

JUDICIAL REMEDIES

ARTICLE 32 & 226

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ARTICLE 32

- Article 32 (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**

ARTICLE 226

- (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or **writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them,** for the **enforcement of any of the rights conferred by Part III and for any other purpose**

IMPORTANT POINTS TO REMEMBER

- ARTICLE 32 IS IN ITSELF A FUNDAMENTAL RIGHT.
- REMEDIAL RIGHT NOT A SUBSTANTIVE RIGHT
- DR. AMBEDKAR
 - “ If I was asked to name any particular Article in this Constitution as the important- an article without which this constitution would be a nullity- I could not refer to any other Article except this one. It is the very soul of the constitution and very heart of it.
- Justice Gajendragadkar-
 - “ fundamental right to move this court can, therefore, be appropriately described as the cornerstone of the democratic edifice raised by the Constitution.(P.C.Garg v Excise Commr. AIR 1963 SC 996).
- RIGHT CANNOT BE ABROGATED BY ANY LAW OR A BY CONSTITUTIONAL AMENDMENT

BODHISATTWA GAUTAM VS. SUBHRA CHAKRABORTY MANU/SC/0245/1996
Enforcement of Fundamental Rights against private citizens

- Saiyed Saghir Ahmad, J.
- Fundamental Rights can be enforced even against private bodies and individuals. Even the right to approach the Supreme Court for the enforcement of the Fundamental Rights under Article 32 itself is a Fundamental Right.
- For the exercise of this jurisdiction, it is not necessary that the person who is the victim of violation of his fundamental right should personally approach the Court as the Court can itself take cognizance of the matter and proceed suo motu or on a petition of any public spirited individual.

M.C. Mehta vs. Kamal Nath and Ors.
MANU/SC/0416/2000

Enforcement of Fundamental Rights against private citizens-POLLUTER PAYS PRINCIPLE

- Saiyed Saghir Ahmad, J.
- In the matter of enforcement of rights under Article 21 of the Constitution, this Court, besides enforcing the provisions of the Acts referred to above, has also given effect to Fundamental Rights under Articles 14 and 21 of the Constitution and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance.

FIVE PREROGATIVE WRITS

- Prerogative-a writ especially associated with the King
- Writs- a short written command issued by a person in authority, and sealed by him in proof of its genuineness.
- *habeas corpus*, - *Have the body or produce the body*
- *mandamus*, - *to compel the performance of a public duty*
- *prohibition*, - *to prevent inferior tribunals from going beyond their jurisdiction;*
- *quo warranto*, *what is your authority*- *issued against usurper of public office*
- *certiorari*-*to review orders and convictions of inferior tribunal*
- *Use of the words “In the nature of” – Article 226 & 32*
- *Wider scope of writ jurisdiction vested in the courts*
- *Procedural technicalities associated with English writs not applicable*

Habeas Corpus

- *habeas corpus ad subjiciendum*, to bring up the body of a person imprisoned on a criminal charge or in private detention
- Bulwark or liberty , one of the most popular engines of personal liberty.
- Most cherished writ in the British legal system.
- Writ guaranteed *ex debito justitiae*- granted as a matter of right.
- Against illegal detention. (not is situations of lawful restraint)
- No need to produce the detainee in court- *Karu Sanyal v District Magistrate AIR 1973 SC 2684*
- Expansive scope:
- *Sheela Barsee v Maharashtra AIR 1983 SC 378*
- *Sunil Batra v Delhi Administration AIR 1977 SC 1675*
- *Inder Singh v State of Punjab AIR 1995 SC 312*
- *Post Sangban Ningol Thockchom v General Officer Commanding AIR 1997 SC 3534*

NILABATI BEHERA V STATE OF ORISSA (1993) 2 SCC 746

- court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available.

Writ of quo warranto

- Judicial Control of executive action in making of appointments to Public Offices.
- Appointment of a persons to a public office can be challenged.
- Necessary Ingredients:
 - a) Office in question must be a public office.
 - b) Office has been created by law.
 - c) Person is not legally qualified to hold the said office.
- Rule of Locus Standi- Not strictly applicable.
- University of Mysore v Govind Rao AIR 1965 SC 491.
- Writ calls upon the holder of a public office to show the court under what authority he is holding the office in question. If he is not entitled to that office, the court may restrain him from acting in the office or declare the office to be vacant.

Writ of quo warranto

- P.L.Lakhanpal v A.N.Ray AIR 1975 Del 66
 - a) Quo warranto is a writ of technical nature and its discretionary for the court to grant it to refuse it according to the facts and circumstances.
 - b) Writ would not be issued if it is futile to do so.
 - c) Writ of quo warranto is issued against the usurper of a public office and not the appointing authority.
- **defacto doctrine**- Gokaraju Rangaraju v State of AP AIR 1981 SC 1473
 - a) Acts of officers defacto performed by them within the scope of their assumed official authority, in the interest of public are generally as valid and binding as if they were acts of officers de jure

Writ of Mandamus

- Mandamus: to command.
- Mandamus is a command by the Court ordering performance of a public duty.
- It is directed to any public authority- administrative and local bodies.
- Conditions:
- Legal duty is imposed on the authority in question and it does not perform the same. (Duty may be imposed by a statute, constitution, rule or order)
- The petitioner has a legal right to compel the performance of this duty.
- (Director of Settlements v M.R.Appa Rao
- aggrieved person has (a) a legal right (b) that right has been infringed.
- Existence of the right is the foundation of the jurisdiction of the court to issue a mandamus. (State of Kerala v A.Lakshmikutty AIR 1987 SC 331)
- Demand & Refusal.
- Amritlal v Collector, CEC, Revenue AIR 1975 SC 538.

Writ of Mandamus

- Mandamus cannot be issued to the government to bring a statute into force.
- Mandamus cannot be issued to the legislature to enact a law.
- Apeejay (P) Ltd. V Union of India AIR 1978 Cal 577.
- Union of India v Brij Fertilizers Pvt. Ltd. (1993) 3 SCC 564.
- A discriminatory administrative decision can be quashed by the court by issuing a mandamus.
- Writ of mandamus can be issued against any executive or administrative order which involves the civil consequences, abridges or takes away any right or affects prejudicially the rights of a person even when the foundation of such a right is based on contract.

WRITS OF *certiorari* & *prohibition*

- Issued to prevent excess of power by public authorities.
- Remedies for judicial control of both quasi judicial and administrative bodies affecting the rights of the individual.
- Certiorari is exercise supervisory jurisdiction to inferior bodies.
- Remedy of certiorari available even if the statute declares the decision final.
- Function of certiorari is to quash the decision already made.
- Prohibition is issued when the proceeding before the concerned body is still pending.

WRITS OF CERTIORARI & PROHIBITION

- Udit Narain v Board of Revenue, AIR 1963 SC 786.
- Justice Suba Rao- Certiorari lies to remove for the purpose of quashing the proceedings of inferior courts of record or other persons or bodies exercising judicial or quasi-judicial functions.
- R v Greater London Council (1976) I WLR 550.
- Just as the scope of certiorari has been extended to administrative authorities, so also with prohibition. It is available to prohibit administrative authorities from exceeding their powers, or misusing them. In particular, it can prohibit a licensing authority from making rules or granting licenses which permit conduct that is contrary to law.
- Two writs can be simultaneously issued- e.g. mandamus and certiorari.
- Certiorarified mandamus
- Application for Judicial Review

WRITS OF CERTIORARI & PROHIBITION

- Ground
 - a) Jurisdictional Error- When the concerned body proceeds to act without or excess of jurisdiction or fails to exercise jurisdiction vested in it.
 - b) Patent Error of Law- Error of law apparent on the face of the record (Basappa v Nagappa AIR 1954 SC 440, “a decision of an authority can always be quashed through certiorari if there is a manifest error of law apparent on the face of the record”.)
 - c) Failure of principles of natural justice.
- Writ of certiorari and prohibition can be issued to any body which makes a decision affecting the rights and interests of any person irrespective of the nature of the function discharged by it whether administrative or quasi-judicial bodies.

