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SCRUTINY OF INCLUSION OF WRITS IN ADMINISTRATIVE LAW

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ABSTRACT

The constitution grants prerogative powers of writ jurisdiction for judicial review of administrative action, which are unquestionably discretionary but have no set boundaries. Yet, the discretion should be used in accordance with established legal guidelines. In this regard, this paper does a critical analysis to emphasize that the foundation of the entire constitutional system is the rule of law, which is first and foremost the absence of arbitrary power. When discretion is granted to the executive authorities under a system that upholds the rule of law, it must be done so based on clearly defined boundaries. Considering this, the rule of law implies that every discretion or judgement must be grounded in a set of guidelines and regulations.

Keywords: writ, arbitrary power, rule of law, writ jurisdiction, judicial review, administrative action

I. INTRODUCTION

The boundaries of the exercise of power, authority, and jurisdiction over administrative activities carried out by any State, Governmental agencies, and instrumentalities as established by Article 12 of the Indian Constitution have been considerably defined by administrative law. Also, the judiciary is actively defining the rules and exceptions while conducting judicial reviews of administrative decisions.

The field of law known as administrative law is responsible for keeping governmental activities within the confines of the law, or, to put it another way, for preventing the implementation of egregiously poor instructions from being offensive. The courts have consistently worked to uphold the people's liberties and exercise their constitutionally mandated authority to conduct judicial reviews of administrative actions.

If discretionary powers are being exploited or misused, they must be limited. Justice is essentially that. The current fad is to read about social justice and translate. The welfare state must carry out its duties impartially, treating

everyone in the nation equally and without bias. In accordance with the rule of law, the judges have raised their arms if they become aware of such powers. The government now offers social services and new types of property, including jobs, quotas, licences, mining rights, etc. Therefore, the provider of special services is not permitted to exercise free will. Judges established the criteria for how reasonable government action must be.

II. CONSTITUTIONAL THEORY BEHIND WRITS

A person may go to court for the proper remedy if their rights are violated by an arbitrary administrative action. The Supreme Court and High Courts are granted writ jurisdiction by the Indian Constitution's Articles 32 and 226 for the purposes of upholding and defending an individual's fundamental rights, respectively. A Writ is an official document or order from the court that instructs a person, official, or authority to perform an action or refrain from performing one.

III. HISTORICAL PERSPECTIVE

The Regulating Act, 1773, which led to the establishment of the Supreme Court in Calcutta, is where writs first appeared in India. In addition

to the Supreme Court, several High Courts were established under the charter, and they were given similar authority to issue writs. The other courts that were afterwards constituted lacked this authority. The initial civil jurisdiction that these courts had under section 45 of the Particular Relief Act of 1877 was the extent of their writ jurisdiction.

IV. UNDERSTANDING OF ARTICLE 32

The right to constitutional remedies is protected by Article 32 and is found in Part III of the constitution. Dr. Bhim Rao Ambedkar believed that the right to constitutional remedies was the heart and spirit of the constitution. The Supreme Court is designated in Article 32 as the fundamental rights' protector and guarantor. According to Article 32(1), if any fundamental rights protected by Part III of the Constitution are violated by the government, the person has the right to petition the Supreme Court to have such rights upheld.

According to Article 32(1), if any fundamental rights protected by Part III of the Constitution are violated by the government, the person has the right to petition the Supreme Court to have such rights upheld. The Supreme Court has the authority to issue writs, orders, or directions under Article 32(2). It says that in order to enforce any essential rights guaranteed by Part III of the constitution, the Supreme Court may issue any one of five different sorts of writs: habeas corpus, mandamus, prohibition, quo warranto, and certiorari. The court's original jurisdiction is its ability to issue writs. According to Article 32(3), Parliament may, by law, authorise any court with local jurisdiction in India to issue writs, orders, or directives that are protected by Article 32 (2). Article 32(4) states that rights given under Article 32 cannot be suspended except such suspension provided by the constitution.

Article 32 was referred to be the "heart and soul" of the constitution by Babasaheb Bhim Rao Ambedkar. Article 32, which grants people the ability to petition the Supreme Court directly for the enforcement of their fundamental rights, is

referred to as the "heart and spirit" of the constitution. Article 32 is the foundation of the Constitution because it is a basic right in and of itself. The Supreme Court claims that Article 32 is the fundamental tenet of the constitution and that it cannot be changed, not even through constitutional amendment.

V. CONSTITUTION-RELATED REGULATIONS

The English remedies have been incorporated into the Constitution via Articles 32 and 226. The Supreme Court and High Courts are now specifically authorized under the Constitution to issue writs of habeas corpus, mandamus, prohibition, quo warranto, and certiorari. If there is no constitutional mechanism for its enforcement, the fundamental rights that are inalienable, sacrosanct in nature, and created in the national and public interest risk becoming fictitious. The rights guaranteed by Article III of the Constitution cannot ever be put into effect by the people unless such constitutional procedures for its enforcement are established. Part III's Article 32 is a fundamental right guaranteed to every citizen by the Constitution. The High Courts have the authority to exercise their prerogative writs, which can be issued against any person or group of people, including the government, under Article 226 of the Constitution. The differences between the two therapies are really small. While Article 226 is available for any purpose other than the enforcement of fundamental rights, Article 32's remedy is limited to the enforcement of basic rights. As a result, the constitution gives the High Court and the Supreme Court discretionary remedies. No one can enforce their assigned rights if there are no provisions for such remedies.

VI. ROLE OF WRITS IN ADMINISTRATIVE ACTIONS

Let's use the cases involving discretion as an example to discuss the function of writs. The delegation of discretionary authority has come to be recognized as a necessary feature of contemporary administrative and constitutional machinery. To serve the public interest, law-making bodies pass laws on any topic, and it

has become essential to include judicially reviewable discretionary powers while doing so. The condition is that the person who has the discretionary authority must use it honestly, just for the intended use, and within the bounds of the Act's regulations. The Courts continue to have the authority to judge whether the Law is reasonable. The majority of the time, the courts examine two issues: first, whether the statute is a piece of substantively legal legislation, and second, if it offers procedural protections. If neither of these two requirements is met, the law is ruled to be extra vires and in violation of Article 14 of the Constitution.

In addition, courts have oversight over the executive branch's discretionary powers that are used after statutes are in effect. Once they exist, it is the Executive Government's responsibility to govern the powers within the parameters set forth to fulfil the Statute's purpose. The Executive must make judgements by taking into account pertinent factors. They should neither disregard pertinent information nor give it full consideration if it is entirely unrelated or unnecessary. They shouldn't take a legal matter in the wrong direction. Only such a choice would be legitimate. Courts have the authority to ensure that the Executive is acting legally. They cannot dodge judicial scrutiny by omitting to provide justifications.

The role of writs is also explicitly outlined in the well-known Padfield case: In England's early days, the courts typically declined to intervene when the government or the relevant authority issued a "non-speaking order," which is an order that did not explicitly state its justifications. The Courts next considered whether the justifications provided by the order or decision were pertinent justifications in cases where a speaking order had been passed. When there existed a non-speaking order, people used to claim that it was unthinkable, like the face of the Sphinx, and that they couldn't even think about whether the order was valid.

VII. TYPES OF WRITS

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

- Habeas Corpus
- Mandamus
- Certiorari
- Prohibition
- Quo Warranto

HABEAS CORPUS

When someone is being held against their will, the courts will issue a Writ of Habeas Corpus. One of the best options accessible to a person in custody is a petition for habeas corpus, which translates to "to have the body."

Via this Writ, the Court directs whoever or whatsoever detains or restrains another person to bring them before the court. The person who is holding someone hostage must furnish the court with the reason(s) for holding them, and if he does not do so, the court will immediately release the person from custody.

The Supreme Court stated in the case of *Kanu Sanyal v. District Magistrate*¹⁶ that the court may review the validity of the detention without needing the detainee to appear before it in order to define the true extent of the writ of habeas corpus.

In *Sheela Barse v. State of Maharashtra*¹⁷, the supreme court relaxed the customary locus standi theory by holding that someone else may petition for a writ of habeas corpus on behalf of the detained individual if he is unable to do so.

The son of the petitioner was taken away by the Orissa police for questioning in *Nilabati Behera v. State of Orissa*¹⁸ and was never found. During the pendency of the petition, his dead body was found on railway track the petitioner was awarded compensation of Rs. 1, 50, 000.

MANDAMUS

¹⁶ AIR 1973 SC 2684

¹⁷ AIR 1983 SC 378

¹⁸ AIR 1993 SC 1960



Another significant Writ that the Indian Constitution provides for is the mandamus. The higher courts direct the inferior courts to take a certain action or to refrain from taking a certain action under the Writ of Mandamus. An inferior tribunal, board, corporation, or any other sort of administrative authority may also receive this order.

The Supreme Court of India is the highest court, hence even if the High Courts are also given the authority to issue such Writs under Article 226, the Supreme Court has the authority to do so. Hence, a High Court may only issue this Writ under Article 226 to Inferior Courts, such as a district trial court.

A petition was filed in the High Court in the case of *Vijaya Mehta v. State of Rajasthan*¹⁹ to compel the State to fulfil its obligation of forming a commission to investigate climate change and floods in the State. The Writ of Mandamus was not issued in this case because the Court determined that the State Government would only be required to name a commission once a resolution was approved by the Legislature and that it was a discretionary rather than a mandatory responsibility.

By its final ruling, the Income Tax Appellate Tribunal had provided the respondent Income Tax Officer with explicit instructions in the case of *Bhopal Sugar Industries Ltd. v. Income Tax Officer*²⁰, Bhopal. The Income Tax Officer was still refusing to follow the Tribunal's instructions. The Supreme Court ruled that the Income Tax officer had a statutory obligation to follow the Tribunal's instructions and that failure to do so constituted grave injustice.

Hence, the Writ of Mandamus was granted to order the official to follow the Tribunal's instructions.

CERTIORARI

The term certiorari refers to "to be certified." It can be issued by the Supreme Court or the High

Court to overturn a lower court's previous decision. It could also be used by the Supreme Court to send a specific case to it or another higher court for consideration.

Certiorari is fundamentally a device for legal control and restriction. As previously stated, it is issued by the Supreme Court or the High Court to overturn an order made by an inferior court, tribunal, or quasi-judicial authority whenever the authority has acted beyond its authority, lacked the necessary jurisdiction, or violated natural justice principles. It is corrective in nature and aims to stop the judicial authorities from going too far.

The writ of certiorari was exercised in the case of *Sayed Yakoob v. K.S. Radhakrishnan & Ors.*²¹. Through a notification issued in accordance with the Motor Vehicles Act of 1939, the State Transport Authority had solicited applications for the issuance of two-stage carriage permits. One of the applicants was granted the first permit after receiving several applications, and new applications were required for the second permit. The appellant then went to the State Transport Appellate Tribunal to make an appeal. In its second decision, the Tribunal granted the appellant's appeal and ruled that the first permit should be granted to him. With a writ of certiorari, the respondent then moved to the High Court. It argued that the Tribunal had failed to take into account a number of significant factors. The appellant filed a special leave petition with the Supreme Court after the previous order was upheld.

By issuing the writ of certiorari in the present case, it was determined that the High Court had in fact exceeded its jurisdiction. It was noted that the purpose of issuing this writ is to rectify situations in which a court has exceeded its jurisdiction. The court cannot check a factual error or act as a court of appeal under the writ's authority. It can be used in situations where there is a legal error or when it can be demonstrated that natural justice principles

¹⁹ AIR 1980 Raj 207

²⁰ 1977 SCR (3) 578

²¹ Syed Yakoob v. K.S. Radhakrishnan, (1964) 5 SCR 64.

were violated. But not solely based on a factual error. However, the court's discretion determines whether such an error has occurred.

In another case of *Radhey Shyam and anr. v. Chhabi Nath and Ors.*²² during the trial, the respondent had filed a writ petition in the High Court against a civil court's interim order. The interim order was overturned by the High Court, which ruled in favor of the appellant. The appellant then filed a Special Leave Petition with the Supreme Court, arguing that the High Court lacked the authority to issue the order and that no writ petition could be filed against an interim order issued by a civil court.

In accordance with Articles 226 and 227, the court distinguished the High Court's jurisdiction. It was noted that while Article 227 grants supervisory jurisdiction, Article 226 grants writ jurisdiction to the court. The two of them contrast in their extension and nature of abilities given to the court. Article 227 says that the court can't just overturn an order; it can also replace it with its own opinion or decision. But Article 226 prohibits the court from doing so. As a result, it was decided that civil court judicial orders are not subject to a writ of certiorari.

PROHIBITION

The legal term "prohibition" means "to prohibit, restrain, prevent, or forbid." To prevent the lower court from exceeding its required jurisdiction or authority, a higher court issues a writ of prohibition against it. It can't be implemented against managerial offices, legal specialists, or confidential people or endeavors. It only applies to bodies that are judicial or quasi-judicial.

In the case of *Brij Khandelwal union of India*²³ the Central Government was prohibited from entering into a boundary dispute agreement with Sri Lanka by the Delhi High Court. The ruling was based on the fact that the government can perform executive and administrative functions without restriction. Even in administrative tasks, there is no longer a view that is tolerable thanks

to the development of the concept of fairness and the idea of natural justice. The solidness of certiorari or restriction writ has likewise mellowed. The writ of prohibition can now be issued to anyone, regardless of the nature of the duty it fulfills, if any of the grounds for its issuance are present. Preclusion is presently viewed as a wide solution for legal control of influencing semi-legal as well as regulatory activities.

In the case of *S. Govind Menon v. Union of India* A writ of prohibition can be issued when there is either too much or not enough jurisdiction. Writ of preclusion was given by a higher court, specifically the Kerala High Court, to a lower court to assume control over locale that was not at first vested, or in that frame of mind, to propel lower courts to hold their jurisdictional limits. The writ can be issued in both cases of an absence of jurisdiction and an excess of jurisdiction.

In the case of *Hari Vishnu v. Sayed Ahmed Ishaque*²⁴ The distinctions between certiorari and prohibition writs were the subject of the case. The verdict in this case made a distinction between prohibition writs and certiorari, stating that the petitioner must file a certiorari petition whenever the lower court issues a decision, as prohibition writs can only be submitted when a judgment has not yet been rendered.

QUO WARRANTO

The writ is issued to prevent a "usurper" from wrongfully occupying a substantive public office and enjoying certain privileges and franchise from that public office when he does not have the authority to do so. The maxim quo warranto means "by what authority." To be considered a valid appointment, the person appointed to the public office must demonstrate his authority over it. Who can apply is not limited in any way. As long as their fundamental or other legal right is being violated, anyone can apply. Concerning the application, a question of the public interest

²² Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423.

²³ Brij Khandelwal v. Union of India, 1974 SCC OnLine Del 210.

²⁴ Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 1104



must arise even when there is no violation of a right.

The application made by the candidate ought to be real. It is not appropriate to submit the application for the sake of a secret political struggle or undercurrent. The applicant should act in the public interest and not in the hope of gaining anything unethical or beneficial by submitting the application.

In the case of *Amarendra Chandra v. Narendra Kumar Basu*²⁵ For this situation, the individuals from the Overseeing Board of a school in Calcutta were the respondents. To question the members' level of authority, an application for quo warranto was requested. The Court decided that a private office would not be subject to the writ of quo warranto.

In another case of *G.D Karkare v. T.L. Shevde*,²⁶ the arrangement of a non-candidate as Promoter General of Madhya Pradesh by the Lead representative was tested. The non-applicant had already retired from his position as a High Court Judge when he reached the age of 60. All things considered, in view of Article 165(1), since he was at this point not a High Court Judge, he was not able to be designated as Head legal officer. Based on Article 226(1), the Court noted that it was not limited to enforcing fundamental rights in this case. Article 226's phrase "for any other purpose" gave the Court the authority to act on whatever it thought was appropriate in the exercise of its powers. There is not a glaringly obvious explanation that the equivalent can't be applied to giving the writ of quo warranto.

In addition, the non-applicant does not seek to enforce his fundamental rights or complain of non-performance of duty toward himself in the proceedings for the writ of quo warranto. The main pressing concern was whether the non-candidate has the privilege to possess the workplace and whether the request passed is a

request expelling the non-candidate from his situation.

In another case of *University of Mysore v. CD Govinda Rao*,²⁷ for this situation, the College of Mysore had set up enlistment commercials for the places of teacher and peruser. The University's list of requirements would be used to determine who qualified for the positions. The petition to issue the writ of quo warranto was based on the hiring and appointment of an unqualified English reader who did not meet the requirements. It was seen by the High Court that to give the writ of quo warranto, the individual who unjustly possesses the public office, should hold an office of a 'meaningful' sort.

CONCLUSION

Article 32 of the Indian Constitution grants the Supreme Court and High Courts with the authority to issue Writs. These Writs are an order which is given by the Courts for the exhibition of a demonstration to the public power which has an obligation to perform it.

There are five different kinds of Writs: Habeas Corpus, Mandamus, Certiorari, Quo Warranto, and Prohibition. Each of these writs is a good way to enforce people's rights and get the government to do what it is supposed to do under the law.

Of these Writs, the extent of Mandamus is the largest. In contrast to other Writs, such as Habeas Corpus and Certiorari, which are only granted in limited instances, Mandamus can be granted in situations where the authority to do so is based on the performance of a duty. Habeas Corpus is used to seek relief from illegal detention. Certiorari is used for cases in which a court has exceeded its authority. As a result, each of these Writs has expanded the power of judicial review in courts and strengthened the enforcement of people's rights.

When fundamental rights are violated, the courts issue formal written petitions known as Writs to enforce the right to constitutional

²⁵ Amarendra Chandra v. Narendra Kumar Basu, 1952 SCC OnLine Cal 37.

²⁶ G.D Karkare v. T.L. Shevde AIR 1950.

²⁷ University of Mysore v. C.D. Govinda Rao, (1964) 4 SCR 575.



remedies. Articles 32 and 226 of the Indian constitution grant authority to the Supreme Court and High Court, respectively. It is interesting to note that "Prerogative Writs," the name given to writs in British law, were adopted.

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