



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

a professional Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal



Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

A CRITICAL STUDY OF ASIAN RESURFACING OF ROAD AGENCY V/S CENTRAL BUREAU OF INVESTIGATION

AUTHORED BY-1. DR. NAMRATA GUPTA,
Assistant Professor, Campus Law Centre, Delhi University

CO-AUTHOR- 2. KUNAL SHAH,
Advocate, Allahabad High Court

In **Asian Resurfacing of Road Agency v. Central Bureau of Investigation**¹, the Apex court issued certain broad range of directions. The controversial direction is to the effect that stay of proceedings ordered by the High Court, automatically comes to an end after six months unless an extension is granted for a valid reason.

This directive assumes significance since it effectively nullifies all orders made by the High Courts, including those made in reliance on Section 482 of the Criminal Procedure Code (CrPC) and Article 227 of the Indian Constitution, with noting but expiry of time Here, the legality of such a course of action and the related constitutional considerations are discussed.

I. Inherent power of High Court to stay the proceedings constituting abuse of the process of law.

The source of such inherent power is traceable from the very nature and constitution of the High Court as a Court of Superior Jurisdiction, which owes a duty to do justice between the parties before it. It is a long-established principle also echoed in the Latin Maxim “Quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest” that where a Court of Law is conferred with a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary in exercising such jurisdiction.

Lord Blackburn in *The Metropolitan Bank, Limited, and Arthur Cooper the Liquidator Thereof*

¹ (2018) 16 SCC 299

*v Alexander Gopsell Pooley*², observed:

“But from early times (I rather think, though I have not looked at it enough to say, from the earliest times) **the Court had inherently in its power the right to see that its process was not abused by a proceeding without reasonable grounds, so as to be vexatious and harassing—the Court had the right to protect itself against such an abuse**”

In the same line The US Supreme Court in *Landis v. North American Co*³ observed thus:

“The power to stay proceedings is **incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel and for litigants.**

The Australian High Court in *Clyne v. N.S.W. Bar Association*⁴ observed thus:

“**If any of the proceedings were frivolous and vexatious, a clear remedy was available: every court has an inherent jurisdiction to stay proceedings which are an abuse of its process.**”

Thus, the power to stay the proceedings is facet of inherent powers of a Court. The inherent powers reside in a Court because of its very existence as a Court and not because it is conferred by a particular Statute. The inherent power was observed the Hon’ble Supreme Court in *Manoharlal v. Seth Hiratal*⁵ has not been conferred on the Court; it is power inherent in the Court by virtue of its duty to do justice between the parties before it.

Hence, the Court's authority exists to advance justice, and if an attempt is made to misuse that authority in order to cause injustice, the Court has the power, nay the duty to prohibit abuse by passing such orders as may be necessary to do real and substantial justice for the administration of which alone the Courts exist. While doing so the Courts act *Ex-debito justitiae*.

The said assertion is bolstered on a bare consideration of the definitions accorded to the doctrine of Ex-debito justitiae.

- As per **Advanced Law Lexicon by P. Ramanatha Aiyar**,

“**Ex-debito justitiae**”, has several facets. Given the context it could mean:

² (1885) 10 App. Cas. 210

³ 299 U.S. 248, 254

⁴ [1960] HCA 40

⁵ AIR 1962 SC 527

“Acting as a matter of right; a debt of justice, contrasted with ex gratia.”

“On account of justice; a claim, the refusal of which would involve an injustice, and therefore one which justice owes it to the claimant to recognize and allow”

“From or as a debt of justice; from that which is owing; from one’s right; as of right”

“As a matter of right. The phrase refers to remedies to which a person is entitled as a matter of right as opposed to a remedy which is discretionary.”

- As per **Mozley and Whiteley's Law Dictionary**, Ex-debito justitiae means:

“As a matter of right; in opposition to a matter for the favour of or discretion”

- As per **Black’s Law Dictionary**, Ex-debito justitiae, 10th Edn. means:

“From or as a debt of justice; in accordance with the requirement of justice; of right; as a matter of right.”

Thus, it follows that when the Court exercises its inherent authority, it acts ex debito justitiae, which means that the Court discharges its debt to a person who has been wronged in law. When such wrong is shown, the court is forced to intervene. All courts, whether civil or criminal, have all the authorities necessary to do the right thing and remedy a wrong in the process of administering justice because of their basic constitution as a Court, even in the lack of any stated provision.

II. The doctrine of separation of powers -transgressed by an improper legislative act of the judiciary.

In *P. Ramachandra Rao v. State of Karnataka*⁶ a Seven Judges Bench of the Apex Court considered the question whether the Supreme Court has the legal and constitutional authority to set a deadline for the conclusion of a criminal trial for specific offenses and to order the trial's termination after the deadline has passed. The Supreme Court held that it was improper for a judge to impose such a deadline. The court held thus:

"Bars of limitation, judicially engrafted, are, no doubt, meant to provide a solution to the aforementioned problems. But a solution of this nature gives rise to greater problems like scuttling

⁶ AIR 2002 SC 1856

a trial without adjudication, stultifying access to justice and giving easy exit from the portals of justice. Such general remedial measures cannot be said to be apt solutions. For two reasons we hold such bars of limitation uncalled for and impermissible: first, because it tantamount to impermissible legislation - an activity beyond the power which the Constitution confers on judiciary, and secondly, because such bars of limitation fly in the face of law laid down by Constitution Bench in A.R. Antulay's case and, therefore, run counter to the doctrine of precedents and their binding efficacy... Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature..."

III. Absence of supervisory jurisdiction of the Supreme Court over the High Court

The Supreme Court and the High Courts are **Courts of Record** under the Constitution. Except for the appellate authority granted to the Supreme Court, the High Court is not a court lower to it. The High Court has broader authority because it can issue writs for violations of all legal rights and supervise all "subordinate courts" in addition to exercising its jurisdiction to issue writs. The Supreme Court, as the highest constitutional court, was never designed to have such supervisory authority over lower courts or the High Courts.

In *Tirupati Balaji Developers (P) Ltd v. State of Bihar*⁷, the Supreme Court's authority over the High Courts was thoroughly discussed.

The Supreme Court came to the following noteworthy findings about the relationship of the two Constitutional courts:

- The Supreme Court is not a court that the High Court is "subordinate" to.

⁷ 2004 Supp(1) SCR 494

- The High Courts have a broader range of prerogative writs-issuing authority than the Supreme Court.
- Only High Courts are given superintendence authority; the Supreme Court is not.
- The Supreme Court occupies a higher position in the hierarchy because it is the highest court of appeal, its decisions are binding on all courts, it has the authority to transfer cases from one High Court to another or to itself, and it is required to support the Supreme Court by Article 144, which requires all authorities, including the High Court, to do so.
- The right to appeal implies the right to overturn, uphold, strike down, or otherwise alter the High Court's ruling, including the right to request a new hearing and to follow any further instructions that may be included with the remand order. This appeal power also includes the ability to use any other incidental or ancillary powers.

The Supreme Court acknowledged in *Tirupati Balaji (Supra)* that while possessing appellate authority, the Supreme Court has always been careful in giving “directions” to the High Court and has instead been using more polite words like “request”, “expected to”, “trust and hope” etc. It was expounded that these customs have become established as tradition and that neither the High Court nor the Supreme Court has disrespected the other very often.

Given this context and the Supreme Court's reluctance to monitor the High Courts, the instructions provided in Asian Resurfacing need to be carefully analyzed. The Supreme Court can undoubtedly intervene with interim orders issued by the High Court when acting within its authority, but only while exercising its appellate authority.

The power used by the High Court to pass an interim order is either a power granted by statute or a power granted by the Constitution. The Supreme Court cannot impose any limitations on the High Court because it is a Constitutional court and a court of record, unless the Supreme Court interprets a law or the Constitution and makes it a matter of law. The instructions provided in Asian Resurfacing do not state this.

IV. Practical Issue

At no stage the submissions may remotely be construed as belittling the malady of delays in

disposal of cases, nor be taken as an endorsement of the view that the matters in which the court has granted stay should be allowed to remain pending for an indefinite period.

Access to justice is commonly defined as having access to fair, timely, and satisfactory means of justice. One of the most desirable elements of a litigation, particularly in criminal litigation, is the expeditious disposition of trials.

While finalization of trial on a speedy basis is necessary to uphold the public confidence in justice delivery system, equally important is the meaningful exercise of the remedies available to an accused to get out of the restraints that may ensue upon the institution of criminal proceedings.

Case Management system, Co-operation on part of the Bar, inadequate Judge strength, inadequate support staffs, infrastructural shortcomings and host of other factors contribute to the crisis of delay.

Attempting to redress the situation by fixing a timeline within which the proceedings be re-heard and stay extended failing which the order granting stay would cease to operate, ignores the practical difficulties. Taking into consideration the practical difficulties with which our legal system is infested, the Hon'ble Supreme Court in *Abdul Rehman Antulay v. R.S. Nayak*,⁸ held that a judicial prescription of the timeline within which criminal proceedings should conclude is not desirable.

Fixation of timelines involves balancing of several competing factors and in doing so it is to be remembered that any cord that renders a procedure unfair or unjust, violates the most treasured human right entrenched in Article 21 of the Constitution of India.

The direction in *Asian Resurfacing (Supra)* to pass orders elaborating the reason for continuing the stay rather than finalizing the trial would result in re-undertaking the very same exercise which had previously been undertaken at the time of grant of interim relief.

The concerned party will have to submit a request for an extension, which will necessitate its registration, service on the opposing party, and then arguments, ultimately placing a load on the already overworked judicial system and its Registry.

⁸ (1992) 1 SCC 225

The direction of the Hon'ble Supreme Court in *Asian Resurfacing (Supra)* gives rise to many unanticipated and unforeseen legal issues. The Hon'ble Supreme Court in *Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Ltd., AIR 1983 SC 239*, flagged a note of caution and held thus:

When serious constitutional issues are involved judges are not authorised to make disembodied pronouncements on serious and cloudy issues of constitutional policy without battle lines being properly drawn. Judicial pronouncements cannot be immaculate legal conceptions. It is but right that no important point of law should be decided without a proper lis between parties properly ranged on either side and a crossing of the swords. We think it is inexpedient for the Supreme Court to delve into problems which, do not arise and express opinion thereon.

In our constitutional scheme certainly the Hon'ble Supreme Court sits at the top and exercises Appellate Jurisdiction against the orders passed by the High Court. Any person aggrieved by the order of the High Court granting the stay can either file an Application for vacation of the same or utilize the very hierarchy embedded in our Constitution to climb up the ladder in pursuit of justice and to right a wrong committed at a lower level.⁹

CONCLUSION

Asian Resurfacing judgment needs to be confined to the PC Act only:

The Supreme Court in Asian Resurfacing appears to have overlooked the seven justices' ruling in P Ramchandra Rao AIR 2002 SC 1856 when ordering that every stay of a court proceeding, whether criminal or civil, must cease automatically after six months. The parties in the Asian Resurfacing case were never informed that the court intended to issue a general instruction that would apply to all civil or criminal proceedings.

There were no arguments made about this crucial constitutional issue or how its outcome would affect the lower courts, who are already overworked due to a huge backlog of cases.

The Supreme Court's broad and mandatory directives in the Asian Resurfacing Case thus requires a review on all the aforesaid aspects.

⁹ Indu Bhusan Jana v. Union of India and Ors AIR 2009 Cal 24; M.H. Patel v. National Consumer Dispute Redressal Commission, 2022/DHC/005152,