

## JUDICIAL CONTROL OVER ADMINISTRATIVE ACTIONS THROUGH WRITS

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The judicial control of administrative action provides remedies against the abuse of power. Since our constitution is based on the foundations of rule of law, therefore, it contains Articles which enable the court to exercise effective control over administrative actions. Part III of the Indian Constitution of India deals with the fundamental rights. Article 32 of the constitution makes necessary provision for the enforcement of those rights. Besides this, Article 226 deals with the enforcement of these rights and confers powers upon the High Courts for the enforcement of fundamental rights of the citizen. It also provides certain other necessary powers for the enforcement of such rights. Article 32 can be used only in the context of fundamental rights, whereas Article 226 can be used for other purpose also.

The prerogative writs had their origin in the exercise of the king's prerogative power of superintendence over the due observance of the law by his officials and tribunals, and were issued by the court of king's bench Habeas corpus that the king may know whether his subjects were lawfully imprisoned or not: certiorari that he may know whether any proceedings commenced against them are conformable to the law: Mandamus, to ensure that his officials did such acts as they were bound to do under the law: and prohibition, to oblige the inferior tribunals in his realm to function within in the limits of their respective jurisdiction.

Under the provisions of Articles 32 and 226 of the Indian constitution the Supreme Court and High Courts have the power to issue writs in the nature of habeas corpus, Mandamus, certiorari-prohibition and quowarranto. The jurisdiction of the Supreme Court is limited only to the enforcement of fundamental rights, while the High Court can issue writs not only for the enforcement of fundamental rights but for other purposes also. Therefore, the authorities are amenable to the writ jurisdiction of the Supreme Court and the High Court.

The jurisdiction vested in the Supreme Court is enforceable only for the enforcement of the fundamental rights conferred by Part III of the constitution. Where there is no question of the enforcement of a fundamental right, Article 32 has no jurisdiction. Thus, no petition under Article 32 would be where the right under Article 226 of the constitution is claimed to be infringed, but no breach of fundamental right is alleged. For the same reason the freedom of intrastate and interstate trade or business embodies in Article 30 is not a fundamental right conferred by part of the constitution and therefore cannot be enforced by a petition under Article 32.

On the contrary, Article 226 of the constitution confers powers on all the High Courts of India to issue writs or directions for the enforcement of fundamental rights. Under this Article writs or directions can be issued for the enforcement of other rights as well. Thus, we see that the powers granted to High Court under Article 226 are wider than those granted to Supreme Court under Article 32.

The main purpose of Article 32 is to protect the individual against the infringement of his fundamental rights.

The threat to fundamental rights may arise from the following sources:

- (a) Government and Parliament of India, Governments and legislatures of state and Local Governments.
- (b) Government departmental undertakings.
- (c) Agencies incorporated by Statutes.
- (d) Agencies registered under statutes e.g. Companies, and Societies Registration Act.
- (f) Private individuals and bodies.

It is clear that the authorities falling under the first three categories are amenable to the writ jurisdiction of the Supreme Court and are included within the definition of the 'State' in Article 12<sup>1</sup>. Agencies falling under the last three categories may be included within the term 'State' and therefore, are amenable to the writ jurisdiction of the Supreme Court<sup>2</sup>.

The approach of the court in the area of fundamental rights must not be whether the authority is 'State' within the meaning of Article 12. The correct approach should be that every authority or person who poses a threat to a fundamental right should be amenable to the jurisdiction of the court. Therefore, not the 'type of agency', but the threat to the fundamental rights, must be the determining factor for the issue of writs under Article 32.

The High Court have a wider power to issue writs against any person or authority, for the enforcement of fundamental rights and any other legal right. As regards to the person and 'authority' against whom such writs can be issued, the law seems to be in a thicket of the consistencies, there is no controversy about the writs of habeas corpus and quo-warranto which can be issued against private individuals and public offices respectively. It is gratifying to note that the area for the operation of these writs has been extended, and rightly so, to cover various administrative agencies exercising multivarious functions. There is no dispute that all constitutional and administrative authorities are amenable to the jurisdiction of the Court. Therefore a writ can be issued against public acts of the President of India,

1. Rajasthan State Electricity Board vs. Mohan Lal, AIR 1967, SC 1857, Sukhdev Singh vs. Bhagatram (1975) SC 421.
2. R.D. Shetty vs. International Airport Authority (1979) SC 489.

Governors, Union and State Governments Ministers, Government officers, departments, Union Public Service Commission, Election Tribunal, Finance Commission, Water Dispute Authority and Advocate General of India,<sup>3</sup> and other bodies given in the constitution.

A mere recent decision of the Supreme Court in *State of M.P. vs. Babulal*<sup>4</sup> has established the law beyond doubt that a writ of certiorari can be issued against a court to the record if the court has usurped jurisdiction. The Government filed a writ before the High Court which has dismissed with an advice that the Government could go in for declaration. On appeal the Supreme Court issued the writ of certiorari. The writ can also be issued to any judge questioning on action taken in an administrative capacity<sup>5</sup>. In *Shetty vs. International Airport Authority*,<sup>6</sup> the court has rightly extended its reach in matter of issuing writs by liberalizing the test which brings an administrative authority within the gravitational orbit of the term 'State' under Article 12 of the constitution. In case question in writ jurisdiction in India has always been whether an administrative authority is included in the category of 'Other authorities' as contemplated by Article 12 within the definition of the term 'State'. In *Rajasthan Electricity Board vs. Mohan Lal*<sup>7</sup> the court held that a constitutional or statutory authority would be within the meaning of the expression, other authorities if it has been invested with statutory power to issue binding directions to third parties, the disobedience of which would entail general consequences writ has the Sovereign power to make rules and regulations having the force of law.

Now the question arises against whom writ may i.e., and who can challenge on administrative action. In case of a writ of habeas corpus any person can file the writ to secure the release of a person in illegal detention, public or private. A writ of quo-warrants also can be filed by any person to challenge the appointment of a person to a public office, whether or not he has a personal interest in it. The general rule governing the writs of mandamus and certiorari is that it is only the person whose rights have been infringed who can apply for the writ. However, it is not necessary that it must be only his personal right which is adversely affected. He may challenge an action even when he has a right common with others. Therefore an ordinary citizen shall have standing to challenge an election held contrary to the provision of law,<sup>8</sup> and tax-payer shall have

3. *Madhava Rao Scindia vs. Union of India* (1971) SCC 85. *Shivaji Mathubhai vs. Union of India* AIR 1960, SC 606. *K. Venkatarajiah vs. State of A.P.* 1956 ALT 414—AIR 1960 A.P. 420. *Mira Chatterjee vs. Public Service Commission* AIR 1958 Cal. 341.
4. (Jan) 2cc 435.
5. *Pradhat Kumar Bole vs. Chief Justice, Calcutta H.C.* AIR 1956. SC 285. *K. Prabhakaran vs. State of Kerala A.I.R.* 1970 Ker. 27. (1979) 3 SCC 489.
6. (1987) 3 SCR 377 AIR 1967 SC 1957.
7. *T. Venkateswara Rao vs. State of A.P.* AIR 1958 A.P. 458.
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standing to prevent a misapplication or misappropriation of public fund by an authority<sup>9</sup>. In the same manner, in case of a breach or abuse of a statutory duty, any body who is adversely affected can file a petition for writ no matter he does not have an enforceable right<sup>10</sup>.

In USA the question of locus standi is by produce to Cases and controversies, clause of the American Constitution. Unless a person has a direct personal interest in the action, it will not be a situation of case and controversy. However, today the trend in America is towards the expression of the horizons of study.

In England, too the development of standing law is a patch work of case-law. The public interest actions like the interest of a tax-payer were enforced in the name of Attorney General who lent his name to the private individual. However now the courts have started allowing challenge in the name of the individual tax-payer. In the case of prerogative writs the law is liberal and any person can point out the excess or abuse of jurisdiction by any administrative authority. Therefore, the court accepted the standing of a member of the public to enforce the law against gambling houses<sup>11</sup>.

The power exercised by the Supreme Court under Article 32 and by the High Court under Article 226 for the enforcement of fundamental rights is mandatory and not discretionary. But the power exercised by the High Courts under Article 226 for any other purpose is discretionary. The power of Supreme Court and High Court for the enforcement of fundamental rights is mandatory, however, the court may refuse remedy if there is unreasonable delay in involving the jurisdiction of the court. Unlike constitution there is no fixed period for laches. Every case will be determined on its own merit. Without reference to the limitation law the court must see whether there is any explanation for the delay in filing the petition<sup>12</sup>.

It has been seen that writs are strong constitutional remedies for the enforcement of fundamental rights. Petitions for the issuance of writs are moved in the courts when fundamental rights of the people are violated. The aggrieved persons may move the writ for the enforcement of their rights. These writs are five in number (1) Mandamus (2) Prohibition (3) Habeas Corpus (4) Quo-warranto and (5) Certiorari, these writs are extra ordinary remedies intended to be applied in exceptional cases in which ordinary legal remedies are not adequate.

The primary purpose of the jurisdiction of High Courts as laid down under Article 226 (1) is to protect the little man from any injury of a substantial nature or substantial failure of justice besides enforcing his fundamental rights. Therefore, instead of being obsessed with the status of person or authority that court must exercise its powers for the protection of the little man thereat of injustice may arise not only from the constitutional or statutory agencies but also from private persons, and bodies commanding economic and political powers.

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9. Kalyan Singh vs. State of Punjab AIR 1962, S.C. 1183.
  10. K.N. Guruswamy vs. State of Mysore AIR 1954 SC 592.
  11. R.V. Metropolitan Police Commr. Exparte Blackburn, (1968) 2 QB 118.
  12. Tilok Chand, Moti Chand vs. H.B. Munshi (1969) (1) SCC 110.