

## WRITS - PROVISIONS IN INDIAN CONSTITUTION

### Article 32 and 226

Writ jurisdiction is exercised by the Supreme Court and the High Courts' only. This power is conferred to Supreme Court by article 32 and to high courts by article 226.

- Article 32(1) guarantee a person the right to move the Supreme Court for the enforcement of fundamental rights guaranteed by part III of the constitution.
- Article 32(2) empowers the Supreme Court to issue direction or orders or writs in the nature of Habeas Corpus, Certiorari, Prohibition, mandamus and Quo-warranto for the enforcement of fundamental rights.
- Article 226 empowers the state high courts to issue directions, orders or writs as mentioned above for the **enforcement of fundamental rights** and for 'any other purpose'. i.e., High courts can exercise the power of writs not only for the enforcement of fundamental rights but also for a 'non fundamental right'.

### Principles of Exercise of Writ Jurisdiction.

The writ jurisdictions exercised by the Supreme Court under article 32 and by the high courts under article 226, for the enforcement of fundamental rights are mandatory and not discretionary. But the writ jurisdiction of high courts for 'any other purpose' is discretionary. In that sense the writ jurisdiction of high courts are of a very intrinsic nature. Hence high courts have the great responsibility of exercising this jurisdiction strictly in accordance with judicial considerations and well established principles

Writs are meant as prerogative remedies. The five writs incorporated under articles 32 and 226 are known as prerogative writs in English law because they were originated in the king's prerogative power of superintendence over the due observance of law by his officers and tribunals. Such prerogative writs are extraordinary remedies. When ordinary legal remedies seem inadequate, in exceptional cases, writs are applied.

### Types of Writs

There are five types of Writs - Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo warranto.

#### 1. Habeas Corpus (बन्दी प्रत्यक्षीकरण)

"Habeas Corpus" is a Latin term which literally means "**you may have the body.**" The writ is issued to produce a person who has been detained, whether in prison or in private custody, before a court and to release him if such detention is found illegal.

यह रिट उस अधिकारी के विरुद्ध दायर किया जाता है जो किसी व्यक्ति को बन्दी बनाकर रखता है. इस रिट को जारी करके कैद करने वाले अधिकारी को यह निर्देश दिया जाता है कि वह गिरफ्तार व्यक्ति को न्यायालय में पेश करे. इस

रिट का उद्देश्य मूल अधिकार में दिए गए "दैहिक स्वतंत्रता के संरक्षण के अधिकार" का अनुपालन करना है। यह रिट अवैध बंदीकरण के विरुद्ध प्रभावी कानूनी राहत प्रदान करता है।

## 2. Mandamus (परमादेश)

Mandamus is a Latin word, which means "**We Command**". Mandamus is an order from the Supreme Court or High Court to a lower court or tribunal or public authority to perform a public or statutory duty. This writ of command is issued by the Supreme Court or High court when any government, court, corporation or any public authority has to do a public duty but fails to do so. यह रिट न्यायालय द्वारा उस समय जारी किया जाता है जब कोई लोक अधिकारी अपने कर्तव्यों के निर्वहण से इनकार करे और जिसके लिए कोई अन्य विधिक उपचार (कोई कानूनी रास्ता न हो) प्राप्त न हो। इस रिट के द्वारा किसी लोक पद के अधिकारी के अतिरिक्त अधीनस्थ न्यायालय अथवा निगम के अधिकारी को भी यह आदेश दिया जा सकता है कि वह उसे सौंपे गए कर्तव्य का पालन सुनिश्चित करे।

## 3. Certiorari (उत्प्रेषण-लेख)

Literally, Certiorari means **to be certified**. 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, tribunal or quasi judicial authority.

यह रिट भी अधीनस्थ न्यायालयों के विरुद्ध जारी किया जाता है। इस रिट को जारी करके अधीनस्थ न्यायालयों को यह निर्देश दिया जाता है कि वे अपने पास संचित मुकदमे के निर्णय लेने के लिए उस मुकदमे को वरिष्ठ न्यायालय अथवा उच्चतर न्यायालय को भेजें। उत्प्रेषण लेख का मतलब उच्चतर न्यायालय द्वारा अधीनस्थ न्यायालय में चल रहे किसी मुकदमे के प्रलेख की समीक्षा मात्र है, इसका तात्पर्य यह नहीं है कि उच्चतर न्यायालय अधीनस्थ न्यायालय के निर्णय के विरुद्ध ही हो।

**There are several conditions necessary for the issue of writ of certiorari.**

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

## 4. Prohibition (निषेधाज्ञा)

The Writ of prohibition means to forbid or to stop and it is popularly known as '**Stay Order**'. This writ is issued when a lower court or a body tries to transgress the limits or powers vested in it. The writ of prohibition is issued by any High Court or the Supreme Court to any inferior court, or quasi judicial body prohibiting the latter from continuing the proceedings in a particular case, where it has no jurisdiction to try. After the issue of this writ, proceedings in the lower court etc. come to a stop.

यह रिट किसी उच्चतर न्यायालय द्वारा अधीनस्थ न्यायालयों के विरुद्ध जारी की जाती है। इस रिट को जारी करके अधीनस्थ न्यायालयों को अपनी अधिकारिता के बाहर कार्य करने से रोका जाता है। इस रिट के द्वारा अधीनस्थ न्यायालय को किसी मामले में तुरंत कार्रवाई करने तथा की गई कार्रवाई की सूचना उपलब्ध कराने का आदेश दिया जाता है।

## 5. Quo-Warranto (अधिकार पृच्छा)

## SHREE SHIV OM AGARWAL ADVOCATE MEMORIAL TRUST, MORADABAD

The word Quo-Warranto literally means "by what warrants?" or "what is your authority"? It is a writ issued with a view to restrain a person from holding a public office to which he is not entitled. The writ requires the concerned person to explain to the Court by what authority he holds the office. If a person has usurped a public office, the Court may direct him not to carry out any activities in the office or may announce the office to be vacant. Thus High Court may issue a writ of quo-warranto if a person holds an office beyond his retirement age.

इस रिट को उस व्यक्ति के विरुद्ध जारी किया जाता है जो किसी ऐसे लोक पद को धारण करता है जिसे धारण करने का अधिकार उसे प्राप्त नहीं है. इस रिट द्वारा न्यायालय लोकपद पर किसी व्यक्ति के दावे की वैधता की जाँच करता है. यदि उसका दावा निराधार है तो वह उसे पद से निष्कासन कर देता है. इस रिट के माध्यम से किसी लोक पदधारी को अपने अधिकार क्षेत्र से बाहर जाकर आदेश देने से रोका जाता है.

### Conditions for issue of Quo-Warranto

1. The office must be public and it must be created by a statute or by the constitution itself.
2. The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another.
3. There must have been a contravention of the constitution or a statute or statutory instrument, in appointing such person to that office.

### Writs in Brief

| Type of Writ  | Meaning of the word     | Purpose of issue  |
|---------------|-------------------------|---|
| Habeas Corpus | You may have the body   | To release a person who has been detained unlawfully whether in prison or in private custody.                           |
| Mandamus      | We Command              | To secure the performance of public duties by lower court, tribunal or public authority.                                |
| Certiorari    | To be certified         | To quash the order already passed by an inferior court, tribunal or quasi judicial authority.                           |
| Prohibition   | -                       | To prohibit an inferior court from continuing the proceedings in a particular case where it has no jurisdiction to try. |
| Quo Warranto  | What is your authority? | To restrain a person from holding a public office which he is not entitled.   |