

Right to Constitutional Remedies

Writs

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History of Writs in India

- First issued by the Supreme Court at Calcutta
- Later by SCs of Bombay and Madras
- Since 1861 – by High Courts
- Since-1937- Federal court of India
- By the Privy Council

Writs under Indian Constitution

- *Ubi jus ibi remedium*
- *Granted by SC of India U/A.32*
- *Granted by HC s U/A. 226*
- *Purpose of Writ Jurisdiction u/a 32 – enforcement of f.rts*
- *Purpose of Writ Jurisdiction u/a 226 – enforcement of f.rts & other purposes*

Article 32 of the Constitution

Remedies for enforcement of rights conferred by this Part:

- [\(1\)](#) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
- [\(2\)](#) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part
- [\(3\)](#) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)
- [\(4\)](#) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

Importance of Article 32

- "If I was asked to name the particular Article in this Constitution as the most important without which this Constitution would be a nullity, I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it This in my judgment is one of the greatest safeguards that can be provided for the safety and security of the individual."- **Dr.Ambedkar**

Nature of Writ Jurisdiction

- Discretionary
- Guiding Factors for exercising discretion -
 - 1.Locus Standi
 - 2.Alternative relief
 - 3.Res Judicata
 - 4.Questions of fact ,and ;
 - 5.Laches

Locus Standi

- Who can apply?
- **Traditional rule**-Only aggrieved party
- **Liberal rule** – any public Spirited person/citizen
- PIL/SAL- evolution and institutionalization
- *"where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened, and any such person or determinate class of persons is by reason of poverty or disability or socially or economically disadvantaged position unable to approach the Court for relief, any member of the public or social action group can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226 and in case of breach of any fundamental right of such person or class of persons, in this Court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.."-Supreme Court in S. P. Gupta v. Union of India (AIR 1982 SC 149) .*

Kinds Writs

- Habeas Corpus
- Quo Warranto
- Mandamus
- Certiorari
- Prohibition

Habeas Corpus

- Meaning - You (shall) have the body
- Purpose - To seek relief from the unlawful detention of him or herself, or of another person
- To protect the individual from harming him or herself, or from being harmed by the Administrative system.
- For safeguarding of individual freedom against arbitrary state action which violates f.rts. u/A. 19,21 & 22 of Constitution.
- Res judicata – not applicable
- Cannot be suspended even during Emergency [Art.359] [ADM Jabalpur v.Shivakant Shukla (Habeas Corpus case) AIR 1976 SC 1207-opinion of H.R.Khanna,J-its impact -44th Amendment, 1978]
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Quo warranto

- [By what warrant?](#)
- Requires the person to whom it is directed to show what authority he has for exercising some right or power (or "franchise") he claims to hold.
- Invoked in case of [Public offices](#)
- [Ashok Pandey v. Mayawati \(AIR 2007 SC 2259\)](#)- writ of QW was refused against Ms. Mayawati (CM) and other ministers of her cabinet even though they were Rajya sabha members

Mandamus

- Means "**we command**" in Latin
- "issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly"
- An order from a superior court to any government, subordinate court, corporation or public authority **to do or forbear from doing some specific act** which that body is obliged under law to do or refrain from doing, as the case may be, and which is in the nature of **public duty** and in certain cases of a **statutory duty**

Conditions for issue of Mandamus

- The applicant must have a legal right to the performance of a legal duty
- The legal duty must be of a public nature.
- The right sought to be enforced must be subsisting on the date of the petition.
- As a general rule, mandamus is not issued in anticipation of injury.
- Demand and refusal

Ultimate purpose: to make 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.

Certiorari

- Latin *certiorare*, ("to search").
- Currently means an order by a higher court directing a lower court, tribunal, or public authority to send the record in a given case for review.
- Grounds of issue:

Prohibition

- is an official legal document drafted and issued by a supreme court or superior court to a judge presiding over a suit in an inferior court
- used to prevent an inferior court from exceeding its jurisdiction or acting contrary to the rules of natural justice
- may be issued both in cases where there is an excess of jurisdiction and where there is absence of jurisdiction.
- **Prohibition and certiorari lie only against judicial and quasi-judicial bodies.** They do not lie against public authority in an executive or administrative capacity nor a legislative body.

Conclusion

- Writs – mostly invoked against State
- Powerful orders having immediate effect
- Issued when **PILs** are filed
- Major work of H.C.s lies in exercising writ jurisdiction

Conclusion

Thank you for your Attention