

## PIL under Writ Jurisdiction : A Review

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### ABSTRACT

*Public Interest Litigation (PIL) is a legal action which is taken in a court of law for legal right of the community. The phrase "Public Interest Litigation" refers to particular human claim made in a politically organized society or political institution. The concept of human rights has assumed importance globally during the past few decades ever since the announcement of the Universal Declaration of Human Rights. Human rights are the important element of philosophical, social and political debates of the twentieth century. Number of people around the world suffers from their basic needs. They are also refrained from the enjoyment of the basic economic, social, cultural, civil as well as political rights. This challenge is the basic issue not only concern with the one country but also universal and global.*

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### 1. Introduction

In terms of PIL the writ Jurisdiction of the Supreme Court of High Courts and India of the States under Articles thirty two plus 226 of the Constitution respectively plays a crucial role. The PIL petitions tend to be filed by creating a prayer on the Courts to issue ideal writ. Arts.32 and 226 empower the Supreme Court and High Courts to issue writs of adhering to natures which might be mentioned as under:

#### **Habeas Corpus**

Habeas corpus means take the entire body. The Writ of Habeas corpus is given as an order calling upon the individual that has detained one other individual to create detenu prior to the Court to analyze the legality of the detention of his. In case the detenu is made before the Court and also the Court finds the detention illegal, it is going to order that the individual very detained ought to be released right away. The object of this particular writ is securing the release of anyone detained illegally whether in jail or even in individual custody. It offers quick remedy to the individual detained illegally. Ordinarily, anyone whose basic right has been infringed is permitted to use for help under Art. thirty two and whose fundamental right or any other legal right has been infringed could apply for relief under Art.226. The software for writ of habeas corpus could be reached by the detenu himself or perhaps in case he's not in a place to do so, then simply by another individual on the behalf of his.

The software for the writ of habeas corpus could be done even by way of a social worker. For instance, in case a kid detained illegally plus he's zero guardian or maybe his guardian isn't able to utilize and doesn't use, an application for the problem of the writ of habeas corpus could be produced by his distant relative or perhaps friend. When the program for the writ of habeas corpus is created by an individual apart from detenu, the individual making such program is necessary to offer reasons regarding why the individual very detained couldn't create the affidavit himself. In the situation of software for the writ of habeas corpus, the stringent regulations of pleading aren't followed. Even a post card authored by the detenu out of the prison is going to be adequate to go the Court into looking at the legality of the detention of his. In this

particular situation, the Supreme Court makes it very clear it's with the detaining power to confirm the detention is in accordance with the treatment established by law.

A petition for habeas corpus isn't maintainable against the private individual that has illegally detained the petitioner. If the petitioner is illegally detained by the State as determined under Art. The petition for the problem of the writ of habeas corpus is maintainable against any detentu whether a private individual or maybe the State.

The writ of habeas corpus is given when the detention is prima facie illegal. The detention is unlawful in case there's zero law supporting the detention or maybe in case the detention is under the law that is unconstitutional or even the detention is under a legitimate law but process established by the law hasn't been implemented, i.e., the detention is in violation of the treatment established by the law. The detention in contravention with the provisions of Art.22 is viewed as unlawful detention and in such a circumstance; the petition for habeas corpus is maintainable. Therefore, the detention is going to be illegal in case anyone arrested is not created before the Magistrate within twenty four hours of the detention of his and in that state the habeas corpus petition is maintainable.

#### **Mandamus**

The writ of mandamus is, in form, a command given by the Superior Court (the Supreme Court or maybe High Court) on the Government, corporation, public authority, tribunal, inferior court or maybe some opponent having public responsibility to do asking such Government, inferior court, tribunal, public authority, corporation, individual to do the public responsibility or even to refrain from making illegal act. Mandamus is a command given to steer some individual, corporation, inferior Government or court requiring him or maybe them to do a little specific point therein specified which appertains to his or maybe the office of theirs and is in the dynamics of public duty. In Co. and Shenoy v. C.T.O24, the Supreme Court held it ought to be brought to imply a command given by the Court competent to do so, to a public servant, amongst others to conduct a duty attaching to the office, failing to do of those

results to the invitation of action. For instance, in case the purchase on the tribunal isn't applied by the Government, the mandamus might be given by the Court blowing the Government to do its legal responsibility by applying the order. The mandamus might be given to a corporation to handle responsibilities placed on it by the statute developing it. Nevertheless, a business that is integrated under the Indian Companies Act and has neither statutory duty nor public responsibility to do, the mandamus can not lie. The primary object of this particular writ is in order to compel the functionality of public responsibilities recommended by the statute and also to hold the subordinate tribunals as well as officers exercising public features within the cap of the jurisdiction of theirs. It's given to secure the functionality of a public responsibility, in the performance of that the candidate possesses a considerable legal interest.

Mandamus is usually given to the power exercising public functioning's.

Consequently, it could be given to the power whether it exercises administrative, legislative, quasi-judicial or judicial functioning. The court can not issue mandamus to the legislature making law retrospectively. For the problem of this writ the coming circumstances have to be fulfilled:

- (i) The power or person against whom this writ is wanted to be given should have public responsibilities to do and there should have been disappointment on the part of his in overall performance of the duties of his. The responsibility is going to be public responsibility in case it's produced by a statute or maybe rule of common law.
- (ii) The functionality of the duties by the authority or the person has to be mandatory or imperative and not discretionary. In case the responsibility is simply discretionary, the writ of mandamus can't be given to enforce it.
- (iii) The petitioner needs legitimate to compel anyone or the expert against who he seeks the problem of the writ of mandamus to do his public duty. He's to satisfy that he's a legitimate to the functionality of a legal responsibility by the party against whom the mandamus is wanted and such right has to be subsisting on the day on the petition.
- (iv) That, the petitioner has called upon the power concerned to do its public responsibility as well as the authority concerned has refused to do it.

Anyone who's influenced by the violation of the statutory responsibility or maybe the misuse of statutory power might apply for the problem of the writ of mandamus.

### **Certiorari**

The writ of certiorari is the writ that is given through the Superior Court (i.e., the High court or maybe the Supreme Court) on the inferior court or maybe body or tribunal exercising quasi-judicial or judicial options to eliminate the proceedings from that court, tribunal or maybe body for looking at the legality of the proceedings. If the order passed through the inferior court or maybe tribunal or maybe body exercising quasi-judicial or judicial functions is discovered to be illegal the

Superior Court may demolish it. When a body of people having legitimate power to establish questions affecting rights of subject getting the responsibility to act judicially and also functions in excess of the legal authority of theirs, certiorari might lie to quash a choice which moves beyond jurisdiction. The object of the writ of certiorari is keeping the inferior courts or maybe tribunals or maybe bodies exercising quasi-judicial or judicial features within the boundaries on the jurisdiction given to them by law and also to stop from acting in excess of the jurisdiction of theirs. The writ of certiorari could be given to the constitutional, statutory and also non statutory body, person or power that exercise judicial, administrative or quasi-judicial function affecting right of anyone. This may be given in case of violation of the concepts of healthy justice. The writ of certiorari isn't issued duly to quash an order or maybe motion though it may be given to reinstate.

### **Prohibition**

The writ of prohibition is given by a Superior Court to an inferior court or maybe body or tribunal from usurping jurisdiction and that isn't legally vested therein and from acting in violation of the concepts of healthy justice or perhaps from acting under the unconstitutional law. Prohibition is a writ issuing from the High Court of Justice and also directed to an inferior court which forbids such court to keep proceedings therein in excess of its jurisdiction or even in contravention of law of the ground.

The object on the prohibition is restraining the inferior courts or maybe tribunals or maybe bodies exercising quasi-judicial or judicial functions from exceeding the jurisdiction of theirs and thus, to help keep them within the cap of their jurisdiction. Prohibition and certiorari are very similar in many aspects. Both are given by the Superior Court to inferior court or maybe tribunal or maybe body exercising judicial or perhaps quasi judicial functions. Both are given on the similar grounds. The object of both writs is restraining the inferior courts or maybe tribunals or maybe bodies exercising judicial functions from exceeding the jurisdiction of theirs. Nevertheless, the primary distinction between prohibition and also certiorari is that prohibition is given before the proceedings are finished while certiorari is given after the decision is provided through the inferior court or perhaps tribunal. In case the proceedings before the inferior court or maybe tribunal aren't finished, the aggrieved person might go the Superior Court for prohibition and the Superior Court might issue prohibition to forbid the inferior court or maybe tribunal from continuing the proceedings but in case the inferior court or maybe tribunal has read the situation and provided a choice and hence the proceedings are finished, the aggrieved person may move the Superior Court to issue certiorari to quash the choice provided through the inferior court or perhaps tribunal.

The writ of prohibition lies in cases where inferior court or maybe tribunal or maybe body exercising quasi-judicial or judicial tasks are with no jurisdiction or maybe in excess of jurisdiction and under a law which is ultra vires or perhaps unconstitutional and in violation of the concepts of healthy justice or perhaps contravention of the basic rights.

### Quo- Warranto

The literal meaning of quo warranto is actually by what authority. By this writ an individual that occupies or usurps an unbiased substantive office is requested to exhibit by what authority he says it. Based on Halsbury " An info within the dynamics Quo Warranto got the spot of the outdated writ of quo warranto that place against an individual that claimed or maybe usurped an office environment, liberty or franchise to enquire by what authority he backed the claim of his, as a way that the right with the office or perhaps franchise are required.

The method of quo warranto confers expert and jurisdiction on the judiciary to manage executive action in the case of appointment to public office against the appropriate statutory provision. By this particular writ the Court protects a citizen from being deprived associated with a public office to which he's legally entitled to keep. With regard to the writ of quo warranto the Supreme Court makes it clear that anyone not entitled to the article is usually ousted and the individual entitled to the post could be permitted to occupy it. For the problem of quo warranto the coming circumstances have to be fulfilled

- (i) that, work in question should be a public office of substantive character. In the situation of Faculty of Mysore v. Govind Rao<sup>34</sup>, the Supreme Court has kept that for this job substantive workplace must be brought to suggest an office independent in title. The home office might be one in respect of what nomination or maybe appointment is made or maybe it might be elective office. The home office is necessary to be an office of public character as well as of substantive character. It is able to stop being given in case work in question is an office associated with a personal character. It is able to stop being given against the people of the Managing Committee associated with a private college and of a working Committee of a personal religious institution because they don't keep the office of public nature. The expression public office hasn't been identified in the

Constitution. Nevertheless, work is considered public office in case the responsibilities of work are public in nature or even public have an interest in work or even produced by the Constitution or even by statute; and

- (ii) that, work should be held by someone with no legal authority. For the goal of problem of this particular writ the public office of substantive character is necessary being kept by an individual who's not legally capable to keep the office or maybe a few statutory provisions should have been violated in generating the appointment of the individual to work that makes the name of his of work invalid. In case of quo warranto there's an exception to the common rule which just an individual who's individually aggrieved could use for the problem of the writ of quowarranto. For the problem of quo warranto the petitioner doesn't always seek to enforce the own right of his but challenges the right on the respondent to support the public office. A stranger whose motivation is not improper might apply for the problem of quowarranto. Consequently, anyone if any fundamental or other legitimate right of person that is that is violated may apply bona fide for the problem of quo warranto.

### 2. Conclusion

In the wake of the brand new judicial activism in regards to PIL, the Supreme Court of India has currently switched into on the Supreme Court of Indians. Indian Judiciary continues to be an useful and effective check on the lapses and also omissions of the Executive & thus judicial activism has converted the Courts from legal forums into the tools of social justice. Currently, a PIL Cell is started in the Supreme Court of India with a point of view to offer independent status to PIL and for the correct processing of the sales letter petitions associated with PIL.

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