



An Analysis on Writs of Habeas Corpus under the Constitution of India

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Abstract:

The Constitution of India has been regarded as the Supreme Law of the land. It enumerates different provision including the provisions of Writs. For the protection of the rights of the people, the Constitution of India lays down various rules and regulation. As the Constitution of India has provided various rights to its citizen, the rights of Writs are another. Article 226 of the Constitution of India empowers the High Court to issue writs for the enforcement of the Fundamental Rights as well as for any other purposes. Similarly under Article 32 of the Constitution of India, the Supreme Court is empowered to issue writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo- Warranto and Certiorari for the enforcement of the Fundamental Rights. In this Article, the researcher would like to analyses the meaning of Writs and its various categories specially Writ of Habeas Corpus through the interpretation of Article 32 and Article 226 in the light of Constitution of India.

Key Words: Constitution, Writs, Article 32, Article 226, High Court, Supreme Court

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Research Methodology: In this Article, the researcher uses Doctrinal Method by using Secondary Data. Secondary Data are collected from various Articles, books, library and Internet.

Objectives: The objective of the researcher is to analyses the concept of writs under the provisions of Constitution of India. Further the researcher would like to discuss the writs of Hasbeas Corpus under the provisions of Supreme Court under Article 32 and under the provisions of High Court under Article 226 of the Constitution of India.

Introduction: The Constitution of India has provided numbers of rights. If these rights are violated the citizens can approach both High Court and Supreme Court through the help of Writs. There are numbers of writs. These are Writ of Habeas Corpus, Writ of Mandamus, Writ of Certiorari, Writ of Prohibition, Writ of Quo- Warranto. The researcher in this Article basically

discuss about the meaning, scope and ambit of Habeas Corpus. The term habeas Corpus is a Latin word which means “you must have the body”. This Writ of Habeas corpus is issued as an order with the purpose of calling upon the person who has detained another person with the object to produce detenu before the court to examine the legality of his detention. After the production of detenu, if the court finds the detention of the respective detenu illegal, then Court has given order for immediate release of the detained person.

The object of this Writ is to secure the release of the person who is illegally detained. And the detained person can be release either from private custody or in prison. Regarding the question who is allowed to apply for Writ of Habeas Corpus it is said in the constitution of India that not only the aggrieved person but on behalf of the aggrieve person any friend, relatives can apply writ petition under Article 32 of the constitution of India in the door of Supreme Court and under Article 226 of the constitution of India under the door of High Court. Regarding the application for the writ of Habeas Corpus, if it is coming from the person otherwise than the aggrieved one, then they are required to give the reason for it. In respect of writ of Habeas Corpus, the strict rules of pleading are not followed. Even to activate the Court into examining the legality of aggrieved person’s detention, a post card written by the detenu from the prison will be sufficient enough.

Condition for the issue of Writ of Habeas Corpus: There are few grounds on the basis of which Writ of Habeas Corpus will be issued. Very firstly when the detention of the aggrieved person is prima facie illegal. A detention will be considered as illegal if there is no law supporting the detention or if the detention is under the law which is unconstitutional or the detention is under a valid law but the procedure which required to be followed has not been followed. The detention which violated the provisions of Article 22 of the Constitution of India is regarded as illegal detention and in such condition the petition of Habeas Corpus will be maintainable. For the issue of the Writ of Habeas Corpus, the illegal detention must continue at the time of the issue of the writ. If a petition for the issue of this writ is filed and the detenu is released during the pendency of the proceedings, the petition may be dismissed on the ground of its having become fruitless. In the case of petition for habeas corpus, the rule of Res Judicata does not apply and therefore the petition for habeas corpus is an exception to the rule of Res Judicata. There is a condition that if the petition for Habeas Corpus under Article 226 of the

Constitution is dismissed by the High Court, the petitioner may file petition for habeas corpus in the Supreme Court under Article 32 of the Constitution of India.

The writ of Habeas Corpus petition is not maintainable under Article 32 of the Constitution against the private person who has illegally detained the petitioner. If the petitioner has been illegally detained by the State as under Article 12 of the Constitution of India, the petition for the issue of writ of Habeas Corpus is maintainable against any detune whether a private person or the State.

A.D.M., Jabalpur Vs Srivakant Shukla which is popularly known as habeas corpus case where the Supreme Court has held that in case of the order of the President under Article 359(1) of the Constitution of India no petition under Article 226 under the constitution of India is maintainable to enforce any of the fundamental rights specified in the order. In that situation no person has locus standi to move any writ petition under Article 226 of the Constitution before a High Court for Habeas corpus or any other writ or order or direction to challenge the legality of an order of detention on the ground that the order is not under or in compliance with the Act or is illegal or is vitiated by malafide , factual or legal or is based on extraneous consideration. The Court further held that in case of suspension of Article 21 of the Constitution of India by the order of the President under Article 359 of the Constitution of India, the detenu loses the local standi to regain his liberty on any ground and the Supreme Court or the High Court losses its jurisdiction to grant relief for this purpose on any ground.

Conclusion: Thus it can be concluded that writs is a formal written order issued by a body with administrative or judicial jurisdiction. In modern usages, this body is court. These writs can be categorized as Habeas Corpus, Mandamus, Certiorari, prohibition and Quo- Warranto. Any person whose fundamental or any other rights are violated can seek justice by filling writ petition either in High Court or Supreme Court. Provided that, regards Supreme Court under article 32 of the Constitution of India, the filling of writ petition is a matter of rights and the court must accept the petition of writ. But this is not in the case of High Court because under Article 226 of the Constitution of India, when one person seeks justice through the application of writ petition, it is the discretion of the High Court to accept the petition or not.

References:

1. **Basu, Durga Das, Constitution of India, 2nd Edition , Agra, Wadhawa and Company Law Publishers, 2005**
2. **Bakshi, P.M., Constitution of India, 9th edition, Delhi: University Law Publication, 2009**
3. **Chaturvedi, R.G. and Prem, Law of Writs and Other Constitutional Remedies, 5th Edition, Bharat Law Publication, 2021**
4. **Ramachandra, V,G, Law of Writs, 7th Edition, Eastern Book Company, 2022**
5. **Atrrey, Abhishek, Law of Writs- Practice and Procedure, Kamal Publishers**
6. **Jain, M.P. Indian Constitutional Law, Bombay: N.M.Tripathy, Eastern Book Publication, 2021**
7. **www.LawBhoomi.com accessed on 04.07.2023 at 5 pm**
8. **www.Manupatra.com accessed on 06.07.2023 at 4 pm**
9. **www.LiveLaw.com accessed on 05.08.2023 at 5 pm**
10. **www.Ipleader.in accessed on 7.08.2023 at 5 pm**