

WRIT JURISDICTION: AN OVERVIEW

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1. INTRODUCTION

Writ Jurisdiction is an unfamiliar subject to persons familiar to the Continental legal system. The purpose of this article is to introduce this subject and to elaborate the several advantages which it possesses.

The issue of prerogative writs had their origin in England in the King's prerogative power of superintendence over the due observance of law by his officials and Tribunals. They were called 'Prerogative' because they were conceived as being intimately connected with the rights of the Crown.

The Constitution of India gave jurisdiction to the High Court under Article 226 and to the Supreme Court under Article 32 to provide for certain safeguards for the people and for protection of the fundamental rights enshrined in Part III of the Constitution of India.

The language used in Article 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, *writs* or directions including writs in the nature of habeas corpus, mandamus quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the wide language used in the Constitution, the courts in India are not bound by the procedural technicalities of these writs in England. In fact the right to move the Supreme Court under Article 32 of the Constitution is itself a fundamental right. That apart, the Supreme Court and the High Courts can also issue directions, orders or writs other than prerogative writs. Articles 32 and 226 enable the Supreme Court and the High Courts to mould the reliefs in the facts and circumstances of the case. This power is much wider than the power to issue prerogative writs as in England in as much as in India the High Courts exercising power under Article 226 and the

Supreme Court exercising power under Article 32 can strike down laws which violate the Constitution but in England no such power is available to the Courts.

2. PURPOSES FOR WHICH WRITS MAY BE ISSUED

Article 226 (1) of the Constitution of India reads as under:
“Power of High Courts to issue certain writs:

- (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within their territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto, certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.”

Article 32 (1) and (2) of the Constitution reads thus:

“32. Remedies for enforcement of rights conferred by this Part.

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warrant and certiorari, whichever may be appropriate for the enforcement of any of the rights conferred by this Part.”

Under Article 226 of the Constitution every High Court has a power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari or any of them for the enforcement of the fundamental rights stipulated in Part II of the Constitution and for any other pur-

pose. This jurisdiction to issue writs is greatly enlarged in amplitude and is exercisable by each High Court throughout the territories in relation to which it exercises jurisdiction, to issue to any person or any authority including in appropriate cases, any Government within those territories. The Constitution of India has created Supreme Court, the highest judicial forum, which under Article 32 could be moved by appropriate proceedings for the issue of direction or order or writ for the enforcement of the rights guaranteed by Part III of the Constitution. Article 32 itself being a fundamental right, the constitutional remedy of writs is available to any one whose fundamental rights are infringed by State action.

Part III of the Constitution which is also called the Fundamental Rights Chapter contains Article 14 which provides that the "State shall not deny to any person equality before the law or the equal protection of laws within the territory of India." This is also called the equality clause. Article 15 provides for prohibition of discrimination on grounds of religion, race, class, sex or place of birth; Article 16 provides for equality of opportunities in matters of employment; Article 19 provides for protection of rights regarding freedom of speech, freedom to form association etc., and Article 21 provides for protection of life and liberty.

3. SPECIFIC WRITS

It is necessary to say a few words with regard to the specific writs mentioned in the two Articles above, namely Article 32 and Article 226 of the Constitution of India -

(a) *Writ of Habeas Corpus*: It literally means to 'produce the body'. The writ provides prompt and effective remedy against illegal restraints. By this writ, the court can direct the person or authority who has detained another person to bring the body of the person before the court so that the court may decide the validity, jurisdiction or justification for such detention. If the authority/person having his custody does not satisfy the court that the deprivation of personal liberty is according to the procedure established by law, the person is entitled to his liberty. The principal aim of the

writ is to provide for judicial review of an alleged unlawful restraint on liberty. For the purpose of moving a writ of habeas corpus it is not necessary that the detenu should alone apply. Any interested person or a relative or a friend may initiate proceedings on his behalf. The only caveat being that he should not be an absolute stranger. The object of the writ is to confer individual protection to one's liberty and to prevent the erosion of the right to be free and move about freely.

The following Article of the Fundamental Rights Chapter is relevant in this context:

“21. Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except according to procedure established by law.”

The tendency of the courts has been to be liberal in the interpretation of the laws whenever the liberty of a citizen is concerned.

(b) *Writ of mandamus*: This is a command issued to direct any person, corporation or Government requiring them to do a particular thing therein specified.

The necessary condition for issuance of the writ of mandamus is where the respondent has to perform a public duty pertaining to his office and where a statutory or public duty is imposed on him in respect of which the petitioner has the legal right to claim performance of the said duty. It is not necessary that the person or a body on whom public duty is cast need be an Official or an Official Body. Mandamus can be issued against any public authority, administrative and local bodies as also quasi-judicial authorities.

Mandamus has been used for enforcement of fundamental rights enshrined in Part III of the Constitution. It can compel the public officials or bodies to perform their duties, such as Electricity Corporations having statutory duties in regard to supply of energy to the public, it can compel the domestic Tribunals to adhere to rules of natural justice, etc., Mandamus is also resorted to for quashing illegal assessment orders and for refund of tax illegally collected. The popularity of mandamus in public law has been on the increase. The Chief Justice Lord Ellenborough in *R. V.*

Canterbury Archbishop and Bishop of London (1812) 104 ER 789 observed:

“Mandamus is supplementary means of substantial justice in any case where there is no other specific legal remedy for a legal right.”

It has been observed in an English case by Justice Martin:

“Mandamus has power to amend all errors which lead to the oppression of the subject or other mis-government and is to be used when the law has provided no specific remedy and good Government require there ought to be one.”

(c) *Writ of Prohibition*: This is issued by the superior court to an inferior court to prevent the latter from usurping the jurisdiction which is not legally vested in it and if the Tribunal acts without or in excess of jurisdiction or in violation of rules of natural justice, etc. a writ of prohibition can be asked for. It can be issued against a quasi judicial authority when such an authority exceeds its jurisdiction not vested in it. In *East Indian Commercial Company Ltd. Vs. Collector of Customs*, AIR 1962 SC 1893, the Supreme Court observed:

“A writ of prohibition is therefore directed to inferior Tribunal forbidding it from continuing with a proceeding therein on the ground that the proceeding is without or in excess of jurisdiction or contrary to the law of land, statutory or otherwise.

The object is to compel the courts not to overstep their jurisdiction and not to contravene rules of natural justice or the laws of the land. The writ is issued where the impugned action infringes the fundamental rights of the petitioner as well as for other purposes. It has been issued where the taxing authority proposes to impose tax on commodity exempted under other statute as in AIR 1962 SC 745, or where license fee was sought to be levied without authority of law. AIR 1962 SC 922 etc.

(d) *Writ of certiorari*: Certiorari is a prerogative writ to superior court to call for the record from the inferior court or body acting in judicial or quasi-judicial capacity. In granting the writ of certiorari the superior court demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views over those of the inferior Tribunal.

The underlying object of writ of certiorari is to keep all subordinate courts and inferior Tribunals within the limits of their jurisdiction and if they act in excess thereof, their decisions can be quashed by superior courts by issuing this writ. Certiorari is curative in nature. The grounds for invoking a writ of certiorari include absence or excess of jurisdiction, violation of principles of natural justice, fraud, an error on the face of the proceedings, etc. A few illustrations wherein the writ of certiorari was issued are given below:

(i) In AIR 1970 SC 1401, in the case of *Hindustan Steel Limited Vs. A.K. Roy*, it was observed by the Supreme Court that where statutory Tribunal exercises its discretion on the basis of irrelevant considerations or without regard to relevant considerations, certiorari can be issued to quash the order.

(ii) In *S.T.O. Vs. Budh Prakash* AIR 1954 SC 459, the assessment orders of the Sales Tax Officer were quashed as the tax levied on forward contract which was not within the taxable jurisdiction of the provincial legislature.

(e) *Writ of Quo-warranto*: Quo warranto is a judicial remedy against an occupier or usurper of an independent substantive public office. For the issuance of a writ of quo-warranto, the office must be of a public nature and is held by a usurper without legal authority. Quo-warranto is generally regarded as an appropriate and adequate remedy to determine the right or title to a public office and to oust an incumbent who has unlawfully usurped or intruded into such office or is unlawfully holding the same.

The next question arises as to who can apply for issuance of writ, namely the rule of locus standi.

4. WHO CAN APPLY: RULE OF LOCUS STANDI

The basis of entitlement to judicial redress is personal injury from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. Therefore, as a general rule the person whose fundamental right has been infringed can only apply to the Supreme Court under Article 32. The same principle applies to the exercise of jurisdiction under Article 226 by the High Court also. In AIR 1962 SC 1044 (*Calcutta Gas Co. Ltd. Vs. The State of West Bengal*) the Supreme Court observed:

“The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself.”

However, the aforesaid rule of standing has been expanded by the Supreme Court in order that legal wrong or injury inflicted on a person does not go unredressed in case he is not able to approach the court in view of his socially or economically disadvantaged position. In such a case some other person can invoke assistance of the court for the purpose of providing judicial redress to the person wronged or injured. The Supreme Court has taken the view that, having regard to the peculiar socio-economic conditions prevailing in the country where there is considerable poverty, illiteracy and ignorance obstructing and impeding accessibility to the judicial process, it would result in closing the doors of justice to poor and deprived sections of the community if the traditional rule of standing involved by Anglo-Saxon jurisprudence that only a person wronged can sue for judicial redress were to be blindly adhered to and followed, and it is therefore necessary to evolve a new strategy by relaxing the traditional rule of standing in order that justice may become easily available to the lowly and poor.

The Courts (High Courts and the Supreme Court) have been taken action on the basis of letters written to the Court by persons aggrieved who are unable to approach the Court as for instance where a person was unlawfully detained, the Court issued direction on a communication addressed directly to it complaining against

his detention and seeking release, and in such a case the Court does not insist on a regular writ petition to be filed.

5. AGAINST WHOM WRIT MAY BE ISSUED

Under Article 226, every High Court has power to issue directions, orders or writs to any person or authority including in appropriate cases any Government, within the territories in relation to which it exercises jurisdiction. Unlike Article 226 (1), Article 32 does not specify the person or authority to whom writ may be issued. But it is well settled that it lies against the government or an authority which is "State" within the meaning of Article 12 of the Constitution.

6. PUBLIC INTEREST LITIGATION:

A novel feature of Indian Legal system is the rapid growth and development of Public Interest Litigation. In a number of cases Supreme Court as well as High Courts have entertained Writ Petitions under Article 226 and Article 32 and also "letters" not only by persons who can be said to "aggrieved" in the strict sense of person but acting *pro bono publico*.

Public Interest Litigation is a strategic arm of the legal aid movement and is intended to bring justice within the reach of the poor persons. Public Interest Litigation is brought before the Court not for the purpose of enforcing the right of one individual against another but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed.

In *Bandhua Mukti Morcha vs. Union of India*: AIR 1984 SC 802 at 841 it was observed by the Supreme Court that when the poor come before the court, particularly for the enforcement of their fundamental rights, it is necessary to depart from the adversarial procedure and to adopt a new procedure which will make it

possible for the poor and the weak to bring the necessary material before the court for the purpose of securing enforcement of their fundamental rights.

In *People's Union for Democratic Rights Vs. Union of India* (AIR 1982 SC 1473), petition by public spirited organization on behalf of persons belonging to socially and economically weaker section employed in the Construction work of various projects connected with the Asian Games, 1982 complaining of violation of various provisions of labour laws was held maintainable.

In *Bandhua Mukti Morcha Vs. Union of India*: AIR 1984 SC 802 petitioner which was an organization dedicated to the cause of release of bonded labourers in the country was held entitled to move the Court for release of bonded labourers working in stone quarries in deplorable conditions.

Recently the Supreme Court as well as the High Court have been entertaining writ petitions relating to environment Pollution by public spirited citizen etc., and have issued several directions to industries for conforming to the Environment laws and for installation of effluent treatment plants. The Supreme Court has interpreted Article 21 (no person shall be deprived of life or personal liberty except according to procedure established by law) to include a right to a healthy environment.

Thus by liberalizing the rule of standing (*locus standi*) and permitting public spirited bodies organizations to move the court on behalf of others who are disadvantaged, the Supreme Court and the High Courts have made it possible to provide access to justice to large masses of people who are denied their basic human rights.

7. ALTERNATIVE REMEDY

As far as Article 226 is concerned, the existence of another remedy does not affect the jurisdiction of the court to issue a writ but "*the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs...*". (AIR 1957 SC 882, *Union of India Vs. T. R. Varma*).

As regards the right to move the Supreme Court for infringement of fundamental rights under Article 32 is concerned, even if other adequate legal remedy is available, it would not disentitle the petitioner to get relief under this Article. The mere existence of adequate alternative legal remedy cannot per se be a good and sufficient ground for throwing out a petition under Article 32, if the breach of a fundamental right actual or threatened, it alleged and is prima facie established on the petition. The petitioner can move the court even when there is a real threat of infringement of his fundamental right.

8. WRIT JURISDICTION AND COMPENSATION FOR INJURY

It is a significant feature of the writ Jurisdiction that the Supreme Court as well as High Court can pass an order for payment of money if such an order is in the nature of compensation consequential upon the deprivation of fundamental right to life or personal liberty.

In *Rudul Sah Vs. State of Bihar*: 1983 (4) SCC 141 where the petitioner was detained in prison for over 14 years after acquittal, the Supreme Court held as under:

“Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of the court was limited to the passing of the orders of release from illegal detention. One of the telling ways in which the violation of rights can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation.”

The Supreme Court directed the State to pay compensation to the petitioner.

Thus in several cases where the High Courts as well as the Supreme Court found that the right to life or personal liberty of the person has been infringed, it has held the State or the authority responsible and has passed directions for payment of compensation.

9. CONCLUSIONS

Writ proceedings is an inexpensive way for an individual to seek redressal of his grievance without the requirement of payment of heavy court fees as required in ordinary civil suits. It is also less time consuming as there is no requirement of recording evidence of witnesses as is required in ordinary civil trials. As mentioned earlier, the Courts have in appropriate cases taken action on letters treating them as writ petition where the person is unable to approach the court because of his economic handicap or for any other justifiable reason. The High Court under Article 226 and the Supreme Court under Article 32 have also power to mould the relief and to pass any order or direction in the facts and circumstances of the cases.