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Writs in India: An Examination of Legal Instruments

The etymology of the term 'Writ' originates from Old English, as a generic term used to denote a written matter. These legal remedies, inherited from the common law system in Britain, are essential to preserving the balance of power between the government and its people.

A writ is a formal legal document or a written order issued by a Court or some other Legal Authority that is empowered in this behalf. A writ can be issued to empower a person to do an act or even to abstain from doing something.

In India, both the Supreme Court and the High Courts are authorized under the Constitution to issue writs.

Article 32 of the Constitution of India, which is also known as 'the heart and soul of the constitution as referred to by Dr. Ambedkar, empowers the Supreme Court of India to issue writs and Article 226 empowers the High Court for the same. The difference between these articles and the power inferred from the Supreme Court and the High Court is that Article 32 empowers the Supreme Court to issue writs to give constitutional remedies in case of violation of the Fundamental Rights of Indian Citizens. On the other hand, the High Court can issue writs in all cases of violation of rights.

Types of Writs in India

There are 5 types of writs in India which are as follows:

1. Writ of Habeas Corpus

The word Habeas Corpus translates to "produce the body." This writ serves as a remedy against illegal detention or imprisonment. It directs the custodian to produce the detained person before the court, enabling judicial review of the legality of their detention.

Conditions for Habeas Corpus:

- An individual should be in the custody of another,

- Family members or Relatives can file an application and even strangers can file an application in the public interest,
- Formal or Informal applications can be filed,
- The same application cannot be made successively to different judges of the same court,
- The formalities and procedures, in whole or in part, that are required while making the arrest are not followed by police.

For Example: In cases of unlawful detention, such as arbitrary arrests, individuals can file a petition in the court for a writ of habeas corpus to be released or to challenge the legality of their detention.

This writ can not only be filed for unlawful detention but also for protection from cruel or indecent behavior during the detention.¹

2. Writ of Mandamus

Mandamus means "we command." This writ is issued by a superior court to a lower court, public authority, or government official, compelling them to perform a duty that they are legally obligated to fulfill. It aims to prevent the abuse of power or negligence in the performance of public duties.

Conditions for Mandamus:

- Petitioner must have a recognized legal right
- There should be an infringement of the said right,
- The Petitioner must demand an authority to perform a duty and there must be non-performance of the duty that the Authority owes to the Petitioner,
- Absence of other remedy².

For Example: If a government department fails to provide essential services, such as issuing passports, affected individuals can seek a writ of mandamus to compel the authorities to fulfill their duties.

3. Prohibition

Prohibition is a preventive writ that prohibits a lower court or tribunal from proceeding with a case that falls outside its jurisdiction or involves legal errors. It aims to prevent injustice by stopping proceedings that are likely to result in an unlawful outcome.

¹ Sunil Batra v. Delhi Administration, AIR 1980 SC 1579

² Suganmal v. State of M.P, AIR 1965 SC 1740

Conditions of Prohibition:

- Lower court or tribunal goes against its jurisdiction as provided by law,
- The proceeding in question must be pending in the lower court or tribunal,
- Application is made against a judicial or quasi-judicial body, etc.
- If a lower court or tribunal has only part jurisdiction then the writ will be issued against the act which is partly outside the jurisdiction,

For Example: If a tribunal continues to hear a case despite lacking jurisdiction or committing legal errors, concerned parties can seek a writ of prohibition to halt the proceedings and prevent an unjust outcome.

4. Certiorari

This writ, meaning "to be informed," is issued by a higher court to quash the orders or decisions of lower courts, tribunals, or quasi-judicial bodies if they have acted beyond their jurisdiction or in violation of the principles of natural justice. It ensures that justice is administered fairly and according to the law.

Conditions of Certiorari:

- The body or person should have legal authority.
- Authority should be related to questions affecting the rights of people,
- The body or person has a duty to act judicial while functioning,
- Person or body has exceeded their jurisdiction or legal authority, etc.

For Example: When a lower court violates procedural rules or exceeds its jurisdiction, parties can approach a higher court for a writ of certiorari to nullify the lower court's decision and ensure a fair trial.

5. Quo-Warranto

Quo Warranto means "by what authority" and is used to challenge the legality of a person holding a public office or position. This writ requires the holder to prove their authority or justify their right to hold the office.

Conditions of Quo-Warranto:

- A Public Office should be wrongfully assumed by a private person,
- The Office should be a creation of the constitution or other statute³,
- The office should be permanent,

³ University of Mysore v. CD Govinda Rao, AIR 1965 SC 491

- An Application should be made against the person who uses the office,

For Example: When there are allegations of an individual holding a public office without the proper authority or qualifications, the public can approach the Court to remove such person from his position.

The relevance of these writs lies in their ability to protect the fundamental rights of citizens and ensure that justice is served. They provide a mechanism for individuals to seek legal recourse against any violation of their rights. Writs are the foundation of judicial activism and operate as a check on oppression and injustice. These legal recourses enable citizens in India's democratic system to hold the government responsible and defend their fundamental rights. They play a vital role in India's legal system and are a testament to the Constitution of India's commitment to democracy, fundamental rights, and the rule of law.