

**Course-B.A LL.B (sem-6)**  
**Administrative Law (unit-3)**  
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# Constitutional Remedies

A person whose right is infringed by an arbitrary administrative action approaches the court for relief/remedy. Administrative Law provides for various kinds of remedies and reliefs to the aggrieved against an illegal administrative action. These remedies are classified as follows:

### **1. CONSTITUTIONAL REMEDIES:**

- i. Scope of Articles 32 & 226 of Indian Constitution;
- ii. Exhaustion of Remedies;
- iii. Writs:
  - a) Habeas Corpus;
  - b) Mandamus;
  - c) Certiorari;
  - d) Prohibition; and
  - e) Quo Warranto.



### **iii. Writs**

Articles 32 and 226 of the Indian Constitution confer writ jurisdiction on the Supreme Court and High Courts respectively. The term 'writ' literally means, it is an instrument or order of the Court, by which the Court (High Court or Supreme Court) directs an individual or official or an authority to do an act or abstinence.

According to Lord Halsbury, Writs' can be called those extraordinary remedies which are issued upon causes shown in cases where the ordinary legal remedies are inapplicable or inadequate.



‘Writ’ is a written command, percept, or formal order issued by a court, directing or enjoining the person or persons to whom it is addressed to do or refrain from doing some act specified therein. Thus writ is a written document under the seal of the Court issued a person or authority including Government in appropriate cases commanding them or any of them to do or forbear from doing some act.

Writs are classified under the following heads:

1. Writ of Habeas Corpus;
2. Writ of Mandamus;
3. Writ of Certiorari;
4. Writ of Prohibition; and
5. Writ of Quo Warranto.



## 1. Writ of Habeas Corpus

**Meaning:** The expression 'Habeas Corpus' is a Latin term. It means "to have (produce) a body." This purpose is to release a person arrested/detained illegally.

If a person is detained unlawfully, he or his relatives or friends can move the court by filing an application under Article 226 in High Court or under Article 32 in Supreme Court for the writ of Habeas Corpus.

The Court on being satisfied with the contents therein, issues the writ of Habeas Corpus. This writ is in the form of an order directing a person who has detained, to produce that person before the Court. He is also asked to let the Court know, by what authority he has detained that person. If the cause shown has no legal justification, the court orders immediate release of the person detained. The court may also award exemplary damages.



**Who can apply for the Writ of Habeas Corpus (Locus Standi):** The general rule is, the person who is detained can apply for the writ. But, in certain cases, the application can be made on his behalf by his friends or relatives. However, a total stranger cannot make the petition for the writ of Habeas Corpus.

**Scope of the Writ of Habeas Corpus:** It is the most effective and speedy remedy in case of unlawful detention. The purpose of the writ is not to punish the wrongdoer, but to protect the personal liberty of the person detained. The burden of proof (that he is under lawful detention) is on the part of the respondent. As it protects the right guaranteed under Article 21, it is called 'Freedom Writ'. It is a writ of right, not discretionary like other writs.



regularly

*Bhim Singh v. State of J & K (AIR 1986 SC 494)* – In this case, Bhim Singh, an M.L.A. was arrested unlawfully. His wife filed an application for Habeas Corpus. Then, the Supreme Court directed immediate release and awarded the exemplary damages of Rs.50,000/-.

## 2. Writ of Mandamus

**Meaning:** The expression 'Mandamus' is a Latin term, which means "a Command" or "the order". Mandamus is a Judicial Order issued in form of a command to any Constitutional, Statutory or Non-Statutory authority asking to carry out a public duty imposed by law or to refrain from doing a particular act, which the authority is not entitled to do under the law. It is an important writ to check arbitrariness of an administrative action. It gives positive as well as negative remedy. It is popularly known as the 'Writ of Justice'.

**Locus Standi or who can file a petition for the Writ:** The rule of Locus Standi is strictly followed except in public interest litigation. The petitioner has to prove that he has a right to enforce public duty in his favour.

**Authorities to which the writ may be issued:** The Writ of Mandamus may be issued against the Government, Semi-Government and all public Authorities (Judiciary, Tribunals,



**Conditions:** The petitioner seeking the writ, has to satisfy the following conditions:

1. There must be a public duty on the part of the respondent;
2. Such duty must be absolute;
3. There must be specific demand and refusal;
4. Subsisting Duty.

**Against whom it will lie?**

The Writ of mandamus may be issued by the Supreme Court (and also by the High Court) to the Government, inferior Court, Tribunal, public authority including administrative and local bodies, corporation or any person having public duty to perform. In appropriate case, mandamus may be issued even against the legislature. For example if the Fundamental Right is violated by a competent proceeding initiated by the Legislature, the court may issue the writ against the Legislature. When the High Court acts in administrative capacity, a writ of mandamus under Article 32 may be issued against it.



## **Against whom mandamus will not be granted?**

- i) The President or the Governor of a State, for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers (Article 361, post).
- ii) Mandamus does not lie against a private individual or body whether incorporated or not except where the State is in collusion with such private party, in the matter of contravention of any provision of the constitution, or a statutory instrument.
- iii) Mandamus will not lie against a company which is incorporated under the Companies Act and has no statutory duty or public duty to perform.

issued to the Government

*Director of Settlement of A.P. v. M.R. Apparao (AIR 2002 SC 1598)* – in this case, the Court has held that in order to obtain the writ of mandamus the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such must be subsisting.

**A Writ of Certiorari**



whom the mandamus is sought and such must be existing.

### 3. Writ of Certiorari

**Meaning:** The word 'Certiorari' is a Latin term, which literally means "to be certified". It is a writ issued by the Supreme Court or High Court to an inferior/lower court for calling up the record of a proceeding in the inferior court for review. In other words, the writ of certiorari confers power on the Supreme Court and High Courts, over the lower courts to correct illegality of their decisions. In simple, it is an order or command by the Supreme Court or High Court to an inferior (lower) court or quasi judicial or administrative body. The inferior authority is directed to transmit the records, to check whether the decision by such authority is illegal or against the principles of natural justice. If it is found illegal, the decision is quashed. But, nothing is substituted to such decision quashed.



**Grounds for issuing the Writ:** The Writ of Certiorari may be issued on the following grounds:

1. Judicial Error or Lack of Jurisdiction;
2. Improper constitution of such authority;
3. If the authority is incompetent;
4. Its jurisdiction is unconstitutional; and
5. Violation of the principles of natural justice.



**Locus Standi** or who may apply for issue of the Writ of **Certiorari**: Any person or even a firm or non-statutory body such as the Managing Committee of a school whose legal right has been invaded and who has been aggrieved by the order complained of may apply for certiorari. Any member of the public, who has not disentitled himself by his conduct, may draw the attention of a superior court to an order passed by a subordinate Tribunal being manifestly illegal or ultra vires.

*A.K. Kripak v. Union of India (AIR 1970 SC 150)* – The Supreme Court issued the Writ of Certiorari to quash the selection list of the Indian Forest Service on the ground that one of the selected candidates was the ex-officio member of the selection committee.



#### 4. Writ of Prohibition

The writ of prohibition is a judicial writ issued by a superior court to the interior/lower court or tribunal or administrative authority vested with a duty to proceed judicially so as to prevent them from to act/proceed in excess or abuse of their jurisdiction setting aside the principles and laws of the land.

The writ of prohibition is an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior tribunal, or to an inferior ministerial tribunal possessing incidentally judicial powers and known as a quasi-judicial tribunal or even in extreme cases to a purely ministerial body, commanding it to cease abusing or usurping judicial functions.

.The writ of prohibition cannot be issued to stop investigation. The Court should not issue a writ of prohibition and stall matters which are against the interest of the country as a whole.

In *Raj Leathers v. Secretary to the Government of India* (AIR 1990 Mad. 30) – it has been held that the petitioner cannot seek the help of the Court and obtain a writ of prohibition to stop the authorities from conducting the investigation.



## 5. Writ of Quo Warranto

**Meaning:** The Writ of 'Quo Warranto' questions the title as to holder of an office. The term 'Quo Warranto' means 'By What Authority.' It is a judicial order asking person, who occupies public office, to show by what authority he holds the office. If it is found that the holder of the office has no valid title, then the Writ of Quo Warranto is issued to him to oust (vacate) from the office.

**Locus Standi (Who can file a petition for the writ):** The object of the proceeding of quo warranto is to try a civil right i.e., a right to hold an office and is not a criminal proceeding. A writ of quo warranto is to terminate a person from the office to which he is authorised, and not entitled to hold that post. By this writ, the appropriate, competent and authorised person is protected to hold the public office for which he has a right. The public office must be statutory or constitutional. Quo warranto is a very powerful instrument for safeguarding against the usurpation of public offices.

The Writ of Quo Warranto to be issued, the following conditions are to be satisfied:

1. The office must be a public office;
2. The office must be substantive in nature (permanent in character and not terminable).



3. The person must be in actual possession of the office;
4. The person must have held the office contrary to law; and
5. Subsequent disqualification.

In *K. Bhima Raju v. State of Andhra Pradesh* (AIR 1981 AP 24) – The Andhra Pradesh High Court quashed the appointment of a Government Pleader on the ground that the rules for the said appointment are not complied with.

The Writ of Quo Warranto cannot be issued if it does not serve any purpose i.e. it is futile.

In *University of Mysore v. Govind Rao* (AIR 1965 SC 491) – it has been held that to issue quo warranto the office may be one in respect of which nomination or appointment is made or it may be elective office. The office is required to be an office of public character and also substantive character. It cannot be issued, if the office in question is an office of a private character.

In *Nityanand v. Khalil Ahmed* (1961) A. Punj. 105) – Punjab High Court held that quo waranto lies even to test the validity of election.



Thank you !!!





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