Article 32 and Writs

Article 32. 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 clauses (1) and (2), Parliament may by law empower any other court to exercise within the focal 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.

A right without remedy is but a worthless declaration. Fundamental Rights would be empty words if they cannot be enforced. Article 32 provides institutional framework for the enforcement of the Fundamental Rights by the Supreme Court. Dr B.R. Ambedkar called this as "the most important Article of the Constitution without which this Constitution would be a nullity. It is the very soul of the Constitution and very heart of it."

If the rights of an individual are not being enforced or being violated by public officers, then he must have the right to get them enforced or remedied. This right to remedy has been provided by Article 32 which guarantees the individual right to move the Supreme Court by appropriate proceedings for enforcement of his Fundamental Rights. The Supreme Court is empowered to issue directions or orders or writs including writs in the nature of Habeas corpus, mandamus, prohibition, certiorari and quo warranto, whichever it considers necessary. Further, without prejudice to the powers of the Supreme Court, the Parliament may by law, empower any other court to exercise within the local limits of its jurisdiction the powers of writs, though the Parliament has not resorted to it yet. Finally, the right to constitutional remedies may be suspended as provided by the Constitution under Articles 358 and 359.

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Prerogative Writs

The concept of issuing writs is taken from the United Kingdom. The expression prerogative writ' is one of English Common Law which refers to the extraordinary writs legal remedies. In course of time these writs came to be issued by the Court of Justice as the agency through which the Sovereign exercised his judicial powers and these prerogative writs were issued as extraordinary remedies in cases where there was either no remedy available under the ordinary law or the remedy available was inadequate.

Supreme Court as the protector of Fundamental Rights

As per Article 32, the right to move to Supreme Court for enforcement of Fundamental Right is guaranteed. And this remedial right is itself made a Fundamental Right, being included in Part III. As a result, in the event of infringement of any of the Fundamental Rights of an individual, the Constitution places a duty on the Supreme Court to engage the petition of an aggrieved individual and provide remedial measures for him. Art. 32, therefore, provides a guaranteed remedy for the enforcement of Fundamental Rights. The Supreme Court is thus constituted the protector and guarantor of Fundamental Rights. That is why the Supreme Court cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringement of such right, on technical grounds. Thus, Supreme Court cannot ordinarily refuse a writ petition under Article 32, merely on the ground that an alternate legal remedy is available to a citizen**. Article 32 is available only in cases of violation of Fundamental Rights and not in case of violation of other legal rights.** No time-limit is prescribed for issuing the writs in the Constitution and has been left to the Courts to decide it in accordance with the nature of the case.

Difference between writs of Supreme Court and High Court

The Supreme Court issues the writ (as under Art. 32) only in cases of the violation of the Fundamental Rights, whereas the High Courts (under Art. 226) can issue the writs not only for the enforcement of the Fundamental Rights but also for redressal of any other injury or illegality, provided certain conditions are satisfied. Thus, in a way the writ jurisdiction of the High Court is wider than the Supreme Court. Art. 32 imposes a duty on the Supreme Court to issue the writs, whereas no such duty is imposed on the High Court by Art. 226. A remedy under Art.226 is discretionary and a High Court may refuse to exercise its writ jurisdiction. The jurisdiction of the Supreme Court extends all over the country, whereas that of the High Court only to

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the territorial confines of the state and the Union Territory to which its jurisdiction extends.

The Writs

Under Article 32(2) the Supreme Court is endowed with the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition certiorari and quo warranto whichever is appropriate for the enforcement of any of the rights conferred by Part III of the Constitution. The five forms of writs are as follows:

1. Habeas Corpus

It is the most valuable writ for personal liberty. Habeas Corpus in Latin means, let us have the body." A person, when arrested or detained, can move the Court for the issue of Habeas Corpus. It is an order by a Court to the detaining authority to produce the arrested person before it, so it can determine whether the person has been detained lawfully or otherwise. If the Court is convinced that the person is illegally detained, it can issue orders for his release. The writ has only one purpose, to set liberty a person who is confined without legal justification. **The writ can be issued against both the State and private individuals or organizations.** While a writ must be moved by the person whose Fundamental Right has been infringed, it is not easily possible in case of a detained person. The petition of Habeas Corpus may be moved on behalf of the prisoner by his friend or social worker or even a stranger. The writ may be moved in cases of preventive detention. It may also be issued to assist legal guardian in obtaining the custody of a child from any other person. The Supreme Court held that while dealing with the application of writ of Habeas Corpus, production of the body of the person alleged to be unlawfully detained was not essential.

2. Mandamus

Mandamus means "We Command". Mandamus is an order from a superior court to a lower court or tribunal or public authority to perform his legal duty. Simply, it is a writ issued to a public official to do a thing which is a part of his official duty, but, which, he has failed to do, so far. It demands activity from an authority that has either not acted or refused to act, according to its legal duty. This writ cannot be claimed as a matter of right. It is the discretionary power of a court to issue such writs. Mandamus will not lie against discretionary acts of a public authority as distinguished from a duty. It will also not lie against a private individual unless they are entrusted with

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public duty. This will cannot be issued against the President and the Governors and the judges acting in the judicial capacity.

3. Prohibition

Writ of Prohibition means to forbid or to stop and it is popularly known as 'Stay Order'. It is a writ issued by a superior court to lower court or a tribunal forbidding it to perform an act outside its jurisdiction. After the issue of this writ, proceedings in the lower court come to a stop. The objective is to keep the inferior courts or the quasi-judicial bodies within the limits of their respective jurisdiction. Writ of Prohibition is, thus, not available against a public officer not vested with judicial or quasi-judicial powers. It cannot be issued against private persons or associations. The writ can be issued only while the proceedings of a case are going on. It does not lie against Legislative or Executive functions. If the court or tribunal has passed final orders, Prohibition would not lie. The Supreme Court can issue this writ only where a Fundamental Right is affected. The difference between Mandamus and Prohibition is that while the former can be issued against judicial as well as administrative authorities, the latter is issued only against the judicial or quasi-judicial authorities. While the writ of Mandamus commands activity i.e. doing of particular thing, the writ of Prohibition is essentially addressed to a subordinate court commanding inactivity.

4. Certiorari

Literally, Certiorari means 'to be certified'. The writ of Certiorari is issued by a superior court to some inferior court or tribunal to transfer the matter to it or to some other authority for proper consideration. The writ of Certiorari can be issued by the Supreme Court or any High Court for quashing the order already passed by an inferior court. The purpose of this writ is to secure that the jurisdiction of an inferior court or tribunal is properly exercised and that it does not usurp the jurisdiction it does not possess. There are several conditions necessary for the issue of writ of Certiorari, which are as under:

- There should be court, tribunal or an officer having legal authority to determine the question of deciding Fundamental Rights with a duty to act judicially.
- Such a court, tribunal or officer must have passed an order without jurisdiction or in excess of the judicial authority vested by law in such court, tribunal or law. The order could also be against the principle of natural justice, or it could contain an error of judgment in appreciating the facts of the case.

A High Court can issue Certiorari against itself in administrative capacity but not in judicial capacity. It cannot issue the writ to another High Court or another bench of

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the same High Court. While the Writ of Prohibition is available during the proceedings before a sub-ordinate court, Certiorari can be resorted to only after the order or decision has been announced, In other words, the writ of Prohibition is available at the earlier stage, Certiorari is available on similar grounds at a later stage. Thus, Certiorari and Prohibition are instruments to control an inferior court or tribunal which has exceeded its jurisdiction or wrongly exercised jurisdiction. On the other hand, Mandamus is issued against an inferior court or tribunal which has declined to exercise its jurisdiction. Also, the object of Prohibition is prevention, while the object of Certiorari is both prevention and cure.

5. Quo Warranto

The word Quo Warranto literally means “under what authority?” This kind of a writ is issued to ensure that the person holding a public office is qualified to hold the office. It is a writ issued to restrain from acting in a public office to which he s not entitled. The writ of quo-warranto is used to prevent illegal assumption of any public office or usurpation of any public office by anybody. The fundamental basis of the proceeding or Quo Warranto is that the public office has an interest to see that an unlawful claimant does not usurp a public office. For example, a person of 62 years has been appointed to fill a public office whereas the retirement age is 60 years. Now the appropriate High Court has a right to issue a writ of Quo Warranto against the person and declare the office vacant.

Public Interest Litigation (PIL)

The condition of Article 32 or for that matter any other article was generally that only the aggrieved person could move the court. But the condition has been relaxed. Now any person can go to court against the violation of Fundamental Right, it is is of social or public interest. It is called Public Interest Litigation (PIL). Under the PIL any citizen or group of citizens can approach the Supreme Court or a High Court for the protection of public interest against a particular law or action of the government. One can write to the judges even on postcard. The court will take up the matter if the judges find it in the public interest.

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