

Writ: Injunction, Types and Importance

March 9, 2021

An injunction is a legal and equitable remedy in the form of a special court order that compels a party to do or refrain from specific acts.

In news: Basics of Writs and Injunctions

Placing it in syllabus: Law & Policy

Dimensions

- What is Injunction?
- What is a Writ?
- Legal Basis of Injunction
- Types and Importance
- Grounds for Rejection of Injunction

Content:

What is an injunction?

- It is a judicial order **restraining a person** from beginning or continuing an action threatening or invading the legal right of another, or compelling a person to carry out a certain act
- An injunction is a **prohibitive writ** issued by a court of equity, at the suit of a party complainant
- For example, if it so happens that a person is demolishing a building you have possible claims on, you may ask the competent court to order such person to not demolish the building until the trial for the claim of the building is complete and judgement goes in his favour.

What is a Writ?

- Writ refers to an order issued by a court requiring that something be done or giving authority to do a specified act.
- It is a formal, legal document that orders a person or entity to perform or to cease performing a specific action or deed.
- Writs are drafted by judges, courts, or other entities that have administrative or judicial jurisdiction.
- These documents are part of common law and are often issued after a judgment is made, giving those involved in a suit the ability to carry out the judgment.
- Writs can take many forms including summonses, writs of execution, writs of habeas corpus, warrants, and orders.

The Supreme Court and High Courts in India can issue five kinds of writs for enforcing the fundamental rights of the citizens.

Habeas Corpus

- The Latin meaning: 'To have the body of.'
- It 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.
- The Supreme Court or High Court can issue this writ against both private and public authorities.

Mandamus

- The literal meaning of the writ is 'We command.'
- It 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.

- Mandamus cannot be issued against a private individual
- 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

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.
- 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.

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 for the mistakes in the judiciary.
- Pre-1991: The writ of Certiorari used to be issued only against judicial and quasi-judicial 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.'
- The Supreme Court or High Court issues 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 of a person to a public office
- 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
- This writ gives the right to seek redressal to any individual other than the aggrieved person.

Legal Basis of Injunction

- The law of injunction has been provided for by the **Specific Relief Act, 1963**, and is also regulated by the **Code of Civil Procedure, 1908** in India.

Types and Importance:

Generally speaking, there are two types of injunctions under the Specific Relief Act, as mentioned below:

- **Temporary Injunction**
- Temporary injunctions are the injunctions that are given for a specific period of time or until the court gives further order regarding the matter in concern.
- They can be **obtained during any stage of the trial** and are regulated by the Code of Civil Procedure (CPC), 1908
- **Perpetual/Permanent Injunction**
- A permanent injunction can be granted by the court by passing a decree made at the hearing and upon the merits of the suit.

- Once such a decree is passed, the defendant is permanently prohibited from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

Grounds for Rejection of Injunction:

On the following grounds, an injunction cannot be granted:

- To restraint a person from prosecuting a pending judicial proceeding, unless it is to prevent multiplicity of the proceeding.
- To restraint a person from instituting or prosecuting a judicial proceeding in a court, where the injunction is sought from a court subordinate to that court.
- To restrain any person from applying to any legislative body.
- To restrain any person from instituting or prosecuting any proceeding in a criminal matter.
- To prevent the breach of a contract the performance of which would not be specifically enforced (Illustration: a contract between a master and servant, requiring the servant to render personal services to the master cannot be specifically enforced by the master or the servant. Hence, an injunction cannot be granted in this situation)
- Where it is not reasonably clear that an act is nuisance, to prevent such an act on the ground of nuisance.
- To prevent a continuing breach in which the plaintiff has acquiesced, as the general rule is that an acquiescence is an implied consent by remaining silent.
- Where except in the case of breach of trust, equally efficacious relief can certainly be obtained by any other usual mode of proceeding.
- When the conduct of the plaintiff or his agents has been such as to dis-entitle him to the assistance of the court.

- When the plaintiff has no personal interest in the matter.

Mould your thought: What is an injunction? How are they governed in India? Differentiate between the types of injunctions.

Approach to the answer:

- Introduction
- Define injunctions
- Mention the laws under which they are governed
- Discuss and show the difference between temporary and permanent injunctions
- Conclusion