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# COMPARATIVE ANALYSIS: THE ROLE OF WRITS IN INDIAN AND CANADIAN ADMINISTRATIVE LAW

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## Exploration of Administrative Law in India and Canada

Administrative law, governing government administrative agencies, is vital in ensuring the legality, fairness, and justice of their actions in both India and Canada. It ensures government agencies are responsible, with its origins dating back to ancient civilizations like the Mauraya dynasty. This field of law defines how the government engages with its populace, outlining the powers and obligations of administrative bodies. Over time, administrative law has evolved, emphasizing fairness, reasonableness, and justice. It prevents potential misuse of power, although it cannot supersede constitutional provisions. This research paper explores its historical development, significance, and distinctions from constitutional law in India. Administrative law aligns government actions with the Constitution and laws, ensuring citizen protection. It defines administrative roles, fostering transparent governance, addressing public needs in sectors like healthcare and education, and establishing tribunals to maintain fair government-citizen relations and prevent power abuse.

Writs, originating from English common law, are crucial judicial orders empowering individuals to challenge administrative authorities' unlawful decisions and protect their rights. In administrative law, writs serve as vital tools to ensure government officials operate within legal boundaries, preventing abuse of power and upholding citizens' fundamental rights. This assignment explores the intricate administrative law mechanisms in India and Canada, focusing on the role of writs. By comparing the administrative frameworks of both countries, it aims to identify similarities and differences in writ utilisation. Objectives include tracing the historical evolution of administrative law, highlighting constitutional foundations, examining administrative law's significance in ensuring government accountability, transparency, and fairness. The analysis delves into various writ types in India and Canada through landmark cases, comparing legal procedures, remedies, and outcomes. Challenges faced by administrative law systems in both nations are evaluated, alongside emerging trends and potential reforms. Through this exploration, the assignment provides a detailed overview of

administrative law concepts, emphasizing writs' pivotal role in safeguarding individual rights in India and Canada, fostering a nuanced understanding of legal frameworks and practical implications in both jurisdictions.<sup>1</sup>

### **Origins of Administrative Law in India's Past**

The foundation of administrative law in India dates back to ancient eras, notably the Maurya and Gupta dynasties. These periods featured centralised administrative structures with a focus on tasks such as tax collection, law enforcement, and state security. The Mughal era continued similar administrative practices, emphasizing fair play and natural justice among officers and rulers. However, the British colonial period significantly impacted the evolution of administrative law in India. With the British arrival, administrative law underwent substantial changes. Different statutes and regulations were enacted to oversee public safety, moral conduct, and transportation. Laws such as the State Carriage Act 1861, Bombay Port Trust Act 1879, Northern India Canal and Drainage Act 1873, Opium Act 1878, and Indian Explosives Act 1884 were put into effect, each focusing on distinct administrative matters. Under British rule, administrative licensing and delegated legislation gained prominence. Delegated legislation, where certain legislative functions were entrusted to organs other than the legislature, emerged as a significant feature. Administrative licensing procedures were introduced, and tribunals were established to settle disputes arising from executive decisions. Post-independence, administrative law in India underwent further transformation. It adapted to contemporary needs, aiming to maintain regular checks and safeguard the general public from potential abuses of power by authorities. These changes reflected the evolving socio-political landscape, ensuring that administrative law remained responsive to the needs of an independent India.<sup>2</sup>

### **Significance of Administrative Law**

The legal system faced challenges such as high expenses, complexity, and delayed processes. To address these issues, administrative law was created to support the judiciary and improve legal efficiency. Supporting the Legislative Process: The legislative process alone cannot generate adequate rules and regulations for efficient state government. Administrative law helped fill this void by creating detailed regulations. Enhancing Social Reforms: As society

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<sup>1</sup><https://www.juscorpus.com/importance-of-administrative-law/>

<sup>2</sup>Development of Administrative Law. (n.d.).

evolved, more laws were needed for successful state management and citizen well-being. Administrative law provided ethical norms for efficient governance. To advance the economy, administrative authorities must create plans and strategies to achieve economic goals. Administrative law facilitates policymaking, boosting economic growth. The establishment and management of administrative tribunals are governed by administrative law. It oversees these bodies' composition and operation to ensure impartiality and efficiency. Administrative law is more adaptable than legislation, which normally remains in effect until the following session. New regulations can be tested, retained, or dismissed as needed, making the law more responsive.

### **Administrative Law in India and Constitutional Framework**

The framers of the Constitution incorporated English legal remedies into Articles 32 and 226, granting the Supreme Court and High Courts broad jurisdiction. These provisions empower the courts to issue essential writs such as Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari. Constitutional enforcement is vital for protecting fundamental rights, which are integral to the nation's welfare. Article 32 ensures constitutional remedies, while Article 226 authorizes High Courts to issue prerogative writs against individuals, including the government.. Similar remedies, Article 32 enforces fundamental rights, whereas Article 226 applies more broadly. Dr. Ambedkar stressed Article 32 as the Constitution's core. Courts must preserve people' fundamental rights as part of the Constitution.

This principle has been upheld in major decisions. In *Devilal v. STO*, the Constitution's Fundamental Rights were emphasized and High Courts under Article 226 must defend them. The court must protect the rights and interests of socially and economically disadvantaged persons, Justice Subbarao said. When petitioning, the right to a writ must be a basic right, according to case. Thus, moving the Supreme Court is both an individual's right and the court's duty to preserve fundamental rights.<sup>3</sup>

### **The Historical Development of Administrative Law in Canada<sup>4</sup>**

The development of administrative law in Canada is deeply rooted in its colonial history and constitutional framework. Canada's administrative law has been influenced by its historical

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<sup>3</sup> <https://www.constitutionofindia.net/read/>

<sup>4</sup> <https://www.thecanadianencyclopedia.ca/en/article/administrative-law>

connections to British administrative practices, legal principles, and changing systems of governance. During its colonial period, Canada inherited administrative practices from the British legal system. British common law principles, including the concept of administrative fairness and the rule of law, served as the foundation for Canadian administrative law. Early administrative decisions were often made by colonial governors and local officials, paving the way for the establishment of administrative bodies and procedures.

**Constitutional Framework and Legal Provisions :-**The Constitution Act of 1867 in Canada delineated the distribution of powers between the federal and provincial governments.. While the Constitution did not explicitly address administrative law, it laid the groundwork for federal and provincial administrative bodies. Over time, statutes and legal provisions at both federal and provincial levels were enacted to create specialized administrative tribunals and agencies, defining their functions and powers.

**Evolution of Administrative Law and the Role of Judicial Review:-**The evolution of administrative law in Canada gained momentum in the 20th century, driven by societal changes, technological advancements, and increased government involvement in various sectors. Administrative bodies multiplied to address diverse issues, ranging from labor disputes to environmental regulations. This proliferation led to the need for coherent legal principles and standards governing administrative actions.

**Judicial Review in Canada:-**Judicial review became a fundamental element of Canadian administrative law, enabling courts to evaluate the legality and equity of administrative rulings. The concept of reasonableness, later refined in landmark cases, became a cornerstone of judicial review, emphasizing deference to administrative expertise while ensuring decisions were rational and justifiable. The seminal case of *Dunsmuir v. New Brunswick* in 2008 further clarified the standard of review, emphasizing the importance of context-specific analysis and expertise of administrative bodies.

### ***Origin of Writs in India<sup>5</sup>***

The concept of writs in the Indian administrative system has its roots in English law. Writs were incorporated into the Indian legal system with the enactment of the Regulating Act of 1773, which led to the establishment of the Supreme Court in Calcutta. These writs, originating

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<sup>5</sup> <https://www.intolegalworld.com/article?title=writs-in-indian-constitution>

from the English legal system, were designed to protect individuals' rights and ensure justice. Over the years, the Indian judiciary adopted and adapted these writs to safeguard citizens' fundamental rights and hold administrative authorities accountable.

### *Types of Writs in India and Their Applications*

***Certiorari***:- Certiorari, derived from the Latin term "certiorari" meaning 'to inform', is a crucial writ used to quash decisions of authorities exercising judicial or quasi-judicial powers. It corrects errors, ensures natural justice, and prevents abuse of power.

***Prohibition***:- Prohibition is a preventive writ issued to lower courts, tribunals, or administrative bodies to stop them from exceeding their jurisdiction or acting against the laws of the land. The writ ensures that justice is served within the confines of legal provisions.

***Mandamus***:- Mandamus, meaning 'we command' in Latin, is a writ that compels public authorities, courts, or government officials to perform their statutory duties. It is used when these entities fail to fulfill their legal obligations. The famous case of **Ratlam Municipal Council v. Vardichand**<sup>6</sup> highlighted the importance of Mandamus when a municipality neglected its duty, leading to a public nuisance. The court's order demonstrated the power of this writ in ensuring administrative accountability.

***Quo Warranto***:- Quo Warranto, meaning 'by what authority' in Latin, challenges the right of an individual holding public office without proper qualifications or legal authority. This writ aims to prevent ineligible candidates from usurping public positions. In University of Mysore case utilized Quo Warranto to ensure appointments complied with statutory provisions, protecting citizens from unqualified individuals holding public office.

***Habeas Corpus***:- Habeas Corpus, translating to 'have the body' in Latin, safeguards an individual's liberty by demanding their production before the court. This writ is instrumental in preventing unlawful detentions and ensuring immediate relief from unjustifiable confinement. In the case<sup>7</sup> the court employed Habeas Corpus, emphasising the writ's role in protecting personal freedom and human rights.

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<sup>6</sup>4495. (n.d.).

<sup>7</sup> Supreme Court of India The State Of Bihar vs. Maharajadhiraja Sir Kameshwar ... on 2 May, 1952 Mobile View. (n.d.). <https://indiankanoon.org/doc/49043/>

### ***Types of Writs in Canada***<sup>8</sup>

In the Canadian legal system, there are no direct counterparts to the traditional Indian writs such as Habeas Corpus, Certiorari, Prohibition, Mandamus and Quo Warranto. However, Canada possesses legal mechanisms and remedies akin to the principles embodied in these writs, addressing administrative issues, ensuring judicial review, and safeguarding constitutional rights.

### ***Judicial Review in Canada***

Canada's legal system emphasizes the importance of judicial review, allowing individuals to challenge administrative decisions before the courts. Unlike specific writs, judicial review serves as a comprehensive mechanism for citizens to hold administrative bodies accountable. Administrative decisions, including those made by government agencies, tribunals, and regulatory bodies, are subject to scrutiny by the judiciary. Courts assess the legality, procedural fairness, and reasonableness of administrative actions, ensuring they adhere to legal standards and protect citizens' rights. While Canada does not possess writs identical to those in the Indian legal system, it has established a comprehensive framework to address administrative issues and protect citizens' rights. Judicial review, the Charter of Rights and Freedoms, administrative law tribunals, and equitable remedies collectively provide avenues for individuals to challenge administrative decisions, ensuring fairness, legality, and respect for constitutional rights. Canada's legal systems demonstrate the country's dedication to maintaining the rule of law, promoting transparent governance, and safeguarding the essential rights of its populace.

### **Rights and Freedoms Charter**

The 1982 Constitution Act incorporates the Canadian Charter of Rights and Freedoms, which protects individual rights from administrative acts. The Charter guarantees fundamental freedoms, movement rights, legal rights, and equality rights, such as Habeas Corpus. Individuals can dispute administrative decisions that violate their rights through Charter applications and court remedies.

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<sup>8</sup> [https://en.wikipedia.org/wiki/Canadian\\_administrative\\_law](https://en.wikipedia.org/wiki/Canadian_administrative_law)

### *Administrative Law Tribunals*

Canada relies on a robust system of administrative law tribunals to address specific administrative issues. These tribunals, similar to quasi-judicial bodies, handle a wide array of matters, including employment disputes, immigration cases, environmental regulations, and professional conduct issues. The decisions rendered by these tribunals are subject to judicial oversight through applications for judicial review. Courts assess whether these tribunals have acted within their jurisdiction, followed fair procedures, and rendered reasonable decisions, mirroring the principles encompassed by writs like Certiorari and Mandamus.

### *Equitable Remedies*

While Canada does not have direct equivalents to Indian writs, it does recognize equitable remedies through the common law tradition. Equitable remedies, such as injunctions and declarations, can be sought in cases where administrative actions violate legal rights or cause irreparable harm. These remedies, although not structured as specific writs, allow courts to intervene and prevent unjust administrative actions or mandate specific conduct, aligning with the spirit of writs like Mandamus and Prohibition.

### *Comparative Analysis of Writs in Indian and Canadian Administrative Law*

In both Indian and Canadian administrative law, writs and similar legal mechanisms play pivotal roles in ensuring fairness, justice, and accountability. However, there are notable differences in their scope, application, and the legal contexts in which they operate. While India's writs are specific and codified in the constitution, Canada relies on a more flexible approach, emphasizing judicial review and constitutional protections. Both systems share the common goal of ensuring administrative fairness, albeit through distinct legal mechanisms.

### *Indian Administrative Law vs Canadian Administrative Law*

In India, writs like Habeas Corpus, Certiorari, Prohibition, Mandamus and Quo Warranto are constitutionally entrenched remedies. These writs serve as fundamental rights and act as potent tools for citizens to challenge administrative actions. Landmark cases like **A.K. Kraipak v. Union of India**<sup>9</sup> and **ADM Jabalpur v. Shivakant Shukla**<sup>10</sup> demonstrate their significant role

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<sup>10</sup>5622. (n.d.).

in upholding individual liberties and restraining governmental overreach. Indian writs operate within a constitutional framework, empowering courts to review administrative decisions and protect fundamental rights, making them crucial in the realm of administrative justice.

In Canada, while there are no direct equivalents to Indian writs, the legal system emphasizes judicial review, constitutional remedies, administrative law tribunals, and equitable remedies. Landmark cases showcase the importance of judicial review and the principle of reasonableness in administrative decisions. The Canadian Charter, along with administrative law tribunals, ensures citizens can challenge administrative decisions on constitutional and procedural grounds, mirroring the intent of Indian writs albeit in a different legal landscape.

### ***Challenges and Criticisms in the Application of Writs***

***Challenges in India:-***In India, the application of writs faces challenges such as delays in the judicial process, leading to prolonged resolutions of administrative disputes. Additionally, resource constraints and a backlog of cases often hinder the timely issuance of writs. There are criticisms that the wide discretionary powers of authorities may not align with the specific remedies provided by writs, leading to potential misuse or abuse of power. Moreover, the complexity of administrative decisions sometimes makes it difficult for courts to clearly categorise cases under specific writs, leading to inconsistent judgments.

***Challenges in Canada:-***In Canada, despite a robust judicial review system, challenges exist in ensuring uniformity across different administrative tribunals. The standards of review, especially the line between correctness and reasonableness, often become blurred, creating uncertainty in the application of writ-like principles. Additionally, there are concerns about the adequacy of legal representation, especially for marginalized communities, impacting their ability to effectively challenge administrative decisions. Resource limitations within administrative bodies might lead to delays and inefficiencies, hampering the timely resolution of disputes.

### ***Case Studies: Writs in Administrative Matters<sup>11</sup>***

#### ***Indian Case Study: Maneak Gandhi Case<sup>12</sup>***

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<sup>11</sup> Vavilov, A. (n.d.). Minister of Citizenship and Immigration Appellant v.

<sup>12</sup>SC8. (n.d.).



The Indian government seized Maneka Gandhi's passport in this landmark case. She filed a writ suit, stating that her right to travel abroad was essential to her liberty. In enlarging Article 21 (Right to Life and Personal Liberty) of the Indian Constitution, the Supreme Court ruled that personal liberty encompasses travel abroad. This decision expanded the understanding of basic rights and the use of writs to protect individual liberty.

### ***Canadian Case Study: Canada v. Vavilov***

The Canadian government's citizenship cancellation of Alexander Vavilov, a Canadian-born child of Russian spies, was contested. The Supreme Court emphasized reasonableness as the presumptive threshold for administrative decision review. This case showed the need of making administrative choices within permissible limits. It showed how judicial review principles like writs ensure administrative fairness and legitimacy.

### ***Conclusion***

***Key Findings of the Comparative Analysis:-*** The comparative analysis of writs in Indian and Canadian administrative law reveals several key findings. In India, writs are codified constitutional remedies, providing specific avenues to challenge administrative decisions and uphold fundamental rights. In contrast, Canada relies on a flexible framework emphasizing judicial review, constitutional protections, and administrative tribunals. Despite the differences, both systems share the overarching goal of ensuring administrative fairness, albeit through distinct legal mechanisms.

***Trends and Emerging Developments:-***Both countries have been improving administrative justice access in recent years. India has seen a shift towards proactive judicial action, strengthening fundamental rights and harmonising them with modern norms. In contrast, Canada has refined review procedures to emphasize deference to administrative judgments while guaranteeing reasonableness and fairness. Both countries are also dealing with delays and resource limits. Legal processes, judicial efficiency, and access to legal representation are being streamlined to help marginalised people use these remedies.<sup>13</sup>

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<sup>13</sup>Swaraj, A. (n.d.). ADMINISTRATIVE LAW AND ITS ORIGIN & DEVELOPMENT IN INDIA. In *Indian Journal of Law and Legal Research*. <https://lawtimesjournal.in/development-and-evolution-of-administrative-law-in-india-us-uk-and-france/>