BLOGS

5 types of Writs: CLAT 2023

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Introduction

The Constitution of India, which is the supreme law of India, guarantees certain basic rights to Indian citizens known as Fundamental Rights which have been provided under Part III of the Constitution.

Provision of any right is futile without there being any remedy to enforce such a right. Thus, the Constitution contains provisions for the issuance of “writs” for the enforcement of fundamental rights.

[Did you know? Article 32 which talks about the protection of fundamental rights is itself a fundamental right!]

In layman’s language, a “writ” can be understood to mean a **written command or directive issued by any court**. The writ issuing power conferred by the Constitution has been borrowed from the Constitution of Britain. The power of issuing writs for enforcement of fundamental rights is vested in the **Supreme Court of India** (the highest court in the country) and the **different High Courts**, having jurisdiction over various States/Union Territories of India, under **Articles 32 and 226 of the Constitution respectively**.

Constitutional provisions relating to the issuance of writs

Fundamental rights, provided under the Constitution, can be majorly classified into six categories namely-

- Right to equality (Articles 14-18),
- Right to freedom (Articles 19 to 22),
- Right against exploitation (Articles 23 to 24),
- Right to freedom of religion (Articles 25 to 28),
- Cultural and educational rights (Articles 29 and 30),

- Right to constitutional remedies (Article 32).

Article 32, which vests the power to issue writs in the Supreme Court, also gives individuals the right to move the Supreme Court for enforcement of fundamental rights. While Article 226, which relates to issuance of writs by High Courts, has not been categorized under Part III of the Constitution, Article 32 is contained in Part III since right to move the Supreme Court for enforcement of fundamental rights is treated as a fundamental right in itself and is known as " **right to constitutional remedies**".

It is because of this that the Supreme Court is referred to as the 'Protector and Guarantor of Fundamental Rights'. Dr. B.R Ambedkar had even referred to Article 32 as the 'heart and soul of the Constitution'!

In addition to Articles 32 and 226, Article 139 of the Constitution also relates to the issuance of writs. It allows the Indian Parliament to make law for conferring on the Supreme Court, the power to issue writs for enforcement of rights other than fundamental rights.

Though at present, only Supreme Courts and High Courts have the power to issue writs but Article 32(3) of the Constitution permits the **Parliament to make law to confer the writ issuing power** vested in the Supreme Court on any other court as well.

Types of writs

Articles 32 and 226 of the Constitution recognize **5 different kinds of writs** namely-

- Habeas Corpus
- Mandamus
- Certiorari
- Quo warranto
- Prohibition
- Habeas Corpus

Habeas Corpus is a Latin term meaning "have the body". It is a writ issued by the court to require the production of any person, who has been detained by any authority, before such court to inquire into the legality of his/her detention and to set him/her free in case such detention is found to be illegal.

While the need to issue a writ of habeas corpus arises mostly **in case of illegal detention by police authorities**, it can also be issued against any private individual who has illegally detained someone.

Since a detained person may not be in a position to approach the court for seeking issuance of such writ, any other individual who is aware of any case of illegal detention may approach the court for seeking such relief.

Writ of habeas corpus cannot be issued against any person who does not fall within the court's jurisdiction and in cases where the detention is legal, for instance, pursuant to order of a court.

Since habeas corpus is intended to prevent illegal detention, it is said to protect the "**personal freedom**" of a person.

- Mandamus

"Mandamus" is a Latin term meaning "we command". This writ is issued as a command or direction to an inferior court or public authority to do their legal duty which they have otherwise failed to do.

So, in case of an inferior court, it is issued to compel the court to exercise such jurisdiction which it has failed or refused to exercise. For issuance of writ of mandamus, two conditions are essential –

(i) the duty whose performance is sought to be enforced must be a legal duty of a public nature and

(ii) performance of the duty/act must not be discretionary.

Considering condition (i), writ of mandamus **cannot be sought against a private individual** who is bound to do something under a contract.

- Prohibition

A writ of prohibition is issued to judicial or quasi-judicial bodies, such as a court or tribunal, by a superior court to prevent them from acting beyond their jurisdiction or exercising a jurisdiction which they do not possess.

It can also be issued **to prevent a court or tribunal from acting contrary to principles of natural justice**. The writ of prohibition can be issued only when proceedings before the court,

against whom the writ is sought, are pending.

The issuance of such writ prohibits the court from proceeding further with the case.

- Certiorari

This writ is similar to a writ of prohibition in the sense that it is also **issued when a court or tribunal acts beyond its jurisdiction**.

The writ is issued to quash an order passed by an inferior court or tribunal which had no jurisdiction to pass such order or which acted beyond the limits of its jurisdiction while passing the order.

It can be issued against judicial or quasi-judicial bodies and administrative authorities.

Thus, the key difference between writs of prohibition and certiorari is that **prohibition is issued when the proceedings are pending** while **certiorari is issued only when the proceedings have gotten completed resulting in the passing of an order**.

- Quo warranto

"Quo warranto" is a Latin term meaning "**by what warrant**". It is a writ issued by a court to any person holding a public office for the purpose of requiring him/her to show as to under what authority he/she holds the office in question.

The objective of issuing this writ is to prevent any person from usurping a public office. If the person under investigation is found to be lacking the authority to hold the office in question, the court may restrain him/her from holding the office any further and declare his/her appointment as illegal.

A "public office" can be understood to mean **an office established by the government** which implies that writ of quo warranto cannot be issued against a private office.

Alternate remedy

Any person seeking issuance of a writ must file a "writ petition" before the concerned court specifying the writ which he/she seeks. As a general rule, **issuance of a writ cannot be sought if an alternate remedy is available** to the concerned person to get his/her grievance redressed.

For instance, if a statute provides for filing an appeal against an order passed by a particular court, a writ of certiorari cannot be sought for quashing of that order.

In a few exceptional cases, such as violation of principles of natural justice, a writ can be sought despite the existence of alternate remedy.

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