

Competition Cosmos

Writs & their Scope

A Writ means an order i.e. anything that is issued under an authority is known as a writ. The Constitution of India empowers the Supreme Court and the High Courts to issue Writs for the enforcement of the fundamental rights conferred by the Part-III of the Indian Constitution under Article 32 and Article 226. There are five types of Writs- Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo- Warranto.

Habeas Corpus is a Latin term, which literally means “You should have the body”. The writ is issued to a produce a person before a Court who has been detained or imprisoned and not produced before the magistrate within 24 hours whether in prison or private custody and would release the person if such detention is found illegal. The purpose of the writ is not to punish the wrong doer but merely to release the person unlawfully detained.

However, Article 21 (Protection of life and personal liberty) cannot be suspended even during the proclamation of Emergency. Therefore, Habeas Corpus becomes a very valuable writ for safeguarding the personal liberty of an individual. While the Supreme Court can issue the writ of habeas corpus only against the State in case of violation of Fundamental Rights whereas the high court can issue it also against private individuals illegally or arbitrarily detaining any other person.

Writ of habeas corpus can be filed by any person on behalf of the person detained or by the detained person himself. In *Sunil Batra II vs Delhi admn.*, a letter written by a convict to one of the judges of the Supreme Court was treated as a writ petition. The court employed this writ for the neglect of State penal facilities. The writ was also issued when a ban was imposed on the law students to conduct interviews with prison mates to provide them legal relief.

Mandamus is a Latin word, which means “to command”. It is a judicial remedy in the form of an order to act legally and to abstain from perpetrating an unlawful act. Where A has a legal right which cast certain legal obligation on B, A can seek a writ of mandamus directing B to perform its legal duty. This writ of

command is issued by the Supreme Court or High Court when any Government, court, corporation or tribunal or public authority has to perform a public or statutory duty but fails to do so.

The Supreme Court may issue a mandamus to enforce the fundamental right of a person when its violation by some governmental order or act is alleged. The High courts may issue this writ to direct an officer to exercise his constitutional and legal powers, to compel any person to discharge duties cast on him by the constitution or the statute, to compel a judicial authority to exercise its jurisdiction and to order the government not to enforce any unconstitutional law.

In *Unni Krishnan vs Union of India*, held that a private medical/ engineering college comes within the writ jurisdiction of the court irrespective of the question of aid and affiliation.

In *Jatinder Kumar vs State of Punjab*, held that Article 320(3) of the constitution which provided that before a government servant was dismissed, the UPSC should be consulted, did not confer any right on a public servant and hence failure to consult the public service commission did not entitle the public servant to get mandamus for compelling the government to consult the commission. However, if the authority is under law obliged to exercise a dissection, Mandamus would lie to exercise it in one way or the other.

Certiorari is a Latin word meaning 'to inform'. 'Certiorari' may be defined as a judicial order operating in persona and carried out in the original legal proceedings, be issued against constitutional bodies, statutory bodies like corporation, non statutory bodies like companies and cooperative societies and private bodies and person requiring the records of any action to be certified by the court and dealt with according to the law.

There are various grounds on the basis of which the writ of certiorari is issued:

- (1) Lack of jurisdiction
- (2) Excess of jurisdiction.
- (3) Abuse of jurisdiction.
- (4) Violation of the principles of natural justice.
- (5) Error of law apparent on the face of the record

In *Syed yakoob vs Radhakrishnan*, held that the jurisdiction of the high court to issue a writ of certiorari is a supervisory jurisdiction and the court exercise it is not entitled to act as an appellate court. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact. However, if a finding of fact is based on 'no evidence' that would be regarded as an error of law which can be corrected by certiorari.

Prohibition refers “to forbid or to stop” and is popularly known as “Stay order”. The writ is issued by the Supreme Court or any High Court when a lower court or a quasi-judicial body tries to violate the powers vested in it, prohibiting the latter from continuing the proceedings in a particular case.

In India, prohibition is issued to protect the individual from arbitrary administrative actions. Prohibition does not lie against an authority discharging executive functions but against an authority discharging judicial functions.

Quo warranto is a Latin term, which means “by what warrant”. The writ is issued to restrain a person from holding a public office to which he is not entitled. It can be issued against offices created by the constitution such as the Advocate-General, the speaker of legislative assembly, officers under the municipal act, members of a local government board, University officials and teachers, but it will not issue against the managing committee of a private school which is not appointed under the authority of a statute.

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