

WRIT JURISDICTION OF THE SUPREME COURT

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ABSTRACT

This study has explored some wide areas of what a writ is and what is Supreme Court's writ jurisdiction. A formal written order, issued by a legal authority executive or judicial who is authorized to do so is said to be a writ. And the body that generally does this is a judicial one. So, in other words, it can be said that a writ is a written order, formal in nature, and is issued by a court that has the power or authority to do so. This research broadly covers and discusses Article 32 of the Indian constitution which deals with the Right to constitutional remedies. Questions such as Where, How, When, and who can file a writ petition have also been answered in this paper. Article 226 which empowers the High court to issue writs has also been mentioned. Five types of writs can be issued by the Supreme court and High court and the main aim behind issuing these writs is to ensure that the fundamental rights of all the citizens are protected at all costs and there has been no infringement by the State and if there is any, they can approach the courts for the same.

Keywords: Writ, Jurisdiction, Court.

INTRODUCTION

The term "writ" refers to a written legal order that is formal in nature and is issued by such a body that has administrative or judicial jurisdiction. In today's time, courts are considered to be this body. A variety of writs such as prerogative writs, subpoenas, warrants, and Certiorari are some of the common types of writs. Coming onto the *jurisdiction* of the Supreme Court it consists of original, appellate, and advisory jurisdiction. The Supreme Court in view of the enforcement of the Fundamental rights has been provided a considerable original jurisdiction by Article 32 of the Indian Constitution. To make sure of the enforcement of these rights the Supreme Court has been empowered to issue orders, directions, or writs that include the writ of habeas corpus, mandamus, quo warranto, and certiorari. Merely providing these Fundamental rights is not necessary but it's also necessary to make sure that these rights have been enforced and are being protected. This research aims to understand and discuss the

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various aspects of writs and what writ jurisdiction is under the Supreme Court. Also, it aims to answer certain significant questions such as “What is writ jurisdiction and when can it be invoked by the Supreme Court” and various others.

WRITS IN INDIA: THEIR ORIGIN

The origin of writs in India can be traced from the Regulating Act, 1773 under which the establishment of the Supreme Court was done in Calcutta. Other High courts were also established as a successor to Supreme Court by the charter and they were also granted the right to issue writs. Under Section 45 of the Specific Relief Act, 1877 the High court’s writ jurisdiction was limited to its original civil jurisdiction.

WRITS UNDER THE INDIAN CONSTITUTION

The Indian Constitution contains the Fundamental Rights in Part III such as the right to life and liberty, right to speech, etc., and to protect these the constitution under Articles 32 and 226 has granted a right to approach the Supreme or High court to anyone whose fundamental right has been violated. Not only this but these two articles i.e., 32 and 226 have granted rights to the highest courts of the country to issue writs for enforcement of the Fundamental Rights. Writ remedies that are enforced by the Supreme court and the High court have been provided by the constitution as a way to protect the Fundamental rights of an individual. An important aspect of these remedies is the compensation that is awarded to the aggrieved person.¹

CONSTITUTIONAL PROVISIONS REGARDING THE WRITS

The Constitution of India has designed Articles 32 and 226 for the enforcement of the Fundamental rights and also for the judicial review of the administration and this is in form of writs. So, if any individual brings any complaint to the court’s notice against any administrative action, then this will be available as a constitutional remedy for that individual. The elements that are considered to be the most important in writ jurisdictions are the assurance of natural justice and Safeguarding of the Fundamental Rights.

¹ Writ under the Indian Constitution by B.L.Hansari.

Only the Supreme court and High courts have the power to exercise writ jurisdictions and this power has been granted to the **Supreme court by Article 32** and to the High court by Article 226.

- Article 32(1): This provides an individual a right to move to the Supreme court with their complaint about the enforcement of their fundamental rights as guaranteed by Part III of the Indian Constitution. ²
- Article 32(2): This grants the powers to the Supreme court to issue the orders, directions, or writs including the writ of Habeas corpus, Mandamus, Prohibition, Certiorari, and Quo- warranto for the enforcement of Fundamental Rights. ³

Supreme Court's jurisdiction is **original but not exclusive** in terms of enforcement of Fundamental Rights. The jurisdiction of the high court under article 226 is consistent (concurrent) with the Supreme court's jurisdiction. ⁴

- It is regarded as original because the afflicted individual can directly go to the Supreme court but not certainly by a means of appeal.
- Concurrent refers to when the Fundamental rights of an individual are violated, the afflicted person has the right to move with their complaint either to the high court or directly to the Supreme court.

Journal of Legal Research and Juridical Sciences

HOW IS THE WRIT JURISDICTION OF THE SUPREME COURT DIFFERENT FROM THAT OF THE HIGH COURT? ⁵

Article 226 of the Indian Constitution grants powers to the state high courts to issue directions, orders, or writs as mentioned before for the enforcement of the Fundamental Rights. Not only this but this Article 226 grants the right to the high courts to issue the writs for 'any other purpose' too apart from enforcement of fundamental rights.

- This phrase 'any other purpose' refers to the enforcement of any other ordinary legal right or a non-fundamental right too.

² Indian polity- Article 32 of the constitution

³ Protection of Fundamental Rights through Writ Jurisdiction: A critical study
[https://www.researchgate.net/publication/341999282_Protection_of_Fundamental_Rights_throu
gh_Writ_Jurisdiction_a_Critical_Study](https://www.researchgate.net/publication/341999282_Protection_of_Fundamental_Rights_through_Writ_Jurisdiction_a_Critical_Study)

⁴ Supreme Court of India; Jurisdiction of Supreme Court <https://main.sci.gov.in/jurisdiction>

⁵ Writs in Indian constitution -By Aniket Dimri

So, from this it can be inferred that the most significant difference between the writ jurisdiction of the Supreme court and that of the High court is that:

- the writ jurisdiction of the High court is wider than that of the Supreme court. This is because the Supreme court can issue writs only for the enforcement of fundamental rights and not for any other purpose. So, in other words, it can be said that the SC does not extend to such a case where there is a breach of an ordinary legal right.

DIFFERENT TYPES OF WRITS

Five kinds of writs are provided by articles 32 and 226 and these are issued in varying circumstances and have different implications: ⁶

1) Writ of Habeas Corpus: The term Habeas Corpus means 'to have a body of' and is considered to be the most important writ for one's liberty or freedom. This writ can be used by a person who has been illegally detained or imprisoned. Under this, the detaining authority responsible is directed by the court to present the detained person before them so that they can examine whether the detention is lawful or not. If the court finds the detention to be unlawful then the person will be released immediately. The principle of this writ is to make sure that the person who has been detained is released from the unlawful detention and the term unlawful refers to the detention which lacks sufficient evidence. The detained person himself or that person's relative on his behalf can file for this writ and it can be issued against another individual or authority.

2) Writ of Mandamus: The word Mandamus is a Latin term that means 'we command' and it is an order from a superior court directing a lower court or public authority to carry out a legal duty that it is supposed to do and falls within its duty. This writ of Mandamus is issued to ensure the duties of public authorities and also to keep them within their jurisdiction. In other words, it can be said that it is a writ issued to a public official when that official has failed to do a certain thing that was a part of his legal duty. Keeping the government machinery functioning properly is the main aim of this writ. The limitation of this writ is that it cannot be issued against private individuals or bodies, Governors of state, Presidents, or working Chief justices.

⁶ Role of writs in the Administrative Law (Legal Service India.com) - <https://www.legalserviceindia.com/article/1402-Role-Of-Writs-In-The-Administrative-Law.html>

3) *The Writ of Certiorari:* The term Certiorari means to be certified. It is issued by the Supreme court to either some lower court asking them to transfer the matter to them or a superior authority for appropriate consideration. Supreme court or the High court can issue this writ rejecting an order that has already been passed by an inferior court declaring that decision invalid. In other words, it can be said that this writ can only be restored when a decision has already been passed.⁷

4) *The Writ of Prohibition:* Popularly known as ‘Stay Order’ is the writ of Prohibition that is issued by a higher court to a lower one to prohibit the court from doing actions that lie outside the powers that have been granted to it and to forbid the court from performing any act that lies outside of its jurisdiction. A major difference between the writ of Certiorari and Prohibition is that they are issued at different phases or levels of the proceedings of a case.

5) *The writ of Quo Warranto:* The term Quo-Warranto means ‘by what warrants. This writ is issued against such a person who acts in an untitled way in a public office. In other words, it can be said that it is issued against a person who holds a seat even when he is not qualified for it. The main motive of this writ is to protect such people who are deprived of their right to hold a public office and also to prevent such who occupy an office even when they’re not entitled to do so. The limitation of this writ is that it cannot be issued against a private office.

WHO CAN FILE A WRIT PETITION AND WHERE CAN IT BE FILED?

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A person whose fundamental rights have been infringed by the State can file a writ petition. Also, a public-spirited individual can file a writ petition for the interest of the general public even if there has been no infringement of his fundamental rights. A writ petition can be filed in the Supreme Court under article 32 and a writ can only be issued by the SC if the petitioner succeeds in proving that his/her Fundamental right has been infringed. The right to approach the SC in case of infringement of one’s fundamental rights is in itself a fundamental right. It is not necessary to approach a high court prior to approaching the Supreme Court. Regardless of this if the petitioner files directly in SC, he will be asked to establish why the case was not filed in the High court at first.

⁷ Judicial Control of Administrative Action in India through the Writ of certiorari by Dr. Amit Singh. Page-22

CONCLUSION

As discussed above the power to grant writs that have been given to the Supreme court and high court under articles 32 and 226 is the most important power. These writs have acted as a method to protect the rights of the citizens. Not only do they provide a faster remedy but it also upholds the true principles of democracy by providing justice in a very quick manner. The power and the importance of these writs should not be underestimated by any court and they most certainly use this power given to them judiciously and appropriately as they have been provided with a very wide scope to practice this power.

