

## Article 199(Writ Petition)

### **Writ Petition**

The Part II Chapter 1 of the Constitution of The Islamic Republic of Pakistan deals with the fundamental rights of a person. This part is also called the heart of the Constitution, which provides right to life and liberty, equality before law, freedom of speech and expression, liberty of thought belief and worship, cultural & educational right, fair trial and right against discrimination, etc.

A writ can be filed before High Court in case of infringement of the fundamental rights under Article 199 of the constitution of The Islamic Republic of Pakistan. Under Article 199 a writ petition can be filed in High Court even in case of infringement of legal rights.

### **Who can file a Writ & what is Writ Petition?**

Any citizen of Pakistan can file a writ petition, however, a foreigner can also file writ petition for enforcing his right to life and equality before law. Court can also issue writ in the interest of justice and public interest. A writ petition is an order given by a higher court to a lower government official or lower court in an effort to preserve the rights of a country. These rights may be individual rights or they may ensure that the governmental system is running appropriately. There are many different writ petitions, many of which deal with prisoners and arrests. Writ implies Power of the Constitutional Courts like the High Courts and the Supreme Court to give authoritative directions to any Public Authority, or to private persons, to do something or refrain from doing something. Petition means the making of Complaint to appropriate Court of law.

It is also important to understand basic difference between a regular Writ Petition and Public Interest Litigation Writ Petition. Whenever a person affected by any illegal act or omission of Public Officials or of any Public office, he may approach the High Court for issue of appropriate Writ (authoritative direction). However a person may approach the High Court for issue of appropriate Writ in the larger public interest even when he is directly not affected by illegal acts or omissions of Public Officials.

The Writ Petition is kind of a remedy given to people of Pakistan for enforcement of their rights against the Government and its various agencies, and in exceptional circumstances, the Writ Jurisdiction may be invoked against private persons who are acting illegal in partnership with any public authority. It is always desirable that one should not show haste in approaching Courts and sincere efforts should be made to explore alternate remedies provided under law or to get things done from Public Authority itself. Yet it is not permissible that one can knock the doors of Court as when he so wishes. Matter should be brought before the Court in most reasonable time. Moreover, it is mandatory to serve notice

to Public authorities against which one intends to move in the court of law, except in compelling circumstances, reasons whereof to be recorded in the Petition.

### **What are the Types of Writ Petitions?**

Following are the types of writ petitions:

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

### **Habeas Corpus**

Writ of Habeas Corpus is sought to enforce the right to life. When the life of a person is in peril this writ is sought. Normally this writ is issued in case of illegal detention. Habeas corpus is used if a person is unlawfully imprisoned. This writ can be issued even on a post card sent to the Judge by victim or his relatives. Writ of Habeas Corpus can be filed to seek release of a person from unlawful detention, whether by Police or by any private person. Habeas corpus (“produce the body” in Latin) is a writ given to an institution or a prison warden to release an imprisoned person from custody. This keeps a government from imprisoning people unlawfully. This is sometimes given when the preservation of life is in danger due to improper jail conditions or other violations.

### **Mandamus**

Mandamus is sought for direction to the subordinate court/tribunal or government officer to perform mandatory duties correctly. Writ of mandamus is most popular writ, which is issued against the arbitrary/illegal acts of government officials including police officers, municipal bodies etc. This writ is given to a lower-level court or a government officer to mandate that proper laws are followed. Mandamus might be given if an official is not using his position appropriately or if a court is not following the laws of the state or country. This writ (also called the “writ of mandate”) ensures that the government and the individuals in charge are performing their functions properly.

### **Prohibition**

Prohibition is an extraordinary writ usually sought requesting an order from the Higher Court that an inferior court/ tribunal be prohibited from undertaking further action on a case pending before it; commonly known as stay of proceeding. The writ of prohibition is given to a lower court by a higher court to stop it from taking up a case. Typically this is done when the case is outside the jurisdiction of the lower court and the higher court feels that no further action should be taken on it. The higher court may take over the case after this writ has been given.

## **Certiorari**

Certiorari is sought to review/quash the decision of an inferior court/ tribunal or other statutory body where such decision/order is passed in utter violation of principle of natural justice or without jurisdiction. This writ is also sought in case of service related matter for quashing the decision of departmental enquiry proceeding and punishment imposed upon the delinquent employee. When a lower court has made a decision that a higher court deems incorrect or inappropriate, this writ will often be used. The writ of certiorari allows a higher court to review the materials from the decision of a lower court with the option of reversing the decision. This can also be used in a workplace to make sure that a punishment levied by an employer against an employee is appropriate.

## **Quo Warranto**

The writ of quo warranto enables enquiry into the legality of the claim which a person asserts, to an office or franchise and to oust him from such position if he is a usurper. The holder of the office has to show to the court under what authority he holds the office. If a person claims that he has the power of a public office without any legality behind it, he is issued a quo warranto. After the writ has been given, the person must show by what authority he has asserted his claim. It is issued when (a) the office is of public and of a substantive nature; (b) created by statute or by the Constitution itself, and (b) the respondent has asserted his claim to the office.

Apart from this classification the writ petitions are also divided into two categories according to its nature, i.e. Civil Writ Petition and Criminal Writ Petition. Civil Writ Petition is filed in those cases where the issue is of civil nature, i.e. Writ for direction to municipal bodies to provide sanitation and water facilities etc. If issue is relating to criminal nature criminal writ is filed, i.e. Writ for quashing of FIR, registration of FIR, further investigation of transfer of investigation.

## **Against whom a writ can be filed?**

A writ can be filed only against State and the same is not maintainable against private individual or corporations. However, a private individual or corporation can be a party in the writ petition if relief sought in the writ petition affects his interest.

## **Who is "State"?**

"State" has been defined under Part III of the Constitution as "the State" includes the Governmental and Parliament of Pakistan and the Government and the Legislature of each of the Provinces and all local or other authorities within the territory of Pakistan or under the control of the Government of Pakistan. All those organizations/organs where, Government has control in the appointment/removal of office bearers/employees, funding and functions of

such authorities. Now the societies registered under societies Act, Universities, Boards etc. are “state”.

**Grounds for granting Writ:**

A writ is granted when there is violation of fundamental right or legal rights of person and when

the inferior court, tribunal, board, or public officer has acted illegally or exceeded its jurisdiction or have no jurisdiction or there is violation of principle of natural justice i.e. the petitioner has not been grant opportunity to be heard or the allegations against him has not been disclosed to him and there is no other equally speedy and adequate remedy is available.

Writ of Habeas Corpus can be filed for illegal detention if a person is illegally detained for more than 24 hours without producing him before a magistrate within 24 hours. The issues are resolved in the writ when there is only disputed question of law. The issues of pure facts which need trial are not resolved in the writ.

**CONCLUSION:**

Writ jurisdiction of high court under article 199 is available only when no other adequate remedy is available. The high court can issue writs on mandamus, prohibition and certiorari on the application of the aggrieved person and it can also issue writ of habeas corpus and writ on the application of interested party.