



PRACTICAL LEGAL TRAINING PROGRAM



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Trainer For:

Writ Petition

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WRIT – TYPES OF WRIT

WRIT

- **General Meaning** - a formal order in Writing issued under seal, in the name of a sovereign, government, Court or other authority, commanding an officer or other person to whom it is issued, to do or refrain from doing some act specified therein.

Constitutional Remedy

Under the Pakistan Constitution, Supreme Court and High Court are empowered to issue writs, for the enforcement of fundamental rights.

- **Article 184 - Supreme Court**
- **Article 199 – High Court**

- **Right is meaningless if it without remedy for its enforcement. Similarly Fundamental rights also provided with its remedy for enforcement.**
- **In case of violation of any fundamental right; one can move to Supreme Court under Art. 184; which is also a fundamental right.**

4) The right guaranteed by this article shall not be suspended except as otherwise provided for by the Constitution.

- Supreme Court will not interfere where with an administrative order; if it is not challenged on the ground of infringement of fundamental right. If no fundamental right is violated then no application will lie.**
- Art. 184 gives Supreme Court 'original jurisdiction' and not 'appellate jurisdiction'.**

- **The power of Supreme Court is not limited to issuing prerogative writs only; but it extends to issuing order, writs or directions including writs in the nature of habeas corpus, mandamus, quo- warranto, prohibition and certiorari.**
- **A prerogative writ means:**
 1. **A right or privilege of a particular person or group or class.**
 2. **A faculty or property distinguishing person or class.**
 3. **An exclusive or special right.**
 4. **Order directing another organ of State with extra ordinary power.**

Article 184 - Constitution of Pakistan

- It grants an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Right.

Article 199 - Constitution of Pakistan

- **It can be exercised not only for the enforcement of fundamental right but for any other purpose.**
- **Jurisdiction is wide and extends to Fundamental rights and other constitutional rights.**

Types of Writ

- Habeas corpus
- Mandamus
- Prohibition
- Certiorari
- Quo-warranto

WRIT OF *HEBEAS CORPUS*

- Meaning of this writ is 'to bring body' or 'to have body'.
- It is an order calling upon the person who has detained another person to produce detune before the court to examine the legality of his detention.
- The object of this writ is to secure the release of the person detained illegally. Its object is not to punish the person who has detained another person illegally but to secure release of the person who has been illegally detained.
- This writ is maintainable against State and not against private person.

- **For issue of writ of habeas corpus detention is prima facie illegal which is condition precedent. Illegal detention means which is not supported by law.**
- **Application for writ of habeas corpus can be made by the person himself or other person.**
- **Writ is not issued if detention is lawful.**
- **Writ of habeas corpus is to be disposed expeditiously.**
- **Burden of proof is on authority to show lawful detention.**

Who can apply?

- **General rule is that an application can be made by a person who is illegally detained. But in certain cases, an application of habeas corpus can be made by any person on behalf of the prisoner, i.e., a friend or a relation.**

- **The Supreme Court enlarged the scope of habeas corpus, making available the fundamental rights of the prisoners**

Writ of **Mandamus**

- Mandamus is a Latin word, which means "We Command".
- Mandamus is an order from a superior court to a lower court or tribunal or public authority to perform an act, which falls within its duty.
- Simply, it is a writ issued to a public official to do a thing which is a part of his official duty, but, which, he has failed to do, so far. This writ cannot be claimed as a matter of right. It is the discretionary power of a court to issue such writs.

- **The writ of mandamus is in form, a command issued by the Superior Court i.e. Supreme Court or High Court, to the Government, inferior court, tribunal, public authority, corporation or any other person having public duty to perform; asking such Government, inferior court, tribunal, public authority, corporation or person to perform the public duty or to refrain from doing illegal act.**
- **Any person who is affected by the violation of statutory duty or the abuse of the statutory power, may apply for the issue of the writ of mandamus.**
- **The object of this remedy is to keep the public authority within the limits of their jurisdiction while exercising their functions.**

- For issue of this writ, following conditions are essential:
 1. **Public duty**: The person / authority against whom writ is to be issued must have public duties to perform and there must be failure on his part in performance. A public duty is created by statute or rule of common law.
 2. **Duty to be mandatory**: The performance of duty by person or authority must be mandatory and not discretionary. But when discretionary power is used arbitrarily or maliciously or don't use discretion; writ of mandamus may be issued.
 3. **Petitioners legal right to compel the performance of the duty**: The petitioner must have a legal right and such legal right must be imposed on the person or authority to perform act.
 4. **Demand of the performance and its refusal**: It is necessary that the person has called upon the authority concerned to perform its public duty and the such authority has refused to do so.

When writ of mandamus can be refused

- I. For private duties. E.g. Duty arising out of contract.**
- II. Against private body or institution.**
- III. Where duty is merely discretionary.**
- IV. On the ground of laches or undue delay.**
- V. When it is infructuous.**
- VI. Where there is mis-statement or suppression of facts.**

- **Writ of mandamus does not lie against a private individual or any private organisation because they are not entrusted with a public duty.**

Writ of Prohibition

- Writ of prohibition means to forbid or to stop and it is popularly known as 'Stay Order'.
- This writ is issued when a lower court or a body tries to transgress the limits or powers vested in it.
- It is a writ issued by a superior court to lower court or a tribunal forbidding it to perform an act outside its jurisdiction. After the issue of this writ, proceedings in the lower court etc. come to a stop.

WRIT OF *PROHIBITION*

- Prohibition is a writ which is issued by a superior court to an inferior court or tribunal or body exercising judicial functions preventing such inferior court or tribunal or body from usurping jurisdiction which is not vested therein or from acting in violation of the principles of natural justice or from acting under the unconstitutional law.
- The object of this writ is to restrain inferior court or tribunal or body from exceeding their jurisdiction and to keep within limit of jurisdiction. It is issued to prohibit the body concerned from proceeding further.
- Prohibition and Certiorari are similar in many respects.

- **Writ of prohibition is issued before the proceeding are completed while certiorari is issued after the decision is given by the inferior court or tribunal.**
- **Prohibition lies as long as the proceedings are pending before the inferior court or tribunal . Certiorari may be issued to quash the decision of such court or tribunal even if it has ceased to exist for the continued existence of the court or tribunal.**

- **The writ is issued in both cases where there is excess of jurisdiction and where there is absence of jurisdiction.**

Writ of **Certiorari**

- Literally, Certiorari means to be certified.
- The writ of certiorari is issued by the Supreme Court to some inferior court or tribunal to transfer the matter to it or to some other superior authority for proper consideration.

WRIT OF *CERTIORARI*

- The writ of certiorari is the writ which is issued by the Superior court i.e. High Court or Supreme Court to the inferior court or tribunal or body exercising judicial or quasi judicial functions to remove the proceedings from such court, tribunal or body for examining the legality of the proceedings.
- It is issued when such inferior court or tribunal or body exercising judicial or quasi judicial functions illegally. It is to keep these within the limits of the jurisdiction assigned to them by law and to prevent them from acting in excess of their jurisdiction.
- Petition for writ of certiorari can be filed by the person who is aggrieved by the impugned order.

- **Writ of certiorari can be filed on following grounds_**
- **If an authority has acted under invalid law.**
- **If there is a jurisdictional error.**
- **If there is error apparent on the face of record.**
- **If the finding of facts are not supported by evidence.**
- **If there is failure of the principles of natural justice**

- **The writ is issued for correcting an error of law apparent on the face of records. It cannot be issued to correct an error of fact.**

- Apply both Prohibition and Certiorari - Prohibition to prevent the court to proceed further with the case and Certiorari for quashing what had already been decided.

Writ of Quo-Warranto

- The word Quo-Warranto literally means “on what authority one is holding the public office”
- It is a writ issued with a view to restraining a person from acting in a public office to which he is not entitled.
- For example, a person of 62 years has been appointed to fill a public office whereas the retirement age is 60 years. Now, the appropriate High Court has a right to issue a writ of quo-warranto against the person and declare the office vacant.

- **The literal meaning of quo-warranto is ‘by what authority’. By this writ a person who occupies or usurps a independent substantive office is asked to show by what authority he claims it.**
- **Unauthorised occupant of such office may be ousted by the judicial order and the person entitled to the office may be allowed to occupy it.**
- **The object of this writ is to control executive action in the matters of making appointment to public offices, against the relevant statutory provisions and to protect a citizen being deprived of that to which he may have the right.**

- **Conditions for application writ of quo-warranto are-**
 - I. The office in question must be a public office of substantive character; and**
 - II. It must be held by a person without legal authority.**
- **Quo-warranto is not issued as a matter of course. It is a discretionary remedy. Court may grant or refuse according to the facts and circumstances of each case.**
- **Quo-warranto is generally not refused on the ground of delay because if the appointment is illegal it can be challenged at any time.**

- Where the holder of an office has been continuing in office for a long time and there is no complaint against him the court refused the writ as it would have been vexatious

WHEN SUPREME COURT CAN REFUSE TO GRANT REMEDY UNDER ARTICLE 184

- 1) Res judicata: Principle of res judicata is applicable to writ petitions also. But not applicable for *hebeas corpus*. If petitioner already moved to High Court; it can be rejected.**
- 2) Delay: It is not a rule of law but when there is not explanation as to undue delay and court may refuse to entertain writ petition.**
- 3) Malicious prosecution.**
- 4) Misrepresentation or suppression of facts.**
- 5) Infructuous petitions.**
- 6) Existence of adequate alternative remedy.**

- 7) **Res judicata:** Principle of res judicata is applicable to writ petitions also. But not applicable for *habeas corpus*. If petitioner already moved to High Court; it can be rejected.
- 8) **Delay:** It is not a rule of law but when there is not explanation as to undue delay and court may refuse to entertain writ petition.
- 9) **Malicious prosecution.**
- 10) **Misrepresentation or suppression of facts.**
- 11) **Infructuous petitions.**
- 12) **Existence of adequate alternative remedy.**

JUDICIAL ACTIVISM

- **Judicial activism means, the movements of the judiciary to probe into the inner functioning of the other organs of the Government i.e. The executive and legislature.**
- **Article 32 makes the Supreme Court as the protector and guarantor of fundamental rights. It has been conferred with power of judicial review in which Supreme Court can examine the constitutionality of executive or legislative actions.**
- **Art. 141 states that, the law declared by the Supreme Court shall be binding on all courts within territory of India. The power of Supreme Court is to declare the law as valid or invalid but not to make law.**

JUDICIAL ACTIVISM

- **Judicial activism means, the movements of the judiciary to probe into the inner functioning of the other organs of the Government i.e. The executive and legislature.**
- **Article 8 makes the Supreme Court as the protector and guarantor of fundamental rights. It has been conferred with power of judicial review in which Supreme Court can examine the constitutionality of executive or legislative actions.**
- **Art. 189 states that, the law declared by the Supreme Court shall be binding on all courts within territory of Pakistan. The power of Supreme Court is to declare the law as valid or invalid but not to make law.**

PUBLIC INTEREST LITIGATION

- Development of public interest litigation i.e. PIL, has also provided significant assistance in making the judicial activism meaningful.
- Rule of Locus Standi: Locus standi means, right to be heard before a court. Generally a person whose right has been infringed, has to appear before court. But some time court may relax this rule and allow another person i.e. a third person to appear before it. In PIL, rule of locus standi is relaxed and a public minded person can file petition for the victim.
- The object of PIL is to protect legal rights of such persons who are unable to appear before court due to insufficient funds, poverty, lack of knowledge, social pressure or like circumstances.

- **The word public interest litigation has been explained by SC in several judgments.**
- **In PIL, an advocate, political person, social worker, news reporter can file petition before court.**
- **Generally court accept petitions from public minded person. But in many situation, court has considered a letter addressed to court as writ petitions. Some time court can take Sua Moto action and issued notices to concerned authorities.**
- **Such PIL are related to problems of women, children, prisoners, labour in quarries, forest and environment protection, victims and displaced persons due to government projects. Etc.**

In many cases court has made it clear as to when PIL can be allowed if it is found:-

- 1. That the impugned action is violation of any of the right covered by part III of the constitution.**
- 2. That the action complained of is palpably illegal or mala fide and affects the group of person who are not in a position to protect their own interest on account of poverty, incapacity or ignorance.**
- 3. That the person or group of persons were approaching the court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the constitutional law.**
- 4. That the person or body of person approaching court have not approached with mala fide intention of vindication their personal vengeance or grievances.**

- 5. That the process of PIL was not being abused by politicians or other busy bodies for political or unrelated objective.**
- 6. That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country.**
- 7. PIL may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the court was of such a nature which required examination.**
- 8. The person approaching the court has come with clean hands, clean heart and clean objectives.**



THE END
THANK YOU FOR YOUR ATTENTION

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