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Writs under Article 32 and 226

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Abstract: ***A writ solicitation can be nominated 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's a legal document issued by the court that orders a person or reality 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. There are 5 kinds of writs which are mentioned in the composition. Also, the composition contains who can file a writ solicitation and where the writ solicitation is filed.***

I. WRITS IN THE CONSTITUTION

In India, the constitution has handed the Supreme Court with the power to issue the Writ under Composition 32 of the Constitution. Under Composition 32, when any Fundamental Right of a citizen is violated, that person has the right to directly approach the Supreme Court for the enforcement of his rights and the Court can issue the applicable Writ for administering similar right The power to issue Writs are also handed to the High Courts of India under Article 226. While citizens can approach the Supreme Court only when his Fundamental Right is infringed, the citizens also have the right to approach the High Court for the issue of Writs in other matters in which the abecedarian rights aren't violated. For e.g. in the case of Smt. Imtiaz Bano vs Masood Ahmad Jafri and Ors. A mama had filed a writ solicitation for habeas corpus under Composition 226 to get guardianship of her 2 children. The High Court allowed the solicitation, and the writ was issued in her Favour. Therefore, the compass of the power to issue Writs is wider in the case of High Courts as compared to the Supreme Court.

Illustration: A is an Indian citizen whose Fundamental Right has been violated. Then A has the Right to either approach the Supreme Court or the High Court for administering his right. But if there's a violation of A's right which isn't an Abecedarian Right also, he only has the right to approach the High Court under Article 226 thus, a citizen has the right to approach either the Supreme Court or the High Court for issue of writs but if he chooses to approach any of the Court and his suit is dismissed by the court, the citizen cannot file the same suit in the other Court because in India, the principle of res judicata is being followed which means that an alternate case cannot be filed for the same cause of action. But if a person files the case in the High Court and the High Court doesn't decide in his Favour, he has the right to appeal against the decision in the Supreme Court.

Illustration: A files a suit under Composition 226 in the High Court and the Court accepts his suit. After the proceedings of the case are concluded, the High Court ruled in Favour of the defendant. Then A has the Right to appeal in the Supreme Court against the decision of the High Court. But if the High Court had rejected the suit filed by A, also he doesn't have the right to appeal in the Supreme Court.

II. TYPES OF WRITS

The Indian Constitution provides 5 types of writs which can be issued by the Courts. They're

1) Habeas Corpus
2) Mandamus
3) Certiorari
4) Quo Warranto
5) Prohibition

A. Habeas Corpus

The Writ of Habeas Corpus is issued by the Courts in those cases where a person is immorally detained. Habeas Corpus means 'to have the body' and it's one of the most effective remedies available to a person detained. By this Writ, the Court commands the person or authority who has detained or restrained another person to present similar person before the Court. The Court requires the detaining person to give the grounds on which the person has been detained and if he fails to give a valid ground, the person who has been detained will be released by the Court incontinently.

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Illustration: A is wrongfully detained by B, a police officer. A write to the High Court regarding the same. The High Court process B with A and asks the grounds for detaining A. However, A will be free to go, If B fails to give a valid ground or defense for A's detention.

This Writ is veritably important for the particular liberty of the citizens because if this Writ isn't handed by the Constitution a person can be unlawfully subdued or detained by any authority and it'll be a clear violation of the particular liberty of the citizens.

Indeed though the purpose this Writ is to help a person from being detained but it'll be applicable only when the detention or restraint is unlawful. If the Court finds the grounds for detaining to be justified, this Writ cannot issue. Also, if the Court orders the detention of a person also it doesn't amount to unlawful detention and this Writ cacannote issued.

This Writ can be applied not only by the person who's detained but it can also be done by some other person on behalf of the detained person.

1) Rules regarding the Writ of Habeas Corpus

The following are the rules related to the writ of Habeas Corpus

a) The aspirant should be in guardianship of another.

b) Generally, the detained person and his family members are allowed to file an operation for habeas corpus, but the court has also allowed similar operation by nonnatives if it's done in public interest.

c) The manner specified for filing this writ isn't necessary so both formal and informal operations in respect of the writ are accepted by the Courts. For e.g.,. A writ operation can also be done by card. In the case of Sunil Batrav. Delhi Administration, the Supreme Court had accepted the operation made through a letter by acconvict(aconvict(aa foreigner) due to the inhuman treatment of captures. In this case, the letter was accepted as an operation and the writ of Habeas Corpus was issued.

d) A person cannot make the operation for the Writ consecutively to different judges of the same court. Therefore, if an operation is rejected by one judge, the same operation cannot be made to another judge of the same court and if it's done, such an operation will be rejected because of the principle of res judicata.

e) This Writ will apply in case of an arrest made by the police when all the formalities and procedures which are needed to be followed aren't followed. For illustration – the demand of presenting the arrested person before a justice or the officer in charge of the police station. (Section 56 of CrPC)

2) Liberal Approach of the Court

In the cases of Habeas Corpus, the Courts have recognized the being socio- profitable conditions in the country and the fact that still, numerous people are illiterate and poor. therefore, the Courts don't reject the operation made by the supplicant on the grounds that he has failed to show the proper ground on which he has challenged the detention.

B. Mandamus

Mandamus is another important Writ which is handed for by the Indian Constitution. In the Writ of Mandamus, the superior courts order the Inferior Courts to do an act or to hesitate from doing an act. This order can also be given to an Inferior Tribunal, Board, Corporation or any other type of executive authority.

In India, the Supreme Court is the apex court, thus it has the power to issue the Writ of Mandamus indeed against the High Court indeed though the High Courts have also been handed with the power to issue similar Writs under Composition 226. So, a High Court can issue this Writ under Composition 226 only to the Inferior Courts similar as the trial court of a quarter.

This Writ is useful for administering the duty which is needed to be done by law or by the office which a person holds. For e.g., the Judge of the Court has a duty to follow the principles of natural justice and if the Judge fails to do so, a Writ can be issued by the Superior Court to observe the fulfillment of this duty. One of the most important points about the Writ of Mandamus is that it cannot be issued against a private person and thus only the State or the people who hold any office which falls in the order of a public office can be impelled to do or to hesitate from doing an act.

Illustration: A is a public menial who has a duty towards B which he has to fulfil according to the law, but he does not fulfil the duty. B is displeased by this perpetration and thus approaches the High Court for demanding the fulfilment of the duty by A. Then the High Court on being satisfied that the case of B is bona fide and there's a duty which should be fulfilled, will issue the Writ of Mandamus and A will be bound to fulfil the duty he has avoided until now. But if A was a businessman who had some duty towards B but he fails to perform it. In such a case A can not approach the Court for Mandamus because this Writ can not be issued against a private person.

1) Grounds for Mandamus

This Writ can be issued by the Courts on the following grounds:

a) The supplicant has a right honored by law. The whole purpose of this Writ is to apply the rights of the citizens but if there's no right which accrues to a complainant, he can not approach the court to issue the Writ of Mandamus.

b) The right of the supplicant has been infringed. Having a right doesn't automatically give ground for issuing the Writs because any person will approach the court without having any cause of action. therefore only when a right is violated, the Writ can be issued by the court.

c) The supplicant has demanded the authority to perform their duty but there has beennon-performance of similar duty. The Writ is issued to impel the authority to do the act which they're needed to do by law or by the post they're holding therefore it's an essential ground for Mandamus

d) The last essential ground for Mandamus is the absence of an effective volition remedy which can be resorted to by the supplicant to apply the duty of the authority.

e) The supplicant has to show to the Court that a duty is owed to him by the authority and similar authority has not performed their duty. This Writ can be issued against all the executive conduct which are unlawful in nature.

In the case of Vijaya Mehtav. State of Rajasthan, a solicitation was filed in the High Court for compelling the State to perform its duty of appointing a commission to look into the climate change and cataracts in the State. It was held by the Court that the State Government would have to appoint a commission only when a resolution was passed by the Legislature, also, it was a optional duty and not a obligatory duty, so the Writ of Mandamus wasn't issued in this case.

In the case of Bhopal Sugar diligenceLtd.v. Income Tax Officer, Bhopal, the Income Tax Appellate Tribunal had given clear directions to the replier Income Tax Officer by its final order. The Income Tax Officer had still refused to carry out the directions given by the Tribunal. It was held by the Supreme Court that the Income Tax officer had a obligatory duty to fulfill the directions given by the Tribunal and perpetration of which amounted to grave injustice. therefore, the Writ of Mandamus was issued to direct the officer to carry out the directions of the Tribunal.

2) When is Mandamus not Allowed?

The Writ of Mandamus is a optional power of the Court and isn't a right which can be executed by the supplicant thus in numerous cases this Writ can be refused by the Courts.

The Courts can refuse to issue these Writs in the following cases Where the right of the supplicant has lapsed

The duty has formerly been fulfilled by the authority against which such a Writ is sought to be issued and thus issuing the Writ would amount to nothing in such a situation.

3) Who can apply for this Writ?

Generally, the person whose right is infringed is allowed to apply for the Writs of Mandamus but after the Supreme Court espoused a liberal view and the arrival of Public Interest Action in India, a public-spirited citizen can also apply for the issuing of the Writ of Mandamus on other people's behalf.

In order to issue a Writ of Mandamus the following considerations are of great significance.

The duty which is sought to be executed is a public duty similar duty is enforceable by law.

In the case of Ratlam Municipality. Vardhi Chand, it was held that Ratlam Municipality was a statutory body which owed duties to the public similar as removing night soil and rubbish, removing any public nuisance etc. and thus the Writ of Mandamus was issued by the Court to apply these duties by the megacity therefore, an operation for Mandamus can be made not only by the affected people but also by those who want to apply these Writs on behalf of others in the public interest.

C. Certiorari

Certiorari is a different type of writ when compared with other Writs. This Writ is corrective in nature which means the purpose of this Writ is to correct an error which is apparent on the records.

Certiorari is a Writ which is issued by a superior court to an inferior court. This can be issued when the superior court wants to decide a matter in the case itself or if there's an excess of governance by the inferior court. This Writ can also be issued when there's a abecedarian error in the procedure followed by the inferior court or if there's a violation of the principles of natural justice still, it can quash the order of that inferior court, If the superior court finds out that there has been a violation of natural justice or a abecedarian error on the procedure espoused.

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Illustration: There's a case in the District Court and the court has no governance to decide similar cases. Still, the District Court Judge tries the case and gives his decision and an operation is made by A(the displeased party by similar decision) to the High Court. Hereby the power of issuing Writs, the High Court will issue a Writ of Certiorari on the order of the District Court, as a result, the order of the District Court will be quashed.

1) Grounds for Certiorari

The Writ of Certiorari can be issued on the following grounds:

a) On the grounds of governance, a Writ can be issued by the superior court. Whenever an inferior oversteps its governance or abuses the governance handed to it or when there's an absence of governance of the inferior court, the Writ will be issued to quash the order made by the inferior court.

b) The violation of principles of natural justice is another ground on which the Writ of Certiorari can be issued by the court. The principles of natural justice form an important part of the Indian Constitution as these principles have been honored by the Constitution similar as the principle of Audi alterum partem which means hail of both the sides is an essential part of the Indian Constitution.

c) When there's an error apparent on the record, it becomes a valid ground for issuing the Writ of Certiorari. This Writ can be issued when the error is grounded on a clear casualness to the vittles of law and not simply because the judgement was wrong.

2) Important Conditions for Certiorari

For the Writ of Certiorari the following conditions should be fulfilled:

a) The body or person has legal authority.

b) Similar authority is related to determining those questions which affect the rights of the people.

c) Such a body or person has a duty to act judicially in doing its functions.

d) Such a person or body has acted in excess of their governance or legal authority.

When all these conditions are fulfilled, only also a Writ of Certiorari can be issued against the body or person who has acted in excess of their governance.

3) Rule of Pacing in Personam

In the cases related to the Writ of Certiorari, the person who's displeased by the unlawful exercise of governance by the court should bring the solicitation before the superior court. In this regard, this Writ is different from the Writ of Habeas Corpus as Habeas Corpus can be applied for indeed by anon-aggrieved person and the courts will accept such an operation.

The proceeding in case of Certiorari is an original proceeding before the superior court which can be initiated by a supplicant before he High Court under Article 226 and before the Supreme Court under Article 32 of the Indian Constitution.

4) Against Whom This Writ Lies?

The Writ of Certiorari lies against those bodies which are judicial or Quasi-judicial in nature. therefore, when anybody or a person is performing a judicial act, their acts can be subordinated to the Writ of Certiorari.

It also means that the compass of the operation of this Writ is limited to only the judicial bodies or the bodies which perform judicial functions and it'll not extend to the Central, State or Original Governments because their functions are executive in nature and not judicial.

D. Quo Warranto

The Writ of Quo Warranto is issued by the courts against a private person when he assumes an office on which he has no right. Quo Warranto literally means ‘ by what authority ’ and it's an effective measure to help people from taking over public services.

Illustration: A who's a private citizen and has no qualifications for the post of sub-inspector assumes similar office. Then a Writ of Quo Warranto can be issued against A to call into question his authority on which he has taken the control of the office of sub-inspector.

The power to issue this Writ is optional on the courts and thus nothing can demand that the court is bound to issue this writ.

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1) Conditions for issuing Quo Warranto

The Writ can be issued only when these conditions are fulfilled:

a) The office which has been wrongfully assumed by the private person is a public office.
b) The office was created by the Constitution or by any other enactment.
c) The nature of the duties which arises from this office is public.
d) The term of the office must be of a endless nature and it shouldn't be terminable at any person or authority's pleasure.
e) The person against whom the Writ is sought to be issued is in factual possession of the office and is using similar office.
f) This Writ can also be issued in those cases where a person was entitled to hold the office before but after getting disqualified he's still in possession of the office.
g) Therefore in cases where the office is of private nature, this Writ can not be issued by the Court. This view was held by the court in the case of Niranjan Kumar Goenka v. The University of Bihar, Muzaffarpur, in which the court observed that the Writ of Quo Warranto can not be issued against a person who isn't holding a public office.

In the case of Jamalpur Arya Samaj Sabhav.Dr. D Rama, an operation for the Writ of Quo Warranto was made by the supplicant in the Patna High Court against the Working Committee of Bihar Raj Arya Samaj Pratinidhi Sabha which was a private body. The court refused to issue the Writ because it wasn't a public office.

E. Prohibition

The last Writ which can be issued under the Constitution is the Writ of Prohibition. This Writ isn't issued frequently and is an extraordinary remedy which a Superior Court issues to an inferior court or bench for stopping them from deciding a case because these courts don't have the governance. Still, it'll be an invalid judgement because for an act to be legal it should have the permission of law, If the court or bars doesn't have governance and it still decides the case. For e.g., if a District Court is hearing an appeal against the judgement of the High Court, such an act is bound to be banned because the District Court doesn't have the power to hear such an appeal. So, a Writ of Prohibition will be issued against such an act of District Court.

1) Rules of Writ of Prohibition

In cases of Writ of Prohibition the following rules are observed

The Writ can be issued only when

a) The inferior court or bench has surpassed its governance
b) The court or bench is acting against the vittles of law
c) In cases where the court is incompletely acting within its governance and incompletely outside it, the Writ will be issued against the act which is incompletely outside its governance.
d) The fact that the aspirant has a right to appeal against the order of the inferior court won't be a bar to issue this Writ.
e) This Writ can be issued only when the proceedings are pending in the inferior court and not when an order has formerly been passed by that court. therefore, this Writ is a preemptive remedy which is exercised by the superior court to help the inferior court from acting outside its governance.
f) The Writ of Prohibition can be issued only against a judicial or aquasi-judicial body and it can not be issued against any executive body.

2) Difference Between Prohibition and Certiorari

Both the Writs Certiorari and Prohibition appear to be the same but there's one major difference between the two. In the Writ of Prohibition, the superior court issues the writ before the final order is passed by the inferior court and thus this is a preventative remedy, while in Writ of Certiorari the superior court issues the Writ after the inferior court has made the final order. therefore the Writ of Certiorari is a corrective remedy by which the order of the inferior court is quashed.

III. CONCLUSION

The Constitution of India has handed the power to issue Writs to the Supreme Court under Article 32 and to High Courts under Article 226. These Writs are a command which is given by the Courts for the performance of an act to the public authority which has a duty to perform it. There are five types of Writs which are Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition and all these writs are an effective system of administering the rights of the people and to impel the authorities to fulfil the duties which are bound to perform under the law. Of these Writs, the compass of Mandamus is the widest.

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While other Writs are issued in certain circumstances only, similar as when a person is immorally detained(Habeas Corpus) or when there's overpassing of governance by a court (Certiorari), Mandamus can be issued in those cases where there's on the performance of duty the authority.

So, all these Writs have played a crucial part in administering the rights of the people and have also bettered the compass of the power judicial review of courts.

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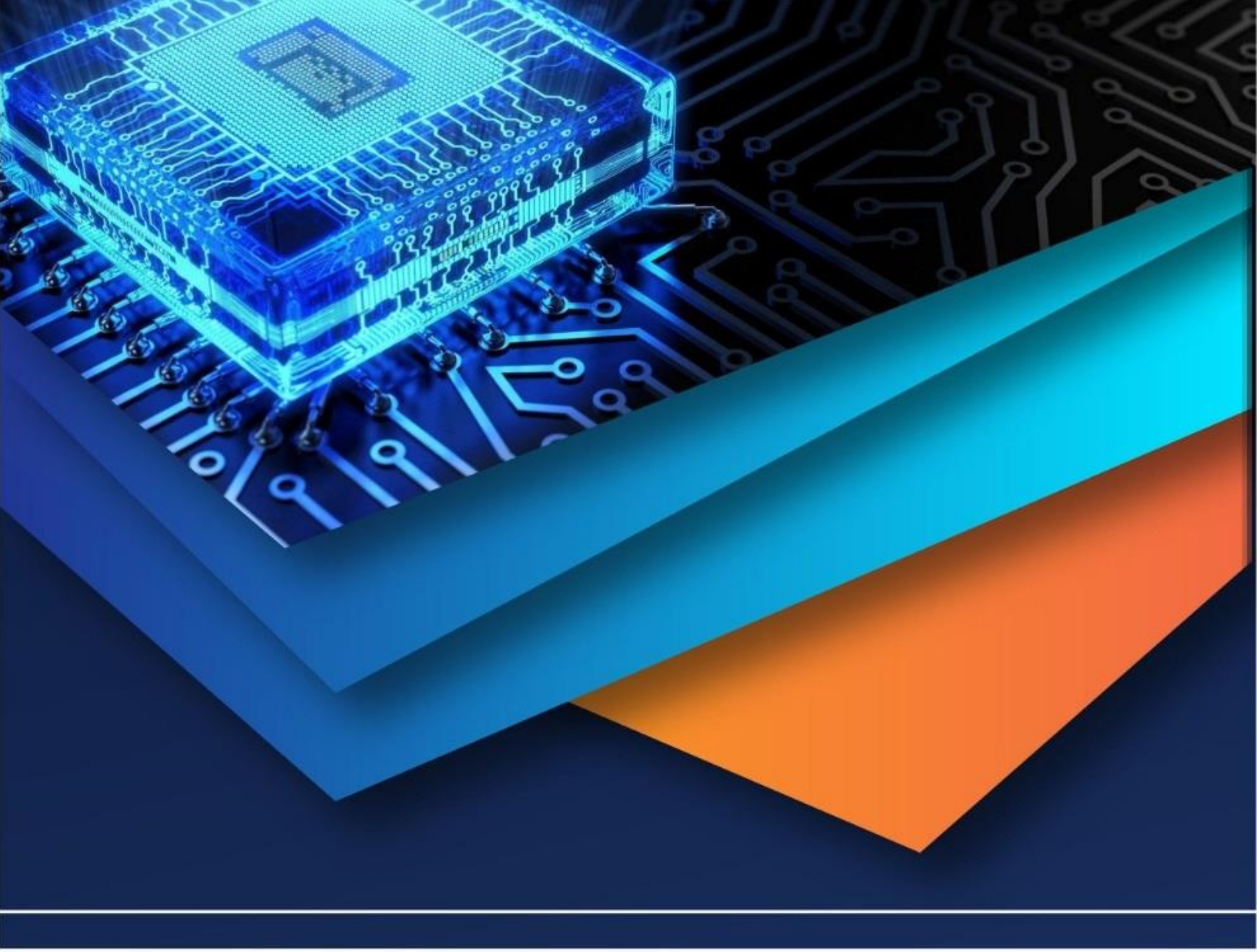

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