* (1932) ILR 56 M 579.

²⁷ Professor Mahendra Pal Singh *Outlines of Indian Legal and Constitution History* (Universal Law Publishing 8th edn 2015) 97–99.

The unequal treatment of the High Courts in India came to an end after the Indian Constitution came into force in 1950. The drafters of the Indian Constitution adopted a tenacious approach for protecting the fundamental rights in the most efficacious manner²⁸ and this formed a path for the introduction of the Constitutional remedies in the form of Writs. The constitutional drafting committee which was led by Dr. Ambedkar had isolated the salient features of the prerogative writs, which made the application of writs in India simple.²⁹ The concept of writs was introduced to all the High Courts in India which made them the guardians of citizens legal rights. The power to issue an appropriate writ by the Indian High Courts is vested under Article 226 and Article 32 vests this responsibility to the Supreme Court of India. Article 226(1) vests the power on High Courts to issue directions, orders or any writ in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari against any breach of fundamental rights and for any other purpose as per their own discretion. The High Court enjoys a discretionary and equitable jurisdiction under the ambit of Article 226.³⁰ The horizon of Article 226 is vast in nature as it not only grants powers to the High Courts to issue a writ against the violation of a fundamental right but it also grants them an unlimited power to grant the writ ‘for any other purpose’. Therefore, the High Courts had set a line of precedents wherein they have granted writs under the latter category.³¹

The realm of Article 32(1) vests the rights upon the citizens to invoke the appropriate writ and move to Supreme Court for the fundamental breach of their rights and Article 32(2) empowers the Supreme Court to grant an appropriate writ in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari against any breach of fundamental rights and the writ under Article 32 restrains the aggrieved person to invoke this provision for the enforcement of a legal right.³² The powers conferred to the Supreme Court under Article 32 to issue writs is much narrower than the power of the High Courts under Article 226 as under the former provision the Supreme Court is vested with the power to issue Writs only on the breach of fundamental rights³³ whereas the High Court can issue an appropriate writ in the latter for the enforcement of fundamental rights and for also any other legal right.³⁴

²⁸ Hormasji Maneckji Seervai, *Constitutional Law of India - A Critical Commentary* (Universal Law Publishing 4th edn. 1993) 1449.

²⁹ Forsyth and Upadhyaya (n 11) 77–85.

³⁰ *UP State Sugar Corporation Limited v Kamal Swaroop Tandon* (2008) 2 SCC 41; *Secretary, ONGC Ltd v VU Warriar* (2005) 5 SCC 245; *Indian Overseas Bank, Anasalai v P Ganesan* (2008) 1 SCC 650.

³¹ *Swayambar Prasad v State of Rajasthan* AIR 1972 Raj 69; *Gujarat State Financial Corporation v Lotus Hotel* AIR 1983 SC 848; *Air India Statutory Corpn v United Labor Union* AIR 1997 SC 645.

³² *RSIDI Corporation v SS Co-op Hsg Society Jaipur* AIR 2013 SC 1226.

³³ *Andhra Industrial Works v Chief Controller of Imports* AIR 1974 SC 1539.

³⁴ Professor Mahendra Pal Singh, Justice Jasti Chelameswar and Justice Dama Seshadri Naidu, *MP Jain Indian Constitutional Law* (7th edn, Lexis Nexis 2016) 410.

IV. APPLICABILITY OF DOCTRINE OF DELAY AND LACHES ON THE PREROGATIVE WRITS UNDER ENGLISH LAW

The doctrine of delay and laches under English equity conveys that the aggrieved party who seeks justice through an exercise of their rights are obligated to act swiftly and diligently. This doctrine is used as a preliminary defence by the defendant when the claimant or the aggrieved party in a case stays dormant in initiating the remedy in time before the appropriate court of law for the injustice done to them.³⁵

Two centuries earlier, Lord Coke had stated that: “laches, or lasches, is an old French word for slackness or negligence, or not doing.”³⁶ In a similar fashion, Sir William Blackstone, had observed and identified the doctrine of laches with “negligence” and “delay”.³⁷ The inception of the earliest source of doctrine of laches was first witnessed in 1311 and which can be traced in the year books of Edward II wherein the following was enshrined: “n’est nie mervaille, qu’il put aver recoverer s’il ust usé sa accioun vivant son piere, issi que la lachesse e sa negligence demenly turnera en rea (That is not wonderful, for he could have recovered if he had used his action in the lifetime of his father; so that the laches and his own negligence will turn to his disadvantage).”³⁸

The essence and pure significance of the interpretation of doctrine of laches was captured by Sir Barnes Peacock in the *Lindsay Petroleum Co*³⁹ wherein he beautifully interpreted the doctrine as “Now the doctrine of laches in Courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy was afterwards to be asserted.”⁴⁰

The Lord Blackburn in *Erlanger*⁴¹ considered Sir Barnes Peacock’s definition

³⁵ Vaquer Antoni, ‘Verwirkung versus Laches: A Tale of Two Legal Transplants’ (*ResearchGate*, February 2009) <https://www.researchgate.net/publication/256000670_Verwirkung_versus_Laches_A_Tale_of_Two_Legal_Transplants> (accessed 14 July 2020).

³⁶ Edward Coke, ‘*The Institutes of the Laws of England, or a Commentary upon Littleton*’ (Franklin Classics 2018) 246, 380.

³⁷ William Blackstone, *Commentaries on the Laws of England* (The Clarendon Press 2009) 247, 465.

³⁸ Frederic William Maitland and George James Turner, *Year Books of Edward II, Vol IV, 3 & 4 Edward II A.D. 1309-1311* (Seldon Society Year Book Series, 1926) 54.

³⁹ *Lindsay Petroleum Co v Hurd* (1874) LR 5 Privy Council 221, 239–240.

⁴⁰ *ibid.*

⁴¹ *Erlanger v The New Sombbrero Phosphate Co* (1878) 3 App. Cas. 1218 [1279].

as the most definitive and distinctive as he stated that: “I have looked in vain for any authority which gives a more distinct and definite rule than this”.⁴² Similarly, Lord Viscount Radcliffe in *Niwakobi*⁴³ opined that the description of doctrine of laches as provided by Sir Barnes Peacock in ‘*Lindsay Petroleum*’ was absolutely complete.⁴⁴

As there are two sides of the same legal coin, similarly, doctrine of laches is also required to be analysed from a contrasting perspective which is portrayed through English judicial precedents. Therefore, a mere delay committed by the aggrieved party cannot form a presumption that the legal rights vested with the aggrieved is hit by the doctrine of laches. The aggrieved party’s awareness of the legal right available to them along with a timely exercise of the right leads towards the efficient enforcement of the legal right or a possible claim.⁴⁵

The Courts are ought to take into account at the time of adjudicating a case which is hit by doctrine of delay and laches all the circumstances which affects the aggrieved party. The English Court in *Niwakobi*⁴⁶ held “*laches can be relied on only when account has been taken of all the circumstances that affect both.*”⁴⁷ This view was also reiterated by the English Court in *Albeyegebe*⁴⁸ and *Nelson*⁴⁹. An aggrieved party cannot be restrained to claim its legal right on a mere lapse of time but it may lead Courts to construct a negative inference which can be adverse for the aggrieved party. In this regard, the view taken by English Court in *Penny v. Allen*⁵⁰ wherein the aggrieved party failed to exercise its legal right in twenty years made the Court to reach an opinion that: “Mere lapse of time does not bar a claim in equity any more than at law: ... with other circumstances, however, [such a lapse] may lead a Court to draw inferences unfavourable to the claim of a party who has let twenty or nearly twenty years elapse without asserting his right.”⁵¹

Further, Lord Wensleydale in *Archbold v. Scully*⁵² opined that; “the fact, of simply neglecting to enforce a claim for the period during which the law permits him to delay, without losing his right, I conceive cannot be any equitable bar.”⁵³

⁴² *ibid.*

⁴³ *Niwakobi v Nzekau* [1964] WLR 1019 [1026].

⁴⁴ *ibid.*

⁴⁵ Terence Prime, Gary P. Scanlan, *The modern law of limitation* (2nd ed, Blackstone Press Publication 2001) 306, 307; John McGhee QC, *Snell’s Equity* (31st ed, Sweet and Maxwell 2005) 5–19.

⁴⁶ *Niwakobi* (n 43).

⁴⁷ *ibid.*

⁴⁸ *Albeyegebe v Ikomi* [1953] 1 WLR 263

⁴⁹ *Nelson v Rye* [1996] 2 All ER 186.

⁵⁰ *Penny v Allen* (1857) 44 ER 160 [166].

⁵¹ *ibid.*

⁵² *Archbold v Scully* [1861] 11 ER 769.

⁵³ *ibid.*

As per Kitto J. in *Lamshed v. Lamshed*⁵⁴ it was held that; “the bare fact of delay is not enough.”⁵⁵

The English Courts at the time of dealing with the issue of the laches on a writ or on any other application under any statute must take into consideration the reasons which caused a delay from the aggrieved party in exercising the necessary legal remedy as there can be instances wherein a short delay can be fatal for the aggrieved and there can be situation wherein a long delay does not affect the case of the aggrieved person. Like, in one of the English decisions in *Laver*⁵⁶ wherein the sole reason for delay was due to the family relationship between the disputant parties, the Court allowed the tardy commencement of claim raised by the claimant.

Next category analyses the interpretation of doctrine of delay and laches by courts under any writ or any other form of application under English laws wherein the court scrutinizes the negative effect and impairment which happens to the defendant and leads towards some detriment and breaches in their legal rights. This category is tactfully interpreted by Peter Birk wherein he masterfully explained that; “The judge has to ask himself whether the staleness of the claim seriously disadvantages the defendant to a degree which, weighed in the balance against the claimant’s entitlement to justice, requires the action to be discontinued.”⁵⁷ The defence of doctrine of delay and laches will be given no special significance if the situation of the defendant remains unchanged during the delay period as it is apparent from the view taken by Lord Barnes Peacock in *Lindsay Petroleum Co.*⁵⁸ wherein he explained the situation in the following manner: “the situation of the parties having, therefore, in no substantial way been altered, either by the delay or by anything done during the interval, there is in this circumstance nothing to give special importance to the defence founded on time.”⁵⁹

Similarly, the doctrine of delay and laches will not be activated if the court remains unsatisfied that some prejudice (violation of a right or any inconvenience) is caused to the defendant as held in *Tottenham Hotspur Football & Athletics Co. Ltd. v. Princegrove Publishers Ltd.*⁶⁰ wherein the court opined that: “the doctrine of laches is not operated unless one is satisfied that, to put it at the lowest, there is some prejudice to the party who is suffering from laches at the hands of the other.”⁶¹ In

⁵⁴ *Lamshed v Lamshed* (1963) Commonwealth Law Reports 440 [453].

⁵⁵ *ibid.*

⁵⁶ *Laver v Fielder* (1862) 55 ER 1 [5].

⁵⁷ Peter Birks, *Unjust enrichment* (2nd ed, Clarendon Law Series 2005), 239.

⁵⁸ *Lindsay Petroleum Co v Hurd* (1874) LR 5 Privy Council 221 [240].

⁵⁹ *ibid.*

⁶⁰ [1974] 1 WLR 113 [122].

⁶¹ *Tottenham Hotspur Football & Athletics Co Ltd v Princegrove Publishers Ltd*, (1974) 1 WLR 113 [122].

the case of *Verrall v. Great Yarmouth Borough Council*⁶² the court while adjudicating the applicability of doctrine of delay and laches held that: “it’s quite clear that there has been no inconvenience caused to the council by such delay as there has been. The delay is in no sense unreasonable.”⁶³

The factors leading for the application of the defence of doctrine of laches to a writ or any other application was carved out by the Court in *Nelson v. Rye*⁶⁴, wherein the following factors were established which were as follows; a) total period of delay, b) the defendant’s position getting affected by the delay, c) prejudice like inconvenience caused to the defendant by the action of the plaintiff. The court held that: “the Courts have indicated over the years some of the factors which must be taken into consideration in deciding whether the defence runs. Those factors include the period of the delay, the extent to which the defendant’s position has been prejudiced by the delay, and the extent to which that prejudice was caused by the actions of the plaintiff.”⁶⁵ The issuance of writ of mandamus by the English Courts is almost immune from the doctrine of delay and laches⁶⁶ and the courts are vested with the power to issue an application for the writ despite the delay made by the aggrieved party in filing an application for the appropriate writ as statute of limitation does not create any hinderance.⁶⁷

The delay of aggravated nature in approaching the court by the aggrieved party can lead to an absolute reverse effect like leading to an enormous reduction of aggrieved party’s claims by the court which is apparent from the English decision in *Coke v. Jones*⁶⁸ wherein the aggrieved party filed an application for issuance of appropriate writ after a period of one year, the Judge initially directed the jury to return with the verdict signifying the nominal damages, the jury returned with a verdict to award the aggrieved party a nominal damages of 10 pounds only but the Judge amended this decision and directed the damage of one shilling only as there was a delay of one year, therefore, the doctrine of delay and laches may lead a drastic impact on the award or compensation awarded to the aggrieved party, if there is an unreasonable delay. In the case of *R v. Robson*,⁶⁹ the Court had refused to condone the delay of three months on the issuance of the appropriate writ to the aggrieved party. In *Ex p. Lewis*,⁷⁰ the Court was of the firm opinion that a twelve-

⁶² (1981) QB 202 [205].

⁶³ *ibid.*

⁶⁴ [1996] 1 WLR 1378 [201].

⁶⁵ *ibid.*

⁶⁶ *R v York Corporation* (1792) 5 TR 66.

⁶⁷ *Ward v Lovendres* (1859) 29 LJQB 40.

⁶⁸ (1861) 4 LT 306.

⁶⁹ (1893) 9 TLR 163.

⁷⁰ (1888) 21 QBD 191

month delay by the aggrieved party formed a subsidiary ground in non-issuance of the appropriate writ under the Justices' Protection Act, 1848.

Further, in the case of *Croydon Corporation v. Croydon R.D.C.*,⁷¹ the plaintiff being aggrieved for partly non-payment of special fees for drainage works by the defendant. The plaintiff contended that he was entitled to be paid a special fee in three parishes by the defendant but for several years due to plaintiff's mistake the amount was not paid by the defendant. Since, the plaintiff was unable to recover the part arrears from the defendant, therefore plaintiff filed an application to recover the unpaid arrears and further filed a writ of mandamus to enforce the levy of a rate on the unpaid arrears to satisfy them. The defendant pleaded that the plaintiff was entitled to a judgment on unpaid arrears but a writ of mandamus to enforce payment of a retrospective rate would be illegal. Lord Justices Cozens-Hardy M.R. Buckley and Kennedy in the court of appeal held that it is the discretionary power of the court in granting the writ of mandamus if there is a delay on the part of plaintiff to bring the actions of damages after a delay but the court must ought to consider the circumstances justifying the delay. Thereby, the Court granted the writ of mandamus to enforce the payment of the amount due for the period when the plaintiff learnt about the non-payment of the part arrears.

The effect of doctrine of delay and laches in the issuance of writ of certiorari is crystal clearly explained by Abbot C.J. in *R. v. Fowey Corporation*,⁷² wherein it is held that the writ of certiorari ought to be applied by the aggrieved party within six months from the cause of action but leave to apply certiorari can be given even after passage of requisite time. The Abbot C.J. explained in the following manner; "The effect of delayed applications is more clear-cut in the case of certiorari and prohibition. Certiorari must be applied for within six months of the decision etc. complained of (R.S.C., Order LIX rule 4; (f. Qld. II.S.C., 0. 81 r. 71, although leave to apply for certiorari is occasionally given out of time."⁷³ The court interpreted the circumstances in issuing a writ of prohibition even after a delay in *R. v. Medical Appeal Tribunal ex p. Gilmore*,⁷⁴ wherein the court held that the writ of prohibition can be obtained by the aggrieved at any stage of proceedings in the court or tribunal when the court remains unfinished and there is something left to prohibit. The court held and explained in the following manner; "Prohibition may always be obtained so long as there is still something to prohibit-thus proceedings of the court or tribunal must still remain unfinished."

The applicability of doctrine of delay and laches under English Law is

⁷¹ (1908) 2 Ch 321.

⁷² (1824) 2 B&C 584 [591].

⁷³ *ibid.*

⁷⁴ (1957) 2 WLR 498.

not an arbitrary or a technical doctrine. Through numerous judicial precedents, it can be inferred that a mere delay by the aggrieved party doesn't affect their claim and it doesn't come under the purview of doctrine of delay or laches. The court is obligated to consider circumstances which leads to a delay in presenting claims by the aggrieved person as a short delay can be fatal but sometimes the long delay is futile. A long delay in presenting claims by the aggrieved person before the court can lead to an enormous drop in stale claim by court which is apparent from the English decision in *Coke v. Jones*⁷⁵. The necessary principles for adjudicating the applicability of the doctrine of delay and laches on a stale claim of the aggrieved persons are a) inconvenience to defendant, for example, to gather necessary evidence to refute plaintiff's stale claim, b) total period of delay, c) acquiescence on the claimant's part.⁷⁶

V. APPLICABILITY OF DOCTRINE OF DELAY AND LACHES ON THE WRITS UNDER INDIAN LAW

The courts in India are vested with the power to issue writs for granting any order, direction or for any other purpose as mentioned under Article 32 and Article 226 of Indian Constitution. The power of the Indian courts under writ jurisdiction is not restrained to issue any particular form writs like habeas corpus, certiorari, mandamus etc. as it is the position of prerogative writs under English Law. The Supreme Court in *P.J. Irani*,⁷⁷ opined that; "Particularly so when the power of the High Court under Article 226 of the Constitution is not limited to the issue of writs falling under particular groupings, such as the certiorari, mandamus etc. as these writs have been understood in England, but the power is general to issue any direction to the authorities viz. for enforcement of fundamental rights as well as for other purposes."⁷⁸ The doctrine of delay and laches has to be analysed and tested through the judicial approach by the Courts while adjudicating a writ petition filed under Article 226 and Article 32 of Indian Constitution 1950.

A. PERTINENCE OF DOCTRINE OF DELAY AND LACHES ON ARTICLE 226

A bare perusal of the interpretation of Article 226 leads us towards the path wherein no prescribed period of limitation is assigned to this Article by the Constitution drafting committee. Therefore, the power to pardon the delay in

⁷⁵ (1861) 4 LT 306.

⁷⁶ *UP Jal Nigam* (n 4) [12].

⁷⁷ *P.J. Irani v State of Madras* AIR 1961 SC 1731.

⁷⁸ *ibid.*

entertaining the writ petition or to dismiss the writ petition which is hit by the doctrine of delay and laches is entirely bestowed upon the High Courts and it is absolutely discretionary in nature.

The High Courts have always taken a distinct view while adjudicating a writ petition which is hit by the doctrine of delay and laches. The High Courts in most of the writ cases have dismissed the petition which is hit by doctrine of delay and laches as the court detest rancid claims and fluster the settled matters.⁷⁹

The court in *P.S. Sadasivaswamy*,⁸⁰ while adjudicating an appeal from the High Court of Madras pertaining to a challenge to the promotion of a government position held that the aggrieved person cannot approach the court after 14 years seeking relaxation in his promotion with regard to the position of Chief Engineer. The court held and prescribed a time period of six months to one year in filing a writ petition pertaining to a challenge of promotion by the aggrieved person.

If the aggrieved person approaches the court after an enormous delay then it would signify an action of unscrambling a scrambled egg. The powers of High Court under Article 226 must be applied as a sound and wise exercise of their discretion as the courts apply their extra ordinary powers at the time of entertaining a petition under Article 226 filed by the aggrieved person who fails to approach the court in a timely manner.

While, entertaining petitions which are hit by doctrine of delay and laches several High Courts and Supreme Court is of the firm opinion that allowing these petitions only leads to a waste of time of court, clogs the court work and impedes the legitimate grievances and the normal court work.⁸¹ The discretionary power of High Court under Article 226 does not customarily abet the tardy, indolent or acquiescent and the lethargic conduct of the aggrieved person in exercising the enforcement of either his fundamental right or statutory right after an unreasonable delay and the courts have usually restrained themselves to intervene or grant relief under Article 226 to the aggrieved person when they have failed to efficaciously explain the inordinate delay in filing the petition.⁸²

⁷⁹ *Durga Pd v Chief Controller* AIR 1970 SC 769; *Krishnaswamy v Union of India* AIR 1973 SC 1168; *Amrit Lal v Collector, CEG* AIR 1975 SC 538; *Gian Singh Mann v High Court of Punjab and Haryana* AIR 1980 SC 1894; *Roshan Lal v International Airport Authority* AIR 1981 SC 397; *RS Makashi v IM Menon* AIR 1982 SC 101; *Ratan Chandra Samanta v Union of India* AIR 1993 SC 2276; *BS Bajwa v State of Punjab* AIR 1999 SC 1510; *Municipal Corporation of Greater Bombay v Industrial Development Company Limited* AIR 1997 SC 482; *Municipal Council, Ahmedabad v MA Rasheed* (2004) 4 SCC 460; *State of UP v Ved Pal Singh* (2003) 9 SCC 212; *KV Rajalakshmiiah Setty and anr v State of Mysore and anr* (1967) 2 SCR 70.

⁸⁰ *PS Sadasivaswamy v State of Tamil Nadu* (1975) 1 SCC 152.

⁸¹ *ibid.*

⁸² *GC Gupta and ors v NK Pandey and ors* (1988) 1 SCC 316; *Karnataka Power Corporation Limited through its chairman and managing director and anr v K Thangappan and anr* (2006) 4 SCC 322.

The evolution of doctrine of delay and laches is founded upon the numerous factors. The first factor seeks to prevent the confusion and public inconvenience which only leads the court to train new injustices against the defendant party. The second factor is the impact of condonation of delay on the rights of third parties. If the third parties suffer hardship, inconvenience and injustice from such condonation then the courts will not condone the delay and the writ petition will be dismissed.⁸³ In *Maharashtra State Road Transport Corporation (In all appeals) vs. Shri Balwant Regular Motor Service, Amravati and ors.*,⁸⁴ the court did not grant a writ of certiorari to the private operator as they were negligent and omitted to exercise their right in a timely manner against the order passed by appellant and further failed to provide a proper explanation to the delay in filing the writ petition. The court held that a writ of certiorari would not be granted to a party which has portrayed a negligent behaviour or an omission of non-exercise of their right within a prescribed period and this leads to a prejudice in the form of inconvenience to the adverse party as it will be really difficult for them to gather evidence to counter the submission of the plaintiff/petitioner who files their claims at a belated stage. The court relied on the principle of doctrine of delay and laches as set out by Sir Barnes Peacock in *Lindsay Petroleum Co.*⁸⁵ and held that the same principle is to a great extent applicable to this case.⁸⁶ The courts must apply their discretion as vested under Article 226 in a sound, reasonable and in a judicial manner and they should refrain themselves to entertain a writ which is suffered from the doctrine of delay and laches even if there is an egregious violation of fundamental right of the aggrieved person.⁸⁷ The filing of several representations to government on the same line of approach when the first representation was turned down by them will not be considered as valid ground or reasonable explanation for condoning the delay.⁸⁸

When a writ petition is filed by the aggrieved person raising his grievance in the issues from employment service category then, the cause of action will always arise from month to month basis and that cannot be considered as a ground to overlook the doctrine of delay and laches. The Court ought to adjudicate the writ petition on the basis of the facts of each case and any petition filed beyond a time period of three years is liable to be dismissed or the aggrieved person must sacrifice

⁸³ *State of MP v Nandlal Jaiswal* (1986) 4 SCC 566.

⁸⁴ (1969) 1 SCR 808; *Shiv Dass v Union of India and ors* (2007) 9 SCC 274.

⁸⁵ *Lindsay Petroleum Co* (n 39); *Abram Farewall, and John Kemp* (1874) 5 PC 221.

⁸⁶ *Maharashtra State Road Transport Corporation (In all appeals) v Shri Balwanti Regular Motor Service, Amravati and ors* 1969 AIR 329.

⁸⁷ *Durga Prasad v Chief Controller of Imports and Exports* (1969) 1 SCC 185; *Karnataka Power Corporation Limited* (n 82).

⁸⁸ *KV Rajalakshmi Setty* (n 79); *State of Orissa v Pyarimohan Samantaray* (1977) 3 SCC 396; *State of Orissa v Arun Kumar Patnaik* (1976) 3 SCC 579; *Karnataka Power Corporation* (n 82).

some part of the relief which could be granted to only three years.⁸⁹ The court should abstain from issuing a writ of mandamus under Article 226 which was filed within three years by the aggrieved person challenging the order of labour court wherein the court had dismissed the petition filed after seven years on account of delay.⁹⁰ The Supreme Court in *Uttaranchal Forest Development Corporation and Anr. Jabar Singh and ors.*⁹¹ had restrained themselves in condoning a delay of ten years and further stated that a writ petition cannot sustain when there is an alternative statutory remedy available unless the aggrieved person makes an exceptional circumstance to maintain the writ petition.⁹² If the aggrieved person shows that the relief which is filed under the writ petition is barred by the law of limitation, then it will cast a little doubt on the High Court and the court in most cases would refuse to grant any relief under its writ jurisdiction.

On the other hand, no hard and fast rule can be laid down for High Courts in entertaining a writ petition which is bashed by the doctrine of delay and laches and it rests completely on the discretion of the court which must be exercised judicially and reasonably.⁹³ Any writ petition which is hit by the doctrine of delay and laches alleging a deprivation of a legal or fundamental right due to the alleged illegal or wrongful executive action is not usually entitled to equitable relief due to his blameworthy conduct and the clarification given by the aggrieved person on delay and laches must be more stringent as the government will face difficulty in collecting and presenting their evidence to portray that the decision taken by them was completely legal and justified.⁹⁴

A challenge to a government notification through a writ petition after an enormous delay pertaining to a land acquisition under the state ownership becomes fatal and it entails a dismissal on the ground of laches as the courts are ought to take a strict view in quashing any such government notifications. The High Court is vested with the choice to quash a government notification under a writ petition after they analyse all the material facts on record with a pragmatic consideration.⁹⁵ It is crystal clearly elaborated by Sir H.W.R Wade that; “The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order

⁸⁹ *Shiv Dass* (n 84); *Lipton India Ltd v Union of India* (1994) 6 SCC 524.

⁹⁰ *Haryana State Coop Land Development Bank v Neelam* (2005) 5 SCC 91.

⁹¹ (2007) 2 SCC 112.

⁹² *Uttaranchal Forest Development Corporation and Anr v Jabar Singh and ors* (2007) 2 SCC 112; *UP State Spg Co Ltd v RS Pandey* (2005) 8 SCC 264.

⁹³ *Smt Narayani Devi Khaitan v State of Bihar* CA No. 140 of 1964; *Durga Prashad v Chief Controller of Imports and exports* (1969) 1 SCC 185.

⁹⁴ *State of Maharashtra v Digambar* (1995) 4 SCC 683.

⁹⁵ *State of Rajasthan and ors v DR Laxmi and ors* (1996) 6 SCC 445.

may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another. A common case where an order, however void, becomes valid is where a statutory time-limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result."⁹⁶

Therefore, an order which is initially void can become effective and valid if there is no exercise of appropriate remedy by the aggrieved party under the appropriate law at right point of time and this may result in upholding of the void decision due to an imposition of ultra vires on the application of the legal remedies. The legal diligence is a general policy of law which is a consistent legal theory whose traces can be obtained from ancient times, the doctrine of prescription in Roman law prescribes about the concept of legal diligence and this doctrine from its inception had only favoured those who are legally diligent.

A court of law shall never tolerate the conduct of an indolent litigant as it is evident that delay defeats the fruit of equity.⁹⁷ The delay and latches is one of the species for forfeiture of right.⁹⁸ The discretionary power vested with the High Courts is defeated by the doctrine of delay and the loss of limitation plays a significant role which destroys the remedy which was ought to be diligently exercised by the aggrieved and it is a principle which is based on the public policy and utility and not completely dependent upon the equity alone.⁹⁹ Those non-vigilant persons who are just sitting on the fence for several years waiting for others to approach the appropriate court first on the same cause of action are not entitled to any relief, if they fail to provide a proper elaboration on delay in filing a writ petition.¹⁰⁰

The law of limitation can be narrated as 'Statutes of Peace'. An unlimited and everlasting threat of limitation leads to a creation of uncertainty and insecurity; therefore, any prescribed time period limitation is required for essential public order. Further, the motive behind the enactment of law of limitation is to prevent disturbance or deprivation of law of equity and justice which can be lost

⁹⁶ Henry William Rawson Wade, *Administrative Law* (7th edn, OUP 1994) 342, 343.

⁹⁷ The interpretation of legal maxim- 'vigilantibus et non dormientibus jura subveniunt'; *SS Balu and anr v State of Kerala and ors* (2009) 2 SCC 479.

⁹⁸ *Hameed Joharan (Dead) and ors v Abdul Salam (Dead) by lrs and ors* (2001) 7 SCC 573.

⁹⁹ *Board of Secondary education of Assam v MD. Sarifuz Zaman and ors* (2003) 12 SCC 408.

¹⁰⁰ *Rup Diamonds v. Union of India* (1989) 2 SCC 356; *UP Jal nigam* (n 4); *State of Karnataka v SM Kotrayya* (1996) 6 SCC 267; *Jagdish Lal v State of Haryana* (1997) 6 SCC 538.

by the aggrieved person's own inaction, negligence and laches.¹⁰¹ The Supreme Court in *Tilokchand Motichand*,¹⁰² observed that the principle of limitation is based on the legal maxim '*Interest Reipublicae Ut Sit Finis Litium*' which means that the interest of the state is to impose an end to the litigation but on the parallel side, law of limitation makes a complete effort to ensure private justice, suppressing fraud, rapid diligence and preventing perjury and oppression. The Court opined and held that; '*Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest*'. The court was of the firm opinion that the law on condoning a delay for adjudicating an application filed by the government authority must be viewed with a certain amount of latitude when they are successfully able to show that the delay was caused due to collusion and fraud by its officers and agents which negatively affected the public interest. This does not entail the government to be treated in a distinctive royal manner as the law on limitation is same for the government as well as for its citizens.¹⁰³

The court at the time of adjudicating a writ petition under Article 226 is duty bound to consider two significant aspects which are a) Efficacious explanation of the delay and laches and b) whether the petition is ex-facie barred by any laws of limitation.¹⁰⁴

Any delay or laches by the government servant deprives him from the benefit which is allocated to other persons and further they will be constrained to use the defence of violation Article 14 of the Indian constitution, since, law leans in favour of those who are alert and vigilant.¹⁰⁵ The concept of equality and equal treatment on the subject matter of promotion can only be claimed when the aggrieved person files its claim within a reasonable time.¹⁰⁶

The court while adjudicating a belated claim of the aggrieved person must bear in mind to exercise its extraordinary jurisdiction with the nexus of the principles of equity because delay comes in way of equity as delay shows an inactivity and inaction on the part of litigant who knocks the doors of courts after an unreasonable time as the court is not expected to indulge in a writ petition by the persons who are on par with "Kumbhakarna" or for that matter "Rip Van Winkle".¹⁰⁷

An ambit of Article 226 does not bar the High Court to exercise its power

¹⁰¹ *Rajender Singh v Santa Singh* (1973) 2 SCC 705; *Pundlik Jalam Patil (Dead)* (n 3).

¹⁰² *Tilokchand Motichand v HB Munshi* (1969) 1 SCC 110.

¹⁰³ *ibid.*

¹⁰⁴ *City and Industrial Development Corporation v Dosu Aardeshir Bhivandiwala and ors* (2009) 1 SCC 168.

¹⁰⁵ *State of Uttaranchal and anr v Shiv Charan Singh Bhandari and ors* (2013) 12 SCC 179.

¹⁰⁶ *Ghulam Rasool Lone v State of J&K* (2009) 15 SCC 321; *State of Uttaranchal* (n 105).

¹⁰⁷ *Chennai Metropolitan Water Supply and Sewerage Board and ors v TT Murali Babu* (2014) 4 SCC 108.

to review and inheres them to utilize the power of review to prevent miscarriage of justice or to correct grave and palpable errors committed by it but the due diligence by aggrieved person in seeking a review of the matter on the ground that the decision was erroneous on merits is also a significant aspect for consideration by High Court.¹⁰⁸

As, the courts in plethora of its dictums have already defined a reasonable time to file the writ petition under article 226, there is a contraposition to this view which in a stringent and a precise manner follows the interpretation of Article 226. Since, the Indian constitution imposes extraordinary powers under Article 226 and Article 227 to the High Courts for the issuance of any order, writ or direction and the power of superintendence over all courts and tribunals throughout the territory of India, therefore, no significant and convenient purpose will be served if the powers of the court are limited and restrained through application of any other statute.¹⁰⁹ Since, a writ petition is a legal guard for the enforcement of fundamental and statutory rights therefore, there cannot be any time limit for filing a writ petition unlike different kind of suits governed by the provision of the Limitation act 1963 and it is a matter of judicial discretion for courts to grant relief to the person who availed this remedy on a cause of action which arose in the past. There cannot be a rigid formula for the explanation of the construction of unexplained delay in filing the writ petition as each case has to be judged on the basis of its own facts and circumstances touching the behaviour of the parties and the change in situation, any prejudice (inconvenience in the form of gathering documents/evidence after a long time to refute the plaintiff/petitioner's belated claim's case) which may affect the opposite or any third parties and general public.¹¹⁰

The Supreme Court in *Haryana SEB*¹¹¹ had rejected the contention of the delay and laches on the ground that the aggrieved person had kept making the representation and placed his grievance to state authorities.¹¹² Late Hon'ble Mr. Justice P.N. Bhagwati in *Smt. Sudama Devi*¹¹³ holds a firm opinion on the doctrine of delay and laches in writ petition wherein he opined that there cannot be a hard and fast rule in imposing a limitation period on the writ petition under Article 226 and further held that no rules of limitation be made by High Court or by practice for adjudicating a writ petition under Article 226.¹¹⁴

¹⁰⁸ *Shivdeo Singh v State of Punjab*, AIR 1963 SC 1909; *State of Jammu and Kashmir v RK Zalpuri and ors* (2015) 15 SCC 602.

¹⁰⁹ *Puran Singh and ors v State of Punjab and ors* (1996) 2 SCC 205.

¹¹⁰ *Shri Vallabh Glass Works Ltd v Union of India*, (1984) 3 SCC 362.

¹¹¹ *Haryana SEB v State of Punjab*, (1974) 3 SCC 91.

¹¹² *ibid.*

¹¹³ *Smt. Sudama Devi v Commissioner and Ors* (1983) 2 SCC 1.

¹¹⁴ *ibid.*

The High Court in *Mahesh Jaggumal Sacchani*¹¹⁵ had condoned the delay of the statutory authority and held that the State ought not to explain the day to day delay as they have to function through officers, servants and lawyers and a delay explained through several documents is abundant to condone the delay.¹¹⁶ It is a well settled law through judicial precedents that the doctrine of delay and laches must be applied in a rational and a pragmatic manner. When the substantial justice and technical viewpoint are facing each other, then the court ought to prefer substantial justice over technical point and the defendant is never vested with the right to raise a contention of injustice against them when the delay was completely non-deliberate in nature.¹¹⁷

Further, the Supreme Court had clarified in *Dhiraj Singh*,¹¹⁸ that the substantial rights must not be defeated on the technical grounds by adopting a hyper technical ground of self-imposed limitations.¹¹⁹ The judgment of *Dhiraj Singh* and *Sudama Devi* opened the doors to access the justice for those aggrieved persons who were earlier restrained from the dictum of the several courts wherein a self-made limitation period was imposed by the courts on litigants and which further caused a grave injustice to the bona fide litigants who failed to file writ petition within the reasonable time. The court ought to be liberal in exempting a delay whenever a public interest and public money is involved irrespective of the facts and circumstances of the cases on the distinct basis.¹²⁰

B. PERTINENCE OF DOCTRINE OF DELAY AND LACHES ON ARTICLE 32

The germane ground on which the doctrine of delay and laches is apposite on the maintainability of a writ petition under Article 32 is completely distinct from the ambit of Article 226 as the complete concentration of Article 32 is to fortify the fundamental rights of the citizens against its breach whereas the core objective of the Article 226 is diverted towards the protection of fundamental rights and statutory rights. The Court ought to reject the writ petition with the laches of the aggrieved person who approaches the court under Article 32 without providing a reasonable explanation (genuine reasons like concealment of information by aggrieved party's counsel, delay in receipt of impugned order obtained from the

¹¹⁵ *Maharashtra Housing and Area Development Authority and anr v Mahesh Jaggumal Sacchani and ors* 2007 Mah Lj 297.

¹¹⁶ *ibid.*

¹¹⁷ *State of Haryana v Chandra Mani* (1996) 3 SCC 132.

¹¹⁸ *Dhiraj Singh v State of Haryana* (2014) 14 SCC 127.

¹¹⁹ *ibid.*

¹²⁰ *Union of India v Balbir Singh* (2000) 10 SCC 611.

department, unawareness pertaining to the order passed by the court etcetera. which led to delay in filing the belated claim) . Even though the citizens of India under Article 32 are vested with the guaranteed right but it does not manifest the goal of the Constitution makers to disregard and grant relief in petition which is filed after an inordinate delay.¹²¹

The Supreme Court who is the master to exercise its discretion under Article 32 for granting relief to the aggrieved person can withheld and disentitles the relief to the aggrieved party, if the aggrieved person kept himself as dormant and sleeps over the rights for a long period of time.¹²² In *V. Purushotham Rao*¹²³, the Supreme Court straightforwardly declined its interference in entertaining a writ petition on the same cause of action under Article 32 which was filed by the aggrieved party after the dismissal of the Special Leave Petition under Article 136 and the review of the same under Article 137.¹²⁴

The constitution bench in *Tilokchand Motichand*¹²⁵ considered the question of maintainability of a writ petition filed under Article 32 after an enormous delay of nine years, Justice S.M. Sikri and Justice Hegde held that a liberal view must be considered by the court in condoning a considerable delay as the particular section of the statute which caused the petitioner to be aggrieved on the violation of fundamental right was already struck down by another bench whereas Justice Bachawat and Justice Mitter held that the writ petition under Article 32 is liable to be struck down on the ground of delay and laches. Since, there is no limitation period prescribed in filing a writ petition under Article 32, a petitioner must approach the court raising their grievance without losing any time and if there exists any delay then the petitioner is obligated to provide an efficacious explanation as every case is distinguished from the other on the basis of its facts therefore, there can be no straightjacket formula which can be adopted by court to adjudicate the issues of delay and laches and whether to entertain or not¹²⁶.

The seven judges bench in *Smt. Ujjam bai*,¹²⁷ held that the powers of the Supreme Court under Article 32 are discretionary in nature and they are vested with the right to frame any type of writ and suitable order along with a declaratory order with consequential relief without putting any artificial limitations¹²⁸ and Justice Gajendragadkar speaking for the court had certainly drawn numerous

¹²¹ *Karnataka Power Corporation Limited* (n 82).

¹²² *Jagdish Lal v State of Haryana* (1997) 6 SCC 538.

¹²³ *V Purushotham Rao v Union of India and ors* (2002) 10 SCC 158.

¹²⁴ *ibid.*

¹²⁵ *Tilokchand Motichand* (n 102).

¹²⁶ *Bangalore City coop housing society limited v State of Karnataka* (2012) 3 SCC 727.

¹²⁷ *Smt Ujjam bai v State of UP* AIR 1962 SC 1621.

¹²⁸ *ibid.*

principles which portrayed a significant factor in circumscribing the limitation under doctrine of delay and laches to a petition under Article 32 and these principles are herein produced below:

- (i) If a writ petition under Article 226 is dismissed on the ground of delay and laches instead of merits then an appeal under Article 32 will be valid.
- (ii) If a High Court fails to entertain a writ petition under Article 226 on the ground of delay and laches and directs the aggrieved person to first avail an alternative remedy then an appeal under Article 32 will be applicable.
- (iii) If the writ petition is dismissed in limine by the High Court on the ground of laches without a speaking order then the aggrieved person is entitled to appeal the decision of the court under Article 32 and it does not lead to the enforcement of res judicata under the law.
- (iv) If the writ petition under Article 226 is dismissed as withdrawn then there would be no bar to the aggrieved person to knock the doors of Supreme Court under Article 32 as the case by High Court was never adjudicated on merits.¹²⁹

In *Narmada Bachao Andolan (I)*,¹³⁰ the Supreme Court entertained the writ petition filed after a delay of almost seven years on the ground to protect the fundamental rights of the aggrieved persons under Article 21¹³¹ but later on held that a public interest litigation challenging the inefficient conduct of policy decision ought not be entertained when there is a lapse of time in filing the petition.

But the Supreme Court in *M. Siddiq (Dead) through legal representatives v. Mahant Suresh Das*¹³² (also known as Ram Janmabhoomi Temple case) had initially entertained a writ petition under Article 32 and efficaciously adjudicated the disputes between the disputant parties but later by a separate order dismissed the same writ petition on account of being hit by the doctrine of delay and laches as the petitioner sought to obtain his breach of rights after a time lapse of around 68 years.

¹²⁹ *Smt Ujjam bai* (n 127); *Daryao v The State of UP* (1962) 1 SCR 574.

¹³⁰ *Narmada Bachao Andolan v Union of India*, (2000) 10 SCC 664.

¹³¹ 'No person shall be deprived of his life or personal liberty except according to procedure established by law'.

¹³² (2020) 1 SCC 1

The court at the time of entertaining a petition under Article 32 must remember that the rule of not entertaining a writ petition which is hit by doctrine of delay and laches is a rule of practice and not a rule of law as there is no inviolable rule which imposes a certain obligation on court to dismiss the petition which is hit by delay and laches¹³³. There is no lower limit or upper limit in deciding a reasonable time for filing the writ petition and there are three factors which needs a proper consideration which are a) a breach of fundamental right b) remedy claimed in the writ petition c) the reason on which delay arose in the first instance.¹³⁴

The relevance of doctrine of delay and laches on the issuance of writs on stale claims by the Supreme Court under Article 32 and by the High Courts under Article 226 and of the Indian Constitution doesn't prescribe any limitation period, therefore, the legislature opted to obligate Courts to adjudicate every writ petition with every stale claim as raised by the aggrieved person. The Supreme Court grants writ to the aggrieved person on the sole ground of violation of their fundamental rights whereas the High Court can grant a writ on the violation of fundamental rights and statutory rights. The Supreme Court and High Courts in India have a discretionary power which must be exercised judicially and reasonably to grant relief on rancid claims of the aggrieved person but the courts have refrain themselves to exercise this discretion as they opine that law leans in favour of those who are diligent.

The appropriate principles for adjudicating any delayed claim which is hit by the doctrine of delay and laches as carved out through numerous judicial dictums are a) inconvenience caused to defendants, b) impact of delayed claims on any third party, c) claims barred by law of limitation raised by the aggrieved person in a writ, d) efficient explanation of delay.

VI. CONCLUSION

The position of prerogative writs in United Kingdom witnessed a positive transformation when they were made available to public for attaining justice. This optimistic growth in the exercise of prerogative writs by the citizens and the authorities witnessed a sluggish growth due to the declination of general administrative law in United Kingdom after the second world war but the introduction of Judicial Review under the English judicial system proved to be a vital aspect in the constructive growth of the prerogative writs.

On the other hand, the initial position of exercising writs in India was rigid as the power to issue writs was only vested upon three courts but this position took an optimistic turn after the introduction of the Indian Constitution which was led

¹³³ *Ramachandra Shankar Deodhar v State of Maharashtra* (1974) 1 SCC 317.

¹³⁴ *ibid.*

by the triumph of Dr. Ambedkar and the fellow drafters who had widened the scope, applicability and flexibility of the writ jurisdiction under Article 226 for High Courts and under Article 32 for Supreme Court across whole India with a sole aim to reach injustice.

Therefore, both in India and United Kingdom the prerogative writs have initially witnessed a struggle but in the end they prospered. The position of writ jurisdiction in India is way more flexible than the English counterpart as the former applies the writ for the enforcement of fundamental rights and the legal rights simultaneously even against the Government authorities which is not the case under the English prerogative writ jurisdiction.

The Supreme Court in *Dwarka Nath*,¹³⁵ draws a distinction between the writ jurisdiction under English Law and Indian Law and described that the Indian High Court can issue writs which is similar to the English prerogative writ but these two writs under distinctive jurisdiction cannot be equated as the former can only draw an analogy from the latter because the Indian High Courts under Indian constitution is entitled to issue directions, orders or writs besides prerogative writs and this assists the courts to mould reliefs to fulfil the peculiar and complex requirements of the country. Further, it was opined by the Supreme Court that equating the Indian writs under Article 226 with the English prerogative writs only leads to the introduction of unnecessary procedural restrictions grown over the years as the United Kingdom functions on the unitary form of government whereas the India functions on a federal structure.¹³⁶

The Mukherjea J. in *T.C. Basappa vs. T. Nagappa*,¹³⁷ beautifully observed that there is no need to analyse procedural technicalities of Writs under English Law or to be feel oppressed for having a distinguished opinion as expressed by English judges because the Indian Constitution is vested with express provisions and the Indian courts can issue the writs as long as they keep in mind the broad and fundamental principles which are applied by the English judges while issuing prerogative writs.¹³⁸

The English legislature from its inception have opined fit to prescribe certain limitations of time and after a lapse of the limitation period, the persons are supposed to live in peaceful possession of their property and they are vested with the right to transfer their estates without impugning the title by litigation which is brought after an inordinate delay as it is really difficult to obtain evidence

¹³⁵ *Dwarka Nath v ITO* AIR 1966 SC 81.

¹³⁶ *ibid.*

¹³⁷ (1962) 2 SCR 169; *Irani v State of Madras* (1955) 1 SCR 250.

¹³⁸ *State of Punjab v Salil Sabhlok* (2013) 5 SCC 1; *Bangalore Development Authority v Vijaya Leasing Ltd* (2013) 14 SCC 737.

pertaining to the proof of the title.¹³⁹ The judicial interpretation on the doctrine of delay and laches under English law also points out that a delay by the aggrieved person also holds a negative inference on the bench while adjudicating the case of the claimant's right but it does not abridge their legal right to attain justice at a belated stage. Therefore, any prerogative writ filed by the aggrieved person after a lapse of certain period is not absolutely immune by the principles of doctrine of delay and laches and every case needs separate consideration by English Courts.

The position of the immunity on writs which is suffered by delay and laches under Indian jurisdiction is not on par with the standing of belated prerogative writs under English law because of the numerous factors. The first factor being the disagreement between the legislative intent and the judicial intent because the former had expressly not prescribed the period of limitation in filing writs under Article 226 and Article 32 whereas the latter in majority of its decisions has upheld the principle of delay defeats equity and the *vigilantibus et non dormientibus jura subveniunt*. Therefore, the question of allowing a writ petition of the aggrieved persons whose claim is hit by the doctrine of delay and laches rests upon the courts and the court had opined and granted immunity to the aggrieved person on the following principles only which are a) a delay properly explained through the production of relevant documents by the aggrieved person, b) a delay which is caused on account of defendant's failure to act on the numerous representations made by the aggrieved party, c) when there is a continuous cause of action, d) when the substantial justice can be prevailed after the delay, e) when the rights of the third party remain unaffected, f) when the rights of the defendants are unaffected if the relief is granted to the aggrieved, g) protecting the fundamental rights of the aggrieved persons. Therefore, besides the abovementioned principles the courts ought to refrain themselves in granting an immunity to the aggrieved person who seeks a relief on a writ petition which is hit by doctrine of delay and laches.

¹³⁹ *Manby v Bevicke* (1857) 3 K&J 342 (Wood VC).