

LEGALFOXES LAW TIMES

ARTICLE 226 & 227: A COMPARATIVE STUDY

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ABSTRACT

Indian Constitution has ensured various fundamental rights to its citizens incorporated in part III and if any of these basic fundamental rights are infringed then the Constitution gives us the power to appeal to the High Courts as well as the Supreme Court. The High Courts of the country are vested with the writ jurisdiction under article 226 and article 227. The writ jurisdiction is a very broad and significant tool given to the High Courts. This paper is a comparative study of the scope, importance and distinction between Article 226 and Article 227 of the Indian Constitution.

INTRODUCTION TO THE ARTICLES

The writ jurisdiction is a very strong and significant instrument given to the High Courts under the Constitution of India. The motive behind writ jurisdiction is to that important directions in the form of writs can be given both as administrative orders just as on the judicial. As known, Constitution of India has offered forces to the High Courts under Article 226 to give directions or writs of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari according to the specific prerequisite and the need. Under Article 227, the High Courts are vested with the powers of Superintendence over all Courts and Tribunals. The powers vested to the High Courts under Article 227 are more extensive than the one gave on the High Court by Article 226. This is on the grounds that the intensity of Superintendence under Article 227 isn't dependent upon the details of the technique or conventional shackles which are found in writ jurisdiction.

SCOPE AND NECESSITY OF ARTICLE 226

The writs have been taken by India from England where they had a since a long time ago chequered history of improvement and therefore have accumulated various details. Under article 226 of the constitution, the High Court has the power to issue the writs and orders as are necessary for administrative actions and judicial or quasi-judicial action.

The Article 226 enables High Courts to give orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. Such directions, writs or order might be given for the implementation of basic fundamental rights or for some other reason. It is settled that the remedy accommodated in Article 226 of the Constitution of India is an option and the High Court always had the discretion to revoke such relief in specific conditions despite the fact that a lawful right may have been encroached. Accessibility of an alternate remedy is one of such deliberation which the High Court may consider to revoke to use its jurisdiction, however this principle doesn't make a difference to the requirement of basic fundamental rights either under Article 32 or under Article 226 of the Constitution.

In every single other situation where no fundamental right is entailed, it has been decided that the High Court would not practice its jurisdiction under Article 226 when another alternative, effective legal remedy is accessible and the petitioner has not availed it, before going to the High Court. Obviously, Article 226 doesn't states on this point; it doesn't state in such a significant number of words anything about this issue, however the Courts have themselves developed this rule as a sort of deliberate limitation on their jurisdiction under Article 226.

Types

There are five types of writs –Habeas corpus , Quo-warranto , Mandamus , Certiorari and Prohibition.

Habeas corpus.

The latin term habeas corpus signifies 'you should have the body ' and a writ for securing the liberty or freedom was called habeas corpus ad subjiciendum. By this writ the court coordinates the individual or authority who has kept someone else to bring the body of the detainee before the court in order to empower the court to decide the legitimacy, jurisdiction or justification for such confinement. The important point of the writ is to guarantee quick judicial review of

supposed unlawful detainment on freedom or liberty of the detainee or confinement. The incredible estimation of the writ is that it empowers quick assurance of the right of an individual with respect to his liberty. Under Article 22, an individual arrested is required to be presented before a judge inside 24 hours of his arrest, and inability to do so would qualify the arrested individual for be discharged. Habeas corpus can't be conceded where an individual has been committed to custody under an order from a court when at prima facie the order doesn't have all the earmarks of being without jurisdiction or entirely illicit. Writ of habeas corpus can be summoned against the state as well as against any person who is holding any individual in unlawful care or detainment. In such conditions it is the obligation of the police to put forth important attempts to see that the detention is got discharged yet , if in spite of such endeavours, if an individual isn't found , the police can't be put constrained to do impossible.¹

In **Gopalanvs Government of India**, the Supreme Court held that the earliest date to which to the legality of detention might be examined is the date on which the application for the same is made to the court.

QUO WARRANTO:

The term quo warranto means 'what is your authority'. The writ of quo warranto is used to judicially control executive activity in the matter of making appointments to public offices under important statutory provisions. The writ is additionally used to shield an employee from the holder of a public office to which he has no right. The writ asks the holder of a public office to show to the court under what authority he is holding the workplace being referred to. If the person isn't qualified for the office or workplace, the court may restrict him from acting in the workplace and may likewise proclaim the workplace to be empty. The writ procedures not just give a weapon to control the official from making appointments to public office against law yet additionally will in general protect people in general from being denied of public office to which he/she has a right

Quo warranto obstructs illegal usurpation of public office by any person. The important components to be fulfilled by the court before giving a writ is that the workplace being referred

¹ Available at <https://www.lawjugaad.com/article-226-of-indian-constitution-with-explanation-and-notes/>
(26/2/20)

to must be public, made by the constitution or a law and the individual holding the workplace isn't legally qualified to hold the workplace in clear violation of provisions of the law or Constitution. It is the individual against whom writ of quo warranto is coordinated, who is required to appear by what authority the individual is qualified for holding the office. While giving such a writ , the High court just makes an open declaration of the illegality of the appointment.²

In **LAKHAN PAL vs A.N. RAY** (1975), A.N. Ray was appointed as C.J.I. ignoring the 3 senior judges , the Supreme Court quashed the petition on the ground that the writ would not serve the purpose since the 3 senior judges has already resigned.

MANDAMUS

The expression Mandamus is latin term which means 'we command'. Mandamus is a judicial order issued by a court to any statutory or non-statutory authority to carryout a public duty imposed by law. For instance, when a body discards to decide an issue which it is bound to decide, it can be ordered to decide on the same.

Mandamus can be issued when the Government repudiates to itself a jurisdiction which it doubtlessly has under the law, or where an authority vested with a power inappropriately revokes to exercise it. The objective of mandamus is to keep the public authorities within restrictions of their jurisdiction while practicing public function. Mandamus can be issued to any authority in regard of the function – legislative, administrative, quasi-judicial, judicial. Mandamus is not issued when Government is under no obligation under the law. It is an important writ to check arbitrariness of administrative action. It is popularly known as a 'Writ of Justice'.

In **Gujarat State Financial Corporation vs Lotus Hotel Ltd.**, the corporation entered into an agreement with Lotus Hotels to provide finance for construction of a hotel and did not release the funds. The Gujarat High Court issued the writ of Mandamus to release the fund as agreed.

CERTIORARI

² Available at [https://www.lawjugaad.com/article-226-of-indian-constitution-with-explanation-and-notes/\(27/2/20\)](https://www.lawjugaad.com/article-226-of-indian-constitution-with-explanation-and-notes/(27/2/20))

'Certiorari' is a latin word which means 'to be informed of'. This writ empowers the Supreme Court and High Court over the lower Court to correct the illegality of their order. Certiorari is an order or command by the Supreme Court or High Court to lower court or quasi-judicial or administrative body. The lower court is directed to transmit the records to check whether the order given by such authority is unlawful or against the principle of Natural Justice. Grounds for issuing writ of Certiorari are:

- Judicial error or lack of jurisdiction.
- If the authority is incompetent.
- Improper Constitution of such authority.
- Jurisdiction is unconstitutional.
- Violation of the principles of Natural Justice.

In **A.K. KRIPAK vs U.O.I.** (1970), The Supreme Court issued the writ of certiorari to quash the selection list of the Indian Forest Service on the ground that one of the selected candidate was ex-officio member of the selection committee.

PROHIBITION

It is issued to prevent the decision or administration action so that it cannot proceed further while the writ of certiorari to quash the decision already given.

Writ of Prohibition means to forbidden or to stop and is popularly known as 'stay order'. This writ is issued when a subordinate court or a tribunal tries to transgress the limits or powers vested in it. The writ of Prohibition is issued by the High courts or the Supreme Court to any subordinate court or quasi-judicial body prohibiting from continuing the proceedings in a specific case, where it has no jurisdiction. After the issue of this writ, proceedings in the lower court and so on comes to a stop.

Power of H.C. to make writs and orders in Income-tax contexts.

The High Court may issue a writ of prohibition to preclude the income-tax authorities from acting in abundance of their jurisdiction, or a writ of mandamus or a writ of certiorari under

Article 226 of the Constitution to propel the income tax authorities to play out their legal duties or to refund the money illegitimately recovered from the petitioner.

Further, the High Court can issue a writ of certiorari to suppress quasi-judicial proceedings taken by the income-tax authorities without the jurisdiction or in overabundance of jurisdiction, or to subdue an order that is vitiated by a mistake evident on the essence of the record or which is passed infringing the principles of natural justice, or to suppress an order that has been given by violating natural justice or constitution. The Court will meddle by a writ if the action is mala fide or doesn't comply to the legal requirements, or if the activity adds up to simply an exercise in impotence.³

Court review of order

The High Court is responsible to review its order in a writ appeal. A subsequent writ petition challenging a similar order on various grounds would not be engaged. Dismissal of a writ petition by High Court on merits — regardless of whether after contest, or without notice to the opposite side but by a speaking order — bars an appeal to the Supreme Court under Article 32; the only remedy of the petitioner is to appeal against the command for dismissal. If the Court dismisses a writ petition at the very admission stage or in the wake of issuing a rule nisi, it should record the reasons behind such dismissal.

The Madras High Court held in **Aditanar Educational Institution vs Assistant Director of Income-Tax** that the relief under Article 226 of the Constitution of India can be allowed notwithstanding the accessibility of alternate remedy under the statute, just depending on undisputed facts. At the point when the High Court finds that factual disputes are present, it would not be wise to deal with them in a writ appeal.

SCOPE AND NECESSITY OF ARTICLE 227

Article 227 of the Constitution of India confers on each High Court the power of superintendence over all the courts and tribunals all through the territories according to which it exercises jurisdiction aside from any court or tribunal constituted under any law in relation to armed forces. Without prejudice such power to the High Court has been conferred with certain

³ TG GROUP, ARTICLE 226-POWER OF HIGH COURTS TO ISSUE WRITS AND ORDERS, (JUNE 4,2020, 10:00 P.M.),

particular powers by sub-Articles (2) and (3) of Article 227. It is all around settled that the power of superintendence conferred on the High Court is judicial and administrative, and is capable for being summoned at the instance of any individual aggrieved or may even be exercised suomotu. The vital thought behind vesting such wide power of superintendence in the High Court is paving the way of justice and expelling any snags in that. The power under Article 227 is more extensive than the one conferred on the High Court by Article 226 as in the power of superintendence isn't dependent upon those technicalities of procedure which are to be found in certiorari jurisdiction. Else the parameters summoning the exercise of power are practically comparable.

The historical backdrop of supervisory jurisdiction practiced by the High Court, and how the jurisdiction has culminated into its current shape under Article 227 of the Constitution, was followed in **Waryam Singh and Another. Vs Amarnath and Another.** (1954). The jurisdiction can be followed back to Section 15 of High Courts Act 1861 which gave a power of superintendence to the High Court separated from and autonomously of the provisions of different laws conferring revisional jurisdiction on the High Court. Section 107 of the Government of India Act 1915 and afterward Section 224 of the Government of India Act 1935, were likewise worded and replicated the antecedent provision. In any case, sub-section (2) was incorporated in Section 224 which restricted the jurisdiction of the High Court to such decisions of the inferior courts which were not in any case subject to revision or appeal. That restrictions had not been conveyed forward in Article 227 of the Constitution.⁴

In **Chandrasekhar Singh and Ors. Vs Siva Ram Singh and Ors.**, (1979), the extent of jurisdiction under Article 227 of the Constitution of India came up for the consideration of this Court with regards to Sections 435 and 439 of the Criminal Procedure Code which precludes a second revision of the High Court against judgement in first revision rendered by the Sessions Judge. On a review of prior judgements, the three Judges Bench summarized the situation of law as under:

(I) that the powers conferred on the High Court under Article 227 of the Constitution of India can't, in any capacity, be reduced by the provision of the Code of Criminal technique;

⁴ WARYAM SINGH AND ANOTHER VS AMARNATH AND ANOTHER, 1954 AIR 215, 1954 SCR 565

(ii) the extent of impedance by the High Court under Article 227 is confined. The power of superintendence conferred by Article 227 to the High Courts is to be exercised sparingly and just in suitable cases so as to keep the subordinate Courts inside the limits of their authority and not for rectifying mere errors;

(iii) that the intensity of judicial interference under Article 227 of the Constitution isn't more significant than the power conferred under Article 226 of the Constitution of India;

(iv) that the power of superintendence under Article 227 of the Constitution of India can't be conjured to correct an error of fact which just a Superior Court can do in exercise of its statutory power as the Court of Appeal; the High Court cannot, in exercise of its jurisdiction under Article 227, convert itself into a Court of Appeal.⁵

DIFFERENCE BETWEEN BOTH THE ARTICLES

The distinction between Articles 226 and 227 of the Constitution of India was well brought out in the case of **UmajiKeshaoMeshram and Ors. Vs Smt. Radhikabai and Anr.**, (1986). Procedures under Article 226 are in exercise of the original jurisdiction of the High Court while procedures under Article 227 of the Constitution are not original but rather just supervisory. Article 227 generously recreates the provisions of Section 107 of the Government of India Act, 1915 aside from that the power of superintendence has been stretched out by this Article to tribunals too. In spite of the fact that the power is likened to that of an ordinary court of appeal, yet the power incorporated under Article 227 is planned to be utilized sparingly and just in suitable cases to keep the subordinate courts and tribunals inside the limits of their authority and not for correcting errors. The power can be exercised in cases occasioning grave foul injustice or failed to provide justice, for example, when (I) the court or tribunals has assumed of the jurisdiction which it doesn't have, (ii) has neglected to practice a jurisdiction which it has, such disappointment occasioning a failure to give justice, and (iii) the jurisdiction however accessible is being practiced in a way which tantamounts to violating the restrictions of jurisdiction.⁶

Upon a review of the decided cases and a study of the occasions wherein the High Courts have practiced jurisdiction to order a writ of certiorari or to exercise supervisory jurisdiction under

⁵ CHANDRASHEKHAR SINGH & ORS. VS SIYA RAM SINGH & ORS., 1979 AIR, 1979 SCR (1) 947

⁶ UMAJI KESHAO MESHARAM & ORS. VS RADHIKABAI W/O ANANDRAO BANAPURKAR & ANR., 1986 AIR 1272, 1986 SCR (1) 731

Article 227 in the given realities and conditions in an assortment of cases, it appears that the differentiation between the two jurisdiction stands nearly demolished in practice. Most likely, this is the reason behind why it has gotten customary with the lawyers labelling their petitions as commonly under Articles 226 and 227 of the Constitution, however such practice has been expostulated in some legal proclamation. Without going into the technicality of the subject, we dare to express the expansive general distinction between the two jurisdictions. Firstly, the writ of certiorari is an exercise of original jurisdiction by the High Court whereas supervisory jurisdiction under Article 227 isn't an original jurisdiction and in this sense it is likened to appellate or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the procedures having been certified and sent up by the subordinate court or tribunal to the High Court, the High Court whenever slanted to practice its jurisdiction, may just invalidate or subdue the proceedings and then do no more. In exercise of the supervisory jurisdiction the High Court may not just subdue or put aside the decried proceedings, judgment or order however it might likewise make such directions as the facts and conditions of the case may warrant, might be by method of directing the subordinate court or tribunal to the way in which it would now continue further or once again as commended to or guided by the High Court. In suitable cases the High Court, while practicing supervisory jurisdiction, may substitute such its very own decisions instead of the impugned decision, as the subordinate court or tribunal ought to have made. In conclusion, the jurisdiction under Article 226 of the Constitution is fit for being exercised on a petition made by or for the benefit of the party aggrieved; the supervisory jurisdiction is fit for being practiced suomotu also.⁷

Conclusion.

The jurisdiction of Articles 226 and 227 of the Constitution is huge and must be exercised sparingly. It very well may be exercised in correcting the errors of jurisdiction, however not to disturb pure findings of the fact, which is inside the province of an appellate court only. This is the exactly where the power of correction comes into picture. The reason for correction or revision is to empower the revision court to fulfil its objective with regards to the accuracy, legality or decency of any discovering, sentence or order recorded or passed and concerning the regularity of any proceedings of the subordinate court. The jurisdiction of Article 226 can't be

used as a Revision or Appeal court as the dismissal of the order by the subordinate court doesn't emerge the question of infringement of fundamental right when the substitute remedy of appeal is accessible to the aggrieved



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