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AN OVERVIEW OF WRITS UNDER ARTICLE 32 AND 226 OF THE INDIAN CONSTITUTION

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I. Introduction

Since the inception of the Constitution of India, law of writ is a strong bludgeon provided to the citizen of India to minimize or to cure inequality arisen out of the government action.¹ The main aspect of this writ jurisdiction through Articles 32 and 226 is to protect the fundamental as well as legal rights of the citizen of India. Writ is the basic structure of the Constitution which cannot be amended. There is a lack of knowledge and awareness about the basic fundamental rights of the citizens, they even not concern about their rights and duties. Everyone is equal in the eyes of law and no one should be deprived of their rights on the ground of race, caste, sex, place of birth, religion as well as should not be discriminated on the above ground²

II. Historical Perspective of Writ Jurisdiction:

Our founding fathers after a close study of the various Constitutions of the world realized that the aspirations of the people are to be reflected in the constitution³. In British Law, an original writ is a letter which is mandatory, issuing through the Hon'ble Court.⁴ In older days, it was a written order to someone to do some act and for the purpose of elections for the House of Representatives or State Governors, writs were used by the medieval British Kings to issue summon to person of the Parliament⁵ The origin of writs took place in the English judicial system. The law of writs originated from orders passed by the King's Bench in England.⁶The US

¹ Debabrata Basu, Protection of Fundamental Rights through Writ Jurisdiction: a Critical Study.

² Jain Prof. M.P,(2008) Indian Constitutional law, Nagpur.

³ Pandey Dr. J.N, (2007) Constitutional Law of India, central law Agency.

⁴ Halsbury's Laws of England, (4th edn), Vol. 11, para 1452, p. 768.

⁵ Halsbury's Laws of England, (4th edn), Vol. 11, para 1452, p. 768.

⁶ https://shodhganga.inflibnet.ac.in/bitstream/10603/132538/5/05_chapter%202.pdf.

Constitution assumed the existence of the prerogative writs of English Common Law and except in national emergency all prerogative writs were enforceable by the American Courts and only the writ of habeas corpus could be suspended during the national emergencies.

III. Writ Jurisdiction in India

Article 32 and Article 226⁷ of the Constitution provide two separate but parallel provisions of writ jurisdiction with the Supreme Court and High Courts respectively. Article 32 has been incorporated as a fundamental right and it provides for the constitutional remedy against the violation of fundamental rights. This remedy is limited to the violation of fundamental rights only under Article 32.

However, it is guaranteed under Article 32(2)⁸ and as per specific provision of Article 32(4) it cannot be suspended otherwise, except, as provided under the Constitution. Therefore, the right to move the Supreme is almost an absolute right and guaranteed under the Constitution itself except in case of suspension of this right as provided under the Constitution (emergency provisions). Though to grant relief or not to grant is absolutely the discretion of the Supreme Court but the apex court can be moved for violation of fundamental right as a matter of right. But to this limited extent, it is a different matter with the High Court.⁹

The provision of Article 226 is a constitutional provision, but it is not a fundamental right. There is no guarantee attached to it unlike Article 32. The scope of Article 226 is wider than that of Article 32 because the operation of Article 226 is not limited to violation of fundamental rights only, but it can be operated for other purposes also. In *Sarvepalli Ramaiah (D) Thr. Lrs. & Ors. V/s District Chittoor Dist. & Ors.*¹⁰ It was observed by the Hon'ble Supreme Court that "*Administrative decisions are subject to judicial review under Article 226 of the Constitution, only on grounds of perversity, patent illegality, irrationality, want of power to take the decision and procedural irregularity. Except on these grounds administrative decisions are not interfered with, in exercise of the extra ordinary power of judicial review*" However, in entertaining the writs, the High Court enjoys wide and open powers as a matter of discretion. It is

⁷ 9 Durga Das Basu, Commentary on Constitution of India (just S. S, Subramani ed., 9th Ed., 2017).

⁸ V.N. SHUKLA, "Constitution of India", EBC (Eastern Book Company).

⁹ SEERVAI, H.M. "The Constitutional Law of India", Universal Law Publishing Co. Pvt. Ltd.

¹⁰ CIVIL APPEAL NO. 7461 OF 2009.

a plenary power of the High Court without any fatter from any provision of the Constitution. Since it is an extraordinary jurisdiction with the High Court, it has no! to be resorted to in routine. The basic objective of this power is to ensure justice wherever the miscarriage of justice is manifest.

The High Court has to reach the remotest comer of justice to eliminate injustice. The Writ Jurisdiction of Supreme Court can be invoked under Article 32 of the Constitution for the violation of fundamental rights guaranteed under Part – III of the Constitution. Any provision in any Constitution for Fundamental Rights is meaningless unless there are adequate safeguards to ensure enforcement of such provisions. Since the reality of such rights is tested only through the judiciary, the safeguards assume even more importance.

III. Various kinds of Writs:

1. Habeas Corpus:

Writ of habeas corpus can be issued for preserving the liberty of a person, who is being illegally detained. It can be invoked against the state as well as against the person within whose custody the aggrieved person is. It came into the picture for preserving the rights and liabilities of

Writ of habeas corpus is a powerful weapon available before a common man who has been wrongfully detained by the person or state. This writ provides a fast and powerful remedy against illegal detention.¹¹ In *State of Bihar v Kameshwar prasad verma*.¹² the court stated that a writ is an order calling the person who was arrested or jailed the alleged person for producing the aggrieved before the court, for knowing the grounds of his detention and if not found any legal ground for his detention then let the aggrieved be free from arrest and let him enjoy his freedom. In *Sapmawia v Dy. commissioner*¹³, The main focus of habeas corpus writ is preserving the right of the appellant's freedom by a quick judicial review for pleaded wrongful detention. This writ came before the existence of a statute, therefore, deep-rooted into the history of our common law.

¹¹ A.D.M., Jabalpur vs Shivakant Shukla, (1976) 2 SCC 521 (652) : AIR 1976 SC 1207: (1976) Supp SCR 172.

¹²AIR 1965 SC 575.

¹³Writ Petition No. 269 of 1970.

2. Mandamus

History of this writ say that it is a command, issued in the name of the crown by the court of king's bench to the subordinate court, inferior tribunal, board or to any person requiring it for him to perform a public duty imposed by law.¹⁴ Therefore, a writ of mandamus is a command given by any high court or supreme court to the lower court or any tribunal or board or to any other public authority to perform their public duty imposed upon them by law. It's primary objective is to supply defects of justice and prevent rights of the citizen. In *State of Mysore v K.N.Chandrasekhara*¹⁵ the high court has issued a writ of mandamus directing the public service commission to include the names of the six petitioners in the list prepared by the Commission under Rule 9(2) of the Rules for appointment to the cadre of Munsiffs. In the view of the High Court the appointment of ten candidates whose names were included in the list under R. 9(2) as fit for promotion could not be disturbed, yet the six applicants should be added to the list and appointments should be made out of that list. Such direction as given by the high court to public service commission can also be issued against any person or body corporate also to perform their public duty.

3. Prohibition

Writ of prohibition is as old as common law. Initially it was used to limit the jurisdiction of ecclesiastical by restraining them from acting without or in excess of their jurisdiction and later it is used by common law courts.¹⁶ It is an extraordinary writ of preventive nature. It prevents courts, tribunal, quasi-judicial bodies and other officers from exercising their power beyond their jurisdiction or exercising those powers which are not vested on them. Writ of prohibition is issued to the court or any tribunal to bar them from doing something what they are about to do. This bar is applied whenever a subordinate court or tribunal hears the matter beyond their jurisdiction or on matters on which they have no jurisdiction. In [*East India Commercial Co. Ltd. v Collector of Customs*](#)¹⁷ an observation is given by the Supreme Court that writ of prohibition is an order directing inferior courts and tribunals to stop from proceeding therein on the ground that

¹⁴ Bakshi,P.M,(2002) The Constitution of India, Universal law Publishing.

¹⁵AIR 1965 SC 532.

¹⁶ V.G. RAMACHANDRAN'S, "Law of Writs" Eastern Book Company.

¹⁷AIR 1962 SC 1893

the proceeding are taking place with excess jurisdiction or lack of jurisdiction. The Supreme Court has explained the jurisdiction of the court for grant of a writ of prohibition. It says that power to issue writ of prohibition is primarily supervisory and the main object for behind the writ of prohibition is to restrain inferior courts or tribunals from exceeding their jurisdictional limits.¹⁸

4. Certiorari

Writ of certiorari has been defined as one of the most effective and efficient remedies taken from common law. Certiorari means “to certify”. It is an order issued by the High Court to an inferior court or any authority exercising judicial or quasi-judicial functions. The main object of this writ is to keep the inferior courts, judicial and quasi-judicial authorities within their limits of jurisdiction and if the act in excess of their jurisdiction their decision will be quashed by the High Court and Supreme Court by issuing a writ of certiorari.

Lord Atkin stated that writ of certiorari may be issued “wherever anybody of person having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority.” This statement has been approved by the Supreme Court in many cases like in [Province of Bombay v Khushaldas](#)¹⁹ and held the four components of this writ that are-

1. Body of persons
2. Such body is having some legal authority
3. Legal duty for determining the question affecting the rights of the subjects
4. Duty to act judicially

5. Quo Warranto

Writ of quo warranto is used to prevent the person from wrongfully or forcefully holding any office or from continuing the office. By writ of quo warranto court has the authority to ask the

¹⁸[S. Govinda Menon v Union of India](#) AIR 1967 SC 1274

¹⁹AIR 1950 SC 222.

holder of the office that by what authority he is holding the office.²⁰ Earlier in England this writ was issued by the king or on his behalf against any person who claim or take any office, or privileges of The Crown. And later this writ was misused by the authorities that led to substitution in proceedings by way of information.

Writ can be issued only if the office in question is a **public office** and any person claiming a writ must establish this fact first. Also it needs to be proved that the office in question is usurped without legal authority. Therefore that lead to an enquiry that the person claimed to be usurped the office is appointed legally or not. In University of Mysore v C.D. Govind Rao²¹ the respondent claimed that appointment of appellant no. 2 is illegal as he does not fulfill the first condition mentioned in the advertised inviting application. In respect of which High Court issued the writ of quo warranto and held the appoint of respondent no. 2 (Anniah Gowda) illegal. Appellant raise an appeal before the Supreme Court. The decision of the High Court was held incorrect by the court, as High Court didn't take into consideration the Degree of Master of Arts of theDurham University obtained by Anniah Gowda.

It was held that the High Court is correct in finding that Anniah did not possess a high second class degree of an Indian University but he did possess the alternative qualification of Master of Arts of a foreign University.

IV. Conclusion and suggestions

There is a lack of knowledge and awareness about the basic fundamental rights of the citizens, they even not concern about their rights and duties. Article 226 of the Constitution allows the High Court to not only enforce Fundamental Rights but the use of words '*other purposes*' also allows the High Court to enforce Legal Rights as well. It is the strongest remedial action against the Government Authority. The heavy traffic of litigation on a narrow track of justice has almost created a jam from where going back and forth both have become tedious. The Supreme Court has been continuously stressing this necessity in various judgments delivered from time to time. The second level of operation may be in the form of filling up the vacancies as sanctioned

²⁰P. Ishwara Bhat, Law & Social Transformation, Eastern Book Company, Lucknow, Reprinted 2012.

²¹AIR 1965 SC 491.

for additional judges in all the High Courts. For increasing pressure on the High Court is the lengthy process of civil courts and if the efficiency of the lower judiciary is improved, it may reduce some pressure on the High Courts. Another factor to improve the justice delivery system is the will and priority of the Government

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