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Md. Abdul Mannan Bhuyean
Ph.D. Scholar, University of
Dhaka (DU), and Associate
Professor, Department of Law,
University of Information
Technology and Sciences
(UITS), Dhaka, Bangladesh

Practice of discrete categories of writ: Bangladesh standpoint

Md. Abdul Mannan Bhuyean

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Abstract

The Subordinate Courts to the High Court Division of the Supreme Court of Bangladesh has original jurisdiction to adjudicate cases in accordance with the legal provisions of the country. It is understood that there are two categories of law: constitutional law and ordinary law. The Subordinate Courts are established by statutory legislation, and its jurisdiction is primarily governed by these laws. The Supreme Court of Bangladesh, comprising the High Court Division and Appellate Division, is established by the constitutional law of Bangladesh. Its jurisdiction is governed by both ordinary and constitutional laws, although in most instances, it is primarily regulated by the Constitution of Bangladesh. The writ jurisdiction constitutes the exclusive original jurisdiction of the High Court Division of the Supreme Court of Bangladesh, as delineated in Article 102 of the Constitution of Bangladesh.

Keywords: Practice, discrete categories, writ, Bangladesh standpoint

1. Introductions

In Bangladesh, there exist distinct sorts of writ practices ^[1, 2]. The Writ jurisdiction is regarded as the exclusive original jurisdiction of the High Court Division of the Supreme Court of Bangladesh ^[1, 3]. This is a specific sort of remedy. The Constitution of Bangladesh does not specify the name of the writ, however Article 102 delineates the definition or theme of five categories of writs ^[4]. An individual with locus standi who is aggrieved by governmental action may seek redress before the Honorable High Court Division by submitting a writ petition ^[5, 6]. The Constitution of Bangladesh does not include a particular definition for an injured party, and judicial interpretations have established its application in the context of Public Interest Litigation (PIL) in Bangladesh ^[7, 8]. PIL is a constitutional right in both India and Pakistan ^[8]. Daily, the issues of writ have been enhanced by judge-made legislation, precedents, or judicial pronouncements as articulated by the Supreme Court of Bangladesh ^[9]. We shall attain a clear understanding of the study following a thorough discussion as outlined below.

2. Definition of Writ

The law does not contain a detailed definition of a writ. A writ is a written document that summons or mandates an individual to perform or refrain from a specific action ^[3].

According to Blackstone, a "Writ" is an obligatory document issued by the king-in-Parliament, sealed with his great seal and addressed to the sheriff of the jurisdiction where the grievance is alleged to have occurred ^[10]. It compels the sheriff to instruct the offender or involved party to either rectify the situation for the complainant or to appear in court and respond to the charges against them.

In the absence of an effective remedy under State laws, pursuant to Article 102 of the Constitution of Bangladesh, an aggrieved party with locus standi may submit a writ petition for reimbursement to the Honorable High Court Division of the Supreme Court of Bangladesh, which possesses special original jurisdiction ^[11]. A writ may be submitted against any public entity.

3. Foundation and enlargement of writ

Archaeologically, writ is derived from and developed within the British Legal System ^[12]. Initially, writs were imperial privileges.

Corresponding Author:
Md. Abdul Mannan Bhuyean
Ph.D. Scholar, University of
Dhaka (DU), and Associate
Professor, Department of Law,
University of Information
Technology and Sciences
(UITS), Dhaka, Bangladesh

Only the King or Queen, as the embodiment of justice, could issue writs, which were termed prerogative writs due to their perceived confidential association with the rights of the monarch. The King issued writs via the King's Bench or the Court of Chancery. The prerogative writs comprised five types: Habeas Corpus, Certiorari, Mandamus, Prohibition, and Quo-Warranto ^[12]. The King issued these writs to compel government officials to perform their duties correctly or to prevent them from abusing their powers. Subjects concerned by the actions of the monarch's officials approached the monarch to seek compensation, and the king, through the aforementioned two courts, mandated his officials to provide remedies to his subjects. As governmental functions expand and the concept of the rule of law evolves, courts have transitioned to self-governance, leading to the transfer of writs from royal prerogatives to those of the courts, ultimately becoming the prerogatives of the populace ^[13, 14]. These writs are now enshrined as assured rights in the constitutions of numerous countries, allowing citizens to invoke them as entitlements.

4. Cataloging of Writs consistent with Bangladesh Constitution

The names of various writs have not been directly mentioned in Article 102 of the Bangladesh Constitution but the true contents of each of the major writs have been set out in self-contained schemes which are stated below:

4.1 Writ of Mandamus

The phrase "mandamus" literally translates to "we command" ^[15]. Mandamus is a remedial measure delineated in Article 102(2)(a)(i) of the Constitution of Bangladesh. When a Court, Tribunal, Authority, or individual has refused or failed to fulfill their statutory obligation, the High Court Division of the Supreme Court of Bangladesh can issue a writ of Mandamus to compel the Authority, Court, or individual to do their statutory duty ^[16].

4.2 Writ of Prohibition

A writ of prohibition is a legal order that prevents a tribunal from exercising jurisdiction over subjects beyond its authority ^[17]. Prohibition is a preventive measure specified in Article 102(2)(a)(i) of the Constitution of Bangladesh. When a Court, Tribunal, Authority, or individual is poised to violate the principles of natural justice, misuse power, or act beyond its jurisdiction, the High Court Division may issue a writ of prohibition to restrain the Tribunal, Court, or Authority from undertaking such actions. Prohibition serves as a protective measure.

4.3 Writ of Certiorari

The term certiorari signifies "to be certified" or "to be more thoroughly informed" ^[18]. This is specified in Article 102(2)(a)(ii) of the Constitution of Bangladesh. If a Court, Tribunal, Authority, or individual has violated the concept of natural justice, misused power, or exceeded jurisdiction, the High Court Division may issue a certiorari to annul that act, so declaring it unlawful.

4.4 Writ of Habeas Corpus

The term "Habeas Corpus" translates to "have his body," signifying the requirement to present the body before the court ^[19, 20]. It is delineated in Article 102(2)(b)(i) of the Constitution of Bangladesh. It is a type of court order that

mandates authorities detaining a suspect to bring the person before the court, where the authorities must justify the apprehension. The Court may mandate the individual's release if the clarification is deemed satisfactory. The writ of Habeas Corpus is a mechanism for protecting individual liberty by providing an effective way for immediate release from unlawful or unjust confinement, whether in prison or private custody. This writ is the main instrument devised by human creativity to safeguard individual liberty. No legal process is more analogous or significant than the writ of Habeas Corpus ^[19, 20]. This type of writ is utilized in an alternate manner under section 491 of the Code of Criminal Procedure when this portion of the Constitution of Bangladesh is suspended during a state of emergency.

4.5 Writ of Quo warranto

The term 'quo warranto' signifies 'by what warrant or authority' ^[21]. It is specified in Article 102(2)(b)(ii) of the Constitution of Bangladesh. Quo warranto is a writ that compels an individual who unlawfully assumes a public office, grant, or liberty to demonstrate the authority by which they claim it, thereby allowing for the resolution of the title to the office, franchise, or liberty and the removal of unauthorized occupants through judicial decree. Specifically, when an individual unlawfully occupies a legally established public office, the High Court Division of the Supreme Court of Bangladesh may, upon the request of any individual, issue a quo warranto to compel the person to demonstrate the authority under which they hold the office and may prohibit them from continuing to occupy such office ^[22, 23].

5. Distinction between Certiorari and Prohibition

- The grounds or reasons of both the writs are identical but the discrepancy lies in the prohibition is a precautionary remedy while certiorari is a healing or remedial cure.
- Prohibition puts on where the authority is about to waste the power but the writ certiorari spreads over where the authority has by this time mistreated the power.
- A writ of certiorari will be dealt out when the proceeding is closed, while an order of prohibition can be issued only so long as the proceeding rests pending.
- Prohibition is issued with a view to bring to a standstill an act it's starting whereas certiorari is to defeat or assert the act illegal.

6. Conclusion

It has been elucidated to us which essential elements are associated with the investigation. Initially, the High Court Division exercises its writ jurisdiction in a stringent manner, but over time, it adopts a more liberal approach in handling writ jurisdiction as a form of special original jurisdiction. Initially, only the aggrieved party with locus standi (right to claim) may invoke the writ jurisdiction of the High Court Division of the Supreme Court of Bangladesh. Subsequently, judicial pronouncements have interpreted the concept of aggrieved party or locus standi according to the standard of objective legal interpretation, leading to the gradual evolution of the concept of Public Interest Litigation (PIL). The Government is anticipated to legislate on the application of Public Interest Litigation (PIL) concerning constitutional rights, similar to neighboring states such as

India and Pakistan. There is a significant necessity to expand the scope and use of various types of writs. Government personnel are essential components of the state, with the primary responsibility of safeguarding legal rights and executing welfare initiatives for the populace. If both parties fulfill their legal obligations, the incidence of writ petitions will diminish over time.

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