



“बेटी बचाओ, बेटी पढ़ाओ”

JAYOTI VIDYAPEETH WOMEN'S UNIVERSITY, JAIPUR

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INTRODUCTION

A writ petition can be termed as a formal written order issued by a judicial authority who possesses the authority to do so. The meaning of the word ‘Writs’ means command in writing in the name of the Court. It is a legal document issued by the court that orders a person or entity to perform a specific act or to cease performing a specific action or deed. In India, writs are issued by the Supreme Court under Article 32 of the Constitution of India and by the High Court under Article 226 of the Constitution of India.

Meaning of Writ

Fundamentally, a writ is a formal written order issued by anybody, executive or judicial, authorised to do so. In modern times, this body is generally judicial. Therefore, a writ can be understood as a formal written order issued by a Court having authority to issue such an order. Orders, warrants, directions, summons etc. are all essentially writs. A writ petition is an application filed before the competent Court requesting it to issue a specific writ.

Writs under Indian Constitution

Fundamental Rights are contained in Part III of the Indian Constitution including the right to equality, right to life and liberty etc. Merely providing for Fundamental Rights is not sufficient. It is essential that these Fundamental Rights are protected and enforced as well. To protect Fundamental Rights the Indian Constitution, under Articles 32 and 226, provides the right to approach the Supreme Court or High Court, respectively, to any person whose Fundamental Right has been violated. At the same time, the two articles give the right to the highest courts of the country to issue writs in order to enforce Fundamental Rights.

Kinds of writs

Articles 32 and 226 specifically provide for five kinds of writs. These writs are issued in different circumstances and have different implications. They are:

- **Habeas Corpus**

‘Habeas Corpus’ literally means “to have a body of”. This writ is used to release a person who has been unlawfully detained or imprisoned. By virtue of this writ, the Court directs the person so detained to be brought before it to examine the legality of his detention. If the Court concludes that the detention was unlawful, then it directs the person to be released immediately. Circumstances of unlawful detention are:

The detention was not done in accordance with the procedure laid down. For instance, the person was not produced before a Magistrate within 24 hours of his arrest.

The person was arrested when he did not violate any law.

An arrest was made under a law that is unconstitutional.

This writ ensures swift judicial review of the alleged unlawful detention of the prisoner and immediate determination of his right to freedom. However, Habeas corpus cannot be granted where a person has been arrested under an order from a competent court and when prima facie the order does not appear to be wholly illegal or without jurisdiction.

This writ can be filed by the detained person himself or his relatives or friends on his behalf. It can be issued against both public authorities and individuals.

In *Sunil Batra v. Delhi Administration* (1980 AIR 1579) case, an application was made to the Supreme Court through a letter written by a co-convict on the maltreatment of the prisoners. This letter was taken up by the Supreme Court and it issued the writ of habeas corpus stating that this writ can not only be used against illegal arrest of the prisoner but also for his protection against any maltreatment or inhuman behavior by the detaining authorities.

In *Kanu Sanyal v. District Magistrate Darjeeling & Ors.* (1974 AIR 510) case, the Supreme Court held that rather than focusing on the defined meaning of Habeas Corpus, i.e. produce the body, there should be a focus on the examination of the legality of the detention by looking at the facts and circumstances of the case. It stated that this writ is a procedural writ and not a substantive writ. This case dealt with the nature and scope of the writ of habeas corpus.

- **Mandamus**

‘Mandamus’ means ‘we command’. It is issued by the Court to direct a public authority to perform the legal duties which it has not or refused to perform. It can be issued by the Court against a public official, public corporation, tribunal, inferior court or the government. It cannot be issued against a private individual or body, the President or Governors of States or against a working Chief Justices. Further, it cannot be issued in the following circumstances:

The duty in question is discretionary and not mandatory.

For the performance of a non-statutory function.

Performance of the duty involves rights of purely private nature.

Where such direction involves violation of any law.

Where there is any other remedy available under the law.

The writ of mandamus is issued for keeping the public authorities within their jurisdiction while exercising public functions. The object of mandamus is the prevention of disorder emanating from failure of justice that is required to be granted in all cases where there is no specific remedy established in law. It cannot be issued when the government or public official has no duty to perform under the law.

A writ petition seeking mandamus must be filed by a person in good faith and who has an interest in the performance of the duty by the public authority. The person seeking mandamus must have a legal right to do so and also must have demanded the performance of the duty and it is refused by the authority.

In *All India Tea Trading Co. v. S.D.O.* (AIR 1962 Ass 20) case, the Land Acquisition Officer erroneously refused to pay the interest on compensation amount. A writ of mandamus was issued against the Land Acquisition Officer directing him to reconsider the application for the payment of interest.

In *Suganmal v. State of M.P.* (AIR 1965 SC 1740) case, the petitioner (person who files the writ petition) filed for issuing a writ of mandamus to direct the respondent (opposite party in the writ) for refunding tax. The Supreme Court held that where an assessment order was set aside and the rules concerned did not provide for refund of tax levied, a writ of mandamus cannot be issued. The proper remedy is filing a suit for claiming the refund.

Quo Warranto

‘Quo Warranto’ means ‘by what warrant’. Through this writ, the Court calls upon a person holding a public office to show under what authority he holds that office. If it is found that the person is not entitled to hold that office, he may be ousted from it. Its objective is to prevent a person from holding an office he is not entitled to, therefore preventing usurpation of any public office. It cannot be issued with respect to a private office.

The writ can be issued only when the following conditions are fulfilled:

The public office is wrongfully assumed by the private person.

The office was created by the constitution or law and the person holding the office is not qualified to hold the office under the constitution or law.

The term of the public office must be of a permanent nature.

The nature of duties arising from the office must be public.

In *Kumar Padma Padam Prasad v. Union of India* (AIR 1992 SC 1213) case, Mr K.N. Srivastava was appointed as a Judge of the Gauhati High Court by the President of India by a warrant of appointment under his seal. A petition was filed for issuing a writ of quo-warranto contending that Mr K.N. Srivastava was not qualified for the office. It was held by the Supreme Court that since Mr K.N. Srivastava was not qualified, quo warranto could be issued and accordingly the appointment of Mr K.N. Srivastava was quashed.

In the case of *Jamalpur Arya Samaj Sabha v. Dr D Rama* (AIR 1954 Pat. 297) case, the petitioner filed an application for issuing the writ of Quo Warranto against the Working Committee of Bihar Raj Arya Samaj Pratinidhi Sabha, which was a private body. The High Court of Patna refused to issue the writ of Quo Warranto because it was not a public office.

Certiorari

‘Certiorari’ means to ‘certify’. Certiorari is a curative writ. When the Court is of the opinion that a lower court or a tribunal has passed an order which is beyond its powers or committed an error

of law then, through the writ of certiorari, it may transfer the case to itself or quash the order passed by the lower court or tribunal. A writ of certiorari is issued by the Supreme Court or High Court to the subordinate courts or tribunal in the following circumstances:

When a subordinate court acts without jurisdiction or by assuming jurisdiction where it does not exist, or

When the subordinate court acts in excess of its jurisdiction by way of overstepping or crossing the limits of jurisdiction, or

When a subordinate court acts in flagrant disregard of law or rules of procedure, or

When a subordinate court acts in violation of principles of natural justice where there is no procedure specified.

Prohibition

A writ of prohibition is issued by a Court to prohibit the lower courts, tribunals and other quasi-judicial authorities from doing something beyond their authority. It is issued to direct inactivity and thus differs from mandamus which directs activity.

It is issued when the lower court or tribunal acts without or in excess of jurisdiction or in violation of rules of natural justice or in contravention of fundamental rights. It can also be issued when a lower court or tribunal acts under a law that is itself ultra vires.

The difference between the writ of certiorari and prohibition is that they are issued at different stages of proceedings of the case. The writ of certiorari is issued after the case is heard and decided. It is issued to quash the decision or order of the lower court when the lower court passed an order without or in excess of jurisdiction. Whereas, the writ of prohibition is issued prohibiting the proceedings in the lower court which acts without or in excess of jurisdiction while the case is pending before it.

Who can file a writ petition?

A writ petition can be filed by any person whose Fundamental Rights have been infringed by the State. Under a Public Interest Litigation, any public-spirited person may file a writ petition in the interest of the general public even if his own Fundamental Right has not been infringed.

Where can a writ petition be filed?

Under Article 32, a writ petition can be filed in the Supreme Court. The Supreme Court can issue a writ only if the petitioner can prove that his Fundamental Right has been infringed. It is

important to note that the right to approach the Supreme Court in case of a violation of a Fundamental Right is in itself a Fundamental Right since it is contained in Part III of the Constitution.

Under Article 226, a writ petition can be filed before any High Court within whose jurisdiction the cause of action arises, either wholly or in part. It is immaterial if the authority against whom the writ petition is filed is within the territory or not. The power of the High Court to issue a writ is much wider than that of the Supreme Court.

The High Court may grant a writ for the enforcement of fundamental rights or for any other purpose such as violation of any statutory duties by a statutory authority. Thus, a writ petition filed before a Supreme Court can be filed against a private person too. Where a fundamental right has been infringed, either the Supreme Court or the High Court can be resorted to.

It is not necessary to go to the High Court first and only thereafter approach the Supreme Court. However, if a writ petition is filed directly in the Supreme Court, the petitioner has to establish why the High Court was not approached first .