

CLASS- B.A.LL.B VIIIth SEMESTER

SUBJECT- ADMINISTRATIVE LAW

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TOPIC- WRITS

Constitutional philosophy of Writs:

A person whose right is infringed by an arbitrary administrative action may approach the Court for appropriate remedy. The Constitution of India, under Articles 32 and 226 confers writ jurisdiction on Supreme Court and High Courts, respectively for enforcement/protection of fundamental rights of an Individual. Writ is an instrument or order of the Court by which the Court (Supreme Court or High Courts) directs an Individual or official or an authority to do an act or abstain from doing an act.

Understanding of Article 32

Article 32 is the right to constitutional remedies enshrined under Part III of the constitution. Right to constitutional remedies was considered as a heart and soul of the constitution by Dr. Bhim Rao Ambedkar. Article 32 makes the Supreme court as a protector and guarantor of the Fundamental rights. Article 32(1) states that if any fundamental rights guaranteed under Part III of the Constitution is violated by the government then the person has right to move the Supreme Court for the enforcement of his fundamental rights. Article 32(2) gives power to the Supreme court to issue writs, orders or direction. It states that the Supreme court can issue 5 types of writs habeas corpus, mandamus, prohibition, quo warranto, and certiorari, for the enforcement of any fundamental rights given under Part III of the constitution. The Power to issue writs is the original jurisdiction of the court.

Article 32(3) states that parliament by law can empower any of courts within the local jurisdiction of India to issue writs, order or directions guaranteed under Article 32(2). Article 32(4) states that rights given under Article 32 cannot be suspended except such suspension provided by the constitution.

Babasaheb Bhim Rao Ambedkar called Article 32 as heart and soul of the constitution

Article 32 is called the heart and soul of the constitution because it gives rights to people to move Supreme court directly for enforcement of their fundamental rights. Article 32 is itself a fundamental right and it makes article 32 soul of the constitution. According to the Supreme court, Article 32 is the basic feature of the constitution it cannot be amended even by way of amendment in the constitution.

The scope of Article 32

The scope of Article 32 is not wide enough as Article 226. Article 32 can be invoked only to enforce fundamental rights under Part III. one cannot approach the Supreme court for enforcement for other rights except fundamental rights. Power to issue writs under Article 32 is mandatory for the Supreme court because Article 32 is itself a fundamental Right and Supreme Court is the protector of these the Fundamental Rights. The writs are strong instruments issued against the government and government officials

Understanding of Article 226

Article 226 is enshrined under Chapter V of the Constitution. It empowers the High Courts to issue certain writs. Article 226 gives discretionary power to the High courts to issue direction, order, writs including the writs in nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari. Article 226 is invoked not only to for the fundamental rights but also a violation for other rights.

Article 226(1) states that in spite of Article 32, High court has the power to issue direction, order, or writs, including the writs in the nature of the writs in nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari to any person, authority, government or public officials for enforcement of fundamental rights or any other rights under its own local jurisdiction.

Article 226(2) states that in spite of the seat of government or authority or residence of the person is not in the local jurisdiction of the High court still high court can issue direction, order to such government, authority or person if the cause of action wholly or in part arises in relation to its own jurisdiction.

Article 226(3) states that the (i)When against a party any interim order is issued by high court in way of interim injunction or stay, or any proceedings relating to a petition under Article 226 without (a) giving copy of the petition or copies of all documents of the interim order to such party and (b) giving opportunity to hear.

(ii) And if such party makes an application to the High court for the vacation of such interim order or petition and also furnishes a copy of the application of vacation to the party in whose favor such interim order or petition is made, or to the counsel of the party.

(iii) Then High court shall dispose of the application

within a period of two weeks from the date on which it is received or,

from the date on which the copy of such application is so furnished, whichever date is later

or

where the High Court is closed on the last day of that period, before the expiry of the next day afterward on which the High Court is open

(iv) and if the application is not so disposed of by the High court, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, will be vacated

Article 226(4) states that the power given to the high court to issue direction, order or writ will not derogate the power given to the Supreme court under Article 32(2)

The scope of Article 226

The scope of Article 226 is much wide than Article 32. Article 226 not only gives the power to issue direction, order or writs not enforce fundamental rights but also for the enforcement of other rights too. Article 226 empowers High court to issue directions, orders or writs to any person, authority, government, or public officials. Article 226 also talks about the interim order for writs and also states the mechanism of how interim order will be disposed of by the High courts.

How Article 32 is different from the Article 226

- ✓ Article 32 gives power to Supreme Court whereas Article 226 gives power to the High court
- ✓ Article 32 is invoked for the enforcement of fundamental Rights whereas Article 226 is invoked for enforcement of fundamental right as well as other legal rights too.
- ✓ The power to High court under Article 226 is wide than the power of the Supreme court under Article 32.
- ✓ Article 32 is itself a fundamental right (Right to constitutional Remedies) whereas Article 226 is not a fundamental Right

Types of Writs

The Indian Constitution provides 5 types of writs which can be issued by the Courts. They are:

- Habeas Corpus
- Mandamus
- Certiorari
- Prohibition
- Quo Warranto

Habeas Corpus

The Writ of Habeas Corpus is issued by the Courts in those cases where a person is illegally detained. Habeas Corpus means 'to have the body' and it is one of the most effective remedies available to a person detained.

By this Writ, the Court commands the person or authority who has detained or restrained another person to present such person before the Court. The Court requires the detaining person to provide the grounds on which the person has been detained and if he fails to provide a valid ground, the person who has been detained will be released by the Court immediately.

Illustration: A is wrongfully detained by B, a police officer. A writes to the High Court regarding the same. The High Court summons B with A and asks the grounds for detaining A. If B fails to provide a valid ground or justification for A's detention, A will be free to go.

This Writ is very important for the personal liberty of the citizens because if this Writ is not provided by the Constitution a person can be unlawfully restrained or detained by any authority and it will be a clear violation of the personal liberty of the citizens.

Even though the purpose this Writ is to prevent a person from being detained but it will be applicable only when the detention or restraint is unlawful. If the Court finds the grounds for detaining to be justified then this Writ cannot be issued. Also, if the Court orders the detention of a person then it does not amount to unlawful detention and this Writ cannot be issued.

This Writ can be applied not only by the person who is detained but it can also be done by some other person on behalf of the detained person.

Rules regarding the Writ of Habeas Corpus

The following are the rules related to the writ of Habeas Corpus:

- The applicant should be in custody of another
- Usually, the detained person and his family members are allowed to file an application for habeas corpus but the court has also allowed such application by strangers if it is done in public interest.
- The manner prescribed for filing this writ is not necessary so both formal and informal applications in respect of the writ is accepted by the Courts. For e.g. a writ application can also be made by postcard. In the case of Sunil Batra v. Delhi Administration, the Supreme Court had accepted the application made through a letter by a co-convict (a stranger) due to the inhuman treatment of prisoners. In this case, the letter was accepted as an application and the writ of Habeas Corpus was issued.
- A person cannot make the application for the Writ successively to different judges of the same court. Thus, if an application is rejected by one judge, the same application cannot

be made to another judge of the same court and if it is done, such an application will be rejected because of the principle of res judicata.

- This Writ will apply in case of an arrest made by the police when all the formalities and procedures which are required to be followed are not followed. For example – the requirement of presenting the arrested person before a magistrate or the officer in charge of the police station. [Section 56 of CrPC]

In **Kanu Sanyal v. District Magistrate**¹, while enunciating the real scope of writ of habeas corpus, the Supreme Court opined that while dealing with a petition for writ of habeas corpus, the court may examine the legality of the detention without requiring the person detained to be produced before it.

In **Sheela Barse v. State of Maharashtra**², while relaxing the traditional doctrine of locus standi, the apex court held that if the detained person is unable to pray for the writ of habeas corpus, someone else may pray for such writ on his behalf.

In **Nilabati Behera v. State of Orissa**³, the Orissa police took away the son of the petitioner for the purposes of interrogation & he could not be traced. During the pendency of the petition, his dead body was found on railway track. The petitioner was awarded compensation of Rs. 1, 50, 000.

Mandamus

Mandamus is another important Writ which is provided for by the Indian Constitution. In the Writ of Mandamus, the superior courts order the Inferior Courts to do an act or to abstain from doing an act. This order can also be given to an Inferior Tribunal, Board, Corporation or any other type of administrative authority.

In India, the Supreme Court is the apex court, therefore it has the power to issue the Writ of Mandamus even against the High Court even though the High Courts have also been provided with the power to issue such Writs under Article 226. So, a High Court can issue this Writ under Article 226 only to the Inferior Courts such as the trial court of a district.

This Writ is useful for enforcing the duty which is required to be done by law or by the office which a person holds. For e.g. the Judge of the Court has a duty to follow the principles of natural justice and if the Judge fails to do so, a Writ can be issued by the Superior Court to observe the fulfillment of this duty.

¹ AIR 1973 SC 2684

² AIR 1983 SC 378

³ AIR 1993 SC 1960

One of the most important points about the Writ of Mandamus is that it cannot be issued against a private person and therefore only the State or the people who hold any office which falls in the category of a public office can be compelled to do or to abstain from doing an act.

Illustration: A is a public servant who has a duty towards B which he has to fulfil according to the law but he doesn't fulfil the duty. B is aggrieved by this non-performance and therefore approaches the High Court for demanding the fulfilment of the duty by A. Here the High Court on being satisfied that the case of B is bona fide and there is a duty which should be fulfilled, will issue the Writ of Mandamus and A will be bound to fulfil the duty he has avoided until now. But if A was a businessman who had some duty towards B but he fails to perform it. In such a case A cannot approach the Court for Mandamus because this Writ cannot be issued against a private person.

Grounds for Mandamus

This Writ can be issued by the Courts on the following grounds:

- The petitioner has a right recognized by law. The whole purpose of this Writ is to enforce the rights of the citizens but if there is no right which accrues to a plaintiff, he cannot approach the court to issue the Writ of Mandamus.
- The right of the petitioner has been infringed. Having a right does not automatically give ground for issuing the Writs because any person will approach the court without having any cause of action. Thus only when a right is violated, the Writ can be issued by the court.
- The petitioner has demanded the authority to perform their duty but there has been non-performance of such duty. The Writ is issued to compel the authority to do the act which they are required to do by law or by the post they are holding thus it is an essential ground for Mandamus.
- The last essential ground for Mandamus is the absence of an effective alternative remedy which can be resorted to by the petitioner to enforce the duty of the authority.
- The petitioner has to show to the Court that a duty is owed to him by the authority and such authority has not performed their duty. This Writ can be issued against all the administrative actions which are unlawful in nature.

The authority has many duties, some of which are mandatory and while some are left at their discretion to be performed. Thus, if an authority does not perform their mandatory duty, the Writ of Mandamus will be issued by the Court. But in cases of discretionary duties, the writ cannot be issued but the authority still has to act in good faith while deciding whether the discretionary duty should be performed or not.

In the case of **Vijaya Mehta v. State of Rajasthan**⁴, a petition was filed in the High Court for compelling the State to perform its duty of appointing a commission to look into the climate change and floods in the State. It was held by the Court that the State Government would have to appoint a commission only when a resolution was passed by the Legislature, moreover, it was a discretionary duty and not a mandatory duty, so the Writ of Mandamus was not issued in this case.

In the case of **Bhopal Sugar Industries Ltd. v. Income Tax Officer, Bhopal**⁵, the Income Tax Appellate Tribunal had given clear directions to the respondent Income Tax Officer by its final order. The Income Tax Officer had still refused to carry out the directions given by the Tribunal. It was held by the Supreme Court that the Income Tax officer had a mandatory duty to fulfill the directions given by the Tribunal and non-performance of which amounted to grave injustice. Thus, the Writ of Mandamus was issued to direct the officer to carry out the directions of the Tribunal.

When is Mandamus not allowed?

The Writ of Mandamus is a discretionary power of the Court and is not a right which can be enforced by the petitioner therefore in many cases this Writ can be refused by the Courts.

The Courts can refuse to issue these Writs in the following cases:

- Where the right of the petitioner has lapsed
- The duty has already been fulfilled by the authority against which such a Writ is sought to be issued and therefore issuing the Writ would amount to nothing in such a situation.

Who can apply for this Writ?

Usually, the person whose right is infringed is allowed to apply for the Writs of Mandamus but after the Supreme Court adopted a liberal view and the advent of Public Interest Litigation in India, a public-spirited citizen can also apply for the issuing of the Writ of Mandamus on other people's behalf.

In order to issue a Writ of Mandamus the following considerations are of great importance:

- The duty which is sought to be enforced is a public duty.
- Such duty is enforceable by law.

In the case of **Ratlam Municipality v. Vardhi Chand**⁶, it was held that Ratlam Municipality was a statutory body which owed duties to the public such as removing night soil and rubbish,

⁴ AIR 1980 Raj 207

⁵ 1977 SCR (3) 578.

⁶ 1981 SCR (1) 97

removing any public nuisance etc. and therefore the Writ of Mandamus was issued by the Court to enforce these duties by the Municipality.

Thus, an application for Mandamus can be made not only by the affected people but also by those who want to enforce these Writs on behalf of others in the public interest.

Certiorari

Certiorari is a different type of writ when compared with other Writs. This Writ is corrective in nature which means the purpose of this Writ is to correct an error which is apparent on the records.

Certiorari is a Writ which is issued by a superior court to an inferior court. This can be issued when the superior court wants to decide a matter in the case itself or if there is an excess of jurisdiction by the inferior court. This Writ can also be issued when there is a fundamental error in the procedure followed by the inferior court or if there is a violation of the principles of natural justice. If the superior court finds out that there has been a violation of natural justice or a fundamental error on the procedure adopted, it can quash the order of that inferior court.

Illustration: There is a case in the District Court and the court has no jurisdiction to decide such cases. Still, the District Court Judge tries the case and gives his decision and an application is made by A (the aggrieved party by such decision) to the High Court. Hereby the power of issuing Writs, the High Court will issue a Writ of Certiorari on the order of the District Court, as a result, the order of the District Court will be quashed.

Grounds for Certiorari

- The Writ of Certiorari can be issued on the following grounds:.
- On the grounds of jurisdiction, a Writ can be issued by the superior court. Whenever an inferior oversteps its jurisdiction or abuses the jurisdiction provided to it or when there is an absence of jurisdiction of the inferior court, the Writ will be issued to quash the order made by the inferior court.
- The violation of principles of natural justice is another ground on which the Writ of Certiorari can be issued by the court. The principles of natural justice form an important part of the Indian Constitution as these principles have been recognized by the Constitution such as the principle of Audi alterum partem which means hearing of both the sides is an essential part of the Indian Constitution.
- When there is an error apparent on the record, it becomes a valid ground for issuing the Writ of Certiorari. This Writ can be issued when the error is based on a clear disregard to the provisions of law and not merely because the judgement was wrong.

Important Conditions for Certiorari

For the Writ of Certiorari the following conditions should be fulfilled:

- The body or person has legal authority.
- Such authority is related to determining those questions which affect the rights of the people.
- Such a body or person has a duty to act judicially in doing its functions.
- Such a person or body has acted in excess of their jurisdiction or legal authority.
- When all these conditions are fulfilled, only then a Writ of Certiorari can be issued against the body or person who has acted in excess of their jurisdiction.

In the cases related to the Writ of Certiorari, the person who is aggrieved by the wrongful exercise of jurisdiction by the court should bring the petition before the superior court. In this regard, this Writ is different from the Writ of Habeas Corpus as Habeas Corpus can be applied for even by a non-aggrieved person and the courts will accept such an application.

The proceeding in case of Certiorari is an original proceeding before the superior court which can be initiated by a petitioner before the High Court under Article 226 and before the Supreme Court under Article 32 of the Indian Constitution.

Against whom this Writ lies?

The Writ of Certiorari lies against those bodies which are judicial or quasi-judicial in nature. Thus, when anybody or a person is performing a judicial act, their acts can be subjected to the Writ of Certiorari.

It also means that the scope of the application of this Writ is limited to only the judicial bodies or the bodies which perform judicial functions and it will not extend to the Central, State or Local Governments because their functions are administrative in nature and not judicial.

Prohibition

The last Writ which can be issued under the Constitution is the Writ of Prohibition. This Writ is not issued often and is an extraordinary remedy which a Superior Court issues to an inferior court or tribunal for stopping them from deciding a case because these courts do not have the jurisdiction.

If the court or tribunals does not have jurisdiction and it still decides the case, it will be an invalid judgement because for an act to be legal it should have the sanction of law. For e.g., if a District Court is hearing an appeal against the judgement of the High Court, such an act is bound to be prohibited because the District Court does not have the power to hear such an appeal. So, a Writ of Prohibition will be issued against such an act of District Court.

Rules of Writ of Prohibition

In cases of Writ of Prohibition the following rules are observed:

- The Writ can be issued only when:
- The inferior court or tribunal has overstepped its jurisdiction
- The court or tribunal is acting against the provisions of law

In cases where the court is partly acting within its jurisdiction and partly outside it, the Writ will be issued against the act which is partly outside its jurisdiction.

The fact that the applicant has a right to appeal against the order of the inferior court will not be a bar to issue this Writ.

This Writ can be issued only when the proceedings are pending in the inferior court and not when an order has already been passed by that court. Thus, this Writ is a preemptive remedy which is exercised by the superior court to prevent the inferior court from acting outside its jurisdiction.

The Writ of Prohibition can be issued only against a judicial or a quasi-judicial body and it cannot be issued against any administrative body.

Difference between Prohibition and Certiorari

Both the Writs Certiorari and Prohibition appear to be the same but there is one major difference between the two. In the Writ of Prohibition, the superior court issues the writ before the final order is passed by the inferior court and therefore this is a preventive remedy, while in Writ of Certiorari the superior court issues the Writ after the inferior court has made the final order. Thus the Writ of Certiorari is a corrective remedy by which the order of the inferior court is quashed.

Quo Warranto

The Writ of Quo Warranto is issued by the courts against a private person when he assumes an office on which he has no right. Quo Warranto literally means 'by what authority' and it is an effective measure to prevent people from taking over public offices.

Illustration: A who is a private citizen and has no qualifications for the post of sub-inspector assumes such office. Here a Writ of Quo Warranto can be issued against A to call into question his authority on which he has taken the control of the office of sub-inspector.

The power to issue this Writ is discretionary on the courts and therefore nobody can demand that the court is bound to issue this writ.

Conditions for issuing Quo Warranto

- The Writ can be issued only when these conditions are fulfilled:
- The office which has been wrongfully assumed by the private person is a public office.
- The office was created by the Constitution or by any other statute.
- The nature of the duties which arises from this office is public.

- The term of the office must be of a permanent nature and it should not be terminable at any person or authority's pleasure.
- The person against whom the Writ is sought to be issued is in actual possession of the office and is using such office.

This Writ can also be issued in those cases where a person was entitled to hold the office earlier but after getting disqualified he is still in possession of the office.

Thus in cases where the office is of private nature, this Writ cannot be issued by the Court. This view was held by the court in the case of **Niranjan Kumar Goenka v. The University of Bihar, Muzzafarpur**⁷, in which the court observed that the Writ of Quo Warranto cannot be issued against a person who is not holding a public office.

In the case of **Jamalpur Arya Samaj Sabha v. Dr. D Rama**, an application for the Writ of Quo Warranto was made by the petitioner in the Patna High Court against the Working Committee of Bihar Raj Arya Samaj Pratinidhi Sabha which was a private body. The court refused to issue the Writ because it was not a public office.

The Constitution of India has provided the power to issue Writs to the Supreme Court under Article 32 and to High Courts under Article 226. These Writs are a command which is given by the Courts for the performance of an act to the public authority which has a duty to perform it.

Of these Writs, the scope of Mandamus is the widest. While other Writs are issued in certain circumstances only, such as when a person is illegally detained (Habeas Corpus) or when there is overstepping of jurisdiction by a court (Certiorari), Mandamus can be issued in those cases where there is on the performance of duty the authority. So, all these Writs have played a key role in enforcing the rights of the people and have also improved the scope of the power judicial review of courts.

Both the Articles 32 and 226 provide five types of writs namely writ of habeas corpus, mandamus, prohibition, certiorari and quo-warranto. These are known as prerogative writs in English Law because they had originated in the King's prerogative power of superintendence over the due observance of law by his officers and tribunals. The prerogative writs are extraordinary remedies intended to be applied in exceptional cases in which ordinary legal remedies are not adequate.

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⁷ AIR 1973 Pat 85

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