

ANALYSIS OF WRIT JURISDICTION OF SUPREME COURT OF INDIA

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ABSTRACT

The Indian constitution provides the fundamental rights which are requisite for the dignified life of humans. These rights are safeguarded by certain provisions which are incorporated in the Indian constitution. A person whose fundamental rights are infringed can use these provisions and can approach the court. These safeguarding provisions are known as Writs and five writs are enumerated in the Indian Constitution. The Indian constitution under Article 32 confers writ jurisdiction of the Supreme Court and it comes under the ambit of Fundamental Rights and also Article 226 confers writ jurisdiction of the High Court which is a constitutional right but High Court has wide jurisdiction as compared to the Supreme Court. This paper will analyze the writ jurisdiction of the Supreme Court, its scope, enforcement, and comparison with the writ jurisdiction of the High Court. The research also aided in understanding the landmark judgments associated with it.

Keywords: Indian constitution, Fundamental rights, Writ jurisdiction, Prerogative.

CONCEPT OF WRIT AND ITS TYPES

A writ is a document or order issued by a court (Supreme Court or High Court) that commands an individual, official, or authority to do or refrain from doing something and to provide constitutional remedies to Indian citizens who have had their fundamental rights infringed. There are five writs, namely: Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto, which are enumerated in the constitution, also known as PREROGATIVE WRITS.

Let us understand the types of writs in detail:

HABEAS CORPUS:

The meaning of the Latin expression Habeas Corpus is “you may have the body”.¹ It is the order which is issued by the court in those cases where a person is detained unlawfully or

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¹ Jus Corpus Law Journal, <https://www.juscorpus.com/what-is-a-writ-petition> (last visited on 13 April, 2022)

detained not accordingly to the provisions of Article 22 of the Indian constitution. Through this writ, the court (Supreme Court/High Court) commands the person or authority who has detained another to produce the latter before the court. If the court finds that ground on which the person has been detained is unjustified or unlawful it can release the detained person, and also the court can grant compensation to the detained person.² The application of the writ can be filled by the detenu or by any other person on the behalf of the detenu. It is the most prominent writ as it deals mostly with the personal liberty of individuals and protects their fundamental right against any arbitrary actions. In the case of *Bhim Singh v. State of Jammu and Kashmir*³, the petitioner was detained unlawfully, and also his constitutional right was infringed so the apex court awarded damages to the petitioner. In the case of *ADM Jabalpur V. Shivkant Shukla*⁴, the court held that “detention in a state of emergency could not be challenged and no person had the right to file any application for habeas corpus or any other writs.”

The writ of Habeas Corpus is not issued:

- When there is no jurisdiction of the court over the detainer or detenu.
- When the detention is lawful and is done by the order of the court.
- It will not be issued when the proceeding is of contempt of court or Parliament.

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MANDAMUS:

The meaning of the Latin expression Mandamus is “we command”. It refers to an order issued by the court in the form of a command to the inferior court or any public authority to perform the public duty that they are bound by law or refrain from doing a thing to which they are not entitled under their authority. Mandamus is an important writ to check the arbitrary action of any administrative body⁵ It cannot be issued against any private bodies or organizations.⁶ Also, it cannot be issued against the President and Governors.⁷ In the case of *Union of India v. S.B. Vohra*⁸, the Supreme Court of India held that “A writ of mandamus may be issued in favor of a person who establishes a legal right in himself. It may be issued against a person who has

² *Rudal Sah v. State of Bihar*, AIR 1983 SC 1086

³ AIR 1986 SC 494

⁴ AIR 1976 SC 1207

⁵ Legal Service India, <http://www.legalservicesindia.com/article/1885/Constitutional-philosophy-of-Writs:-A-detailed-analysis.html> (last visited on 14 April, 2022)

⁶ *T. Gattaiiah And 86 Ors. vs Commissioner of Labour and Anr*, (1981) 43 FLR 202

⁷ *S.P. Gupta vs Union of India*, AIR 1982 SC 149

⁸ *Indian Kanoon*, <https://indiankanoon.org/doc/1702971/> (last visited on 14 April, 2022)

a legal duty to perform but has failed or has neglected to do so. Such a legal duty emanates from the operation of law. The writ of mandamus is most extensive in regards to its remedial nature. The object of mandamus is to prevent disorder emanating from the failure of justice and is required to be granted in all cases where the law has established no specific remedy”.

PROHIBITION:

The meaning of the Latin expression prohibition is “to prohibit” and it is also known as “stay order”⁹. The writ of prohibition is issued by the superior court (any high court or supreme court of India) to the inferior court or tribunal to prevent them to decide the case when they have no legal jurisdiction. So, the main objective of this writ is to prevent the inferior courts from exceeding their jurisdiction.¹⁰ The writ of prohibition can be issued when there is an absence of jurisdiction or excess of jurisdiction.¹¹ It can only be issued when the inferior court proceedings are pending, not when judgment has already passed.

CERTIORARI:

The meaning of the Latin expression certiorari is “to certify”. It is issued by the superior court (any high court or supreme court of India) to the inferior court. This writ can be issued when the inferior court or tribunal or quasi-judicial authority passed an order beyond their jurisdiction or has violated the principle of natural justice.¹² So, due to this superior court can quash the order of that inferior court or authority. Also, the superior court can order the inferior court to transfer the matter to it or another superior authority. The writ of prohibition is used when the court proceedings are pending but on the contrary, the writ of certiorari is used after the decision or order has been delivered. The writ of certiorari can be issued by the high court for quashing decisions of an inferior court but it cannot quash the decision of any other high court.¹³

In the case of Hari Vishnu Kamath v. Syed Ahmad Ishaque¹⁴, the Supreme Court has stated certain necessary conditions for the issuing of a writ of certiorari which is as follows:

⁹ Latest laws, <https://www.latestlaws.com/articles/analysis-of-types-of-writs-under-constitution-of-india-landmark-cases-by-tanu- Kapoor> (last visited on 14 April, 2022)

¹⁰ Wikipedia, https://en.wikipedia.org/wiki/Writ_of_prohibition (last visited on 14 April, 2022)

¹¹ S.C. Prashar vs Vasantsen Dwarkadas, (1956) 29 ITR 857 (Bom)

¹² I pleaders, <https://blog.ipleaders.in/all-you-need-to-know-about-the-writ-of-certiorari> (last visited on 14 April, 2022)

¹³ S. Govinda Menon vs The Union of India & Anr, AIR 1967 SC 1274

¹⁴ AIR 1955 SC 233

- There is an error in the jurisdiction.
- Inferior court or authority acts beyond their jurisdiction.
- There is a violation of the principle of natural justice by the inferior court.
- There is an error of law apparent on the face of the record.

In the case of T.C. Basappa v. T. Nagappa & Anr¹⁵, it was held that a writ of certiorari is generally granted when a Court has acted:

- without jurisdiction, or
- above its jurisdiction

QUO-WARRANTO:

The meaning of the expression Quo-Warranto is “by what authority”. It is issued to prevent a person from usurping the public office that which he is not legally entitled or it is issued to inquire a person by what authority he is holding a public office. If a person found that he is holding public office illegally then by the writ of quo-warranto he can be expelled from the public office. In the case of Niranjana Kumar Goenka vs The University of Bihar And Ors¹⁶, It was held that a writ of quo-warranto cannot be issued against a person who holds any private office.

Necessary conditions for the issuing of Quo-Warranto¹⁷:

- There must be a public office.
- The public office was created by statute or constitution itself.
- The public office must be substantive.
- There must be a contravention of the law in appointing a person to public office.

SCOPE OF WRIT JURISDICTION OF THE SUPREME COURT OF INDIA

The writ jurisdiction of the supreme court is covered under Article 32 of the Indian Constitution. Article 32 is enumerated in the Part-III of the Indian Constitution as one of the fundamental rights. The scope of Article 32 is not extensive as Article 226 and it can only be

¹⁵ AIR 1954 SC 440

¹⁶ AIR 1973 Pat 85

¹⁷ Indian Kanoon,

<https://indiankanoon.org/doc/85488671/#:~:text=The%20existence%20of%20the%20following,by%20statute%20or%20by%20the> (last visited on 14 April, 2022)

availed in the cases where there is a violation of fundamental rights.¹⁸ Dr. B R Ambedkar had said, “If I was asked to name any particular Article in this Constitution as the most important — an article without which this Constitution would be a nullity — I could not refer to any other Article except this one (Article 32). It is the very soul of the Constitution and the very heart of it...”¹⁹ So, it is a prominent article in the Indian constitution which enables a person to approach the Supreme Court for enforcement of fundamental rights and it makes the Supreme Court a protector of the fundamental rights. In the case of *Fertilizer Corporation Kamgar (Union) v. Union of India*²⁰, it was held that “Article 32 confers jurisdiction on the Supreme Court, which is an important and integral aspect of the Constitution's basic structure because it is pointless to confer fundamental rights without providing an effective remedy for their enforcement.”

Article 32 is defined in the “Indian Constitution” as “Remedies for enforcement of rights conferred by this Part”²¹:

1. Right to approach the supreme court if there is a violation of fundamental rights which are mentioned in part-III but one approach the supreme court only by appropriate proceedings.
2. The Supreme Court shall have the power to issue directions or orders or writs, including writs like habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred in part-III.
3. Without prejudice to the Supreme Court's powers under clauses (1) and (2), Parliament may empower any other Court to exercise its jurisdiction or any of the powers wielded by the Supreme Court under clauses (1) and (2).
4. Except as otherwise allowed by this Constitution, the right granted by this article shall not be suspended.

¹⁸ Law Circa, <https://lawcirca.com/what-is-the-difference-between-article-32-and-article-226-of-the-indian-constitution/#:~:text=The%20scope%20of%20Article%2032%20is%20not%20wide%20enough%20as,other%20Rights%20except%20fundamental%20rights> (last visited on 15 April, 2022)

¹⁹ The Indian Express, <https://indianexpress.com/article/explained/article-32-and-supreme-court-fundamental-rights-7055040/> (last visited on 15 April, 2022)

²⁰ (1981) 2 SCR 52

²¹ INDIA CONST. art. 32

COMPARISON BETWEEN ARTICLE 32 AND ARTICLE 226

1. Article 32 deals with the writ jurisdiction of the Supreme Court and it is a fundamental right where Article 226 deals with the writ jurisdiction of the High Court and it is a constitutional right.
2. If the President declares an emergency, Article 32 can be suspended but Article 226 cannot be suspended.²²
3. The scope of Article 32 is limited and it can be availed in the cases of infringement of fundamental rights whereas the scope of Article 226 is extensive and can be availed in cases of violation of fundamental rights and legal rights.²³
4. The territorial jurisdiction of the supreme court under Article 32 is wide whereas the territorial jurisdiction of the high court is confined.²⁴
5. As Article 32 comes under the ambit of fundamental rights it cannot be refused by the Supreme Court whereas under Article 226 it depends upon the discretion of the High Court for the issuing of the writ.²⁵

CONCLUSION

It can be very well concluded that even though we have fundamental rights which are enumerated in the Indian Constitution but without Article 32 they cannot be protected or enforced. Article 32 is regarded as the soul and heart of the Indian constitution and this article empowers Supreme Court to issue certain writs for the enforcement of fundamental rights or whenever there is an infringement of fundamental rights. The Supreme court is the actual protector of fundamental rights and also Article 32 enhances its judicial power and writs are the finest remedy that prevents arbitrary actions which are contrary to the fundamental rights. However, Article 32 has some restrictions that through it Supreme Court cannot issue writs in the cases of violation of legal rights and Article 32 is a fundamental right so, it will get suspended during the period of emergency.

²² IPleaders, <https://blog.ipleaders.in/difference-article-32-article-226/#Prohibition> (last visited on 15 April, 2022)

²³ Law Circa, https://lawcirca.com/what-is-the-difference-between-article-32-and-article-226-of-the-indian-constitution/#How_Article_32_is_different_from_the_Article_226 (last visited on 15 April, 2022)

²⁴ Smt Ujjam Bai vs State Of U.P, (1963)1 SCR 778

²⁵ Law column, https://www.lawcolumn.in/article-32-and-article-226-different-articles-with-same-motive/#Difference_between_Article_32_and_Article_226_in_a_nutshell (last visited on 15 April, 2022)