

A STUDY ON ENFORCEMENT OF WRIT AGAINST EXECUTIVE AUTHORITIES OF A STATE – WITH SPECIAL REFERENCE TO WRIT OF MANDAMUS

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INTRODUCTION

The judiciary in India plays an important role in the democracy because it not only prevents government officials from misusing their powers but also safeguards the rights of citizens and protects the Indian Constitution. As a result of this, Indian Constitution envisions a powerful, independent, and well-organised judiciary. A writ petition is a formal written order issued by a judicial authority, such as Supreme Court and High Court. Writ petitions can be filed to protect Fundamental Rights. Fundamental Rights are contained in Part III of the Indian Constitution including the right to equality, right to life and liberty etc. Merely providing for Fundamental Rights is not sufficient. It is essential that these Fundamental Rights are protected and enforced as well.

To protect Fundamental Rights the Indian Constitution, under Articles 32 and 226, provides the right to approach the Supreme Court or High Court, respectively, to any person whose Fundamental Right has been violated. At the same time, the two articles give the right to the highest courts of the country to issue writs in order to enforce Fundamental Rights.

The Supreme Court and High Court have different jurisdiction for issuing writs. Article 32 and Article 226 provide the Supreme Court and the High Courts the authority to bring a suit against a government entity if any citizen's rights and freedoms are violated.

ARTICLE 226 OF INDIAN CONSTITUTION:

The High Court has broad powers to issue orders and writs to any person or authority under Article 226 of the Indian Constitution. Before a writ is issued, the party who is petitioning the court must prove that he has a right that is being violated or endangered illegally. If the cause of action arises within its jurisdiction, the High Court can issue writs and direct to any Government, authority, or person even if they are located beyond its jurisdiction.

Under Part V of the Constitution of India, Article 226 provides the High Courts with the power to issue writs, including writs in the form of habeas corpus, mandamus, prohibition, quo warranto, certiorari, or any of them, to any person or authority, including the government.

According to Article 226(1), each High Court within India's territorial jurisdiction has the ability and power to issue orders, instructions, and writs, to any individual or authority, including the government, for the enforcement of Part III of the Indian Constitution or basic fundamental rights and other legal rights within its own jurisdiction.

Article 226(2) empowers the High Courts with the authority to issue orders, instructions, and writs to any government authority or any individual, outside their own local jurisdiction in circumstances when the cause of action is completely or partially within their local jurisdiction despite the fact that such government or authority's seat or the individual's domicile is not within the territory.

Article 226(3) when an interim order is issued against the respondent under article 226 in the form of an injunction or a stay without

providing the respondent with a copy of the petition and any relevant evidence or providing the respondent with an opportunity to be heard.

Article 226(4) the jurisdiction granted to the High courts under Article 226 does not prevent the supreme court from using its powers under Article 32(2).

In **Bandhua Mukti Morcha v. the Union of India (1984)**, it was held that Article 226 has a much broader scope than Article 32, as it gives the High Courts the power to issue orders, directions, and writs not only for the enforcement of fundamental rights but also for the enforcement of legal rights that are granted to the disadvantaged by statute and are just as important as the fundamental rights.

In **Chandigarh Administration v. Manpreet Singh (1991)**, it was decided that the high court does not sit or function as an appellate authority over the orders of the subordinate authorities when working under Article 226. Its authority is purely supervisory. While performing this job, the High Court must ensure that it does not go beyond the well-defined boundaries of its own jurisdiction.

In the case of **State of Madras v. Sundaram (1964)**, it was held that when it is proven that the impugned conclusions were not supported by any evidence, a High Court, in the exercise of its authority under Article 226 of the Constitution, cannot sit in appeal over the findings of fact made by a competent Tribunal in a properly conducted departmental investigation. When the High Court exercises its power under Article 226 of the Constitution, the adequacy of such evidence to support the allegation is not a matter before it.

In **Common Cause v. the Union of India (2018)**, the Hon'ble Supreme Court stated that the High Court has been given the power and jurisdiction to issue appropriate writs in the nature of mandamus, certiorari, prohibition, quo warranto, and habeas corpus for the

enforcement of fundamental rights or for any other purpose under Article 226 of the Constitution. As a result, the High Court can issue relief not only for the enforcement of fundamental rights but also for "any other reason," which might include the enforcement of public responsibilities by public authorities.

WRITS

A writ is a written order issued by a court instructing someone to do or refrain from doing something. It possesses authority and the ability to compel compliance. We all have various rights, such as the right to life, the right to education, the right to dignity, and so on, but these rights can only be used if they are safeguarded. Our Constitution primarily mentions the protection of our fundamental rights in four articles:

- Article 12 of the Constitution of India discusses judicial review
- Article 359 of the Constitution of India states that fundamental rights cannot be curtailed at any time except in the situation of emergency;
- Article 32 of the Constitution of India mentions the protection of our fundamental rights by the Supreme Court;
- Article 226 of the Constitution of India mentions the protection of our fundamental rights by the High Courts.

Part III of the Indian Constitution deals with fundamental rights, it runs from Article 12 through Article 35. This essentially indicates that Article 32 of India's Constitution, which stipulates the preservation of fundamental rights, is a fundamental right in and of itself. Both the Supreme Court and the High Courts have been vested with the authority of issuing 'writs' under Article 32 and 226 respectively.

TYPES OF WRITS AVAILABLE UNDER ARTICLE 226 :

The Supreme Court of India is the defender of the fundamental rights of the citizens. For that, it has original and wide powers. It issues

five kinds of writs for enforcing the fundamental rights of the citizens. The five types of writs are:

1. Habeas Corpus
2. Mandamus
3. Prohibition
4. Certiorari
5. Quo-Warranto

HABEAS CORPUS

The Latin meaning of the word 'Habeas Corpus' is 'To have the body of.' This writ is used to enforce the fundamental right of individual liberty against unlawful detention. Through Habeas corpus, Supreme Court/High Court orders one person who has arrested another person to bring the body of the latter before the court. The Supreme Court or High Court can issue this writ against both private and public authorities.

Habeas Corpus cannot be issued in the following cases:

- When detention is lawful
- When the proceeding is for contempt of a legislature or a court
- Detention is by a competent court
- Detention is outside the jurisdiction of the court

MANDAMUS

The literal meaning of this writ is 'We command.' This writ is used by the court to order the public official who has failed to perform his duty or refused to do his duty, to resume his work. Besides public officials, Mandamus can be issued against any public body, a corporation, an inferior court, a tribunal, or government for the same purpose. Unlike Habeas Corpus, Mandamus cannot be issued against a private individual

Mandamus cannot be issued in the following cases:

- To enforce departmental instruction that does not possess statutory force
- To order someone to work when the kind of work is discretionary and not mandatory
- To enforce a contractual obligation
- Mandamus can't be issued against the Indian President or State Governors
- Against the Chief Justice of a High Court acting in a judicial capacity

PROHIBITION

The literal meaning of 'Prohibition' is 'To forbid.' A court that is higher in position issues a Prohibition writ against a court that is lower in position to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. It directs inactivity. Writ of Prohibition can only be issued against judicial and quasi-judicial authorities. It can't be issued against administrative authorities, legislative bodies and private individuals or bodies.

CERTIORARI

The literal meaning of the writ of 'Certiorari' is 'To be certified' or 'To be informed.' This writ is issued by a court higher in authority to a lower court or tribunal ordering them either to transfer a case pending with them to itself or quash their order in a case. It is issued on the grounds of an excess of jurisdiction or lack of jurisdiction or error of law. It not only prevents but also cures for the mistakes in the judiciary.

Before 1991 the writ of Certiorari used to be issued only against judicial and quasi-judicial authorities and not against administrative authorities. After 1991 The Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting the rights of individuals. It cannot be issued against legislative bodies and private individuals or bodies.

QUO WARRANTO

The literal meaning of the writ of 'Quo-Warranto' is 'By what authority or warrant.'

Supreme Court or High Court issue this writ to prevent illegal usurpation of a public office by a person. Through this writ, the court enquires into the legality of a claim of a person to a public office. Quo-Warranto can be issued only when the substantive public office of a permanent character created by a statute or by the Constitution is involved. It can't be issued against private or ministerial office. This writ gives the right to seek redressal to any individual other than the aggrieved person

WRIT OF MANDAMUS

It is a Latin phrase which means to 'we command.' It is a type of command that can be used to execute public duties by constitutional, statutory, non-statutory, universities, courts, and other bodies. This writ is used to compel a public official to carry out the duties that have been assigned to them. The only requirement for using this writ is that there be a public duty. The writ of Mandamus is used to order any authority to carry out the public obligations given to them. It's a directive or order that tells someone, a company, a lower court, or the government to do what they're legally obligated to do. Any individual who is harmed by a breach or abuse of a public obligation and has the legal right to enforce its performance can seek a writ of Mandamus from a High Court or the Supreme Court.

In other words, Writ of mandamus is one that is issued against an inferior court, a governmental body or officer by a superior court to rectify an action of the past or omission to act along the lines of the responsibility that they are entitled to. Writ of Mandamus can also be issued against public corporations and tribunals. As it is directed to set the indolent authorities to task, it is also described as a "wakening call", dictating their activity and setting them in action in pursuance of discharging public duty

GROUND OF THE WRIT OF MANDAMUS

Writ of mandamus is one that is issued against an inferior court, a governmental body

or officer by a superior court to rectify an action of the past or omission to act along the lines of the responsibility that they are entitled to. Writ of Mandamus can also be issued against public corporations and tribunals. As it is directed to set the indolent authorities to task, it is also described as a "wakening call", dictating their activity and setting them in action in pursuance of discharging public duty. There exists a legally sanctioned right of the petitioner or the applicant of the writ and a violation or compromise of this right has been committed.

The infringement of the rights of an applicant can be done by a public authority in the following manners:

1. Crossing the limits of the powers and duties vested to their office.
2. Failure or omission to act responsibly according to the conditions laid down by the law for the exercise of their power.
3. Denial by an official or authority to perform their statutory duties.
4. A complete disregard for or contravention of the principles of natural justice.

Another ground for the legality of issuing the writ of mandamus is the failure to act or perform the legal duty despite being demanded by the applicant for the same. This was also upheld by the Supreme Court in [Sarawati Industrial Syndicate v. Union of India](#).

The writ should be applied for in good faith, without any ulterior motive or intent on the part of the applicant. Lastly, the writ of mandamus can only be issued when no other recourse, redressal mechanism or legal alternatives have been left at the disposal of the applicant.

Gujarat State Financial Corporation v. Lotus Hotels (1983)

In this case, the Gujarat State Financial Corporation entered into an arrangement with Lotus Hotels, stating that the funds would be released so that the building work could

proceed. They did not, however, release the monies subsequently. As a result, Lotus Hotels filed an appeal with the Gujarat High Court, which issued a writ of mandamus ordering Gujarat State Financial Corporation to perform its public duty as promised.

Hemendra Nath Pathak v. Gauhati University (2008)

In this case, the petitioner sought a writ of mandamus against the institution where he studied because the university failed him despite the fact that he received the requisite passing grades under the university's statutory standards. The university was ordered to declare him pass according to university norms, and a writ of mandamus was issued.

Sharif Ahmad v. HTA., Meerut (1977)

In this case, the respondent failed to follow the tribunal's instructions, and the petitioner went to the supreme court to have the tribunal's orders enforced. The Supreme Court issued a Mandamus, requiring the respondent to obey the tribunal's directives.

Union of India v. S.B. Vohraxi

The Supreme Court of India held "A writ of mandamus may be issued in favour of a person who establishes a legal right in himself. It may be issued against a person who has a legal duty to perform but has failed or has neglected to do so. Such a legal duty emanates by operation of law. The writ of mandamus is most extensive in regards to its remedial nature. The object of mandamus is to prevent disorder emanating from failure of justice and is required to be granted in all cases where law has established no specific remedy".

SP Gupta v. Union of India (1981)

In this case, the court concluded that the president of India cannot be served with a writ directing him to determine the number of High Court judges and fill vacancies. The courts cannot issue writs of Mandamus against individuals such as the president and governors

TYPES OF MANDAMUS

There are three types of Mandamus that exist within the Indian jurisprudence and has been developed over the years through case laws and judgements. They are

01.CERTIORARIFIED MANDAMUS

The basic difference between the two writs of certiorari and mandamus can be explained on the basis of jurisdiction; while former provides for judicial review of an already tried case by a subordinate court and checks whether a jurisdiction has been exceeded, the latter takes into account whether a jurisdiction has been refused from getting exercise. If Certiorari stands, the order of the subordinate court or tribunal stands quashed and void. In certain cases with peculiar facts and moot issues, both the writs of certiorari and mandamus complement each other provided the issuance of both are warranted by the circumstances of the case in hand and do not end up discharging the issue altogether. A case might be rescinded due to application of certiorari and may end up getting decided by following the due process of law because of a subsequent issuance of mandamus. This kind of writ is known as certiorarified mandamus.

In [Y. Mahaboob Sheriff & others v. Mysore State Transport Authority](#), the renewal of a permit, despite getting sanctioned for three years, was only granted for a year. In pursuance of the writ of certiorari, the Supreme Court of India invalidated the previous judicial order of the subordinate court and in the effect of the writ of mandamus, directed the concerned authority for the renewal of three years. This is an instance of certiorarified mandamus.

02.ANTICIPATORY MANDAMUS

In [Maganbhai Shwarbhai Patel v. Union of India](#), the group of petitioners issued a writ of anticipatory mandamus in order to restrain the Government of India from sanctioning certain areas lying in Rann of Kutch to Pakistan as a part of the award. The Court held that the mandamus shall not be granted merely on the

suspicion of the violation of rights unless some actual damage or infringement has happened.

In plenty of other cases, both in India and other countries, it has been held by the courts of law that on the mere basis of perturbation of getting one's statutory or fundamental rights violated or an anticipatory omission of the duties or responsibilities of a public authority are not sufficient grounds for granting the issuance of a writ of mandamus.

03. CONTINUING MANDAMUS

In certain cases, it shall be deemed fit by the court of law that mere issuing of the writ of mandamus will not be sufficient for exacting the task from the public authority and that continuous supervision of the situation needs to be conducted in order to ensure the proper following of the verdict. This is done by the courts by providing for court visits and presenting a report of compliance of their verdict on behalf of the public authority. This legalese has developed and become a part of the jurisprudence after much judicial activism and several public interest litigations. The Supreme Court, in [Chhetriya Pardushan Mukti Samiti v. State of Uttar Pradesh](#), held that besides ensuring the adequate enforcement of the fundamental rights, it is also the Court's responsibility to ascertain the prevention of misuse of authoritative power and full adherence of the order.

LIMITATIONS

Writ of mandamus is basically a public law remedy of the common law system that, though can be rightfully applied for by any citizen whose rights have been violated by governmental or judicial bodies, is not sanctioned to be availed in cases of private wrongs.

The writ of mandamus cannot be issued against the following:

1. Private persons, institutions or organizations, if default, cannot be held accountable for their inaction by the issuance of mandamus.
2. If the duty or the activity that is in the question of the public authority is not mandated by a compulsory obligation but is discretionary in nature, the writ of mandamus cannot be issued for the enforcement of such duties.
3. The writ of mandamus cannot be issued against the Head of the State, that is, the President on a national level or Governor at the state level.
4. The incumbent Chief Justice of the Supreme Court and distinct high courts are also exempted from being held accountable by the issuance of a writ of mandamus.
5. For the enforcement of a contractual relationship that is private in nature, writ of mandamus cannot be issued for its enforcement.
6. A writ of mandamus cannot be issued against any Member of Parliament (MP of Lok Sabha or Rajya Sabha) and any Member of Legislative Assembly (MLA) of any state for the purpose of providing a smooth functioning and conduct of the parliamentary deliberations.
7. Mandamus cannot be issued against any legislative institution which is passing such a law that is in contravention of the fundamental rights promised under Part III of the Constitution. This was subsequently upheld by the apex court in [Chotey Lal v. State of Uttar Pradesh & Ors](#). The petitioner had moved a writ petition against the State of Uttar Pradesh as the state legislature had passed Zamindari Abolition and Land Reforms Bill in 1951 which was considered to be unconstitutional according to the applicant.
8. Electoral matters have been kept away from the purview of the writ of Mandamus and those officials that are engaged in different levels of the

electoral process cannot be directed by mandamus. However, this is applicable only for elections to Union and state parliament. Mandamus can be issued in matters of contention relating to Municipal level elections.

Thus, the major legal requirements for the issuance of the writ is the public nature of the body, person or authority against whom the writ is getting applied for and a valid, justified rationale of the claims on the part of the petitioner.

CONCLUSION

Martin Luther King once said, *"Injustice anywhere is a threat to justice everywhere"*.

Therefore, the writ of mandamus can be rightly described as a legal instrument of ensuring general public interest, safeguarding their rights promised to them in the Constitution and other laws of the land. It is also an effective mechanism for maintaining accountability of the state or public authorities and mandating them to comply with their constitutional and statutory obligations. Thus, writ of mandamus is essentially a pro-democratic mechanism which empowers the common people to get their rights enforced by the administrative bodies.

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Online Resources:

1. Supreme Court of India - judgments and orders on writ petitions
2. Indian Kanoon - database of Indian laws and judgments
3. Law Commission of India - reports on judicial review and writs
4. National Judicial Academy - articles and research papers on writs

Websites:

1. Supreme Court of India - official website
2. Law Ministry, Government of India - official website
3. Indian Law Institute - official website
4. Commonwealth Legal Information Institute - database of Commonwealth laws and judgments

Journals:

1. Journal of Indian Law Institute
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