

“Evolution of writs jurisdiction in India: Transition of writs from royal prerogative to constitutional remedies”.

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ABSTRACT

This research paper will explore transition or transformation of writ from royal prerogative instruments to constitutional remedies under Indian judicial systems rooted in judicial activism and rule of law. This paper examines the origin and history of its evolution in the medieval England as well as their presence in India as a part of colonial legacy. It analyses how prerogative writs were introduced in limited manner through legislative enactments.

With the adoption of Indian constitution writ underwent a significant change. Article 32 and 226 codified the writs jurisdiction in India endorsed them with power for the enforcement of fundamental rights.

The transition reflects or underscores India’s commitment to rule of law and judicial activism.

Initially the particular characteristics of writs of mandamus, certiorari, habeas corpus etc., was that it was available for the use of king or crown to prevent encroachment to royal prerogative or matters exclusively reserved for consideration of the crown.

KEYWORD:

ROYAL PREROGATIVE, CONSTITUTIONAL REMEDIES, ARTICLE 32 AND 226, PROTECTION OF RIGHTS.

INTRODUCTION

Before we delve or explore evolution of writs, let's first understand the meaning of writs. In simple words writs can be defined as formal written order or command issued by superior court such as Supreme Court or High Court under the seal or name of the court. Writs is one the oldest and effective legal remedy meant to control exercise of power.

Writs originally emerged as royal prerogative instruments issued under the name or seal of the crown or king. Since inception writs in England were known by name of prerogative writ. In layman's language prerogative mean an exclusive right or privilege that somebody has. This give us an understanding why they were known by name of prerogative writs as in England prerogative writs were available at the discretion of crown. These prerogative writs were discretionary remedy available only for the use of crown and exercised at his discretion rather than enforceable legal rights available to subject.

With the decline of monarchical system and rise of constitutionalism, rule of law and judicial review the scope of writs was widened and made available to all subjects.

The discretionary authority of crown or we can say that writs were available for the use of crown this practice was affirmed and subsequently reinforced or confirmed by various judicial pronouncement. Chief Justice Edward Coke in *Bagg’s*¹ case confirmed the same. It was observed by court that only court of king’s bench

¹ 11 Co. Rep. 93b; 77 E.R. 1271

possess requisite jurisdiction to issue writ of mandamus to order the restoration of wrongfully removed officials.

In the Case of Proclamations (1610) 12 Co Rep 74², court confirms the authority to issue prerogative writs lies at hand of crown or resides with crown but limited it to only traditional prerogative writ. The English court established the principles that crown cannot create or recognize any new prerogative writ.

R v Secretary of State for the Home Department, ex parte Northumbria Police Authority³ [1989] QB 26, the court confirmed the same crown possess the authority to maintain peace.

The birth of constitutional remedies in India:

In India the framer of constitution adopted this writ and conferred the constitutional status to these writs. However, in India it's root can be traced back to Regulating Act 1773. The writs jurisdiction in India has traversed a long evolutionary journey from moving from limited or narrow circumscribed framework to expansive framework, through judicial interpretation and judicial innovation. This expansion highlights or reflect the superior court's proactive role to meet the needs and changing demand of constitutional governance and social justice requirement of society. This progressive or dynamic expansion of writ jurisdiction confirmed through various landmark judicial pronouncement as reflected in S.P Gupta vs. Union of India⁴ which empowers the court to entertain writ petition for broader societal interest.

The supreme court of India plays a pivotal role in redefining the scope of writs jurisdiction of superior court.

In case titled Guruvayoor Devaswom Managing Committee⁵, the court emphasized on the proactive role of judiciary in enforcement of fundamental rights through writ petition via public interest litigation.

In case titled Binny ltd⁶, it was observed by court that writ of mandamus can be issued against private individual if they are performing public function. Ordinarily the writ cannot be directed against private individual.

Dr B.R Ambedkar aptly observed that Article 32 is most important Article without which constitution is nullity. Our framer of Indian constitution makes this right enforceable, real and not be ornamental or illusory. The Right guaranteed under Article 32 and Article 226 forms part of basic structure of constitution⁷.

The power to issue writs under article 226 is wider in scope than article 226. Under article 226 power to issue writs can be used not only for enforcement of fundamental right but also for other legal right also.

² <https://www.lawteacher.net/cases/the-case-of-proclamations.php>

³ [1987] EWCA Civ 1118-10

⁴ (2005) 6 SCC 657

⁵ Guruvayoor Devaswom Managing Committee and Another v. C.K Rajan and Others (2003) 7 SCC 546

⁶ Binny Ltd. & Anr. v. V. Sadasivan & Ors. (2005) 6 SCC 657

⁷ L. Chandra Kumar vs. Union of India (1997) 3 SCC 261

LITERATURE REVIEW

An attempt is made in this section of study to review a few related relevant literatures related to the research topic.

SNO.	TITLE OF THE PAPER	LITERATURE REVIEW
1.	Comparative Study on Writ Jurisdiction in India and the UK-PRACHI OZA	<p>The article highlights and compares writs jurisdiction in India and UK and how India adapted the concept from UK and incorporated within a constitutional framework.</p> <p>The above research work though provides valuable insight but suffers from several limitations or not without certain limitations.</p> <p>RESEARCH GAPS</p> <ul style="list-style-type: none"> • Researcher placed sole reliance only on secondary resources limiting it to India and UK. • The finding cannot be generalized to other common law jurisdictions. • No detailed comparative study on specific writs in India and UK • Fails to provide comparative analysis on its origin and modern-day practice.
2.	The History and Development of the Law of Prerogative Writs under the Pakistani Legal System: A Critical Evaluation by Amr Ibn Munir	<p>The research work traces the evolution of prerogative writs from medieval England how it was introduced in British India and further incorporated in Pakistan legal system.</p> <p>RESEARCH GAPS</p> <ul style="list-style-type: none"> • The research work fails to highlight restrictions on enforceability of writ jurisdiction in Pakistan imposed by constitution in year 1962 and 1973. • Further it lacks comparative analysis with common law countries.
3.	The Development of the prerogative writs in ENGLAND AND INDIA: The student becomes the master? Christopher Forsyth and Nitish Upadhyaya	<p>The paper explores and examines evolution of prerogative writs in England and how it was incorporated in Indian legal system and elevated to constitutional status. The paper examines how Indian court surpass traditional circumscribed limit to broader application</p> <p>RESEARCH GAPS</p> <ul style="list-style-type: none"> • The paper fails to highlight modern constitutional practices.

4.	Significance of Right to Constitutional Remedies of Indian Constitution in Redressing Violation of Fundamental Rights- Chetan Kumar	The paper examines how right guaranteed under Article 32 provide protection to fundamental rights of citizens and how it works and why this is important. RESEARCH GAPS <ul style="list-style-type: none"> • No case law analysis. • Fails to highlight modern constitutional practise. • Lack of empirical research.
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RESEARCH METHODOLOGY

The study uses or employs doctrinal, library-based, qualitative and comparative legal research design grounded in socio-legal methodology. The doctrinal research primarily concerned with analysis of existing legal frameworks, judicial pronouncement and scholarly writing.

The research is primarily based on the secondary source of law. It involves detailed analysis of text books, papers, journals.

RESEARCH OBJECTIVES

1. To trace the evolution of royal prerogative writs under English common law.
2. To analyse how prerogative writs were incorporated into Indian judicial systems and elevated to constitutional status.
3. To assess how Indian judiciary play proactive role in redefining writ jurisdiction for protection of rights of citizens.
4. To analyse transition of writs from royal prerogative instruments to established remedies under rule of law.

RESEARCH HYPOTHESIS

- The evolution of writs from royal prerogative to constitutional remedies reflects shift toward institutional judicial independence.
- The transformation of writs from royal prerogative to constitutional remedies reflects adoption of rule of law and judicial activism.

- The transformation of writs in India from royal prerogative remedies to constitutional guarantees substantially altered their nature, scope, and purpose, making them tools of rights enforcement rather than governance control.

RESEARCH QUESTIONS

1. To what extent do constitutional writs in India represent a departure from their English common law origins?
2. What role has judicial interpretation played in expanding the scope and effectiveness of constitutional writs in India?
3. 2. How has the writ jurisdiction in India evolved from royal prerogative under colonial law to a constitutionally guaranteed remedy for protecting fundamental rights?

EVOLUTION OF PEROGATIVE WRITS

1. ANGLO SAXON ROOTS:

The writs jurisdiction like any other common law system traces its root back to Anglo- Saxon jurisprudence, where Anglo- Saxon kings used to issue formal written command or order often called briefs or grants to courts or its official. The writs primarily used to convey land or send instructions. In simple words it was used to informs official about transfer of lands.

2. NORMAN CONQUEST:

Following the Norman conquest in England in 1066, the writ jurisdiction was highly standardized or procedurally defined available only for the use of king or crown primarily to settle dispute or nullify the court's decision.

3. REGISTER OF WRITS:

By the end of 12th centuries, the writs used to handle legal cases. To keep track of record court of chancery created a register of writs.

4. EVOLUTION OF PREROGATIVE WRITS:

The notable attributes of prerogative writs and history of its evolution in England was discussed in watershed case titled *King vs Speyer*⁸ where Lord Reading C.J. discussed distinctive and most authoritative exposition of prerogative writs, tracing its root and evolution.

Initially prerogative writs were available for only use of the king or crown primarily to prevent encroachment on royal prerogative or rights or liberties or franchise of the crown.

The main object is to control feudal lords or to maintain peace. Primarily addressed to judges, sheriff's, local authorities.

Landmark Cases Cementing the Crown's Exclusive Prerogative

*Brownlow v. Mich*⁹. 13 Jac. 1 (1615), established royal supremacy or illustrating monarch exclusive authority over certain legal proceedings.

⁸ (1916)1 KB 595

⁹ *Brownlow v. McCall Enters., Inc.*, 315 Mich. App. 103

R v. Commissioners of Sewers for the County of Essex¹⁰ (1643) (1 Vent. 66), this early case of certiorari highlights or underscored the authority of king's bench to correct inferior court's decision on behalf of the crown.

Dr. Askew's Case¹¹ (1768) (4 Burr. 2186), confirm that writs were available for use of crown to maintain peace or to prevent disorders or failure of justice by inferior court.

James Bagg's Case (1615) 3 Bulst 32, the power to prevent misgovernment or to restore appointment of person who was removed wrongfully resides with court of king's bench who exercise power on behalf of the crown.

Groenvelt v Burwell¹², reiterated the same that crown via king's bench has sole authority or inherent right to issue certiorari.

5. SHIFT FROM ROYAL PREROGATIVE TO ESTABLISHED REMEDIES:

As precisely mentioned by Edward Jenks the prerogative writs transformed from being instruments of crown prerogative tools into tool of judicial control.

As aptly remarked by Lord Reading initially writ of quo warranto was reserved for use of crown to prevent encroachment on royal prerogative or liberty or right of crown later it was accessible to attorney general which led to practise of filing of information by attorney General which empowered court to enquire into public position. Later the government officials or king's officials started practise of questioning public officials by what authority he is holding a public office at the instance of private person. Later during reign of William and Queen Mary this practise of filing of information was stopped. Later during the reign of Queen Anne this practise of filing at the instance of private person was subject to the discretion of court.

The landmark judicial pronouncement which confirms the transition of writs from royal prerogative instruments to established remedies under rule of law.

Darley v. R¹³., Tindal C.J- "now it is well settled that writ of quo warranto will lie to control executive actions in making appointments to public office or to prevent public from usurper of public officers.

The Case of Proclamations¹⁴, the king had no authority to create or recognize any new prerogative writs.

The Case of the Seven Bishops¹⁵, emphasized that king was not above law which further solidified or established parliamentary supremacy over royal prerogative.

Entick v Carrington¹⁶ (1765) 19 St Tr 1030, State is not above law, executive action is subject to judicial review. This judgment turned writs into matter of scrutiny rather than a kings or royal prerogative.

EVOLUTION OF PEROGATIVE WRITS IN INDIA

The writs jurisdiction was adopted by the constituent assembly of India from England or they reflect the presence of colonial legacy in India. At the various junctures in history these writs were known by different name but in spirit they are same more or less. The Supreme court of High court are bestowed with wider scope and the credit for its expansion was goes to court greatest judicial innovation i.e., Social Action Litigation or Public Interest Litigation.

¹⁰ 107 E.R. 177

¹¹ Rex vs Doctor Askew (1768) 4 Burr 2186

¹² (1699) 1 Ld Raym 454

¹³ (1846) 12 Cl

¹⁴ (1610) 77 ER 1352

¹⁵ (1688) 12 St Tr 183

¹⁶ (1765) 19 St Tr 1030

The prerogative writs which were incorporated into Indian judicial system traces its roots back to Regulating Act 1773. The writs jurisdiction in India has traversed a long evolutionary journey from moving from limited or narrow circumscribed framework to expansive framework, through judicial interpretation and judicial innovation.

1. REGULATING ACT 1773- laid the foundation for the establishment of Supreme court at Calcutta in fort William which had civil as well as criminal jurisdiction.
2. INDIAN HIGH COURT ACT, 1861- laid the foundation for establishment of High court in each of three presidencies. It is pertinent to mention that these courts subject to certain limitation vested with the power to issue prerogative writs.
3. SPECIFIC RELIEF ACT 1877- section 45 of the Act provides statutory recognition to writ of mandamus.
4. CODE OF CIVIL PROCEDURE- section 491 of the act provides statutory recognition to writ of habeas corpus.

KEY PEROGATIVE WRITS

1. WRIT OF HABEAS CORPUS

A writ of Habeas corpus is an order or command to the detaining authority to produce the detained person and show the cause of detention so that the court can determines its legality.

Let's take a look into landmark judicial pronouncement of Indian courts which confirms how Habeas corpus shaped Indian rights.

It is well settled that in dealing with writ petition of Habeas corpus court has to see legality of detention on the date of the filing of the petition¹⁷.

A person who is released on personal bond and can file writ petition of Habeas corpus, as person who is released on personal bond is still under restraint or control¹⁸.

A writ of Habeas corpus cannot only be granted to release a person who has been detained illegally but also to ensure person is protected from ill-treatment inside jails¹⁹.

2. WRIT OF QUO WARRANTO

By issuing this writ a person is called upon to show by what authority he holds a public office. The object of this writ is to control executive action in making appointment to public offices.

It is important to note that petitioner need not to demonstrate personal grievances or specific legal injury.

3. WRIT OF PROHIBITION AND CERTIORARI

Is an order to prevent inferior court or tribunal from exceeding their jurisdiction. Both are available on similar grounds; writ of prohibition is issued before inferior court decision. If decision has been made appropriate remedy is certiorari.

It is important to note certiorari is available even when an alternative remedy exist. The existence of an alternative remedy does not divest high court of its power.

¹⁷ Kanu Sanyal v. District Magistrate, Darjeeling & Ors., (2001) 5 SCC 247

¹⁸ Ram Manohar Lohia v. State of Bihar, 1966 AIR 740

¹⁹ Sunil Batra vs. Delhi Administration 1978 AIR 1675

4. WRIT OF MANDAMUS

Is an order or command to public authority to do or not to do something. The object is to compel the performance by public officer prescribed by statute.

RESEARCH FINDINGS

1. Writs as royal prerogative instruments primarily used to prevent encroachment on royal prerogative or prevent other from exercising jurisdiction exclusively reserved for the crown.
2. With the decline of monarchical system or with the rise of rule of law or constitutionalism writs were made available to all subjects.
3. In Indian writs jurisprudence the credit for its development and expansion goes to court greatest judicial innovation PIL. PIL further democratized writ petition.
4. Judicial activism has further expanded or democratized writ jurisdiction.

CONCLUSION

1. The transformation or transition of writs in India from royal prerogative remedies to constitutional remedies or guarantees, substantially altered their nature, scope, and purpose, making them tools of rights enforcement rather than governance control.
2. What began as royal prerogative instrument issued at the discretion or the prerogative of crown now become a tool of judicial control for the protection or enforcement of fundamental rights of citizen.
3. In Indian judicial system writs were elevated to the constitutional status and becomes dynamic instrument of social justice.

RECOMMENDATION

1. Judiciary must maintain delicate balance, show some measure of restraint and some measure of activism.
2. Codification of doctrines or principle governing writ jurisdiction which could enhance the legal certainty.

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