

CHAPTER 10

WRITS

10.1. Scope

Public law remedies for administrative illegality may be pursued by :-

- (a) the aggrieved individual, or
- (b) (according to recent trends) by way of “public interest litigation”.

The principal public law remedy is that of “writs”. But it should not be overlooked that our law of civil procedure contains specific provisions to enable two or more persons having a legitimate interest in the subject matter, to seek remedy through court for :-

- (a) remedying public wrongs (section 91, C. P. C.),
- (b) remedying breaches of public trusts (section 92, C. P. C.) :

Provision similar to section 92, C. P. C. exist also in some Central and State Acts.

Besides this, there is the procedure of “representative suit” (class action), under the Code of Civil Procedure, 1908, Order 1, Rule 8.

The Code of Criminal Procedure, 1973 also contains (in section 133 and succeeding sections) a useful set of provisions, designed for seeking relief by way of injunction etc. for public nuisances.

10.2. Writs : the Supreme Court & High Courts

However, the remedy *par excellence* in public law in India is the writ. Article 32 of the Constitution provides as under :

“32 Remedies for enforcement of rights conferred by this part

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be conferred by this part.
- (3) Without prejudice to the power conferred on the Supreme Court by clauses (1) and (2), Parliament may, by law, empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by the Constitution.

A wider writs jurisdiction is conferred on High Courts by article 226 of the Constitution.

10.3. Variety of Rights coming up for Enforcement

Rights given by law, or recognised by law, can be analysed into the following categories :-

- (a) fundamental rights given by the Constitution;
- (b) constitutional rights, not having the status of fundamental rights;
- (c) statutory rights;
- (d) rights flowing from subordinate legislation;
- (e) rights based on case law;
- (f) customary rights;
- (g) contractual rights.

Only fundamental rights falling within category (a) above can be enforced under article 32 of the Constitution.

10.4. Supreme Court and High Court's Concurrent Jurisdiction

- (a) On the text of articles 32 and 226 of the Constitution where a fundamental right is involved, a party should be free to approach either of the two courts.¹ And this, has been the earlier judicial approach. In fact, some decisions have pointed out that since the remedy under Article 32(1) is itself a fundamental right, the Supreme Court is under duty to grant relief for violation of a substantive fundamental right.²

Even still stronger, are decisions holding Article 32 to be a basic feature of the Constitution, which cannot be taken away by even amending the Constitution.³

- (b) Notwithstanding the above position, the Supreme Court has, in certain decisions pronounced in 1987 stated that where relief through the High Court is available under Article 226, the party should first approach the High Court.⁴

It is submitted with great respect that this view goes against the intendment of the Constitution and is contrary to earlier case law.

10.5. High Courts

Article 226(1) of the Constitution of India reads as Under :-

“226 Power of High Courts to issue certain writs:

Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government within those territories

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1. *M.K. Gopalan v. State of M.P.* (1955) SCR 168, 174.
 2. *Kochunni v. State of Madras*, A.I.R. 1959 SC 725,729; *Tata Iron & Steel Co. v. Sarkar*, A.I.R. 1961 SC 65; *Nishan Das v. State of Punjab*, A.I.R. 1961 SC 1570; *Kharak Singh v. State M.P.*, A.I.R. 1963 SC 1295.
 3. *Fertiliser Corporation of India v. Union of India* AIR 1981 SC 344.
 4. *P.N.Kumar v. Municipal Corporation of Delhi* (1987) 4 SCC 609, 610, 611; *Konubhai Brahmhatt v. State of Gujarat*. AIR 1987 SC 1159.

directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition quo warranto and certiorari, or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose”.

The power of High Court to issue writs under Article 226 is wider than that of the Supreme Court. It is not confined to fundamental rights, but extends to all cases where the breach of a right is alleged. The writs may be issued for the enforcement of fundamental rights or for any other purpose.⁵ Of course, there must be violation of a right.⁶

10.6 Geographical limits as to writs

On a combined reading of clause (1) and (2) of article 226 of the Constitution, one can say that a writ can be issued against a Government, person or authority, if

- (a) its seat is within the High Court’s jurisdiction, or
- (b) the cause of action has arisen wholly or in part within the High Court’s jurisdiction.

10.7. Law Declared by High Courts

The law declared by the High Court is binding on all subordinate courts within the State.⁷

10.8. Relief on writs

The relief that may be granted under article 226 may be⁸

- (a) setting aside an illegal order;
- (b) declaratory;
- (c) restitutionary (refund of invalid tax);
- (d) other consequential relief.

5. *State of Orissa v. Madangopal* (1952) SCR 28.

6. *Calcutta Gas Co. v. State of W.B.* AIR 1962 SC 1044.

7. *East India Commercial Co. v. Collector of Customs*, AIR, 1962 SC 1895.

8. *Calcutta Discount Co. v. I.T.O.*, AIR 1961 SC 372; *BBL & T. Merchants Association v. State of Bombay*, AIR 1962 SC 486; *State of M.P. v. Bhailal*, AIR 1964 SC 1006; *Dwarka v. I.T.O.*, AIR 1986 SC 81; *Desai v. Roshan*, AIR 1976 SC 578; *Rambhadraiah v. Secretary*, AIR 1981 SC 1653.

10.9. Extraordinary and Discretionary remedy

The remedy of writs is :

- (a) extraordinary;
- (b) discretionary (unless a fundamental right is involved);
- (c) dependent on there being a cause of action;
- (d) exercisable only against the parties before the court.⁹

10.10. Public Interest Litigation

An outstanding development of far-reaching importance during the last decade or so, is the growth of public interest litigation. Public interest litigation is a proceeding in which an individual or group seeks relief in the interest of the general public and not for the purposes of the individual or group.

The spate of such litigation has enriched the law, modified the traditional doctrine of *locus standi* and led to the devising of new remedies and procedures.

Of the numerous cases on the subject, the following are worth study, as illustrating the basic and important features:

- (i) *S. P. Gupta v. Union of India*,¹⁰ [Scope and basic approach];
- (ii) *D.C. Wadhwa v. State of Bihar*,¹¹ [Locus Standi];
- (iii) *Ratlam Municipality v. Vardhichand*¹² [General];
- (iv) *Fertiliser Corporation v. Union of India*,¹³ [Locus Standi];
- (v) *Pelplc's Union for Democratic Rights v. Union of India* ¹⁴ [General];

9. *Abraham v. I.T.O.*, AIR 1961. SC 609 (alternative remedy); *state of Rajasthan v. Karam Chand*, AIR 1965 SC 913 (fundamental right); *Khurai Municipality v. Kamal Kumar*, AIR 1965 SC 1321 (mandatory provision violated); *Bhopal Sugar Industry v. I.T.O.*, AIR 1967 SC 549 (alternative remedy).

10. *S.P. Gupta v. Union of India*, AIR 1988 SC 140, 191.

11. AIR 1987 SC 579, para 3, 8.

12. AIR 1980 SC 1622.

13. AIR 1981 SC 344.

14. AIR 1982 SC 1472.

(vi) *State of H. P. v. Parent*,¹⁵ [Mode of entertaining];

(vii) *Shivajirao v. Mehesh* ¹⁶ [Mode of entertaining].

10.11. Local Authorities and Writs

A local authority having a legal grievance may be able to take out a writs. Thus, a writ was issued on the petition of a local authority against a public utility concern, for the latter's failure to fulfill its statutory obligation to supply power to the local authority, which was a consumer of electricity. [*Corporation of Nagpur v. N. E. L. & PVT. Co.*¹⁷]

10.12. Specific Writs

The Constitution, in articles 32 and 226, specifically mentions five writs. But the power of these two courts to issue writs is not confined to those specifically enumerated.¹⁸

15. AIR 1985 SC 910.

16. AIR 1985 SC 294 paras 35, 36.

17. AIR 1985 Bom. 498.

18. See P. M. Bakshi, *Hand book on Administrative Law* [Indian Law Institute, 1990]