

Enforcement of Writ of Mandamus: A Legal Analysis

Dr. Syed Sarfaraj Hamid*
Fairouz Aanika Dipinty**

Abstract

It is necessary to start with a discussion on mandamus in English law, as there exists a certain amount of uncertainty in Bangladesh, India and Pakistan as to how far mandamus can go. Enforcement of writ of mandamus is a continuing procedure. This study is an attempt to explore the violation of rights of a person and how it can be secured by applying writ of mandamus. The writ of mandamus is a high prerogative writ of the most extensive remedial nature, and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior Court, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. This study analyses the role of the Court to ensure rule of law. Writ of mandamus can be considered as a tool to ensure justice for the society. In this study analytical method has been applied for the effectiveness.

Keywords: Writ, Writ of Mandamus, Enforcement and Judicial Review.

1. Introduction

On the scope of mandamus the authorities fall widely apart. The middle of the nineteenth century, mandamus used to enforce an infinite variety of public duties: to compel a town to fulfill its obligations under a certain statute, to order the election, admission, or restoration of a party 'aggrieved' to any office or franchise of public nature whether spiritual or temporal, to secure the use of a meeting-house, to obtain production, delivery, and inspection of public documents, to compel local official to pay over sums due, and to perform various other functions, to compel justices of the peace to issue warrants, make rates appoint overseers, and pass accounts, to compel a body corporate to surrender its regalia, or to affix its common seal.¹ After this period, the significance of mandamus dwindled, partly because of the legislation which organized the local Governments, subjecting them to the Central Administrative Control by means of district audit of accounts, inspection of services, etc., which secured the proper discharge of local duties, and partly because of statutory right of appeal and reforms in the administration of corporations. Famous Jurist C.K. Allen² lends his support to this view by saying that now-a-days the most common use of mandamus is to require the inferior courts or tribunals to 'hear and determine' a cause which they have refused to entertain, and to compel the local and public utility authorities to carry out their duties. Former Chief Justice of Bangladesh A. T. M. Afzal stated that the liberalized view as expounded by my brother is an update, if

* Associate Professor, Department of Law and Justice, Bangladesh University of Business and Technology (BUBT), Dhaka. email: sarfaraj_shovon@yahoo.com

** Adjunct Faculty Member, Department of Law and Justice, Bangladesh University of Business and Technology (BUBT), Dhaka.

¹ Halsbury's *Laws of England* (3rd Ed.), Vol. II, pp. 91-4

² Sir. G. K. Allen, *Law and Orders* (1965), pp. 216-17

I may say so, of the liberalization agenda which was undertaken in the case of Kazi Mukhlesur Rahman.³

2. Meaning of Mandamus

Professor H. W. R. Wade has explained that in modern times mandamus has moved from enforcing private duties (e.g. arising out of contract or trust) to public duties as Government is based increasingly on statutory powers and duties. In that way mandamus has acquired a more precise scope.⁴ In other words it has become an exclusively public law remedy. The learned court expresses the view that mandamus should not be used to enforce contractual or private law rights.⁵

Writ of mandamus is, in general, a command issuing in King's name from the Court of King's Bench and directed to any King's Dominion requiring them to do some particular thing therein specified which appertains to their office and duty, and which the Court of King's Bench has previously determined, or at least supposes to be consonant to right and justice. It is a high prerogative writ of a most extensive remedial nature and issues in all cases where a party hath a right to have anything done, and hath no other specific means of compelling its performance.⁶

'Mandamus' means 'We command' and is of English origin. The King of England as the 'autocratic' head of a vast administrative system had occasion to *mandamus* his subjects many times in the course of the day.⁷ The direction in the Magna Carta that the Crown was bound neither to deny justice to anybody nor is to deny anybody obtaining justice, a recognition of the prerogative of the sovereign to issue a writ.

Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest Court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior Court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper Court, commanding the official or broad to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed. It has been termed a criminal process relative to civil rights.⁸ It is a high prerogative writ, issuing from the High Court, commanding an inferior Court, corporation, or person, to do some particular thing of right and justice appertaining to their officer or duty.⁹

³ 26 DLR (SC) 44

⁴ H.W. R. Wade, *Administrative Law* (1963), pp. 631-32

⁵ The authority of *R. v. Aston University Senate ex p. Roffey* (1969) 2 QB 538 to the contrary was repudiated in *Harring v. Templeman* (1973) 3 All ER 569

⁶ BLACKSTONE, 3 Commentaries 110. Cf. HIGH, *Extraordinary Legal Remedies*, S. 1

⁷ Vide Jenk's *Prerogative Writs*, (1923) 32 Yale LJ 528-530

⁸ BOUVIER, *Law Dictionary*

⁹ STROUD, *Judicial Dictionary of Words and Phrases*, Vol. p. 1727

3. Application of Mandamus

Mandamus has had a symmetrical development in England. The law as it existed in the eighteenth century is not different from what was stated in 1950 in *R. v. Dunsheath Ex. p. Meredith*,¹⁰ that “mandamus is neither a writ of course, nor a writ of right, but that will be granted if the duty is in the nature of a public duty and specially affects the right of an individual provided there is no other appropriate remedy”. It was affirmative in form and compelled official action when there was no equally efficient alternative remedy. The law in England has been summed up in Halsbury’s “Laws of England”.¹¹

“The writ of mandamus is a high prerogative writ of a most extensive remedial nature, and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior Court, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to supply defects of justice; and accordingly it will issue to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing such right and it may issue in cases where although there is an alternative legal remedy, yet such mode of redress is less convenient, beneficial and effectual”.¹²

“*Mandamus* will be appropriate to compel a tribunal to exercise a jurisdiction which it possesses but declines to exercise”¹³ and again Halsburny says, “The Court will as a general rule and in exercise of its discretion, refuse an order of *Mandamus* when there is an alternative specific remedy, beneficial and effective.”¹⁴

In India, Pakistan & Bangladesh the writ of *Mandamus* follows the English pattern. Any petitioner who applies for a writ or order in the nature of *Mandamus* should, in compliance with a well-known rule of practice, ordinarily, first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry it out within a reasonable time before applying to a Court for such an order even where the alleged obligation is established.¹⁵ The second part of clause(2) (a)(i) of Article 102 empowers the High Court Division to issue orders in the nature of writs of mandamus to compel a person performing functions in connection with the affairs of the Republic or of a Local Authority to do something that he is required by law to do. The difference between mandamus and prohibition is that mandamus commands the public functionary to do what

¹⁰ (1950) 2 All ER 741 at 743, per Lord Goddard, C. J

¹¹ Halsbury’s, “*Laws of England*”, Halisham Edition, Vol. ix, 744, para 1269, Cited in *Tan Bug Tain v. Collector of Bombay*, AIR 1946 Bom 216 at p. 255

¹² *Ibid*

¹³ 3rd Edition, Vol. II, at pp.53-54

¹⁴ *Supra* note 11

¹⁵ *State of Haryana v. Chanan Mal*, (1977) 1 SCC 340; AIR 1976 SC 1654

he is under a legal duty to do, while prohibition is issued to prevent him from doing what he is not permitted by law to do.

No *Mandamus* can issue to compel a body to exercise its discretion in a particular manner unless the refusal to exercise its discretionary jurisdiction is vitiated by *mala fides* or is based on irrelevant grounds or extraneous considerations.¹⁶ The writ of *Mandamus* is issued to a public officer to enforce the performance of a duty. It is usually connected with the administration of statutes and is employed when a public officer refuses to exert a ministerial duty. The duty must, however, be plainly prescribed and it should be free from doubt being equivalent to a positive command. *Mandamus* is discretionary and is not one of right. It will not issue unless the rights of the petitioner are clear and not doubtful. It cannot be invoked to determine academic questions or empty and barren technical rights.¹⁷ The essential four requisites as formulated in the *Karnal* case¹⁸ are:-

- (i) Whether the petitioner has a clear and specific legal right to the relief demanded by him.
- (ii) Whether there is a duty imposed by law on the respondent.
- (iii) Whether such duty is of an imperative ministerial character involving no judgment or discretion on the part of the respondent.
- (iv) Whether the petitioner has any remedy other than by way of *Mandamus*.

4. Demand of Mandamus

Demand and refusal is necessary for *Mandamus*. But where what the petitioner is seeking is not a demand for the performance of a duty but the issue of an appropriate writ, order, or direction restraining a public body like a Municipal Corporation from doing an act which according to him is in contravention of the statute which has brought it into existence, strictly speaking what the petitioner is seeking is not a writ of *Mandamus*. The Court in such cases have the power to issue an appropriate writ, direction or order though it may not strictly be a writ of *Mandamus*.¹⁹ In *Mandamus* it is essential that there should be a demand and a refusal of relief. There is no particular form. Thus the prior institution (Supreme Court) of a suit against the respondents from holding elections, and the contest made by the respondent for the grant of interim injunction in the suit was considered as sufficient notice of demand and refusal.²⁰ The idea underlying the making of demand is that the authorities may have an opportunity of redressing the wrong.²¹ So if that is wanting the writ application cannot be ordered.²² It is almost a condition precedent for the grant of the writ.²³

¹⁶ *Bherulal v. S.T.A.T., Rajasthan*, AIR 1977 Raj 29: 1976 Raj LW 491

¹⁷ *Glaxo Laboratories (India) Pvt. v. A. V. Venkateswaran*, AIR 1959 Bom 372: 61 Bom LR 1

¹⁸ *Karnal Kaihal Co-op. Tpt. Society Ltd. v. State of Punjab*, AIR 1959 Pun 75:60 Pun LR 425

¹⁹ *John Servage Philip v. City of Nagpur Corpn.*, AIR 1959 Bom 458:61 Bom LR 1299

²⁰ *Pulla Venugopalan v. Vijayawada Municipality*, 1956 An WR 711

²¹ *Subodh Ranjhan v. N. A. O. Callaghan*, AIR 1956 Cal 532: 60 CWN 917

²² *Ibid*, relies on AIR 1952 Cal 601:1952 SC 16

²³ *Onkarmal Mistri v. R. T. A.*, AIR 1956 Cal 490

The principles underlying the issuance of mandamus were stated in a Calcutta case²⁴:

- (i) Firstly a writ of mandamus is issued to any person, corporation or tribunal requiring him or them to do some particular thing appertaining to the office as in the nature of public duties. Mandamus may issue where although there is an appropriate remedy yet the regress is not convenient, beneficial and effectual;
- (ii) Secondly mandamus will be granted ordering that to be done which the statute requires to be done and for this rule to apply, it is not necessary that the party or Corporation on whom the statutory duty is imposed should be a public official or an official body;
- (iii) Thirdly the applicant must show that there resides in him a legal right to the performance of a legal duty by the party against whom mandamus is sought. The Court cannot enforce an equitable right by this remedy;
- (iv) Fourthly mandamus is granted only to compel the performance of duties of a public nature and it will not issue for the enforcement of a duties of a private nature.

So in cases of contractual rights and liabilities there can be no writ issued.²⁵

5. Implementation of Mandamus

Mandamus can be issued against any public authority, administrative and local bodies, as also judicial and quasi-judicial authorities. Mandamus compels any person who is under a duty imposed by statute or common law to do an act. Mandamus will apply in cases where the person refrains from doing an act or refrains from wrong motives from exercising a power which he is under duty to exercise. It can reach individuals or corporations only if there is some public duty to perform. It is immaterial if the individual or body is a Court or not.

While mandamus demands activity, prohibition commands inactivity, the latter being intended to prevent the inferior court from usurping jurisdiction or acting in excess of its jurisdiction. Mandamus acts where the tribunal has declined jurisdiction, certiorari or prohibition act in cases of excess or usurpation of jurisdiction. Certiorari corrects while mandamus compels acts. In cases where the tribunal declines to consider matters falling within its jurisdiction, or has not decided the cases according to law, mandamus can direct the tribunal to act according to law.²⁶

²⁴ *Regional Director (Food) Ministry of Food and Agriculture v. Arjun Singh*, (1969) 73 CWN 267 relies

²⁵ *Ibid.*, relies on AIR 1966 SC 334; AIR 1947 Cal 397

²⁶ *AIR 1954 SC 592 and 1934 SC 176*

While a person or body under a clear duty to do an act can be commanded to do so by mandamus, quo warranto is directed against a person who has claimed or usurped an office, franchise or liberty. Quo warranto is intended to enquire by what authority he supported his claim in order that the right to the office or franchise may be determined.²⁷ In English law mandamus lies to compel any person who is under a duty imposed by statute, or by common law, to do a particular act²⁸; it is a positive command to perform a certain act (i.e., duty of public nature); it is not used to restrain public functionaries from doing anything and has no negative function. Negative operation, in respect of judicial and quasi-judicial acts, is the peculiar province of certiorari and prohibition. The injunction is the appropriate ordinary-law remedy for restraining the public authorities, administrative as well as judicial, other than Crown or Crown agents, from acting illegally. In India, Pakistan and Bangladesh mandamus is used in both positive and negative forms. The requisites for a writ of mandamus may be stated to be the following:

The applicant has a legal right to the performance of a legal duty (not discretionary) by the persons against whom the writ is sought. The right must be a public right and the duty to be enforced of a public nature or to enforce private rights where duties of public nature arise. Mere interest in the performance of the duty is not sufficient. The applicant must possess in himself or in common with others the legal right to compel performance of duty. The aggrieved party alone may apply. The application should be in good faith and not for an indirect ulterior purpose or on behalf of a third party. The party against whom mandamus is sought should have refused to act. i.e., there must have been a demand and a refusal. The writ must result in benefit to the applicant. It will be refused when the person to whom it is prayed against has no power of compliance or where no resultant benefit will accrue to the applicant.

Where allegations of mala fides are made against person, they must be impleaded as parties.²⁹ Where a writ of mandamus was already granted, Court cannot issue a writ of Quo Warranto to disobey the prior directions.³⁰ Where there is threat or apprehension of demolition of house by state officials without legal authority, writ of mandamus directing them not to do so can be issued.³¹ There must be a demand and refusal of relief for a writ of mandamus.³² Where matters simply fall within the discretion of authorities, a writ of mandamus cannot be issued.³³ For obtaining the remedy by way of writ of mandamus, the

²⁷ *Nesamony v. Varghese*, AIR 1952 TC 66

²⁸ *R. v. Metropolitan Police Commr. Ex parte Parker* (1953) 2 All ER 717 (719)

²⁹ *Jagannadha Reddy vs. Chairman, Visakhapatnam Port Trust*, AIR 1998 AP 320

³⁰ *Rajendra vs. State of M.P.*, 1997 (7) Supreme 99

³¹ *Bhuraneshwar Prasad vs. State of Bihar*, AIR 1995 Pat. 1

³² *Saraswati Industrial Syndicate vs. Union of India*, AIR 1975 SC 460

³³ *Raja Laxmaiah Setty vs. State of Mysore*, AIR 1967 SC 993

petitioner must have legal rights.³⁴ An order of mandamus is, in form, a command directed to a person or an inferior tribunal requiring him or those to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty.³⁵

6. Enforcement of Mandamus

Writ of mandamus does not lie to enforce a contractual duty.³⁶ A writ of mandamus cannot be issued for enforcing contractual rights and obligations.³⁷ A writ of mandamus cannot be issued to enforce obligation flowing out of a contract.³⁸ Writ of mandamus to enforce a contract is not maintainable.³⁹

A writ of mandamus can be issued for protecting fundamental rights and legal rights.⁴⁰ There must be good faith in making an application for issuing writ of mandamus.⁴¹ Where promotion to higher post was on the basis of seniority cum merit, promotion cannot be claimed as a matter of right by virtue of seniority alone. However direction can be given to consider such case for promotion.⁴² Where a statutory provision is in violation of right to life, such provision must be held to be unconstitutional.⁴³ Vires of a statute can be questioned and decided in a writ of mandamus.⁴⁴ A writ of mandamus can be issued where the Court is satisfied that there is abuse of power.⁴⁵ An interim direction in a mandatory form which is contrary to the policy of Government is deprecated.⁴⁶

The object of the doctrine of ultra vires is the protection of the public. A local authority owes a duty to its rate payers to preserve rate payer's funds and to arrange for proper administration. But the reasonable steps and arrangements carried out by the council for the purpose of discharging its duties must be lawful. An ultra vires transaction cannot be remedied.⁴⁷ Where a writ petition is admitted on merits, even if alternative remedy is available writ petition cannot be rejected on that ground.⁴⁸

7. Judicial Review and Writ of Mandamus

The exact nature and scope of the power of the judiciary to review legislative action by way of mandamus was stated as far back as 1901 by Mr. Justice Marshall, Chief Justice of the Supreme Court of the United States, in terms which still remain a locus classicus of

³⁴ *Shobha Bhatnagar vs. State*, AIR 1959 MP 307

³⁵ *Praga Tools Corporation vs. Imanul*, AIR 1969 SC 1306

³⁶ AIR 1991 AP 320

³⁷ *Joginder Singh vs. Asst. Registrar Cooperative Societies*, AIR 1965 J & K 39

³⁸ AIR 1977 SC 2149

³⁹ *Union of India vs. Graphic Industries Co.*, 1994 (5) SCC 398

⁴⁰ *Rashid Ahmed vs. Municipal Board*, AIR 150 SC 163

⁴¹ *Chhetriya Pradushan Mukti Sangharsh Samithi vs. State of U.P.*, AIR 1990 SC 2060

⁴² *State of Mysore vs. Syed Mahmood*, AIR 1968 SC 1113 at 1114

⁴³ *Olga Tellis vs. Bombay Municipal Corporation*, AIR 1986 SC 180 at 193 at 200

⁴⁴ *Charanjit Lal vs. Union of India*, AIR 1951 SC 41

⁴⁵ AIR 1972 SC 2178

⁴⁶ *State of U.P. vs. Ramana Perhar*, 1994(6) SCC 1

⁴⁷ *Hazell vs. Hammer Smith and Fulman London Bogough Council*, 1991 (1) All ER 545

⁴⁸ *Shri Kumar Padma Prasad vs. Union of India*, 1992 (2) JT (SC) 247

judicial utterance. The occasion was the case of *Marbury vs. Madison*,⁴⁹ in which proceedings instituted in the Supreme Court of the United States, Marbury the applicant, prayed for a writ of mandamus against Madison, the Secretary of State, directing him to deliver to the applicant the commission of his of his appointment as Justice of the Peace in the District of Columbia. The Commission had been signed by the President of the United States after the appointment had been approved by the Senate as required by United States law but it had been withheld by the Secretary of State. The Supreme Court found that the applicant had been duly appointed as Justice of the Peace and that he was entitled to the delivery of the commission; but the question arising for the decision of the Court was whether in the circumstances it had the power to issue a writ of mandamus. The Supreme Court's jurisdiction to issue writs had been defined by an Act of Congress, establishing judicial Courts of the United States, and that Act had authorized the Supreme Court 'to issue writs of mandamus in cases warranted by the principles and usages of law, to any Court appointed, or person holding office, under the authority of the United States. If the Act conferring this jurisdiction on the Supreme Court was valid, the case for the issuance of a writ of mandamus was beyond question; but the United States Constitution had provided that "the Supreme Court shall have original jurisdiction in all cases affecting Ambassadors, other Public Ministers and Consuls and those in which a State shall be a party. In all and Consuls and those in which a State shall be a party. In all other cases the Supreme Court shall have appellate jurisdiction". The Court observed that it had not been empowered on the appellate side as "it is that it had not been empowered on the appellate side as it is the criterion of appellate jurisdiction, that it revises and corrects the proceedings in a case already instituted, and does not created that cause. Although, therefore, a mandamus may be directed to Courts yet to issue such a writ to an officer for the delivery of a paper is in effect the same as to sustain an original action for that paper; therefore, it seems not to belong to appellate but to original jurisdiction". As to the power to issue writs of mandamus which had been conferred on it by the act of Congress the Court said

"the authority, therefore, given to the Supreme Court, by the act establishing the judicial Courts of the United States, to issue writs of mandamus to public officer, appears not to be warranted by the Constitution."

Thus the Court was faced with the situation that if it followed the law, it was bound to issue a mandamus but if it followed the Constitution, it had no authority to do so. The case was, therefore, one where there was a conflict between the law and the Constitution and the question was whether in deciding the case, the Court should give effect to the law or to the Constitution as reconciliation between the two was impossible; in other words, the issue was what was the law applicable to the decision of the case, there being nothing in the law or the constitution expressly providing an answer. In expounding the principle governing the decision in any such case. Chief Justice Marshall expressed himself as follows:

⁴⁹ *Marbury v. Madison*, 1 Cranch. 137

This original and supreme will (will of the people) organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by these departments. The Government of the United States is of the latter description. The powers of the Legislature are defined and limited; and those limits may not be mistaken, or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if these limits do not confine the persons on whom they are imposed; and if acts prohibited and acts allowed, are of equal obligation.

Certainly all those who have framed written Constitutions contemplate them as forming the fundamental theory of every such government must be, that an act of the Legislature, repugnant to the Constitution, is void. It shall, however, receive a more attentive consideration. It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each. So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules governs the case.

This doctrine would subvert the very foundation of all written Constitution. It would declare that an act which according to the principles and theory of our Government, is entirely void, is yet, in practice, completely obligatory. That it reduces to nothing what we have deemed the greatest improvement on political institutions, written Constitution, would of itself be sufficient, in America, where written Constitution have been viewed with so much reverence, for rejecting the Constitution. But the peculiar expressions of the Constitution of United States furnish additional arguments in favour of its rejection.⁵⁰

Ever since the judgment of the Supreme Court in *Marbury vs. Madison*, it has been an incontrovertible rule that where an act of Congress is repugnant to or inconsistent with a provision of the Constitution, the law is void. Therefore, in all adjudications presenting such conflicts, Courts are bound to ignore the law and decide the case on the footing that such law did not exist. This principle, as will presently be stated, has been expressly recognized by the Constitution of Pakistan and India and Bangladesh; in fact the provisions of these Constitution declaring the law in such cases to be void, have undoubtedly been borrowed from the judgment of Chief Justice Marshall. There can be no question of finding or declaring a law to be void or unconstitutional as, *ex hypothesis*, there are no limitations on the authority of the Legislature and the power of correction is

⁵⁰ *Marbury v. Madison*, 1 Cranch 137, per MARSHALL, C.J

exercised by superior Courts from which an appeal or revision lies or which are subject to their jurisdiction.⁵¹

An officer-in-charge of a police station is legally bound to reduce information of cognizable offence into a first information report and to start investigation into the case. Mandamus may issue to compel the police to record first information report.⁵²

Shortly before the end of President Adams' term, he nominated Marbury and three others to be justices of the peace in the District of Columbia. Their nominations were confirmed and commissions signed by the President, but the secretary of State, John Marshall, had not delivered them. Jefferson's new Secretary of State, James Madison, refused to deliver the commissions, claiming that delivery was necessary to complete the appointments. The four men asked the Supreme Court to issue a writ of mandamus ordering delivery in the exercise of its original jurisdiction. Mandamus was not sought from lower federal courts.⁵³

8. Findings

Mandamus will also not be issued if there is no application from an aggrieved person or if there is any other equally efficacious remedy provided by law. Mandamus may issue upon any person performing functions in connection with the affairs of the Republic or of a local authority. Such a person must hold office of a public nature. An office of a public nature means an office under the Constitution or a law relating to the affairs of the Republic or of a local authority. It will be issued only when the public functionary has a public duty under a law and refused to perform his duty. The duty may be judicial, quasi-judicial or administrative. But if there is no such legal duty conferred by the Constitution, statute or statutory rules the authority cannot be compelled by mandamus. Mandamus cannot be granted to compel them to exercise their discretion in a particular manner. The public authority must have public duty and the applicant must have a specific legal right or he must be aggrieved by nonperformance of such public duty. A government policy does not create any such right or duty and hence it cannot be enforced by mandamus. An application for mandamus has to be preceded by a demand made to the public functionary concerned for performance of the public duty sought to be enforced. When the public functionary refuses to perform or the refusal to perform may be inferred from the conduct of the public functionary, the application for mandamus will be maintainable. But such a demand will not be necessary if from the facts and circumstances of the particular case it appears that making a demand and waiting for reply may seriously affect the interest of the applicant or that such a demand will serve no useful purpose and will be a mere idle ceremony.

⁵¹ Muhammad Munir, *Development of the Doctrine of Judicial Review in India, Pakistan and Bangladesh*, pp 135-135, (published in the Centenary Book of High Court of West Pakistan)

⁵² *Yasmin Sultana v. Bangladesh*, 54 DLR 269

⁵³ *Marbury v. Madison*, 1 Cranch, 137, 2 L.Ed. 60 (1803)

9. Conclusion

Hence the writ of mandamus is to protect the interest of the public from the powers given to them to affect the rights and liabilities of the people. This writ makes sure that the power or the duties are not misused by the executive or administration and are duly fulfilled. It safeguards the public from the misuse of authority by the administrative bodies. Although there are certain conditions also which were discussed in the project like all the alternative remedies should be exhausted and it should be a statutory duty and not discretionary in nature. Hence it forms one of basic tool in the hands of the common people against the administrative bodies if they do not satisfy the duties which by statutes they are bound to perform. The function of the Judiciary is to uphold the Writ of Mandamus properly, equally, scientifically with proper cautions. Thus justice will be ensured to the society and as a whole a well discipline society will be ensured.