

## WRITS UNDER THE CONSTITUTION OF INDIA

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### INTRODUCTION

The fundamental rights under the Indian Constitution falls in Part III of the Constitution. It is very important that these rights are safeguarded and also enforced. To protect these fundamental rights, Article 32 and Article 226 allows us to approach Supreme Court and High Court respectively, if any of the fundamental rights have been violated. These articles give right to the court to issue writs in order to enforce the fundamental rights. Any provision in the constitution is meaningless unless there are means to safeguard and enforce it. It should satisfy the maxim of '*ubi jus ibi remedium*'

There are five types writs under constitution of India, namely habeas corpus, mandamus, quo warranto, prohibition and certiorari. These rights are borrowed from the Constitution of England, as it had a long history of development there. These writs are available to the people in India in form of Right to Constitutional Remedies, this very right forms the basis for other rights to be enforced. Hence, it is correct to say that the right to constitutional remedies is the heart and soul of the Indian Constitution.

### WHAT IS A WRIT?

Writ is any formal order issued by a court having authority to issue such an order over a specific matter. A writ can be a warrant, directions orders etc. issued by the Supreme Court or the High Court. Writ petition is filed before a concerned court for issuance of a specific writ.

The concept of writs being introduced in India dates back to the Regulating Act<sup>i</sup>, Supreme Court was established in Calcutta under this act. The charter also allowed establishment of

other High Courts and gave them the authority to issue writs. The jurisdiction of the same was limited to original civil jurisdiction which was under Section 45 of the Specific Relief Act<sup>ii</sup>.

One of the principal makers of the Indian Constitution, Dr. Bhimrao Ambedkar has given the most importance to Article 32 compared to all other articles in the Indian Constitution. Dr. BR Ambedkar referred to Article 32 as, “It is the very soul of the Constitution and the very heart of it, *“It is the very soul of the Constitution and the very heart of it.”*”

## **CONSTITUTIONAL PROVISIONS**

The right to move to the Supreme Court through Article 32 is an absolute right and it cannot be suspended except as provisions provided under the constitution. To grant relief in these matters is on the discretion of Supreme Court.

However, this not the same with the High Court while approaching it through Article 226. Article 226 is not a fundamental right; it is a constitutional right and hence there is no guarantee attached unlike Article 32 of the Indian Constitution. The scope of Article 226 is much wider than Article 32 as it not only covers fundamental rights but other matters also. High Courts enjoys absolute discretion while entertaining matters of issuing writs. The basic reason behind this is to provide justice wherever anything wrong happens.

## **TYPES OF WRITS UNDER INDIAN CONSTITUTION**

### **Writ of Habeas Corpus**

It is considered as the most important writ for personal liberty. The literal meaning of habeas corpus is, ‘let us have the body.’ A person when arrested without a reasonable cause can approach the court to issue this writ. Basically, its an order which directs the authority which has detained the person to produce him/her before the court so that the court can examine whether the person was detained lawfully. If the court finds that the person was detained illegally, it can direct the concerned authority for immediate release of the person.

The general rule for application of this writ is that the person who has been illegally detained can approach the court, but in some cases any person on behalf of the person detained can approach the court.

However, there are certain limitations to this writ. This writ is only a procedural remedy, it only guarantees freedom from illegal detainment but it does not guarantee other rights like, the right to fair trial.

**When this writ can be issued:**

This particular writ can be issued when the purpose of a person's detention was mala fide and had other motives behind this. However, if the court feels that the detention is justified, the court may not issue the writ of habeas corpus.

**Case law:**

***ADM (Additional District Magistrate) V. Shivkant Shukla<sup>iii</sup>***

The Constitution of India since its adoption in the year 1950 has given the citizens with a means to prosecute their guaranteed rights via institutions, peculiarly the apex court which is Supreme Court. The Supreme Court has always largely remained firm in their role of safeguarding the fundamental rights that are provided in the Constitution.

This case changed into broadly referred to as the Habeas corpus case or The Additional District Manager Jabalpur vs. Shiv Kant Shukla. The important query bobbing up in this situation changed into whether or not beneath neath the Presidential Orders the High Court may want to entertain a writ of Habeas Corpus (A writ of Habeas Corpus actually to supply the body} is a courtroom docket order to someone jail warden} or agency preserving a person in custody to supply the imprisoned character to the courtroom docket issuing the order) filed with the aid of using someone hard the floor for his detention. The bench consisted of Chief Justice of India A. N. Ray, Justice H.R. Khanna, Justice M.H. Beg, Justice Y.V. Chandrachud and Justice P.N. Bhawati. The case changed into argued over 2 months and then the judgment changed into laid. The judgment concluded as follows, "In view of Presidential Order dated 27th June 1975 no man or woman has any locus to transport any writ petition under article 226 earlier than High

Court for habeas corpus or another writ or order or route to undertaking the legality of an order of detention at the floor that the order isn't in compliance with the act or is unlawful or is vitiated with the aid of using mala fides genuine or felony or is primarily based totally on extraneous considerations. The judgment changed into dominated in choose of the authorities with a 4:1 majority. In this landmark judgment, the Supreme Court declared that the rights of residents to transport the courtroom docket for violation of Articles 14, 21 and 22 could continue to be suspended all through emergencies. Triumph of character liberty (Maneka Gandhi vs UOI) 1978. Widely taken into consideration a contravention of Fundamental Rights.

### **Writ of Mandamus**

The literal meaning of Mandamus is 'we command.' It is an order issued by a superior court to a lower court, tribunal or any public authority to perform a specific act which falls within the ambit of the duty of the concerned authority. It is simply a writ issued to public official to do duty which is part of his/her job and he/she has failed to do so till now. The main reason of issuance of this writ is to secure performance of a public official which will lead to a smooth government machinery's functioning. Mandamus writ can also be issued to a tribunal so that the concerned tribunal can exercise its jurisdiction over specific matter which it had refused to do so earlier. Mandamus can also be issued where there is legal right but there no specific remedy for the same.

### **When this writ can be issued**

This particular writ can be issued when there is failure of performance of a mandatory duty. Also, in cases where there is reasonable breaches in performance of a mandatory duty. However, the aggrieved party must show that there was a reasonable demand from their side and the concerned authority had refused to entertain their problem.

### **Case law**

#### ***Commissioner of Income Tax v. State of Madras<sup>iv</sup>***

In this case a contract was entered into between the petitioner and the government. There was a threat about the breach of contract on the part of the government. The petitioner sought a writ

of mandamus in the court, but the court refused on the basis that holding the writ of mandamus is only granted to compel the performance of a duty of a public nature. Similarly in denying the petitioner's right as managing agent there is no question of public duty involved, the matter being purely a private right between the petitioner on the one hand and the company on the other, based upon the contractual relations which were incorporated in the memorandum and the articles of association.

### **Writ of Certiorari**

The literal meaning of certiorari is 'to be certified.' This writ of certiorari is issued by the apex court to some other lower court or a tribunal to transfer the concerned matter to a superior authority for proper and reasonable consideration. This writ can be issued by Supreme Court and High Court to quash any order passed by a lower court. Writ of prohibition is available for similar reasons at an earlier stage, but the writ of certiorari is available at a much later stage. Writ of prohibition issued regarding pendency of a matter at a lower court, but certiorari is available only when an order is passed by a lower court.

When the court has an opinion that the order passed by the lower court is beyond its jurisdiction or has some errors of law, then this writ of certiorari comes into play. By this writ the superior court can quash the already passed order and transfer the matter to itself.

### **When this writ can be issued**

This writ is issued only to remove or to adjudicate upon the validity of already passed judicial acts. Whenever the superior court feels that a particular order which was passed by an lower court was beyond the lower court's jurisdiction or had some serious error of law, the superior court can quash the particular order and transfer the matter to itself.

### **Case law:**

#### ***Rafiq Khan v. State of Uttar Pradesh***

In this case, according to section 85 of the Uttar Pradesh Panchayat Raj Act 1947, sub-divisional magistrate does not have the authority or power to alter the order or sentence of Panchayati Adalat. Whereas SDM either can quash the order or abandon the jurisdiction

Panchayati Adalat. In this case sub-divisional magistrate had perform the modification of the order or sentence passed by the panchayati Adalat in a way that SDM quash the conviction of the accused in other offences except one which SDM himself maintained. In this scenario the Panchayati Raj order was being modified by the SDM (Sub-Divisional Magistrate).

Held- Allahabad High Court finding it unfit and contrary as the order maintained by the Sub-Divisional Magistrate had quashed the order of Panchayat Raj Act 1947 section 85. Therefore, after a review of this case it is been clearly stated that the need and want of jurisdiction may arise from the nature of the subject matter of the proceedings, court can't decide some of its parts itself and other be untouched as enquiry of the whole case should be conducted properly.

### **Writ of Prohibition**

The literal meaning of Prohibition is 'to forbid' or 'stop.' It is also commonly known as the stay order. This particular writ is issued when a lower court or public body tries to act by going beyond the powers vested in them. This writ is issued by the superior court to the lower court or a tribunal to stop them from performing any act which is outside their jurisdiction. Writ of Prohibition can be issued by the Supreme Court or High Court to a lower court, to prohibit the latter from continuing proceeding over which it has no jurisdiction.

### **When this writ can be issued:**

The main reason behind issuance of this particular writ is to prevent the lower court or a tribunal from exercising powers which is beyond its jurisdiction or which is in contrary to the principle of natural justice.

### **Case law: -**

#### ***S. Govinda Menon v. Union of India***<sup>vi</sup>

In this case Supreme Court has explained the jurisdiction of the court for grant of a writ of prohibition. It means that power to issue writ of prohibition central supervisory and main agenda behind the writ of prohibition is to limit the jurisdiction from being in excess of courts or tribunals. It is a well settled law derived from the decided cases that the writ of prohibition not only lies in the ambit where jurisdiction is beyond the limits of area or there is abuse of

judicial power but writ also lies in the cases where the activity are in contravention to the Natural Justice. But the writ does now no longer deceive accurate the course, exercise or technique of inferior courts or tribunal, additionally to accurate the incorrect selection of inferior courtroom docket at the deserves due to the fact difficulty may be issued best whilst the situation be counted of the plea is a query of law.

Writ of Prohibition can not be issued when there is an error of law and unless that error makes it beyond the jurisdiction limits. Therefore it is simply clear from this present case that if there is need of jurisdiction then matter is coram non judice and a writ of prohibition lies otherwise on any other ground other than on point of jurisdiction writ of prohibition can't be issued.

### **Writ of Quo Warranto**

The literal meaning of Quo Warranto is 'by what means.' This writ is issued to stop any person from acting in a public office which he/she is not entitled to hold. This particular writ is issued to prevent the usurpation and illegal assumption of any public office by anybody. This court calls upon the person to show under what authority he/she is holding that particular office, if the court believes that the person is holding an office illegally, the court can restrain that person from further doing so and declare the office vacant.

### **When this writ can be issued:**

Quo warranto prevents illegal usurpation of public office by an individual. the necessary ingredients to be satisfied by the court before issuing a writ is that the office in question must be public, created by the constitution or a law and the person holding the office is not legally qualified to hold the office in clear infringements of provisions of the constitution or the law.

### **Case law:**

#### ***G.D. Karkare v. T.L. Shevde<sup>vii</sup>***

In this case the petitioner applied to the High Court for the issue of writ of quo warranto against the Advocate General of the State on the allegation that he was guilty of intrusion into the office of the Advocate General, for at the date of appointment he did not possess the necessary qualifications prescribed by the Constitution for that office.

Held- It was held that a writ of quo warranto could issue as the office of the Advocate General was of a public nature. Membership of the Privy Council, it has been held in an English case, is an office for which the writ may issue. Likewise it will lie to question the appointment of a judge of High Court. Similarly, In the case of *Shiam Sunder v. State of Punjab*, on the issue of writ of quo warranto, the offices of ten members who were elected to the Municipal Board were declared vacant because there had been no valid delimitation of constituencies.

## CONCLUSION

Protection and enforcement of fundamental rights form the very basis of democracy in every country. There should be a strict mechanism to enforce the fundamental rights if it is violated. Enforcement of fundamental rights in India is possible because of Article 32 and 226 of the Indian Constitution. Article 32 and 226 allows a person whose fundamental rights have been violated to approach the Supreme Court and High Court respectively. These articles give right to the court to issue writs in order to enforce the fundamental rights. Any provision in the constitution is meaningless unless there are means to safeguard and enforce it. This is the main reason behind calling Article 32 as the heart and soul of the Indian Constitution.

## ENDNOTES

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<sup>i</sup> Regulating Act, 1773

<sup>ii</sup> Specific Relief Act, 1877

<sup>iii</sup> 1976 AIR 1207

<sup>iv</sup> 1983 142 ITR 877 Mad

<sup>v</sup> 2004 2 UPLBEC 1533

<sup>vi</sup> 1967 AIR 1274

<sup>vii</sup> AIR 1952 Nag