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Drafting A Writ Petition Against Administrative Action

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ABSTRACT:

A writ petition is an important constitutional remedy available to a person who is affected by an unlawful or arbitrary administrative action. Articles 32 and 226 of the Constitution of India empower the Supreme Court and High Courts, respectively, to issue writs for the protection of fundamental and legal rights. Administrative authorities are required to act within the limits of their legal powers, follow principles of natural justice, and exercise their discretion fairly and reasonably. When an administrative action violates these requirements, an aggrieved person may approach the appropriate court through a writ petition. The drafting of a writ petition requires careful presentation of the facts, identification of the legal grounds, specification of the relief sought, and supporting documents and affidavits. The petition may seek appropriate writs such as Habeas Corpus, Mandamus, Certiorari, Prohibition, or Quo Warranto, depending upon the nature of the administrative action. This paper focuses on the essential principles, drafting requirements, grounds, procedural aspects, and remedies involved in filing a writ petition against administrative action.

Keywords: Writ Petition, Administrative Action, Article 226, Article 32, Judicial Review, Administrative Law, Principles of Natural Justice, Fundamental Rights, Mandamus, Certiorari.

INTRODUCTIONS

In case of infringement of Fundamental Rights of a citizen by the State or its instrumentalists of state, Petitions under Article 32 of the Constitution for issuance of directions or orders or writs including the writs in the nature of Habeas-corpus, mandamus, quo-warranto, prohibition, certiorari for enforcement of the fundamental rights;

The Supreme Court has have power to issue directions or orders or writs whichever may be appropriate, for the enforcement of any of the rights conferred by Part III of the Constitution.

Even after a death sentence has been confirmed and is not open to review, the Supreme Court may, under Article 32 read with Article 21, commute the sentence of death into one of life imprisonment on the ground of undue delay in execution of the death since it was confirmed.

Filing a writ petition high court India proceedings is best begun by understanding when Article 226 of the Constitution of India is the right constitutional tool and when a statutory remedy or specialized tribunal is the more appropriate route. This guide is written for businesses and individuals who need a practical, step-by-step understanding of Article 226, the grounds courts accept, how to draft focused relief, how to secure interim protection, and where to file. Article 226 gives every High Court wide discretionary power to issue writs, and used well it can deliver fast, decisive public-law relief; used carelessly, a petition can be dismissed for delay, want of jurisdiction, or the availability of an equally efficacious alternative..

THE FIVE WRITS ;

S.no	WRIT	WHAT THE AUTHORITY HAS DONE	WHAT TOPLEAD	QUESTION THE COURT ASKS
1.	Habeas Corpus	Detained a person	Detention is without lawful authority or procedure	Is the detention lawful?
2.	Mandamus	Failed or refused to act	A public duty exists and the petitioner has a legal right to its performance	Has the authority neglected a duty it must perform?
3.	Certiorari	Passed an order	No jurisdiction, breach of natural justice, or error of law apparent on the record	Was this order made legally and fairly?

S.no	WRIT	WHAT THE AUTHORITY HAS DONE	WHAT TOPLEAD	QUESTION THE COURT ASKS
4.	Prohibition	Is still hearing or deciding a matter	The authority is acting beyond its jurisdiction	Does the authority have the power to proceed?
5.	Quo Warranto	Holds a public office	The holder lacks the required qualification or lawful appointment	Is this person entitled to hold this office? ¹

TL : DR CHECKLISTS ;

- **Suitability of the Remedy** :Determine if the situation calls for the use of writ jurisdiction and whether there is a suitable statutory or alternative remedy available.
- **Of Reliefs Sought**: The relief requested must be clearly defined and enforceable, specifying whether the petitioner is seeking to cancel an action, enforce a legal duty, or stop an illegal process.
- **Preparedness for Interim Relief** : If urgent action is necessary, the petitioner should be prepared to apply for interim relief, supported by an affidavit that explains the situation and why immediate action is needed.
- **Adequate Documentation and Filing** : The petition must include all required documents, such as the affidavit, vakalatnama, certified copies of the order being challenged, and proof of any previous submissions, if applicable.
- **Timeline and First-Hearing Readiness** : Providing a brief summary of the key events in chronological order, along with a short outline of the main issues, will help present the case effectively at the first hearing.

Who May File a Writ Petition: Locus Standi and Representative Claims ;

Standing is essential in writ proceedings. Generally, the petitioner must demonstrate that the challenged administrative action has violated a legal right or interest. However, under Indian constitutional law, Public Interest Litigation (PIL) is allowed, enabling a genuine petitioner to seek justice for public rights or groups facing oppression .representative action is permissible when petitioners is pursuing both public and private interests.²

Grounds accepted by High Courts for Article 226 relief :

High Courts are not meant to re-examine every administrative decision. They step in only when the decision or process is illegal. They accepted grounds for judicial review included;

- **Illegality**.- Where the authority acted beyond its power or in a manner not authorized by law
- **Violation of fundamental rights**. -when authority's action infringes upon the constitutional right outlined in Part III of the constitution.
- **Breach of statutory procedure**.- when the decision-making process ignores a required legal procedure.
- **Denial of natural justice**.- when a fair hearing was not provided,bias was present, or no reason were given for the decision.
- **Jurisdictional error** - when the authority lacked the legal power to act or refuse to exercise it.
- **Mala fides**- when the authority uses its power for an improper or ulterior purpose

How to Structure Your Writ Petition ;

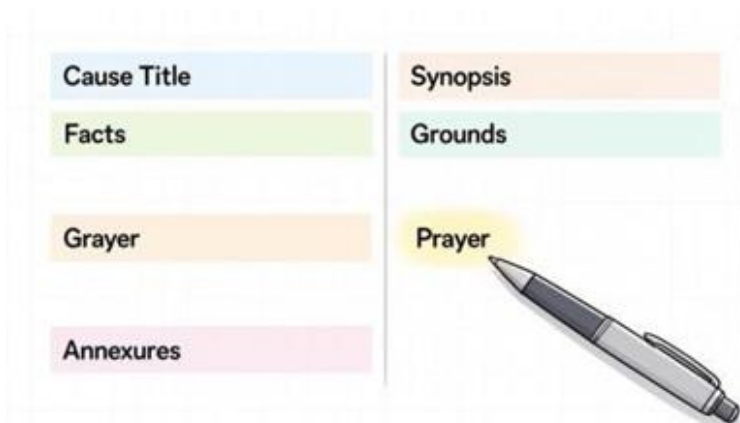
A well- prepared writ petition is crucial for persuading the court to grant the relief the Sought It should be a clear, logical document that guide the court through arguments to the desired outcome. Each part plays a distant role, the order is important.. A petition based on a faulty premise , with unclear facts and issues, is likely to fail to convince the court.

Systematic and organized approach is essential for achieving the desired result.³

¹ Empowers high court , supreme court issue writ ,
Direction or order, Fundamental rights

² Constitution of India article,21 – personal liberty
Constitution of India article 19(1)(a) – freedom of speech,

³ Constitution of India article 226(2)-



Key Elements of Your Petition:

Although each High Court may have its own particular ways, writ petitions generally follow a uniform structure across the country.

Understanding this structure helps ensure your petition is properly formatted and easy for the court to follow. Here is the typical order, with a brief explanation of each section:

- **Cause Title and Memo of Parties:** This is the official front page of the petition, which includes the court's name, the petitioner and respondent details, and the type of filing (e.g., Writ Petition under Article 226 of the Constitution of India). The Memo of Parties should provide the full names and addresses of all the petitioner and respondent parties.
- **Synopsis and List of Dates:** The Synopsis is a one-page summary that gives an overview of the case. The List of Dates outlines all important events in chronological order.
- **Facts of the Case:** This section presents the background of the case in chronological order. It should contain only factual information, not legal arguments.
- **Questions of Law:** This part identifies the specific legal questions you want the court to address based on the facts of the case.
- **Grounds for Relief:** This section details the facts of the case and the law that has been violated. Each ground should address one specific legal violation.
- **Averment on Alternative Remedy:** It must be clearly stated that no other available, effective, and quick legal remedy exists.
- **Prayer Clause:** This is the most important part of the petition, as it outlines exactly what relief the petitioner is seeking. The prayer should be precise, as a poorly written prayer can lead to the dismissal of the petition, even if the rest of the document is well-structured.
- **Affidavit:** This is a sworn statement made by the petitioner confirming that the information in the petition is true to the best of their knowledge.
- **Annexures:** Include all case-related documents and supporting evidence in soft copy here. Each annexure must be correctly numbered and labeled.⁴

THE ESSENTIAL FILLING CHECKLIST ;

S.NO	Checklist Item	Purpose	Common Mistake to Avoid	Principle Protected	Impact if defective
1.	Vakalatnama	Gives the advocate written authority to represent the petitioner.	Left unsigned by the client or advocate.	Authority and accountability of counsel.	Petition may be treated as not properly presented.
2.	Affidavit	Sworn confirmation that the petition's facts are true.	Not notarised or attested by an Oath Commissioner	Truthfulness and integrity of pleadings.	Facts may not be accepted; petition may be returned.

⁴ Territorial jurisdiction of high court

⁴ Grounds of judicial review- illegality, procedural improper
Rule 2 of CPC – pleading should contain material facts

S.NO	Checklist Item	Purpose	Common Mistake to Avoid	Principle Protected	Impact if defective
3.	Court Fees	Prescribed fee paid through stamps under the state's Court Fees Act.	Wrong calculation, as it varies by state and relief.	Lawful access to the court system	Objection by the registry; delay in listing.
4.	Process ee (PF)	Covers issuing notices to respondents.	Not filed with the petition.	Right of respondents to receive notice.	Notice is not issued, so the hearing is delayed.
5.	Serving Copies	Advance copies given to all respondents.	No record or proof of service kept.	No one should be Condemned unheard	Court may refuse to proceed; the pposite side can claim prejudice. ⁵

Common Drafting Mistakes to Avoid:

Even the most solid case can be undermined if the writ petition is poorly written.

While theory is important, in practice, errors can frustrate the court and weaken the argument. Avoiding these mistakes is crucial to presenting the client's case in the strongest possible light. One of the most frequent errors is a vague or overly broad prayer.

A prayer is a list of specific requests that must be clearly stated. The court cannot assume what you are asking for; you must be as precise as possible. For example, if you want an order canceled, you must state that clearly. If you want the court to order a party to do something or declare something, make that explicitly clear.

SUPREME COURT

When the State or its instrumentalities violate a citizen's Fundamental Rights, petitions may be filed under Article 32 of the Constitution seeking directions, orders, or writs—including habeas corpus, mandamus, quo warranto, prohibition, and certiorari—to enforce those rights;

The Supreme Court may issue whatever directions, orders, or writs are appropriate to enforce any right conferred by Part III of the Constitution.

Even after a death sentence is confirmed and no longer subject to review, the Supreme Court may, under Article 32 read with Article 21, commute it to life imprisonment if execution has been unduly delayed since confirmation..⁶

FILING PROCEDURE & DOCUMENTS TO BE ACCOMPAINED:

When filing the Writ Petition, include:

1. The original, certified, or true copy of the order or decision being challenged, if there is one;
2. With an affidavit confirming the facts stated.
3. The petitioner must say if they have asked the High Court for the same relief, and what happened.
4. If a petitioner relies on documents they have or control, they must file them with the petition.
5. If a document is handwritten or hard to read, a true typed or printed copy must be attached: Provided that if the petitioner does not have such documents, a list of them must be attached to the petition

Public Interest Litigation:

Public interest litigation petitions can be filed under Article 32 of the Constitution along with Part III(B) Order XXXVIII of the Rules, to remedy public harm, enforce public duties, or

protect a public interest. The Supreme Court can hear a public interest litigation writ petition under its Extra-ordinary Original Jurisdiction.

⁵ Case title memo of parties,

Synopsis and list of dates, fact of case

⁶ Relief must be precise and clear , court can't presume

The court not granted for relief specifically prayed For.

Public interest matters usually cover: bonded labor; neglected children; exploitation of casual workers and unpaid wages; harassment or torture of Scheduled Castes, Scheduled

Tribes and Economically Backward Classes by villagers or police; environmental pollution, ecological imbalance, drugs, food adulteration, heritage and culture, antiques, forests and wildlife; petitions from riot victims; and other issues of public importance.

A petition under Article 32 of the Constitution with Order XXXVIII Rule 1 of the Rules, seeking a direction, order or writ such as mandamus, prohibition, quo warranto or certiorari, is filed in Form No. 32, giving the name and description of the Petitioner(s) and

respondent(s), the fundamental right violated, the relief sought and the grounds for it.⁷

Letter Petition (Also dealt as Writ Petition by Supreme Court):

Letters sent by post that are not in the public interest can still be treated as writ petitions if the designated Judge orders it.

These individual cases can also be filed as writ petitions under Article 32 of the Constitution:

- I. Complaints of harassment, torture, or death in jail or by police;
- II. Complaints of crimes against women, like dowry harassment, bride burning, rape, murder, and kidnapping;
- III. Complaints about family pensions; and
- IV. Complaints that police refused to register a case.

In these cases, a report is obtained from the relevant Authority before the matter goes to the Judge, who decides whether to register it as a writ petition.

CASE LAW :

L. Chandra Kumar vs. Union of India³ cannot be ousted altogether a statute. This power

being in the nature of an extraordinary and prerogative writ, being discretionary in nature, can be exercised for the enforcement of fundamental rights guaranteed by Part III of the

Constitution, or for any other purpose, such as enforcement of

Statutory rights. The Constitution does not place any fetters on the extraordinary jurisdiction of the courts under Article 226.

The courts have however evolved certain self-imposed restraints, such as the rule of

exclusion if an alternate, effective and efficacious remedy is available under a statute, or

where the facts are disputed, or where the determination of the lis would require an elaborate examination of evidence, or where there is suppression or misrepresentation of facts, etc⁸

U.P. Power Transmission Corpn. Ltd. V. CG Power and Industrial Solutions Ltd., throwing light on the writ jurisdiction of the Court while disposing of the disputes arising out of the contracts containing arbitration clause observed that, "in any case, the existence of an arbitration Clause does not debar the court from entertaining a writ petition". However, a writ petition could be entertained in a contractual matter in the following alternative scenarios, despite existence of an arbitration clause: (i) the lis involves a public law character¹⁹ or calls for a judicial determination in rem²⁰; (ii) the alternate forum chosen by the parties would not be in a position to grant appropriate relief²¹; (iii) a statutory contract is in question²² or the action of a State or its instrumentality is demonstrably arbitrary, unreasonable²³ or violative of the fundamental rights of a party;²⁴ (iv) the matter does not relate only to the interpretation of a contract which is within the domain of an arbitrator

In Modern Steel Industries vs. State of U.P. & Ors., a writ petition was filed against the Electricity Board and the State of U.P. against the collection of minimum guarantee charges and a challenge on the vires of the statutory regulation under which such charges were sought to be collected was raised. The Supreme Court held that since the High Court was required to examine the vires of the statutory regulation, a writ petition would be maintainable despite the existence of an arbitration clause.

In Bhim Singh v State of J & K (1986, p.494), Bhim Singh, an MLA of State of J & K was wrongfully arrested and detained in the police station and was prevented from attending the State Legislative Assembly. The Court awarded a sum of Rs.50,000 to the petitioner as compensation for the violation of his Constitutional right of personal liberty under Art.21.

⁷ Supreme court rules, 2013, order XXI, Rule 3(1)(a),

Order VII, Rule 14, CPC- pleading of documents

⁸ L.chandra kumar vs union of India (1997) 3 scc 261

In Jamalpur Arya Samaj Sabha v Dr. D. Ram (1954, p.297), the member of the Working Committee of the Bihar Arya Samaj Sabha had tenure more than the prescribed. The High Court refused to issue writ of Quo Warranto on the ground that it was a private association.

In K.Bhima Raju v State of Andhra Pradesh (1981,p.24) the Government pleader was appointed against the rules. The petitioner filed a writ of Quo Warranto. The High Court quashed the appointment of Government Pleader on the ground that the appointment was not made in accordance with rules.

In Ishwar Chand Jain v High Court of P & H (1988, p.370), the appellant was posted as Additional District and Sessions Judge at Hissar. On happening of certain incidents the Bar Association passed a resolution against the appellant which resulted in his transfer from Hissar to Karnal.⁹

A. D. M. Jabalpur v S. Shukla (1976, p.1207) case also popularly known as 'Habeas Corpus Case', it has been held by the Court that if enforcement of Article 21 is suspended by the Presidential Order under Article 359, the detente shall not have right to file a writ petition in challenging the lawfulness of detention. However after 44th amendment of the Constitution rule passed in Habeas Corpus Case is no longer a good law. According to the present position even Presidential Order cannot suspend the right to life and liberty under Article 21.

In Sunil Batra v Delhi Administration (1978, p. 1575), solitary confinement imposed on Sunil Batra and Charles Sobhraj who were under sentence of death was challenged as violation of Article 14, 19, 20 and 21 of the Constitution. The Court treated their letter as writ petition. The Court held that writ of Habeas Corpus can not only be granted for releasing a person illegally detained but also it will be used for protecting him from ill-treatment inside jails.

CONCLUSION ;

Drafting a writ petition challenging an administrative action is an essential component of constitutional and administrative law. Articles 32 and 226 offer effective constitutional remedies against unlawful administrative action and empower the courts to safeguard fundamental and legal rights. Nevertheless, to succeed in the writ petition, it is crucial to identify the appropriate writ; establish locus standi; present the material facts clearly; and demonstrate the recognized grounds of judicial review, including illegality, excess of jurisdiction, violation of natural justice, arbitrariness and mala fide exercise of power.

Furthermore, the study emphasizes that writ jurisdiction is discretionary and is limited by principles such as the availability of an alternative and efficacious remedy. Nevertheless, it should be observed that the availability of an alternative remedy is not a mandatory condition that bars a constitutional court from exercising its jurisdiction to intervene in exceptional circumstances. Therefore, proper documentation, the framing of specific prayers, adherence to procedural requirements and a meticulous presentation of the grounds are vital aspects of the writ petition.

Lastly, it is pertinent to note that preparing the writ petition is not merely a procedural formality but a crucial mechanism for triggering judicial review and establishing administrative accountability. Accurate and legally sound drafting of the writ petition allows constitutional courts to scrutinize the administrative action and, where appropriate, grant suitable relief to protect individual rights and uphold the rule of law.¹⁰

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K Bhima Raju vs State of Andhra Pradesh (1981)

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