BLOGS

Understanding the Types of Writs Under Indian Constitution

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The meaning of the word ‘Writs’ would be a command in writing in the name of the Court. Both the supreme Court and the High Court have been given the power to issue the writs under Article 32 and Article 226 of the Constitution of India. Article 32 generally gives the power to issue writs for the enforcement of Rights under Part III i.e. the fundamental rights. It is the Parliament under Article 139 that can confer upon the Supreme Court the power to issue the writs on the ground other than those mentioned under Article 32. In fact this power of the Supreme Court to issue writs can be given to any other Court by the Parliament.

This right under Article 32 gives you a fundamental right to enforce other fundamental rights guaranteed by this Constitution. In fact this right cannot be suspended in a general sense but exceptionally it can be suspended in case of Emergency. In fact, if we compare Article 32 with Article 226, we would find that Article 226 is very much wider as Article 226 would use the word ‘any other purpose’ which would mean any legal right or legal duty. In fact the Supreme Court can also be given these powers but it would by statute called as statutory powers but the High Court has these powers by the Constitution itself. Hence the Constitutional powers will always be ahead as compared to the statutory powers.

The writs are called as Prerogative writs under the English Law which means it was dependent upon the King to issue them or not and India has adopted them. Both the Supreme Court and High Court have the concurrent powers and no person can be forced to go to the High Court first.



In the case of *Romesh Thapar v State of Madras (SC) (1950)*, it was held that person can come directly to the Supreme Court for the infringement of Fundamental rights and the Supreme Court is under an obligation to pass the orders . In the case of *P N Kumar v MCD (SC) (1987)*, the Supreme Court clarified that Article 32 and Article 226 are both effective remedies but it is better that we first go to the High Court. This case was basically because of the fact that there was a huge pendency in the Supreme Court. The petitions to the Supreme Court are subject to Res Judicata except the writ of Habeas Corpus.

In the case of *Daryao v State of Uttar Pradesh (1961) (SC)*, certain guidelines were laid down:

1. If a petition has been filed under Article 226 and has been considered on merits, then it would bind the parties.
2. It is not open to parties to again go to SC on the same facts.
3. But if the petition under Article 226 has not been dismissed on merits but on laches (delay), then it would not be a bar to file a petition under Article 32.
4. If the petition under Article 226 has been dismissed in limine (on the same day without much hearing or argument) and if the orders are with reasons, it would be a bar but if it is not a speaking order, then it would not be a bar.

Habeas Corpus

This is a Latin term which means that you may have the body. This is available when the person has been detained by an authority without giving any reasons as to the detention. In simple words, it is basically a remedy for a person who has been unlawfully detained. The custody of the person may be a public custody or private custody. This means that even if a person has wrongfully detained some other person in his house, then also a petition for Habeas Corpus can lie. This can be filed by some other person on his behalf. The Principle of Res Judicata does not apply in such

cases.

Mandamus

It means the order. It is an order by the Superior Court commanding any authority or person including the Government Corporation to do or not to do a duty. It lies when public authority has failed to do his duty. This writ does not lie against private individuals.

Prohibition and Certiorari

These writs are filed against the Courts. Here the Superior Courts would be issuing orders to the inferior courts, where the courts are acting without their jurisdiction or exceeding their jurisdiction. Sometimes , it is also used when the rules of Natural Justice have not been followed. In the case of *S Govind Menon v Union Of India (1967) (SC),* it was held that such writs can be issued against inferior courts either where there is excess of jurisdiction or absence of jurisdiction.

Both of them are similar in the sense that they are issued against the inferior courts but the difference between them is that when the matter is still pending and the Court is having no Jurisdiction, there would be a writ of prohibition but where the decision has been given, the writ of certiorari would lie.

If a decree or judgement has been passed by a Court without jurisdiction, then also it is binding upon the parties unless and until it is set aside by the higher courts. Generally, the parties go in appeal challenging such judgements rather than going for writ of certiorari.

Quo Warranto

By using this writ, an officer or an authority is asked by what mandate or warrant he is holding that office. It is a writ to prevent a person from holding an office which he is not legally entitled to and obviously it would be a public office.

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