
Judicial Control of Administrative Action in India through Writ of Quo-warranto

Dr. Bhagyashree A. Deshpande

Professor

[B.E. LL.M. Ph.D. (Law)]

Dr. Panjabrao Deshmukh College of Law,
Amravati

Mob. 9822724558

E-mail: bhagyashri.deshpande72@gmail.com

Abstract

A comprehensive mechanism is available for judicial control of administrative action under the provisions of the Constitution of India, CPC, specific relief act etc. Firstly, it includes judicial review of administrative action under Articles 32 and 136 by the Supreme Court of India and under Articles 226 and 227 by the High Courts, Public Law Review and Private Law Review.

Effective implementation of writ of quo-warranto is urgently needed as it is essential and significant to keep administration / public officials within their limits. Creation of an awareness claim of writ of quo-warranto is equally important.

Quo-warranto is important to exercise control on public officials who are not performing their public duty reasonably and properly. It gives relief to the individuals against irregular administrative action. Writ of quo-warranto is crucial to keep administrative authorities within their limits which is the core object of administrative law. Indian judiciary has played crucial role in the effective implementation of writ of quo-warranto.

Introduction

There is an availability of comprehensive mechanism for judicial control of administrative action under the provisions of the Constitution of India, CPC, specific relief act etc. Firstly, it includes judicial review of administrative action under Articles 32 and 136 by the Supreme Court of India and under Articles 226 and 227 by the High Courts.

Secondly it includes Public Law Review through writs and through PIL. Thirdly, it includes Private Law Review through injunctions, declaratory judgments and specific performance and civil suits for compensation.

There are five kinds of writs viz. Habeas Corpus, Quo-warranto, Writ of Prohibition, Writ of Certiorari and Quo-Warranto. The Supreme Court of India can issue writs under Article 32 of the Constitution of India. Similar power is vested in the High Court under Article 226.

Quo Warranto means “what is your authority”. The writ is issued to call upon the holder of a public office to show to the Court, under what authority he is holding that office. The purpose of the writ is to prevent a person from holding an office, which he is not legally entitled to hold. It is issued against the usurper of an office.

The scope of present research paper is confined to discuss and analyze judicial control of administrative action through writ of quo-warranto.

Keywords

Judicial Control, Quo-warranto, Writ, illegal arrest / detention.

Objectives

- To consider the meaning of quo-warranto.
- To discuss object and to analyze the purposes of quo-warranto.
- To discuss and analyze the concept of writ of quo-warranto.
- To study and analyze the importance of writ of quo-warranto.
- To create awareness amongst the individuals about claim of writ of quo-warranto.
- To analyze few landmark case laws on issuing of writ of quo-warranto.
- To highlight the significance of implementation of quo-warranto.
- To draw conclusion and suggest recommendations.

Hypothesis

- Effective implementation of writ of quo-warranto is urgently needed as it is essential and significant to keep administration / public officials within their limits.
- Creation of an awareness claim of writ of quo-warranto is equally important.

Research Methodology

Research methodology adopted for writing this research paper is Doctrinal Research Method / Methodology.

Meaning of Quo-warranto

Meaning - Quo warranto is Latin term. It literally means – ‘what is your authority’.

‘Quo-Warranto’ literally means ‘By what authority’? A writ of quo-warranto is one of the prerogative writs issued by a superior court against a person who claims or who usurps and any office, franchise or liberty, to enquire by what authority he supports his claim. Such person is required to show, by what authority he is entitled to hold that office. The challenge can be made on the ground such as he does not fulfill the required qualifications or suffers from any disqualification debarring him to hold such office. Quo-warranto proceeding is a judicial remedy by which any person who occupies or usurps an independent substantive public office or franchise or liberty is asked to show by what right he claims is, so that the title to the office, franchise of liberty may be settled and unauthorized occupant ousted by judicial order.¹

Object and Purposes (Analysis)

Object - The object of the writ of quo-warranto is to prevent a person to hold an office which is not legally entitled to hold. Office means a public office which is statutory or unconstitutional.

¹ Retrieved from Myneni Dr. S.R, Constitutional Law-I, Asia Law House, Hyderabad, 2nd Edition 2017. Rep. 2019 t p. 640.

Purposes –

- To terminate a person from the public office to which he is not authorized and not entitled to hold that post.
- To carry on a civil action against a person who is holding a public office without having legal authority.
- The purpose of the writ of quo warranto is to give an order to a person to vacate the public office held by him without fulfilling required and requisite qualification etc. by the Supreme Court of India or the High Court.
- To terminate a person from public office which was held by him without having legal authority to hold it?
- To carry on civil action against a person holding public office without legal authority.

Analysis of Concept of Writ of Quo-warranto

Who may apply -

- Any person whether or not any fundamental or other legal right of such person has been violated may apply for the issue of quo warranto at the instance of acted bona-fide.
- Any person whether or not be is personally aggrieved or whether or not he has any person interest in the office may apply for an issue of quo warranto at the instance of acted bona-fide.
- A stranger whose motive is not improper may apply for the issue of quo warranto.
- Thus, a writ of quo warranto can be claimed by a person who satisfied the Court that the office in question is a public office and it is held by a person without legal authority.

When it will lie / when it is issued –

- It will lie against a person holding public office without having legal authority subject to condition that the office must be public office. It must be created by a statute or by the constitution itself.
- ‘Public office’ for the purpose of quo-warranto has not been defined in the constitution. However, the office is regarded as public office if the duties of the office are public in nature or public have an interest in the office or created by the Constitution or by Statute e.g., Prime Minister, Chief Minister, Ministers, Speaker of Parliament or Legislative Assembly, Advocate General, Government Pleader, Mayor and Member of Municipal Corporation etc.
- The office must be a substantive one and not merely the function of employment of several at the will and during the pleasure of another. To be of substantive character it must be independent in title.
- There has been a contravention of the Constitution or a statute or statutory instrument, in appointment such person to that office.
- The usurper must have held the office. Once he ceases to hold the office, quo warranto will be not issued as it will become in fructuous.

- No locus standi is necessary for issuing quo-warranto. It may be raised as a PIL.²
-

When it will not lie / it is not issued

- A writ of quo-warranto cannot be issued against a private person or firm.
- It can be refused by the Court if there is an unreasonable delay from the side of the petitioner to file a writ i.e. he is guilty of laches.
- If it is vexatious.
- It can be refused on the ground of resjudicata.
- It may not lie in a case where alternative remedy is available to the petitioner.
- It is a discretionary remedy.
-

Therefore, the Court may be issued or may not issue it by examining the facts and circumstances of each case.

Against whom it will lie / it is issued -

- It will lie against a person holding public office without legal authority.

Against whom it will not lie / it is not issued -

- It will not lie against a private person or a firm.
-

Importance of Writ of Quo-warranto

- Quo-warranto is important to exercise control on the usurpers of public office and to protect the public from a person holding public office without having any legal authority.
- It gives relief to the individuals against usurpers who are doing misuse of public office.
- Writ of quo-warranto is crucial to compel usurpers to vacate public office.
-

Few Landmark Case Laws

- In G.D. Karkare v. Shevde³, the appointment of Advocate General of MP was challenged by private individual who had no legal interest in that office. The Court issued a writ of quo-warranto against the Academic General.
- In Amrendra Chandra V. v. Nagendra⁴, it has been held that quo-warranto cannot be issued against the members of the Managing Committee of a private school as it does not hold the office of a public nature.
- In Jamalpur Arya Samaj Sabha v. D. Ram⁵, it has been held that quo warranto cannot be issued against the member of a working committee of a private religious institution as it does not hold the office of public nature.

² Public Internet Litigation.

³ AIR 1952 Nag, 331.

⁴ AIR 1953 Cal. 114.

- In *Baij Nath v. State of UP*⁶, it has been held that where the holder of an office has been continuing in office for a long time and there is no complaint against him, quo warranto cannot be issued as it would have been vexatious.
- In *P.G. Dhanajayan v. State of Kerala*⁷, the writ of quo warranto was refused in matters of appointment to represent workers on Abkari workers' welfare Board on the ground that the writ only can be issued when it is concerned with issue of usurpation of public office. The Court found that there is no usurpation and the person so appointed is competent to hold the office.
- In *Jagram v. Gwalior Town and Country Development Authority*⁸, it has been held that the officers and servants appointed under M.P. Nagar Tatha Gram Nivesh Adhhiniyam, 1973 cannot be said to hold any public office and quo warranto cannot be issued against them as they do not hold public office.
- In *University of Mysore v. Govind Rao*⁹, it has been held that no issue quo warranto the office may be one in respect of which nomination or appointment is made or it may be elective office. The office is required to be an office of public character and also substantive character. It cannot be issued, if the office in question is an office of a private character.
- In *Nityanand v. Khalil Ahmed*¹⁰, Punjab High Court held that quo warranto lies even to test the validity of election.
- In *State of West Bengal v. Anindya Sundar Das*¹¹, the Supreme Court held that a writ of quo-warranto can only be issued when the appointment is contrary to the statutory rules. The Court further observed that - the jurisdiction of the High Court while issuing a writ of quo-warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules.
- While dismissing the appeals filed by the State of West Bengal and Sona Chakravarti Banerjee challenging the order of the Calcutta High Court, the Supreme Court ruled that- "writ of quo-warranto can be issued where and appointment has not been made in accordance with Law."

Significance of Implementation of Quo-warranto

⁵ AIR 1954 Pat. 297.

⁶ AIR 1955 All. 15.

⁷ AIR 1995 Ker. 162.

⁸ AIR 1987 MP. 11.

⁹ AIR 1965 SC 491.

¹⁰ (1961) Pun. 105.

¹¹ Dt. 11 October, 2022.

-
- Implementation of writ of quo-warranto would result into relief to an individual against the usurpers of public office.
 - Implementation of writ of quo-warranto compels the public official / usurper to vacate public office immediately which was held without legal authority.

Conclusion

- Indian judiciary has played crucial role in the effective implementation of writ of quo-warranto.
- Effective implementation of writ of quo-warranto is urgently needed as it is essential and significant to protect the individuals against usurper. Creation of awareness to claim a writ of quo-warranto is equally important.
- Writ of quo-warranto is a weapon at the hands of the common man to exercise control over the administration.

Recommendations

- Camps should be organized to make people aware about the legal authority of the public officials and to identify usurpers.
- Training programs should be organized to prepare the selecting authorities to make a selection of a person to hold public office having legal authority to hold.

References

- Deshpande Dr. B. A. : Administrative Law, 1st Ed.2023, University Book House Pvt. Ltd., Jaipur.
- Deshpande Dr. B. A. : Indian Constitution and New Challenges, (1st Ed. 2021) CLP, Allahabad.
- Jain M.P. & Jain S.N : Principles of Administrative Law, 7th Ed. 2017, Lexis Nexis, India.
- Massay, I.P. Administrative Law, 10th Ed. 2023, EBC, Lucknow.
- Pandey Dr. J.N.: Constitutional Law of India, (Ed. 2023), Central law Agency, Allahabad-2.
- Shukla V.N.: Constitution of India, (14th Ed.2024), Eastern Book Company, Lucknow.

Websites

- www.indiankanoon.org
- www.livelaw.in