



Petition: Catalyst in field of Rights

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Abstract

The importance of petition in the field of justice is to such an extent that the process of justice cannot even start without petition. The concept of the petition has its root in the ancient and medieval period, the difference is that in present time it is in written form but during the ancient or medieval time it was oral or through some kind of other provisions like a bell of justice used by many kings in their court for enabling people to file the petition because at that time most of the laws and judicial system were uncodified. Due to an unwritten petition, there were chances that the petitioner might turn down from his/her own statement, so to resolve this problem and to bring effectiveness the concept of the written petition was introduced along with codified laws. A petition acts as a catalyst for the rights of individuals. A petition can be filed by an individual, organization or by a group of people. The concept of a petition in the history of England can be traced in the Magna Carta issued in 1215 which was used for filing a petition in front of the Crown. In the United States of America, the right to file a petition is one of the core guarantees of civil liberty. In 1789 U.S. Congress in its first session introduced the bill of right to petition and added it with other rights, later on, other states also amended their constitution and added the right to petition and have a proper procedure to act upon it. Petitions filed by the people of France played a significant role in the France revolution.

This article is going to deal with all 12 kinds of petitions with their importance provided under Indian laws along with landmark judgements related to these petitions.

Keywords: right to petition, Magna Carta, congress, civil liberty, France revolution, justice

Introduction

Petition is written request which can be signed by an individual, group of people or an organization for a particular reason or cause. It is mostly addressed to the courts and government officials. Petition is a form of written prayer which is also known as supplication. Petition makes the process of justice very feasible in nature as it can represent the issue of public at large like in the case of France revolution. It makes system more transparent in nature.

People usually get confused between Petition and Complaint. In order to receive order from court a petition is filed while for claiming damages a complaint is filed. In case of petition party filing it is called as petitioner and person answerable to the petition is known as Respondent whereas in case of complaint there is plaintiff and defendant.

There are total 12 kinds of petitions for different purposes and there are some petitions which cannot be filed in all the courts which we are going to discuss in details in this paper.

Curative Petition

The concept of curative petition came into existence in the landmark case of Rupa Ashok Hurra vs Ashok Hurra and Anr. (2002). In this case a review petition was filed by aggrieved party which was dismissed by Supreme Court and from there the question emerged that whether there is any provision in law which gives aggrieved party the right to get relief against the final judgement delivered by supreme court. So, the Supreme court came up with the provision of Curative Petition stating that there should be no hinderance in path of justice for which every individual is entitled. Sole purpose of curative petition is to avoid judicial error and to prevent mistreatment with the process of justice. After the interpretation of Article 137 of the Indian constitution supports the concept of curative petition which says subject to the provisions of any law made by parliament or any rules made under article 145, the Supreme Court shall have power to review any judgement pronounced or order made by it. Curative Petition is filed in the court after review petition is dismissed. In such type of petition, the petitioner appeals the court to review or revise the judgement delivered by the court as it is not serving justice. It is the last constitutional hope for readdressing the plea in the court which should be filed within 30 days of the judgement and if curative petition is without any merit, then it will be rejected and also court will impose heavy penalty on that person.

Following Procedure is laid down by the Supreme Court regarding filing Curative Petition

1. It can be only filed after the review petition is dismissed by court.

2. It can only be filed if the court has overlooked any fact which should have been considered and the concept of principle of natural justice during the judgement.
3. It should be filed in rare case not on regular basis, like the one filed in *Nirbhaya* case.
4. When curative petition is filed it is first considered by three senior most judges or by the judges who delivered the judgement and if majority of them agree that the matter should be listened again then only it can be listed before that same bench.
5. Court can appoint *amicus curiae* (friend of the court) at any stage of consideration for helping them to reach a conclusive and fair decision.
6. Commonly, matter related to curative petitions are decided in the working place of judges rather in open court unless there is specific request.

Writ Petition

Writ is a form of written order issued by apex courts to lower courts and to government organizations directing to do or restrict them from doing something. Writ petition is filed in Supreme Court when fundamental right of an individual is infringed under article 32 and under article 226 of the Indian constitution in High Court. In case of writ petition High court has more power than Supreme court to respond on *writas* it can respond to the writ petitions which are filed for legal right infringement as well as matter related to fundamental right infringement. Types of Writs issued by Apex courts in India:

Habeas Corpus

It means to have a body; it is also known as “bulwark of personal freedom”. This writ is issued by apex courts to release a person who is illegally or unlawfully detained. When writ of Habeas corpus is issued by the court then the authority produces that person in court for examination that whether process is legal or illegal, if court found that it is illegal, then court will order to release that person.

Supreme Court has widened the range of writ petition of Habeas Corpus in case of *Sunil Batra vs. Delhi Administration*, now one can file this petition in case of infringement of fundamental rights of prisoners.

Features of writ petition of Habeas Corpus explained by Supreme Court are as follows:

- a. Court can ask why person is detained?
- b. Court can issue summon to produce that person in court to the authority who have detained that person.
- c. If court finds that the person detained by authority is unlawful or illegal then court can order to release that person.

Cases where Writ Petition of Habeas Corpus can be filed

- a. If person arrested by police is not presented in front of magistrate within 24 hours of arrest excluding holiday and traveling time.
- b. If person is arrested without any legal ground.
- c. If person is detained with deceitful intention that is to harm that person.
- d. Against unconstitutional law

Mandamus

The meaning of this writ is “we command”. It is a command issued by apex courts to a public authority or a person holding a public office, directing him to do or not to some acts which he must perform as a part of public duty. Point to be noted here is that mandamus writ is only issued to enforce a public right not for private rights. Both President and Governor are immune from this command.

In the case of *Mani Shobhrej Jain vs State of Haryana (1977(1) SCC 486)*, Supreme Court explained the essential requirement for filing writ petition of Mandamus

- a. Petition should be filed for enforcement of public legal right which is in existence.
- b. It should be enforceable by the apex courts.
- c. That particular right should impose responsibility on a person holding public office or public authority.

Prohibition

This writ is issued by apex courts only against judicial or quasi-judicial authorities to ensure that these bodies should work within the limit of jurisdiction and in case any of these go beyond their jurisdiction then writ of prohibition is issued. Once writ of prohibition is issued then process comes to an end.

In case of *Govind Menon vs. UOI (AIR 1967 SC 1893)*, Supreme Court explained under which conditions an individual can file writ petition of Prohibition:

- a. In case of excess of jurisdiction,
- b. In case of absence of jurisdiction

Certiorari

It means “to be certified.” This writ petition is quite similar to prohibition, this petition is filed in case where judicial and quasi-judicial bodies deliver a judgement by exceeding their jurisdiction. In case there is no jurisdiction or fails to make use of jurisdiction, the apex court may issue writ of certiorari to quash the

judgement. The apex court may also file such writ in case where court gives decision against the principle of natural justice or violated procedure established by the law.

In *Hari Vishnu kamath vs. Ahmed Ishaq* (AIR 1995 SC 233) Supreme Court said that purpose of writ of certiorari is to rectify the fallacy which are on the face of records not to rectify the fallacy of fact.

Quo Warranto

Literally meaning of this word is “by what authority”. This writ is issued when a person exercise beyond allotted powers or holding office which that person is not entitled.

In *University of Mysore vs. Govind Rao*, supreme court set the following essentials for filing petition of quo warranto-

- a. The post for which petition is filed must be public post.
- b. Along with the person holding that post must be illegal in nature.
- c. That post must be designated in nature that is substantive means that post which one can require after following a set of procedures not by pleasure of one.

Review Petition

Review petition is a form of petition which may be filed to review or recheck the judgement already passed by the Supreme Court ^[1]. It is an exception of stare decisis which means ‘to stand by thing decided’. Courts quote stare decisis when the same issue has already been brought to the acknowledgement of the court and judgement has been passed in the past. In the case of review petition stare decisis is not applied. According to article 137 of the Indian Constitution the Supreme Court has the power to review its own judgement ^[2]. However, section 137 is subject to any provisions made by the parliament or rules made under article 145(e). Review petition can be filed by any party to the case in consideration or any third party aggrieved by such case or the decision of the court. While reviewing any petition the court does not takes fresh cases but only seeks to correct mistakes due to which justice has not provided to the aggrieved ^[3]. After the passing of the judgement the review petition should be filed under the time span of 30 days and must be brought before the same bench or judge who has delivered the judgement ^[4]. The course of review petition is without any oral argument by lawyers. In the case of *Northern India Caterers (India) vs Lt. Governor of India* the extend of review was explained.

Grounds for filing review petition

- When there is some sort of patent error which means an error that appears on the face of the document
- When even after due diligence some evidence was out of the knowledge of the petitioner and the same could not have been produced in front of the court
- Other sufficient reason which includes situations that are similar to above two grounds.

In case of civil cases review petition can be filed on the basis of rule 1 of the Order XLVII (Code of Civil Procedure, 1908). Further if the review petition is dismissed than curative petition can be filed as explained in the judgement of *Roopa Hurra vs Ashok Hurra* ^[5].

Arbitration Petition

Arbitration is a mechanism through which disputes between two parties can be resolved outside the court of justice. Whenever two parties enter into any contractual relationship there is an arbitration clause mentioned in the agreement. Through arbitration parties chose to resolve disputes privately without going to the court, it becomes easy for the parties as there in no much requirement of resources. The arbitrator should be appointed consensually by both the parties. The parties have the liberty to decide on the odd number of the arbitrators but if they fail to do so then the arbitral tribunal will consist of sole arbitrator ^[6]

Section 11 of The Arbitration and Conciliation Act, 1996 deals with the appointment of the arbitrator:

The arbitrator can be of any nationality unless and until specified by the parties ^[7]. Both the parties chose one arbitrator each and then the selected two arbitrator appoint the third arbitrator, who is the presiding arbitrator ^[8]. According to sub section 6 if the parties fail to follow the procedure established in order to appoint the arbitrator or the two arbitrators fail to appoint third arbitrator then any of the party can appeal to the chief justice of High Court or any other institution or person appointed by the Chief Justice to resolve the dispute unless any other means is any mentioned in the agreement ^[9].

Election Petition

Election is a process by which people or group of people are chosen through vote ^[10]. India is a democratic country where people are free to choose their representative and to facilitate the same elections are held. Sometimes there are chances that the election held may not be valid due to some or the other reasons such as: -

- If the returned candidate was not qualified on the date of election
- If there has been unjustified disqualification of any nomination
- If the other candidates believe that there has been any fabrication with the results of election
- If the returned candidate or any person authorized by him has committed any corrupt practice
- If there has been non-compliance of any rule given in The Representation of People Act 1951

So, election petition is a course of action to probe into the reasonableness of the parliamentary or local elections.

The election petition can be filed by any of the other candidates in the High court within the period of 45 days. According to article 80-A of The Representation of People Act 1951 High court has the jurisdiction related to election petition under article 329(b) of the constitution ^[11]. If the person is not satisfied with the decision of the High Court he can appeal in Supreme Court. The limitation period is of 30 days within which appeal can be made on the decision of the High Court in the Supreme Court.

Essentials of election petition

- The petition should briefly contain the facts based on which the allegation is being made
- It should contain the name of the party who has committed the corrupt act along with place and time of commission of such act
- If there are annexures to support the allegation then the same should also be mentioned
- The allegation made should be accompanied by affidavit.

Landmark Judgement

Mohinder Singh v. Chief Election Commissioner.

Conclusion

This article intends to cover almost all the major petitions under Indian law system which act as a catalyst in field of seeking justice but sometimes this petition in place providing justice becomes burden in judicial process as the concept of petitions nowadays are taking hype and which make a person night star and due to which many useless petitions are filed in courts that's why court had established examine portal that whether petition is eligible for giving time or its just wasting time of court. Society needs to understand that rights and duties are twofold that if state and other people are bound to not infringe your rights then it is also duty of that person to not become hurdle in path of others who are here to seek justice because these useless petitions becomes the reason of delay of justice for others and late justice is equal to injustice. This article tried to make people aware of their all rights to seek justice.

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