
WRITS- THE CHIEF DOMAIN OF THE LAW MECHANISM

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ABSTRACT

A Right without remedy is meaningless formality. It is the remedy which makes right real” these were the words of Dr. Ambedkar when he was describing the Article 32 of the Indian Constitution. The Article 32 of the Indian Constitution is said to be the “the protector and the guarantor of fundamental rights”. The Article 32 and Article 226 of the Indian Constitution provide the remedies for the enforcement of Rights conferred by this part. The Legal meaning of the “writs is command in writing in the name of the court”. These are legal documents which order a person or entity to perform or cease to perform a work for which they are legally bound. As any provision of the constitution will be meaningless unless and until there are adequate safeguards to ensure enforcements of such provisions. The Indian constitution has provided Five Type of (i) Habeas Corpus, (ii) Certiorari, (iii) Mandamus, (iv) Quo-Warranto and (v) Prohibition. These writs are the saviors of the constitution. Writs provide the safeguards against the infringement of the legal rights of the citizens of India. The Right to file writs is providing to the citizens of INDIA against their infringements of Fundamental Rights and for the enforcement of their fundamental rights. In a number of cases the Hon’ble Supreme Court of India and various High courts of the different states have given the various important judgments.

RESEARCH METHODOLOGY

For the research of this legal essay the researchers have taken reference from the Bare Acts, various books i.e Constitution Law Of India By J.N. Pandey , Framing of India's Constitution by B. Shiva Rao Bare Acts , as well as the various online search engines such as Indian Kanoon.com, Manupatra, LexisNexis, etc.

HYPOTHESIS

The writs have been an important part of the Indian Constitution since the formation of the constitution but still many people are not aware about the same. The government of India should organize various campaigns to bring the awareness to the citizens about the Writs being the important tool to safeguard the rights of the people. Also the topic of writs should be included in the study pattern of the students so that they will be aware about the same.

INTRODUCTION

The constitution of India has given a wide range of powers to the Supreme courts and the High courts.

One of the major powers of the courts is to issue writs.

“A writ is a form of a written command in the name of the court or other legal authority to another person by which such person has to act or abstain from acting in a certain way.”

Article 32 of the Indian Constitution has granted the authority to the Supreme Court to issue writs whenever any fundamental rights of a citizen are violated. The person whose fundamental rights have been violated can directly contact the Supreme Court and then the Court can issue the writ for enforcing such right

Article 226 of the Indian Constitution has granted the authority to the High Courts to issue writs where any person can reach up to the High Courts for any of the matters except the infringement of fundamental rights.

There are five types of writs which can be issued by the courts, they are as follows-

1. Habeas Corpus

Habeas Corpus means “let us have the body” which states that a person under arrest shall be brought by the detaining authority before a judge or into the court so as to examine whether the person has been detained lawfully or otherwise and If the court is convinced that the person is illegally detained when there is no valid ground, then the court can issue orders for his release. The writ of Habeas Corpus ensures that any person can be released from unlawful detention. It is the most valuable Writ for personal sovereignty. This writ can be applied by any person who is unlawfully detained or can be made by any person on the behalf of the prisoner. The writ of Habeas Corpus can be made both in a formal or an informal manner. Also, a person cannot make the application for the writ successively to different judges if the application is once rejected by one judge (due to the principle of res judicata).

2. Certiorari

The writ of Certiorari is a writ where the Supreme Court issues the order to the lower court to transfer the matter to the Supreme Court itself or to another superior authority for proper consideration. This writ is corrective in nature and means the writ rectifies the errors on record. This writ is issued when there is a violation of principles of natural justice or there is a fundamental error in the procedure followed by the lower courts or when the lower court steps out of its jurisdiction and entertains the case. This writ lies against the bodies which are both judicial and quasi-judicial in nature.

Brief Facts about Certiorari In India:-

Before 1991 Certiorari can only be issued against the judicial and quasi-judicial authorities and not against the administrative authorities

But In 1991 the Supreme Court of India stated that the writ of Certiorari can even be issued against the administrative authorities affecting the rights of the individuals.

3. Mandamus

Mandamus is a Latin word which means “we command”. This writ allows the Superior Court to order the inferior courts to do an act or to abstain from doing an act. The purpose of issuing this writ is to keep a check upon the activities of the lower legal entities. It is issued to check upon the performance of the public duties and to rectify the errors made by them. The petitioner has to show the court that there was a duty owed by the authority and such authority has failed to perform the duty. The writ of Mandamus can be issued against any public body, an inferior court, a corporation, or a government. This writ cannot be issued against any private individual

4. Quo-Warranto

The precise meaning of Quo-Warranto is “By what authority or warrant”. This means that the Supreme court or the High Court has the authority to question the private person upon his acts. The main purpose of issuing this writ is to prevent illegal acts of a public office by a person. It is mandatory that the person must be in possession of the office and is using such an office and only then the writ of Quo-Warranto can be issued.

5. Prohibition

The literal interpretation of the word prohibition is “to outlaw”. This writ gives authority to the Court in higher position to issue a prohibition writ against a lower court which is exceeding its

jurisdiction or is acting against the provisions of law. Every court has a prescribed jurisdiction and if the court knowingly or unknowingly exceeds such jurisdiction then such act becomes unlawful where the role of the writ of prohibition comes into the action. The writ of Prohibition is only applicable upon judicial or a quasi-judicial body and it cannot be issued against any administrative body.

Difference Between the Writ Jurisdiction of High Court and Writ Jurisdiction of Supreme Court

- The Powers provided to High Court under Article 226 are wider than the powers provided to the Supreme Court under article 32 as the under Article 32 the Supreme Court is provided powers only to enforce the Fundamental Rights on the other Hand under Article 226 the High Court has the power to enforce the fundamental rights as well as for the enforcement of Ordinary rights.
- The Article 32 of the Indian Constitution is available not only to the citizens but also to any person or even the non-citizens whose fundamental rights have infringed

ROLE OF JUDICIARY

- **Smt. Imtiaz Bano v. Masood Ahmad Jafri & ors.** ¹

The case held that the scope of the power to issue the writ is wider in the case of the High courts as compared to the power of the Supreme court. In this case a mother did file a writ petition for Habeas Corpus under Article 226 to get the custody of 2 children.

- **State of Bihar v. Kameshwar prasad Verma** ²

This case stated that if there are no legal grounds for the detention of the person so detained, he shall be free from arrest and a writ of Habeas Corpus can be issued.

- **Mani subrat Jain v. State of Haryana** ³

1. AIR 1979 All 25

2. 1965 AIR 575,1963 SCR (2) 183

3. 1977 AIR 276,1976 SCR (2) 361

In This case definition of the aggrieved person was stated that if a person's legal rights have been infringed or denied by someone who had the legal duty to do something, then he is said to be an aggrieved person. This definition was given by Justice Ray A.N

- **S. Govinda Menon v. Union Of India⁴**

The case describes that the power to issue writ of prohibition is applicable only when the inferior courts are exceeding the jurisdictional limits or are going against the provisions of law by abusing the judicial powers.

- **Jamalpur Arya Samaj Sabha v. Dr. D Rama⁵**

In this case the Patna High court refused to issue the writ of Quo warranto against the working committee of Bihar Raj Arya Samaj Pratinidhi Sabha which was a private body and not a public office.

- **N. Masthan Sahib V. Chief Commissioner, Pondicherry⁶**

In this case the Supreme Court of India has observed that a right to obtain a writ when the petition establishes a case for it, must equally be a fundamental right. If a fundamental right to a writ is established, the party who establishes such right must be entitled *ex debantio justitiae* to the issue of the necessary writ.

CONCLUSION

The Constitution of India has imparted the authority to issue writs to the Supreme Court and High Court under article 32 and article 226 respectively. The writs are the instructions given by the courts to perform certain acts to the public authority and it is the duty of that person to abide by that. These writs play a vital role in protecting the rights of the people and have also played a major role in improving the sectors of judicial review of courts. There are five types of writs namely Habeas Corpus, Mandamus, Quo-Warranto, Certiorari and Prohibition and all of these writs hold a different purpose to compel the authorities by one way or the other to fulfil the duties which are bound to perform under the law. The writs ensure the rule of law and a

4. 1967 AIR 1274,-967 SCR (2) 566

5. 1980 SCC 488

6. AIR 1962 SC 797:1962(2)SCA 401

check and equalisation upon the three organs of the legal framework. This is the main reason why the Article 32 of the Indian Constitution is known as the backbone of the Indian Constitution.

SUGGESTIONS

The writs are issued to carry on the proper functioning of the people in the public authority and also for the proper functioning of the government. The judiciary must play a vital and a strict role in protecting the procedure of law and ensure that everything is managed in a proper way to maintain the law and order without any breakdowns in the system.