

**PAPER 13: SPECIALISATION PAPER 7:**  
**LAW RELATING TO WRITS AND PUBLIC SERVICE**

**Objectives:**

Rights without remedy are of no use. As the student studies fundamental rights and other rights he is supposed to know about where lies the remedy in case of violations of rights. Prerogative writ remedies which have their genesis in United Kingdom have been replicated under Article 32 and Article 226 of the Constitution of India. A student shall study the genesis of the writ remedies. The scope of writ remedies under Article 32 and Article 226 of the Constitution of India the context and reasons for the Supreme Court to adopt such a narrow construction of writ remedies under Article 32 during 1980 and adopting of liberal construction in the post 1980 period. It is significant to analyse the British unwritten Constitutional law, which is the source and inspiration for many provisions of the constitution of India including provisions relating to writ remedies but functioned differently in Indian setting and also to study the comparative analysis of prerogative writs and the present working of writ remedies under Indian and UK law.

Protection of rights of public servants against the mighty state is yet another ever-evolving area of constitutional law. While the constitutional provisions and the service rules by the Governments at the union and at the state 's level regulate the matter, the principles and doctrines like, the doctrine of pleasure having its origin in UK and finding its place in our constitution as delineated in a catena decisions by a judiciary assumes significance. The extent and degree of protection of interests of public servants under the constitutional regime needs to be studied. Further, law governing administrative tribunals and judicial interpretation of constitutional provisions pertaining to them and rules and procedure governing disciplinary actions against public servants and the extent of judicial review of the disciplinary committee's decision shall also be studied for the comprehensive understanding of the service law.

**Course Outcomes:**

On successful completion of the course the student will be able to -

1. analyse the distinction between the prerogative writs and judicial writs
2. compare and appreciate the Indian law on specific writs
3. describe who can apply and against whom writs may be applied, and where to apply.
4. examine the role of judiciary in relation issuing of writs.
5. explore the nature and scope of jurisdiction of administrative tribunals.

**Course content:**

**Unit I**

Importance of constitutional remedies; Evolution of writs in UK and India; Nature of writs in England; prerogative writs- meaning and distinction between prerogative writs and judicial writs. Comparative study of English law and Indian law on specific writs- Habeas Corpus, Mandamus, Certiorari, Prohibition, & Quo-Warranto.

## **Unit II**

General principle of writ jurisdiction: who may apply for writs and against whom writ may be issued- government, local authority and other authorities. Law relating to exhaustion of local remedies. Locus standi- Exceptions, Public Interest Litigation; territorial jurisdiction, alternative remedy; delay and laches; res judicata.

Procedures-impleading of proper parties. Dismissal in limine. No dismissal of petition without speaking orders. Raising of a new plea. Relief and prayers in petition, review petition.

## **Unit III**

Writ Jurisdiction of the supreme court under Articles 32 of the constitution of India and jurisdiction of the High Court under Art. 226 and 227; Grounds and procedure for filing specific writs-Habeas Corpus, Mandamus, Certiorari, Prohibition, & Quo-Warranto; interpretation of the expression 'for any other purposes' under Article 226.

Practice & procedure in writ petitions: pleadings, content of writ petitions Supreme Court rules- Provisions relating to writ procedure. Application for enforcement of fundamental rights; Karnataka High Court rules governing writ petitions; applicability of CPC; drafting of writ pleadings. Evidentiary matters.

## **Unit IV**

Service regulation under the Constitution; constitutional safeguards-rights of civil servants- doctrine of pleasure and its limitations- domestic inquiry- compassionate appointments- voluntary retirement- compulsory retirement.

## **Unit V**

Departmental remedies; representation, review and appeal under CCA Rules- Procedure for imposing penalties- remedies before the Administrative Tribunal; Its jurisdiction, scope and procedure – Administrative Tribunal Act, 1985, Articles 323 A and 323 B- Exclusion of judicial review- judicial Review of service matters- limited jurisdiction of judicial review against disciplinary proceedings.

### **Select Bibliography:**

1. D.D. Basu- Constitutional Remedies and Writs (Kamal Law House, Kolkata, 3<sup>rd</sup>Edn., 2009)
2. Justice C.K. Takker and MC Thakker, V.G. Ramachandran's Law of Writs(EBC, Delhi, 6<sup>th</sup>edn., 2007)
3. M.R. Malick, Writs Law & practice (EBC, New Delhi, 2<sup>nd</sup>edn., 2009)
4. Justice P.S. Narayana , Law of Writs (Asia Law House, New Delhi, 2<sup>nd</sup>edn., 2009)
5. P.M. Bakshi, Public Interest Litigation (Ashoka Law House, New Delhi, 3<sup>rd</sup>edn., 2012)
6. S.A. De Smith, Judicial Review of Administrative Action (Cambridge University Press, 2009)

7. H. M. Seervai, Constitutional Law of India (Universal Law Publishing Co. Ltd., 4<sup>th</sup>edn., 2015)
8. Halsbury' s Laws of England Vol II (Lexisnexis, UK, 5<sup>th</sup>edn., 2020)
9. Justice M. Rama Jois, Services under the state (Indian Law Institute, New Delhi, 2007)
10. G.B. Singh's Commentary on the CCS and CCA Rules
11. ILI- Judicial review through writ petitions
12. Sharpe, Law of Habeas Corpus
13. Chaudary& Chaturvedi- Law of Writs
14. Samaraditya pal- Law Relating to public Service- 3<sup>rd</sup>edn., Lexisnexis, 2011 re pt. 2017.