

Writ Jurisdiction of High Court & Supreme Court under Article 32 And 226

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Abstract: In modern democratic countries, the administrative authorities are vested with vast discretionary powers. The exercise of those powers often becomes subjective in the absence of specific guidelines etc. Hence the need for a control of the discretionary powers is essential to ensure that 'rule of law' exist in all governmental actions. The judicial review of administrative actions in the form of writ jurisdiction is to ensure that the decisions taken by the authorities are legal, rational, proper, fair and reasonable.

Article 32 and 226 of the constitution of India has designed for the enforcement of fundamental rights and for a judicial review of administrative actions, in the form of writs. It is a constitutional remedy available to a person to bring his complaint or grievance against any administrative action to the notice of the court. Safeguard of fundamental rights and assurance of natural justice are the most important components of writ jurisdictions.

Keywords: Article 32 And 226, Writ Jurisdiction, High Court & Supreme Court Under

I. INTRODUCTION

Articles 32 and 226 are the provisions of the Constitution that together provide an effective guarantee that every person has a fundamental right of access to courts. Article 32 confers power on the Supreme Court to enforce the fundamental rights. It provides a guaranteed, quick and summary remedy for enforcing the Fundamental Rights because a person can go straight to the Supreme Court without having to go undergo the dilatory process of proceeding from the lower to higher court as he has to do in other ordinary litigation. The Supreme Court is thus constitution the protector and guarantor of the fundamental rights.

The High courts have a parallel power under Article 226 to enforce the fundamental rights. Article 226 differs from Article 32 in that whereas Article 32 can be invoked only for the enforcement of Fundamental Rights, Article 226 can be invoked not only for the enforcement of Fundamental Rights but for any other purpose as well. This means that the Supreme Courts power under Article 32 is restricted as compared with the power of a High Court under Article 226, for, if an administrative action does not affect a Fundamental Right, then it can be challenged only in the High Court under Article 226, and not in the Supreme Court under Article 32. Another corollary to this difference is that a PIL (Public Interest Litigation) writ petition can be filed in Supreme Court under Article 32 only if a question concerning the enforcement of a fundamental right is involved. Under Article 226, a writ petition can be filed in a High court whether or not a Fundamental Right is involved.

The provision of legal aid is fundamental to promoting access to courts. The Supreme Court of India has taken imaginative measures to promote access to justice when people would otherwise be denied their fundamental rights. It has done this by the twin strategy of loosening the traditional rules of locus standi, and relaxing procedural rules in such cases. Thus where it receives a letter addressed to it by an individual acting pro

bono publico, it may treat the letter as a writ initiating legal proceedings. In appropriate cases it has appointed commissioners or expert bodies to undertake fact-finding investigations. Thus, the mechanism of PIL now serves a much broader function that merely espousal of the grievances of the weak and the disadvantaged persons. It is now being used to ventilate public grievances where the society as a whole, rather than a specific individual, feels aggrieved. Several sections of the constitution such as Articles 13 (Laws inconsistent with or in derogation of the fundamental rights (are void)); 14 (Equality before law); 20 (Protection in respect of conviction for offenses); 21 (Protection of life and personal liberty); 22 (Protection against arrest and detention in certain cases); 38 (State to secure a social order for the promotion of welfare of the people); 39 (Certain principles of policy to be followed by the State) have been interpreted in conjunction with Article 32 and 226 to extend right of access to courts and judicial redress in various matters.

II. ARTICLE 32 AND 226

Writ jurisdiction is exercised by the Supreme Court and the High courts only. This power is conferred to Supreme Court by article 32 and to high courts by article 226.

- Article 32(1) guarantee a person the right to move the Supreme Court for the enforcement of fundamental rights guaranteed by part III of the constitution.

- Article 32(2) empowers the Supreme Court to issue direction or orders or writs in the nature of Habeas Corpus, Certiorari, Prohibition, mandamus and Quo-warranto for the enforcement of fundamental rights.

- Article 226 empowers the state high courts to issue directions, orders or writs as mentioned above for the **enforcement of fundamental rights** and for 'any other purpose'. i.e., High courts can exercise the power of writs not only for the enforcement of fundamental rights but also for a 'non fundamental right'.

1.Habeas Corpus

The meaning of the Latin phrase Habeas Corpus is 'have the body'. According to article 21, "no person shall be deprived of his life or personal liberty except according to the procedure established by law". The writ of Habeas corpus is in the nature of an order directing a person who has detained another, to produce the latter before the court in order to examine the legality of the detention and to set him free if there is no legal justification for the detention. It is a process by which an individual who has been deprived of his personal liberty can test the validity of the act before a higher court. The objective of the writ of habeas corpus is to provide for a speedy judicial review of alleged unlawful restraint on liberty. It aims not at the punishment of the wrongdoer but to resume the release of the detainee. The writ of habeas corpus enables the immediate determination of the right of the appellant's freedom.

2. Certiorari

The writ of Certiorari is generally issued against authorities exercising quasi-judicial functions. The Latin word Certiorari means 'to certify'. Certiorari can be defined as a judicial order of the supreme court or by the high courts to an inferior court or to any other authority that exercise judicial, quasi-judicial or administrative functions, to transmit to the court the records of proceedings pending with them for scrutiny and to decide the legality and validity of the order passed by them. Through this writ, the court quashes or declares invalid a decision taken by the concerned authority. Though it was meant as a supervisory jurisdiction over inferior courts originally, these remedy is extended to all authorities who issue similar functions. The concept of natural justice and the requirement of fairness in actions, the scope of certiorari have been extended even to **administrative decisions**. Whether the decision is judicial or quasi judicial is irrelevant nowadays. Certiorari is **corrective in nature**. This writ can be issued to any constitutional, statutory or non statutory body or any person who exercise powers affecting the rights of citizens.

3. Prohibition

The grounds for issuing the writs of certiorari and prohibition are generally the same. They have many common features too. The writ of prohibition is a judicial order issued to a constitutional, statutory or non statutory body or person if it exceeds its jurisdiction or it tries to exercise a jurisdiction not vested upon them. It is a general remedy for the control of judicial, quasi judicial and administrative decisions affecting the rights of persons. When an authority acts in violation or infringement of the fundamental rights of a person, a writ of prohibition can be invoked.

4. Mandamus

The writ of mandamus is a judicial remedy in the form of an order from the supreme court or high courts to any inferior court, government or any other public authority to carry out a 'public duty' entrusted upon them either by statute or by common law or to refrain from doing a specific act which that authority is bound to refrain from doing under the law. For the grant of the writ of mandamus there must be a public duty. The superior courts command an authority to perform a public duty or to non perform an act which is against the law. The word meaning in Latin is 'we command'. The writ of mandamus is

issued to any authority which enjoys judicial, quasi judicial or administrative power. The main objective of this writ is to keep the public authorities within the purview of their jurisdiction while performing public duties.

5. Quo Warranto

The word meaning of 'Quo warranto' is 'by what authority'. It is a judicial order against a person who occupies a substantive public office without any legal authority. The person is asked to show by what authority he occupies the position or office. This writ is meant to oust persons, who are not legally qualified, from substantive public posts. The writ of Quo warranto is to confirm the right of citizens to hold public offices. In this writ the court or the judiciary reviews the action of the executive with regard to appointments made against statutory provisions, to public offices. It also aims to protect those persons who are deprived of their right to hold a public office.

III. CONCLUSION

Undoubted public interest litigation has become a powerful method of controlling wrong governance. It has come to stay with firm footing and its legitimacy is now beyond doubt. It is clearly discernible in latest cases that the public interest litigation movement in India is fastly moving into various newer areas, arousing high expectations, not merely for the vindication of governmental commitments to the well being of downtrodden, poor masses but also for communal harmony, social control, preserving the Rule of Law and preventing decline of public morality. It has reflected that the Constitution can be used as a medium of silent non-revolutionary struggle against domination and abuse of power. Public interest litigation is a strategy evolved by the Judiciary to give teeth to law, empowering the victims to use through courts for forcing the government to fulfil its commitments. Various revolutionary changes are taking place in judicial technology and judicial law making and social dimensions are being added through the Judicial process through court's activism.