

Continuing Mandamus

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Continuing Mandamus

Continuing mandamus or structural interdict or structural injunction is a relief given by a court of law through a series of ongoing orders over a long period of time, directing an authority to do its duty or fulfill an obligation in general public interest, as and when a need arises over the duration a case lies with the court, with the court choosing not to dispose the case off in finality.

- This happens in a situation which cannot be remedied instantaneously but requires a solution over a long time, at times going on for years.
- With this procedural innovation of the writ of mandamus or a mandatory order, the court monitors compliance of its orders, seeking periodic reports from authorities on the progress in implementing them.
- It may enlist senior advocates to assist it as amicus curiae in court, or as court commissioners in the field, and subject experts or expert bodies to report back to it on the facts and ground-realities of the case.
- It may appoint a court committee or a court commission, independent from the executive, as its oversight or monitoring agency.
- It may require the subject-matter covered by the case, be taught in schools and universities, making it part of textbooks and syllabi, or be given wide publicity through the media.
- It may use contempt against people in positions of power or authority as a remedy in case of non-compliance or poor implementation of its orders.
- It may recommend that the legislature frame a policy in the matter, for the future.

Evolution in Indian Law

- Under the ambit of its judicial activism, the Indian Courts have evolved a new sort of litigation called Public Interest Litigation, where the requirements for locus standi were dispensed with in the interest of the public and the downtrodden and underprivileged who could not avail of the rights guaranteed to them under the Constitution.
- The Courts have taken the advantage of the open wording of Article 32 and 226 of the Constitution. These articles allow the Courts the freedom to mould the remedies and even invent new ones for the enforcement of rights.
- Articles 32 and 226 of the Constitution of India thus give the courts the power to issue „directions, orders or writs“ to achieve the objective of the article.
- Under a PIL, the scope of the writ of mandamus has greatly increased, because it is issued to compel the government to do what is within its discretion not to do. It thus allowed for an infringement into policy matters to certain extent.
- An example of this would be when the court allows a petition to ensure that the state provides education for the children of prostitutes or when it allows a petition impugning a provision in the jail manual for allowing a person to be left hanging for half an hour after death stating that this was against the basic human dignity.
- The Court has thus been increasingly allowing PILs to increase its scope and allows it to usurp the power of the executive and the legislature in certain cases where it believes that the other wings of governance are not functioning to the level that they are legally required to do.
- The doctrine of continuing mandamus, first propounded in a case in the late 1970s, has been discussed and dealt with in the respective cases of Vineet Narain v. Union

of India and Bandhua Mukti Morcha v. Union of India & Ors.

- It has been applied to cleaning the air around the Taj Mahal and the waters of the Ganga, and to mitigate travel conditions in commuter trains and road surface, traffic & vehicle conditions, in cities.
- As it essentially seeks to directly control the bureaucracy, bypassing the political regime, it has met with both, gradual success and stiff resistance, in India. If a case, prima facie, cannot be made out against an accused in a charge sheet, it is to be closed and quickly submitted to the court.
- The courts are not concerned with the accusations on merit, in such cases, but merely whether the agencies have investigated them expeditiously, and to their logical conclusion.