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## An Analysis of the Writ Jurisdictions of the High Court

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### Abstract

The judiciary in each country plays a critical role in interpreting and applying the law and resolving conflicts between citizens and between citizens and the state. Where there is a written constitution, the courts also have the responsibility of upholding the supremacy of the constitution by interpreting and applying its provisions and ensuring that all powers stay within its bounds. Judicial review is an important institution and a cornerstone of the checks and balances system, without which no democracy worth its name can function. Judicial Review is a part of the state's judicial power that is used by the courts to determine the legality of a rule of law or an action taken by a state agency. It has a wide range of meanings in modern democracies' legal systems. The judiciary plays a critical role in safeguarding the constitutional values that our forefathers established under Article 226 now gives the power to issue directives, orders, or writs not just to impose fundamental rights but also to impose other rights. Article 226 of the Constitution empowers the High Court to give directives, orders, or writs to any person, power, government, or public official. Article 226 also discusses interim writs orders and the method through which interim orders might be struck out by the High Court'' Judicial Review is a part of the state's judicial power that is used by the courts to determine the legality of a rule of law or an action taken by a state agency.

### INTRODUCTION

The Common Law developed the concept of Writ with the goal of keeping a judicial check on the administration's activity. The Anglo-Saxon monarchy was responsible for all of the unique features of the writs, which consisted of a brief administrative edict dealing with land tax objectives. The court issues a writ, which is a written official order issued by the court. This writ can take the form of a warrant, instruction, command, or order, among other things. The High Court, under Article 226 of the Indian Constitution, 1950, and the Supreme Court, under Article 32 of the Indian

Constitution, 1950, are the only courts that can issue writs. By the decision of the inferior court, writs are now open to any injured individual.

### **Article 226 of The Indian Constitution, 1950**

The judicial inspection of the decision-making procedure, rather than the decision itself, is directed by Article 226 of the Indian Constitution of 1950. Article 226 of the Constitution allows for judicial review of all administrative decisions on the grounds of inconsistency, flagrant illegality, unreasonableness, lack of power to make a decision, and procedural irregularity. Due to the illegality of the decision, it may be set aside and overturned under Article 226 of the Indian Constitution of 1950. The basic goal of the writ is to free anyone who is being held illegally, not to punish the detaining power. Article 226 of the Indian Constitution of 1950 allows the High Court to issue directions, orders, or writs, such as Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari. The remedy given for Article 226 of the Indian Constitution is widely regarded as discretionary, and the High Court may refuse to grant such relief in certain instances, even if a legal right has been breached. The presence of an alternative remedy is one of the elements the High Court may consider when deciding whether or not to exercise its jurisdiction, but this principle does not apply to judgement enforcement.

“In the case of Mohd. Yasin v. Town Area Committee, the Supreme court had held that an alternative remedy is not a bar to moving a writ petition in the High Court to enforce a fundamental right which is only an exception. When an alternative, adequate, and efficacious legal remedy is available, and the petitioner has not used it before coming to the High Court, it has been ruled that the High Court will not exercise its jurisdiction under Article 226 because the petitioner has not used it before coming to the High Court. Of course, Article 226 is quiet on this topic; it does not say anything about it in so many words, but the Courts have developed this rule as a type of self-imposed limitation on their Article 226 power”<sup>1</sup>

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<sup>1</sup> (A.I.R. 1952 SC 115)

### **Writ of Habeas Corpus**

Writ of Habeas Corpus is issued for the preservation of the liberty of a person, who is illegally been detained. The Writ of Habeas Corpus can be invoked against the State and against the person under whose custody the aggrieved person is. The Writ of Habeas Corpus is for a common man who has been wrongfully detained by a person or state. This Writ provides a fast and powerful remedy against any illegal detention. The Writ of Habeas Corpus is basically an order calling the person who had been arrested or jailed the alleged person for producing the aggrieved person before the court, for knowing the grounds of his detention and if illegal then to set the aggrieved person free and allow him to enjoy his freedom.

“The Court's decision was given by KAPUR, J.- The State of Bihar has filed this appeal against the High Court of Patna's judgement and order, which stems from proceedings for a writ of habeas corpus under Art. 226 of the Constitution and s. 491 of the Criminal Procedure Code in the case of one Bipat Gope's incarceration. The petitioner at the High Court was the current respondent. On November 29, 1957, Bipat Gope, a resident of the Patna district, was convicted under sections 323 and 324 of the Indian Penal Code, read with sections 511 of the Indian Penal Code, and sentenced to six months' rigorous imprisonment by the High Court on appeal from an acquittal under section 417 of the Code of Criminal Procedure. Bipat Gope filed a plea under Art. 226-against the District Magistrate's order on April 29, 1958, and the High Court ordered on May 1, 1958, that Bipat Gope appear on Monday, May 5, 1958, when the petition was to be taken up for preliminary hearing.”<sup>2</sup>

“This is referred to as a habeas corpus case, and it is described here what a writ of habeas corpus is. Justice Khanna was quoted as saying "A writ of habeas corpus secures an aggrieved person's liberty by providing an adequate procedure for prompt relief from unlawful or illegal detention." Whether the person held in illegal custody is in prison or in the private custody of an individual." and if the High Court and its judges find that there is no legal jurisdiction for the detention, the aggrieved person is ordered to be released.”<sup>3</sup>

### **Writ of Mandamus**

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<sup>2</sup> State Of Bihar vs Kameshwar Prasad Verma, 1965 AIR 575

<sup>3</sup> [ADM, Jabalpur v. Shivkant Shukla](#), 1976 AIR 1207

A writ is a command issued in the name of the crown by the court of king's bench to a subordinate court, inferior tribunal, board, or any other person who needs it to perform a public duty prescribed by law. As a result, a writ of mandamus is a command issued by a high court or supreme court to a lesser court, a tribunal or board, or any other public authority to carry out their legal obligations. Its main goal is to correct flaws in the legal system and protect citizens' rights. “ In State Of Mysore & Anr vs K.N. Chandrasekhara & Ors the high court issued a writ of mandamus ordering the public service commission to include the names of the six petitioners in the list compiled by the Commission under Rule 9(2) of the Rules for appointment to the Munsiff cadre. The appointment of ten candidates whose names were included in the list under R. 9(2) as fit for promotion could not be disturbed, according to the High Court; however, the six applications should be added to the list and appointments made from that list. The high court's instruction to the public service commission can be issued against any person or corporation that fails to perform their public obligation.”<sup>4</sup>

### **Writ of Prohibition**

Prohibition writs are as old as common law. It was first employed to limit the jurisdiction of ecclesiastical authorities by prohibiting them from acting outside of or in excess of their authority, and it was later adopted by common law courts. There were three charters under which courts exercised their power prior to the enactment of the Indian Constitution, and after the constitution was enacted, the High Court and Supreme Court exercised their power to issue this writ. It is a remarkable piece of preventive writing. It prohibits courts, tribunals, quasi-judicial bodies, and other authorities from acting outside of their jurisdiction or exercising powers that they do not have.

“The Supreme Court clarified the court's authority to issue a writ of ban in this instance. It states that the power to issue a writ of prohibition is largely supervisory, and that the principal purpose of the writ is to prevent lesser courts or tribunals from exceeding their jurisdictional limits. It is well established law derived from decided instances that a writ of prohibition exists not only in cases of excessive jurisdiction or judicial power abuse, but also in cases when actions are taken in violation of Natural Justice standards. However, the writ cannot be used to remedy inferior courts'

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<sup>4</sup> State Of Mysore & Anr vs K.N. Chandrasekhara & Ors, 1965 AIR (SC) 532

or tribunals' course, practise, or procedure, or to correct an inferior court's or tribunal's incorrect decision on the merits, because issue can only be issued when the plea's subject matter is a point of law. When there is a legal error, a writ of prohibition cannot be issued unless the error causes it to go outside its authority. As a result of this case, it is apparent that if there is a lack of jurisdiction, the subject is coram non judge, and a writ of prohibition cannot be issued; otherwise, a writ of prohibition cannot be issued for any reason other than a lack of jurisdiction.”<sup>5</sup>

### **Writ of Certiorari**

The writ of certiorari is one of the most powerful and efficient remedies available under common law. Certiorari is Latin for "to certify." It is an order from the High Court to a lower court or any other authority with judicial or quasi-judicial powers. The major purpose of this writ is to keep lesser courts, judicial and quasi-judicial authorities within their jurisdictional limits, and to have their decisions overturned by the High Court and Supreme Court by issuing a writ of certiorari if they operate outside of their authority. "Wherever anybody or person possessing legal jurisdiction to settle problems affecting the rights of subjects, and having the responsibility to act judicially, acts in excess of their legal authority," a writ of certiorari may be granted.

“A sub-divisional Magistrate does not have the authority to change a Panchayati Adalat order or sentence under section 85 of the Uttar Pradesh Panchayat Raj Act, 1947. He can either quash the order or cancel the panchayati Adalat's jurisdiction. In this instance, the ruling was amended by the sub-Division Magistrate, who upheld the accused's conviction in one of the offences while quashing his conviction in the other. As a result, the Panchayati Adalat's order was modified by the sub-Division Magistrate. The Allahabad High Court ruled that a sub-divisional magistrate's order violated section 85 of the Indian Penal Code and quashed the judgement by issuing a writ of certiorari.

As a result of evaluating this case, it is evident that lack of jurisdiction may occur due to the nature of the proceeding's subject matter, and the court cannot decide some of it while leaving the rest unresolved. The entire matter should be investigated at the same time. Similarly, in circumstances where lesser courts have incorrectly refused to exercise authority vested in them, a writ of certiorari

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<sup>5</sup> S. Govinda Menon vs The Union Of India & Anr, 1967 AIR 1274

may be issued to overturn the inferior court's decision and decide the case that falls within their jurisdiction. In the instance of conditional powers, where certain powers are conferred in a third party.”<sup>6</sup>

### **Writ of Quo Warranto**

The purpose of a quo warranto is to prevent someone from holding or continuing to hold an office improperly or forcibly. The court has the authority to inquire the holder of the office under what authority he is holding the office via a writ of quo warranto. A writ can only be issued if the office in question is a public office, and anyone seeking a writ must first prove this. Furthermore, it must be demonstrated that the position in question has been usurped without legal authority. As a result, it was determined whether the individual who claimed to have usurped the office was legitimately appointed or not.

“Respondent contends that appellant no. 2's appointment is void because he fails to meet the first criterion stated in the advertisement seeking applications. The High Court issued a writ of quo warranto in this case, ruling that the appointment of respondent no. 2 (Anniah Gowda) was unconstitutional. The appellant filed a petition with the Supreme Court. The court ruled that the High Court's decision was wrong because the High Court failed to consider Anniah Gowda's Master of Arts degree from Durham University. The High Court was correct in ruling that Anniah lacked a high second-class degree from an Indian university, but he did have the alternative qualification of Master of Arts from a foreign university.”<sup>7</sup>

### **Case Analysis on Writ Jurisdiction of High Court**

“The principle of exhausting a remedy before invoking jurisdiction under Article 226 is a rule of policy, convenience, and discretion rather than the rule of law, according to the Supreme Court's decisions in State of Uttar Pradesh v Md. Nooh<sup>8</sup> and Baburam Prakash Chandra Maheshwari v Antrim Zila Parishad<sup>9</sup>. People should not be encouraged to circumvent statutes that provide a mechanism and technique for contesting administrative or quasi-judicial actions done under them, hence the restriction

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<sup>6</sup> Rafiq Khan And Anr. vs State Of Uttar Pradesh And Anr, AIR 1954 All 3

<sup>7</sup> The University Of Mysore And Anr vs C. D. Govinda Rao And Anr, 1965 AIR 491

<sup>8</sup> AIR 1958 SC 86

<sup>9</sup> A.I.R. 1969 SC 556

was warranted. The Income Tax Act is a code in and of itself when it comes to legal remedies. Petitioners have a number of effective and comprehensive legal options to challenge the impugned rulings, including an appeal under section 246(1)(i) of the Act, a second appeal to the Income-tax Appellate Tribunal, and a third appeal to the Supreme Court.”<sup>10</sup>

“The Supreme Court's decisions in *UP Jal Nigam v Nareshwar Sahai Mathur*<sup>11</sup>, *Titaghur Paper Mills Co. Ltd. v State of Orissa*<sup>12</sup>, and *HB Gandhi v Gopi Nath and Sons*<sup>13</sup> indicate that statutory remedies are insufficient to meet the demands of an extraordinary situation, such as where the statute's very viability is in question, or where private and public wrongs are so inextricably mixed that recourse to Article 226 is required for the prevention of public injury and vindication of public justice; or where the alternative remedy is onerous, costly, or insufficient; or where it requires excessive delay in which the authority has no jurisdiction.”<sup>14</sup>

"The Andhra Pradesh High Court stated in *Institute of Chartered Financial Analysts of India v Asst C.I.T.* that judicial review remedies under Article 226 are substantially distinct from other remedies." The High Court is concerned with whether the act or order under review should be allowed to stand or not, rather than substituting its own decision for that of another body, as it is when an appeal is approved, when conducting a review under Article 226. The courts have repeatedly stated that judicial review is "not directed against a result, but rather against the decision-making process."<sup>15</sup>

The basic goal of the regulation, according to the judiciary, is that top Courts are the apex judicial institutions within the States. If an alternate suitable, equally efficacious remedy is offered to the aggrieved party, it's only natural that they will refuse to exercise the extraordinary jurisdiction under Article 226 and direct the aggrieved party to first pursue the said alternative remedy, after considering H.W.R. Wade's commentary in "Treatise on Jurisprudence." The extraordinary authority of the High Court under Article 226 cannot be limited to the usual jurisdiction of the High Court. “In *Radha Krishan Industries v. State of Himachal Pradesh*, the Hon'ble Apex Court relied on *Whirlpool Corporation v. Registrar of Trade Marks*, *Mumbai Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*, and stated

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<sup>10</sup> Supra, AIR 1969 SC 556

<sup>11</sup> 1 S.C.C. 21

<sup>12</sup> 142 ITR 663

<sup>13</sup> (1990) 77 S.T.C. 1

<sup>14</sup> Supra, 1 S.C.C.21

<sup>15</sup> 256 I.T.R. 115



in paragraph 27 of the judgement: "The following legal principles emerge: (I) The power to issue writs under Article 226 of the Constitution can be used for any purpose; The power to issue writs under Article 226 of the Constitution can be used for any purpose; The power to issue writs under Article 226 of the Constitution can be used for any purpose; The power to issue writs under Article 226 of the (ii) The High Court has the authority to refuse to hear a writ petition. (iii) Exceptions to the rule of alternate remedy arise when (a) the writ petition is filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; or (c) the order or proceedings are wholly unconstitutional. (iv) An effective alternate remedy does not deprive the High Court of its powers under Article 226 of the Constitution in an appropriate case, though ordinarily, a writ petition should not be entertained when an effective alternate remedy is provided by law; (v) When a right is created by a statute that prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that specific statutory remedy before invoking the discretionary remedy. This rule of legislative remedy exhaustion is one of policy, convenience, and discretion.(vi) In circumstances involving disputed factual issues, the High Court may deny jurisdiction in a writ petition. However, if the High Court is objective in its assessment that the nature of the dispute necessitates the use of its writ jurisdiction, such assessment will not be easily overturned."<sup>16</sup>

### **Conclusion**

The Preamble of the Constitution's first and most important purpose is to provide social, economic, and political fairness for all of the country's residents. The Constitution's Preamble It is the nation's guiding concept since it outlines the key goals that legislators sought to attain. The Constitution sought to achieve the social changes that the framers of the Constitution envisioned through the exercise of fundamental rights by individuals and the state's policy direction toward the goals outlined in Chapter IV of the Constitution, which specifies directive principles of state policy. The judiciary was established in the Constitution to ensure that these ideas and purposes were carried out effectively in real life and to prevent abuse of these rights and liberties. It is a cliché and a Latin proverb, *ubi jus ibi remedium*, which indicates that where there is wrongdoing, the law will give a remedy. As a result, the judiciary was created to uphold this principle, and when a remedy is

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<sup>16</sup> AIR 2003 SC 2120

provided for the breach of any right, the right becomes more effective. Letters, postcards, telegrams, and even newspaper articles have been accepted as writ petitions by the Supreme Court and the High Court of India, respectively, under Article 32 and 226 of the Indian Constitution. These petitions seek extraordinary court redress for anyone whose rights have been violated by a judicial or quasi-judicial order. PIL plays a significant part in the legal system because it provides a path to justice for those who are marginalized in society and may not even be aware of their rights. The law is a superior body, and no one can be above it, according to the Constitution. Even Supreme Court judges are obligated by the decisions they make in conformity with the law. Furthermore, the constitutional remedies afforded by legislation serve as a check and balance for the entire system. As a result, writ jurisdictions serve as judicial restrictions on policy actions that are irrational, unfair, or contrary to the public good.

