



# ABHIDHVAJ LAW JOURNAL

[ [www.abhidhvajlawjournal.com](http://www.abhidhvajlawjournal.com) ]

**The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.**

**Editor In chief – Assistant Professor Mr. Janmejay Singh**

**Publisher & Founder – Vaibhav Sangam Mishra**

**Frequency – Quarterly ( 4 Issue Per year )**

**ISSN: 2583-6323 (Online)**

**Copyright © 2024 - 25**

---

**Analysis of Article 32-Right to constitutional remedy**

---

**AUTHOR'S NAME – Vashvi Upendra Singh, LL.B. (compl.).****INSTITUTION NAME – Savitribai Phule Pune University****ABSTRACT:**

This article makes an honest attempt to make the reader understand the various facets of Article 32. This article includes an introduction to article 32, the various salient features of writs, and the various types of writs along with their extensive analysis.

**INTRODUCTION:**

Article 32 is an extremely important fundamental right under part III of the constitution. Dr. Ambedkar called it the 'heart and soul of the constitution'. The concept of writs has been borrowed from the United Kingdom. Under Article 32 the Supreme Court can issue the writs of habeas corpus, mandamus, prohibition, certiorari, and quo warranto for the enforcement of fundamental rights. There are fundamental in the sense that the Supreme Court may not refuse to exercise the writs under Article 32.

**What is a writ under Article 32?:**

A writ is a formal written order, direction, or summons by a court for the purpose of enforcing a fundamental right. Under Article 32 any aggrieved person can move to the Supreme Court directly if his fundamental rights are violated, thus he doesn't need to go through the various hierarchies of the traditional court system. Under the Public interest litigation, any concerned citizen can file a writ on behalf of another person whose freedom has been violated. Issuing of writs through public interest litigation is a unique aspect of the Indian judicial system.

**The features of Article 32 are:****a) original jurisdiction of the Supreme Court, but not an exclusive power:**

Article 32 vests in the Supreme Court the original jurisdiction to issue writs, which means an aggrieved person can move directly to the Supreme Court, bypassing the requirement of moving to the Supreme Court by way of an appeal. However, it is not an exclusive power of the Supreme Court as the High Court too is vested with the power to issue writs under article 226, hence an aggrieved person can move either to the Supreme Court or to the High Court.

**b) Narrow jurisdiction of the Supreme Court:**

Under Article 32 the Supreme Court can only issue writs for the enforcement of fundamental rights and not any other legal right, this makes the jurisdiction of the Supreme Court under

Article 32 narrower than that of high courts as under Article 226 the high courts can issue writs for any matter or any ordinary legal rights.

c) **No territorial limitation:**

The writs issued by the Supreme Court have a territorial jurisdiction over the entire country. The Supreme Court can issue writs against any person and government throughout the territory of the country.

d) **Article 32 is a fundamental right:**

Since it's a fundamental right, the Supreme Court may not refuse to entertain it, it's not a discretionary right. The high court on the other hand may refuse to exercise writ jurisdiction, as it is a discretionary power under Article 226.

**The various types of writs under Article 32 are:**

1) **Habeas Corpus:** It's a Latin term, which means 'to have the body of'. It is an order issued by the court to a person who has in his custody or detention another person, to produce the body of that person before the court.<sup>1</sup> It is one of the most important writs as it secures and protects individual liberty. If the person is found to be detained illegally or unlawfully, the Supreme Court can order to set the person free. This writ has a wide scope as it includes both public authorities and private individuals and it can be filed by the detained person himself, by family, friends, or any concerned person acting on behalf of the detained person.

The nature of the writ has evolved over the years through various judicial interpretations in several case laws. The Supreme Court in **Kanu Sanyal v. District Magistrate Darjeeling & Ors. (1974)** the case gave a flexible approach to the writ of habeas corpus by insisting on looking at the facts and circumstances of the case rather than taking a rigid stand on the term 'to bring the body of'.<sup>2</sup>

Writ of habeas corpus cannot be issued only if the detention is unlawful, it cannot be issued if a) the detention is lawful, (b) the proceedings are for contempt of court or legislature, (c) detention is by contempt of court, (d) detention is outside the jurisdiction of the court. In the famous case of **AK Gopalan vs State of Madras (1950)**, the Supreme Court held that if the detention is preventive in nature, it is legal, and a writ of habeas corpus cannot be issued if

---

<sup>1</sup> gktoday, <https://www.gktoday.in/question/under-which-writs-the-courts-sought-to-produce-a-p>, (last visited Mar. 6, 2024).

<sup>2</sup> Sehgal, D.R. (2019) The writ of Habeas Corpus, iPleaders, (May. 27, 2024, 9:29 PM) <https://blog.iplayers.in/writ-habeas-corpus/>

the detention is legal and backed by the constitution and law and does not violate the rights of citizens under article 19(1)(d) and 21 of the constitution.<sup>3</sup>

In **Manubhai Ratilal Patel vs State of Gujarat (2013)**, it was held that a writ of habeas corpus is not maintainable if a competent court orders a person to be sent to judicial or police custody.<sup>4</sup>

This was reiterated by the Supreme Court in **Gautam Navlakha vs. National Investigation Agency LL( 2021)** while considering the question of whether a remand order can be set aside through habeas corpus and the court held that only if the remand is illegal and there exists a lack of jurisdiction on behalf of the court, can a habeas corpus petition be entertained in this such a matter.

## 2) Mandamus:

It means 'we command'. In this writ, the Supreme Court issues a command to a public official commanding him to perform the official duties which he has either refused or failed to perform. A writ of mandamus cannot be issued against a private individual In **Sohanlal v. Union of India (1957)** the court held that only if the private individual is affiliated with the public institution in any manner can a writ of mandamus be valid against such a person, however, it can be issued against any public official, lower courts, tribunals, government agencies for the performance of public and constitutional duties.<sup>5</sup> A writ of mandamus can be issued if there exists a legal right that is being infringed by the public official and that legal right involves performing an existing legal duty and no other parallel legal remedy is available in law, in the case of **Rashid Ahmad v. Municipal Board (1950)**, it was held that even if other parallel remedies are available the court cannot put a blanket ban on entertaining such matters which may involve violation of basic fundamental right.<sup>6</sup>

The performance of that public duty should have a mandatory statutory force backing it and not discretionary force, and it should not include enforcement of a contractual obligation.

The writ of mandamus cannot be issued against the president of India and the governor of any state, this was held in the landmark case of **SP Gupta v. Union of India (1981)**.<sup>7</sup> The writ of Mandamus has evolved over the years through various judgments of the Supreme Court. The Supreme

---

<sup>3</sup> AK Gopalan vs State of Madras(1950), INDIA CONST. art. 19. Cl. (1)(d) & 21.

<sup>4</sup> Manubhai Ratilal Patel vs State of Gujarat (2013)

<sup>5</sup> Sohanlal v. Union of India (1957)

<sup>6</sup> Rashid Ahmad v. Municipal Board (1950)

<sup>7</sup> SP Gupta v. Union of India (1981)

Court has tried to maintain a balance by not resorting to judicial overreach and making sure in various cases that there is no lack of jurisdiction in a particular case. Though writ of mandamus is a fundamental right under Article 32, it cannot be misused to correct a personal grievance against an order of the lower court, or to compel a court to order the legislature to make a particular law.

### 3) Prohibition:

The meaning of this writ is 'to forbid'. It is issued by a higher court to prevent or forbid a lower court, or tribunals from exceeding its jurisdiction.<sup>8</sup> It can only be issued against quasi-judicial and judicial bodies.<sup>9</sup> The aim of this writ is to prevent a lower judicial authority from breaching its constitutionally assigned position. Writ of prohibition can be issued when a lower court violates a basic right, goes against the principle of natural justice, and overreaches the constitutionally prescribed powers.

Over the years the Supreme Court has expanded, explained, and enhanced the meaning and principles of the writ of prohibition. In the famous **S Govind vs Union of India (1967)** the Supreme Court held that the writ of prohibition can be issued when there is absence of judgment.<sup>10</sup> In the case of **Hari Vishnu v. Syed Ahmed Ishaque (1955)**, the Supreme Court held that a writ of prohibition can only be issued when the lower court has not yet given the judgment.<sup>11</sup> In the case of **Prudential Capital Markets Ltd v. The State of A.P. and others (2000)** the high court reiterated the same and held that once the judgement has been pronounced writ of prohibition cannot be issued.<sup>12</sup>

Writ of prohibition cannot be issued against any decision or act of the legislature, nor it can be used to direct a legislature to act in a particular manner or to prevent it from acting in a particular manner, as it will go against the principle of separation of power. In the case of **Brij Khandelwal VS India AIR (1975)**, the Delhi High Court did not oblige to issue a writ of prohibition against the central government to prevent it from entering into an agreement with the Sri Lankan government regarding a boundary dispute.<sup>13</sup>

---

<sup>8</sup> byjus, <https://byjus.com/ias-questions/what-is-the-writ-of-prohibition/>, (last visited Mar. 6, 2024).

<sup>9</sup>

<sup>10</sup> S Govind vs Union of India (1967)

<sup>11</sup> Hari Vishnu v. Syed Ahmed Ishaque (1955)

<sup>12</sup> Capital Markets Ltd v. The State of A.P. and others (2000)

<sup>13</sup> Brij Khandelwal VS India AIR (1975)

Thus, a writ of prohibition can be issued when a lower court oversteps its jurisdiction, it can be entertained and issued only during the proceeding of the case and not after the judgment has been delivered. The aim of this writ is to prevent the miscarriage of justice and to uphold the constitutional validity of the law and principles of natural justice, it however cannot be used to perform judicial overreach and give directions to the legislature.

#### 4) Certiorari:

It means 'to be informed'. This writ is issued by a higher court to the lower court or to a tribunal to transfer the case to itself or invalidate the order of the lower court. Till 1991 writ of certiorari was issued only against judicial and quasi-judicial bodies, however, it was later laid down by the Supreme Court that writ of certiorari can be issued against administrative bodies also.<sup>14</sup> Writ of certiorari is issued in two cases a) when the lower court, quasi-judicial, administrative body, or tribunal exceeds its jurisdiction, and (b) when the lower court, quasi-judicial, administrative body, or tribunal makes an error of law.

Though certiorari is similar in nature to prohibition, there are certain fundamental differences between the two-

- i) Prohibition is preventive and certiorari is both preventive and curative
- ii) A writ of prohibition is issued when the case is going on in the court and it cannot be issued once the judgment has been given by the court, whereas a writ of certiorari is issued after the final judgment has been given by the court.
- iii) writ of prohibition is issued to prevent a lower court from overstepping its constitutionally designated jurisdiction, whereas the writ of certiorari is issued when to ensure whether the court has acted within the limits of its jurisdiction.<sup>15</sup> The aim of certiorari is to analyze the constitutionality of the judgment given by the lower court.

The writ of certiorari has evolved over the years through various judgments of the courts in India. **Nagendra Nath Bora and Anr v. The Commissioner of Hills Division and Appeal, Assam and Ors. (1958)**, The Supreme Court held that a writ of certiorari can be issued when a lower tribunal exceeds its jurisdiction, it can also be issued to correct a jurisdiction error, and

<sup>14</sup> byjus, <https://byjus.com/free-ias-prep/types-of-writs-in-india/>, (last visited Mar. 6, 2024).

<sup>15</sup> Pranav Bhaskar, A Comprehensive Guide To Types Of Writs In The Indian Constitution, legalserviceindia, (May. 27, 2024, 7:19 AM), <https://www.legalserviceindia.com/legal/legal/legal/article-12841-a-comprehensive-guide-to-types-of-writs-in-the-indian-constitution.html>

this was laid down in **Central Council for Research in Ayurvedic Sciences and Anr v. Bikartan Das and Ors (2023)**.<sup>16</sup>

#### 5) Quo-warranto:

it means 'by what authority'. It is issued by the court to ask for the legality of the claim of a person holding a public office. This writ can only be issued when the office held by a person is created by the constitution or by a statute and the said office is of a permanent nature, it however cannot be issued if the office is a private office or if it's an office held by a minister. This writ can be issued by any person and not necessarily by an aggrieved person.

In the case of **Amarendra Chandra v. Narendra Kumar Basu (1951)**, the court held that a writ of quo-warranto cannot be issued when the office held by the person is a private office.<sup>17</sup> The public office held by the person should be a substantive public office and this was reiterated by the Supreme Court in **University of Mysore v. CD Govinda Rao (1963)**.<sup>18</sup> The writ of quo-warranto is issued when the appointment is 'contrary to the statutory provisions' and this was reiterated by the Supreme Court in **Rajesh Awasthi v. Nand Lal Jaiswal (2013)**, thus the Supreme Court held that it's important to see if the person possessed the necessary qualifications in accordance with the provisions laid down in the statute.<sup>19</sup> Also, in the case of **Centre for Public Interest Litigation vs. Union of India (2018)** the Supreme Court issued a writ of Quo warranto as the appointment of the director of CBI was not made in accordance with the various rules and regulations laid down.<sup>20</sup> The writ of Quo warranto can also be issued against the judges of the High Court and High Court if there is a lack of independence and impartiality and this was laid down in **Supreme Court Advocates-on-Record Association vs. Union of India (2016)**.<sup>21</sup> Thus, the writ of Quo-warranto can be issued if the office is of a public nature, permanent, and violates the statutory and constitutional provisions of appointment.

---

<sup>16</sup> Nagendra Nath Bora and Anr v. The Commissioner of Hills Division and Appeal, Assam and Ors. (1958), Central Council for Research in Ayurvedic Sciences and Anr v. Bikartan Das and Ors (2023)

<sup>17</sup> Amarendra Chandra v. Narendra Kumar Basu (1951)

<sup>18</sup> University of Mysore v. CD Govinda Rao (1963)

<sup>19</sup> Rajesh Awasthi v. Nand Lal Jaiswal (2013)

<sup>20</sup> Centre for Public Interest Litigation vs. Union of India (2018)

<sup>21</sup> Supreme Court Advocates-on-Record Association vs. Union of India (2016).

**CONCLUSION:**

The writs under Article 32 are the heart and soul of the constitution, the efficiency of these writs has been improved due to the existence of PIL. These writs protect individual freedom and personal liberty and are in sync with other fundamental rights guaranteed by part III of the constitution. However, it is important that each case that is presented to the court under these writs is judged based on individual merits to uphold the sanctity of Article 32 and to protect the essence of freedom, dignity, liberty, and law.

