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E.MBA, LL.M, PH.D, PGDSAPM

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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **TOOLS AND TECHNIQUES IN POLICY MAKING AND CREATIVITY IN CONSTITUTIONAL ADJUDICATION**

AUTHORED BY - K KEERTHANA & M DIVYA BHARATHI

Assistant Professor, School of Law,  
Vels Institute of Science, Technology and Advanced Studies, Chennai

## **ABSTRACT**

The judiciary plays a pivotal role in interpreting the Constitution and shaping public policy within a democratic framework. Judicial interpretation often transcends mechanical application of laws, evolving into a creative process that reconciles constitutional ideals with social realities. This article examines the tools and techniques of policy making embedded within judicial functions, focusing on the creative and purposive role of courts in constitutional adjudication. It explores how Indian courts, particularly the Supreme Court and High Courts, have expanded the constitutional horizon through writ jurisdiction, judicial review, and interpretative innovation. The study analyses the interplay between constitutional interpretation, public policy, and judicial creativity by reviewing significant decisions and theoretical foundations that define India's constitutional jurisprudence. Ultimately, the article argues that judicial creativity serves as an essential instrument for realizing justice, liberty, and equality-the core objectives of the Indian Constitution.

**Keywords:** Judicial Creativity Constitutional Adjudication Policy Making Judicial Review Writ Jurisdiction Supreme Court Fundamental Rights

## **INTRODUCTION**

The judiciary plays a crucial role in interpreting the Constitution's provisions. The court serves as the sole interpreter, protector and caretaker of the Constitutional's supremacy. The judiciary must play a crucial role in interpreting and enforcing the country's human rights, which are codified in the country's fundamental law. As a result, it is important to understand the judiciary's approach to constitutional interpretation, and a judiciary must formulate realistic wisdom after adopting an innovative and purposeful approach to the interpretation of various

constitutional rights The Supreme Court and the High Courts have been provided with many powers which they exercise to provide justice to the people. One of the most important tools or power which the courts have been provided with by the constitution is the power to issue writs.

## **THE TOOLS OF CREATIVITY IN CONSTITUTIONAL ADJUDICATION**

Judicial creativity in interpreting constitution has yet another dimension. There are occasions in which the court will have to interpret various provisions dealing with a common theme, where mere interpretation of the words and phrases used in those provisions may not be adequate for satisfying the object for which they are enacted. In such cases, the judiciary will have to identify, formulate and select certain concepts, norms or values relevant to all of those provisions and introduce them into the Constitution. All those provisions. will then be interpreted with a view to upholding the concept or norm so judicially introduced. In other words, the criteria for construction as well as the content of provisions will be the outcome of judicial labor. In some instances, such creativity to figure out the expressions in constitutions has been influenced by the common law concepts like public policy“ or natural law.”

Introduction of such concepts or norms was justified on the grounds that interpretation of the Constitution without them would defeat the very purpose of enacting the Constitution. They are instances in which judiciary can be considered at the zenith of its creativity in constitutional interpretation. An early instance of such innovation in constitutional interpretation in the United States is seen in the famous case of Marbury v. Madison.“

## **SUPREME COURT OF INDIA – FUNCTIONS**

The supreme court is concerned with relevant articles 12, 32 and 136 empowers supreme court to issue directions, orders or writs for the enforcement of fundamental rights.

1. It takes up appeals against the verdicts of the High Courts, other courts and tribunals.
2. It settles disputes between various government authorities, between state governments, and between the centre and any state government.
3. It also hears matters which the President refers to it, in its advisory role.
4. The SC can also take up cases suo moto (on its own).
5. The law that SC declares is binding on all the courts in India and on the Union as well as the state governments.

## POWERS AND FUNCTIONS OF THE HIGH COURT

The High Court is the highest court in a state in India. Articles 214 to 231 in the Indian Constitution talk about the High Courts, their organization and powers. Parliament can also provide for the establishment of one High Court for two or more states.

1. It superintends and controls all the subordinate courts.
2. It can ask for details of proceedings from subordinate courts.
3. It issues rules regarding the working of the subordinate courts.
4. It can transfer any case from one court to another and can also transfer the case to itself and decide the same.
5. It can enquire into the records or other connected documents of any subordinate court.
6. It can appoint its administration staff and determine their salaries and allowances, and conditions of service

## TYPES OF WRITS

The Indian Constitution provides 5 types of writs which can be issued by the Courts. They are:

1. Habeas Corpus
2. Mandamus
3. Certiorari
4. Quo Warranto
5. Prohibition

## HABEAS CORPUS

The Latin meaning of the word 'Habeas Corpus' is 'To have the body of.' This writ is used to enforce the fundamental right of individual liberty against unlawful detention. Through Habeas Corpus, Supreme Court/High Court orders one person who has arrested another person to bring the body of the latter before the court.

## FACTS ABOUT HABEAS CORPUS IN INDIA

- The Supreme Court or High Court can issue this writ against both private and public authorities.
- Habeas Corpus cannot be issued in the following cases:
- When detention is lawful

- When the proceeding is for contempt of a legislature or a court
- Detention is by a competent court
- Detention is outside the jurisdiction of the court

In the case of Sunil Batra vs Delhi Administration union the Supreme Court had accepted the application made through a letter by a co-convict (a stranger) due to the inhuman treatment of prisoners. In this case, the letter was accepted as an application, and the writ of Habeas Corpus was issued. This Writ is very important for the personal liberty of the citizens because if this Writ is not provided by the Constitution a person can be unlawfully restrained or detained by any authority, and it will be a clear violation of the personal liberty of the citizens.

## **MANDAMUS**

The literal meaning of this writ is 'We command.' This writ is used by the court to order the public official who has failed to perform his duty or refused to do his duty, to resume his work. Besides public officials, Mandamus can be issued against any public body, a corporation, an inferior court, a tribunal, or government for the same purpose.

## **FACTS ABOUT MANDAMUS IN INDIA**

- Unlike Habeas Corpus, Mandamus cannot be issued against a private individual
- Mandamus cannot be issued in the following cases
- To enforce departmental instruction that does not possess statutory force.
- To order someone to work when the kind of work is discretionary and not mandatory
- To enforce a contractual obligation
- Mandamus can't be issued against the Indian President or State Governors
- Against the Chief Justice of a High Court acting in a judicial capacity

In the case of Vijaya Mehta v State of Rajasthan a petition was filed in the High Court for compelling the State to perform its duty of appointing a commission to look into the climate change and floods in the State. It was held by the Court that the State Government would have to appoint a commission only when a resolution was passed by the Legislature, moreover, it was a discretionary duty and not a mandatory duty, so the Writ of Mandamus was not issued in this case.

## **CERTIORARI**

The literal meaning of the writ of 'Certiorari' is 'To be certified' or 'To be informed.' This writ is issued by a court higher in authority to a lower court or tribunal ordering them either to transfer a case pending with them to itself or quash their order in a case. It is issued on the grounds of an excess of jurisdiction or lack of jurisdiction or error of law. It not only prevents but also cures mistakes in the judiciary.

### **FACTS ABOUT CERTIORARI IN INDIA**

- Pre-1991: The writ of Certiorari used to be issued only against judicial and quasijudicial authorities and not against administrative authorities
- Post-1991: The Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting the rights of individuals
- It cannot be issued against legislative bodies and private individuals or bodies.

## **QUO WARRANTO**

The literal meaning of the writ of 'Quo-Warranto' is 'By what authority or warrant.' Supreme Court or High Court issue this writ to prevent illegal usurpation of a public office by a person. Through this writ, the court enquires into the legality of a claim for a person to a public office

### **FACTS ABOUT QUO-WARRANTO IN INDIA**

- Quo-Warranto can be issued only when the substantive public office of a permanent character created by a statute or by the Constitution is involved
- It can't be issued against private or ministerial office

In the case of Jamapur Arya samaj sabha v Dr. D Rama, an application for the Writ of Quo Warranto was made by the petitioner in the Patna High Court against the Working Committee of Bihar Raj Arya Samaj Pratinidhi Sabha which was a private body. The court refused to issue the Writ because it was not a public office.

## **PROHIBITION**

The literal meaning of 'Prohibition' is 'To forbid.' A court that is higher in position issues a Prohibition writ against a court that is lower in position to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. It directs inactivity.

## FACTS ABOUT PROHIBITION IN INDIA

- Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.
- It can't be issued against administrative authorities, legislative bodies and private individuals or bodies.

## CONCLUSION

The Constitution of India has provided the power to issue Writs to the Supreme Court under Article 32 and to High Courts under Article 226. These Writs are a command which is given by the Courts for the performance of an act to the public authority which has a duty to perform it. There are five types of Writs which are Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition and all these writs are an effective method of enforcing the rights of the people and to compel the authorities to fulfil the duties which are bound to perform under the law.

## REFERENCES

### BIBLIOGRAPHY

1. Basu, Durga Das. Introduction to the Constitution of India. LexisNexis, 25<sup>th</sup> Edition, 2021.
2. Jain, M. P. Indian Constitutional Law. LexisNexis, 8<sup>th</sup> Edition, 2018.
3. Seervai, H. M. Constitutional Law of India: A Critical Commentary. Universal Law Publishing, 4<sup>th</sup> Edition.
4. Austin, Granville. The Indian Constitution: Cornerstone of a Nation. Oxford University Press, 1999.
5. Dicey, A. V. Introduction to the Study of the Law of the Constitution. Macmillan, 10<sup>th</sup> Edition

### WEBLIOGRAPHY

1. <https://main.sci.gov.in>
2. <https://lawmin.gov.in>
3. <https://indiankanoon.org>
4. <https://nja.gov.in>