



**WRITS:
HISTORY & PERSPECTIVES**

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TOPICS COVERED

- MODULE 1: INTRODUCTION - TOPIC 1
- ORIGIN OF WRIT JURISDICTION: A HISTORICAL PROSPECTIVE
- MEANING
- EVOLUTION
- TYPES OF WRITS
- WRITS & INDIAN CONSTITUTION

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INTRODUCTION

- IF WE LITERALLY INTERPRET THE TERM 'WRIT' MEANS TO 'WRITE AN ORDER'.
- A FORM OF WRITTEN COMMAND IN THE NAME OF A COURT OR OTHER LEGAL AUTHORITY TO ACT, OR ABSTAIN FROM ACTING, IN A PARTICULAR WAY.
- AN ORDER OR MANDATORY PROCESS IN WRITING ISSUED IN THE NAME OF THE SOVEREIGN OR OF A COURT OR JUDICIAL OFFICER COMMANDING THE PERSON TO WHOM IT IS DIRECTED TO PERFORM OR REFRAIN FROM PERFORMING AN ACT SPECIFIED THEREIN. (MERRIAM WEBSTER).
- A LEGAL DOCUMENT FROM A LAW COURT THAT TELLS YOU THAT YOU WILL BE INVOLVED IN A LEGAL PROCESS AND EXPLAINS WHAT YOU MUST DO. (CAMBRIDGE DICTIONARY).

EVOLUTION

- THE CONCEPT OF WRIT JURISDICTION HAS BEEN TAKEN FROM COURT OF KINGS BENCH IN ENGLAND.
- WRIT, WAS PRECISELY A ROYAL ORDER, WHICH WAS ISSUED UNDER THE ROYAL SEAL.
- IT USED TO BE ISSUED ON A PETITION PRESENTED TO THE KING IN COUNCIL FOR EXERCISE OF THE EXTRA-ORDINARY JUDICIAL POWERS IN A PARTICULAR MATTER.

RATIONALE BEHIND EVOLUTION

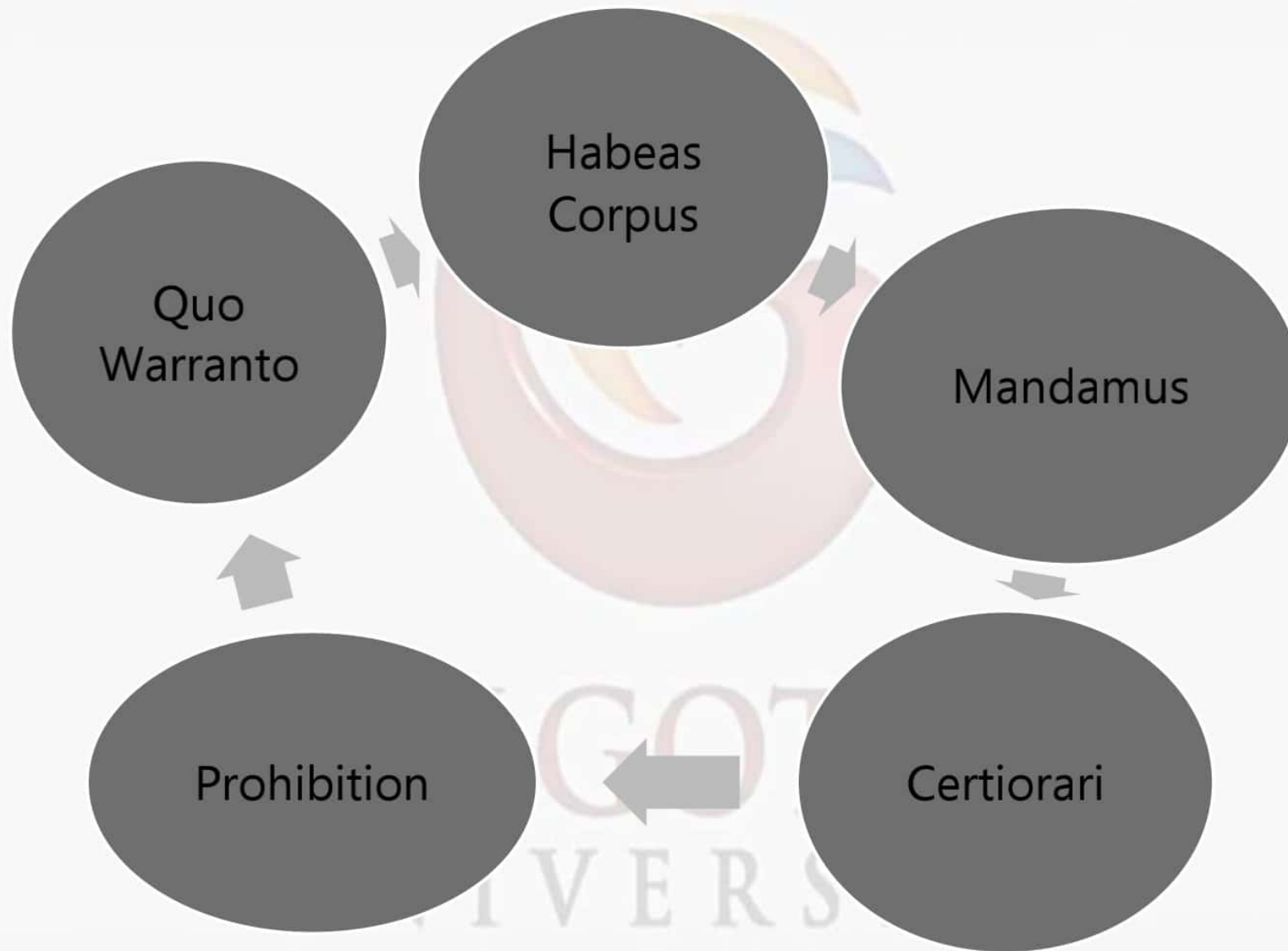
- THE JURISDICTION OF COMMON LAW COURTS WAS MORE OR LESS STATIC, IT ONLY RECOGNIZED THE RIGHTS MENTIONED IN THE LAW.
- SIMILARLY, COMMON LAW COURTS UNDER WHICH RIGHTS WERE TO BE ENFORCED, WERE FIXED AND LIMITED.
- THUS, THERE HAD BEEN NUMBER OF CASES, WHICH DID NOT FALL UNDER ANY OF THE FIXED REMEDIES AND SO THESE CASES REMAINED BEYOND THE JURISDICTION OF THE COMMON LAW COURTS.
- IN SUCH CASES, THESE COURTS WERE POWERLESS TO GRANT RELIEF.

- THUS, THE DEFICIENCY OF REMEDY OR FAILURE OF THE COMMON LAW COURTS TO GRANT RELIEF IN TIME, BECAME THE CAUSE/GROUND OF PETITION TO THE KING IN COUNCIL TO EXERCISE THEIR EXTRA-ORDINARY JUDICIAL POWERS.
- THESE PETITIONS WERE HEARD AND DISPOSED OF BY OR ON BEHALF OF THE KING'S BENCH. A WRITTEN ORDER WAS ISSUED IN THE NAME OF THE KING CALLED A WRIT, WHICH WAS TO ACT AS A FOUNDATION TO THE SUBSEQUENT PROCEEDINGS.
- ORIGINALLY, WRITS WERE INTENDED TO BE ISSUED ONLY BY THE CROWN AND IN THE INTEREST OF THE CROWN.
- HOWEVER, IN DUE COURSE OF TIME, THE WRITS BECAME AVAILABLE TO THE ORDINARY CITIZENS ALSO.

EVOLUTION IN INDIA

- THE ORIGIN OF WRITS IN INDIA GOES BACK TO THE REGULATING ACT 1773 UNDER WHICH A SUPREME COURT WAS ESTABLISHED AT CALCUTTA BY A CHARTER IN 1774.
- A SIMILAR CHARTER ALSO ESTABLISHED THE SUPREME COURTS OF MADRAS AND BOMBAY WITH ANALOGOUS PROVISIONS IN 1801 AND 1823 RESPECTIVELY.
- THESE COURTS WERE REPLACED BY THE HIGH COURTS IN 1862 UNDER HIGH COURTS ACT 1861.
- THE HIGH COURTS SO ESTABLISHED ENJOYED ALL THE POWERS, WHICH WERE THERE WITH THE SUPREME COURTS REPLACED BY THESE COURTS INCLUDING ISSUANCE OF WRITS.

KINDS OF WRITS



- **HABEAS CORPUS:** IT IS THE LATIN TERM WHICH LITERALLY MEANS 'TO HAVE THE BODY OF'. THE PRIMARY AIM IS TO PRODUCE THE PERSON BEFORE THE COURT ILLEGALLY DETAINED. (RUDUL SHAH V. STATE OF BIHAR, 1983).
- IF ONE COURT REFUSES THAN THE OTHER COURT MAY ALLOW THIS WRIT.
- **MANDAMUS:** IT IS A LATIN TERM MEANS 'WE COMMAND'. SIMPLY, IT IS A COMMAND OR AN ORDER FROM A SUPERIOR COURT TO A SUBORDINATE COURT OR TRIBUNAL OR PUBLIC AUTHORITY TO PERFORM ITS DUTY IN CASE IT IS NOT DOING IT.
- THE FUNCTION OF MANDAMUS IS TO KEEP THE PUBLIC AUTHORITIES WITHIN THE LIMITS OF THEIR JURISDICTION WHILE EXERCISING PUBLIC FUNCTIONS.

- CERTIORARI: A WRIT TO ANY INFERIOR COURTS OR TRIBUNALS OR QUASI JUDICIAL BODY IN ORDER TO QUASH THEIR JUDGEMENTS IN A PARTICULAR CASE.
- IN LITERAL SENSE, IT MEANS 'TO BE CERTIFIED' OR 'TO BE INFORMED'.
- IT IS AN ORDER TO A LOWER COURT FROM A SUPERIOR COURT TO TRANSFER THE MATTER TO IT OR TO ANY OTHER COURT FOR DECIDING THE MATTER.
- PROHIBITION: IT MEANS 'TO FORBID', ITS AN ORDER ISSUED BY THE SUPERIOR COURT TO FORBID A SUBORDINATE COURT OR TRIBUNAL FROM PROCEEDING WITH A CASE WHICH IS BEYOND ITS JURISDICTION.

- ALSO SUPERIOR COURT CAN RESTRAINT IF LOWER COURTS ACT IN VIOLATION OF RULES OF NATURAL JUSTICE OR VIOLATES FUNDAMENTAL RIGHTS OR PREJUDICE IS ITSELF UNCONSTITUTIONAL. (EAST INDIA COMMERCIAL CO. LTD. V COLLECTOR OF CUSTOMS.)
- QUO WARRANTO: IT MEANS 'BY WHAT AUTHORITY OR WARRANT'.
- THIS WRIT IS ISSUED TO RESTRAINT A PERSON FROM ACTING IN A PUBLIC TO OFFICE TO WHICH HE/SHE IS NOT ENTITLED.

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- IN BROAD SENSE TO ASK AN OFFICER OR BODY OR AUTHORITY THAT ON WHICH GROUNDS HE HOLDS HIS OFFICE OR WHETHER THE OFFICE HE IS HOLDING IS CREATED BY A STATUTE OR NOT.
- LATER, IF THE OFFICER'S TITLE FOUND TO BE WRONGFULLY GAINED OR DEFECTIVE, HIS OFFICE WILL BE QUASHED AND HE WOULD BE BOUND TO VACATE THE SAME IMMEDIATELY.
- DR. SUBRAMANIAN SWAMY VS J. JAYALALITHA AND ORS.

WRIT AS A RIGHT

- WRIT IS GENERALLY ISSUED FOR THE SAKE OF PROTECTION OF INDIAN CITIZENS' RIGHTS AND FREEDOMS.
- THERE ARE TWO ARTICLES UNDER THE INDIAN CONSTITUTION WHICH GUARANTEES THE ENFORCEMENT OF RIGHTS BY ISSUING DIFFERENT WRITS AS THE CASE MAY BE.
- ARTICLE 32: REMEDIES FOR ENFORCEMENT OF RIGHTS CONFERRED BY THIS PART:
- THE RIGHT TO MOVE THE SUPREME COURT BY APPROPRIATE PROCEEDINGS FOR THE ENFORCEMENT OF THE RIGHTS CONFERRED BY THIS PART IS GUARANTEED.

- THE SUPREME COURT SHALL HAVE POWER TO ISSUE DIRECTIONS OR ORDERS OR WRITS IN THE NATURE OF HABEAS CORPUS, MANDAMUS, PROHIBITION, QUO WARRANT AND CERTIORARI, WHICH EVER MAY BE APPROPRIATE, FOR THE ENFORCEMENT OF ANY OF THE RIGHTS CONFERRED BY THIS PART.
- WITHOUT PREJUDICE TO THE POWERS CONFERRED ON THE SUPREME COURT BY CLAUSE (1) AND (2), PARLIAMENT MAY BY LAW EMPOWER ANY OTHER COURT TO EXERCISE WITHIN THE LOCAL LIMITS OF ITS JURISDICTION ALL OR ANY OF THE POWERS EXERCISABLE BY THE SUPREME COURT UNDER CL. (2).
- THE RIGHT GUARANTEED BY THIS ARTICLE SHALL NOT BE SUSPENDED EXCEPT AS OTHERWISE PROVIDED BY THIS CONSTITUTION."

- ARTICLE 226: IT TALKS ABOUT POWER OF HIGH COURTS TO ISSUE CERTAIN WRITS.
- NOTWITHSTANDING ANYTHING IN ARTICLE 32 EVERY HIGH COURT SHALL HAVE POWER, THROUGHOUT THE TERRITORIES IN RELATION TO WHICH IT EXERCISES JURISDICTION, TO ISSUE TO ANY PERSON OR AUTHORITY, INCLUDING IN APPROPRIATE CASES, ANY GOVERNMENT, WITHIN THOSE TERRITORIES, DIRECTIONS, ORDERS OR WRITS, INCLUDING, QUO WARRANTO AND CERTIORARI, OR ANY OF THEM FOR THE ENFORCEMENT OF ANY OF THE RIGHT CONFERRED BY PART III AND FOR ANY OTHER PURPOSE.

REFERENCES:

- B.P. BANERJEE, "WRIT REMEDIES- REMEDIABLE RIGHTS UNDER PUBLIC LAW" LEXISNEXIS, 2016
- ABHE SINGH YADAV, "LAW OF WRITS: JURISDICTION AND ITS EFFICACY", UNIVERSAL LAW PUBLISHING Co., 2008
- ABHE SINGH, EFFICACY OF WRIT JURISDICTION A SOCIO LEGAL CRITIQUE, [HTTP://HDL.HANDLE.NET/10603/132538](http://hdl.handle.net/10603/132538)

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