



## Analysis Article 32 of the constitution of India

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**Abstract:** Writs are prerogative remedies. Article 32 is itself a Fundamental Right and the Supreme Court's jurisdiction under article 32 is mandatory by nature and not discretionary. The writ jurisdiction of High Courts are discretionary and intrinsic for other purposes. The Scope of Article 32 in comparison to Article 226 is limited. The Supreme Court can't be approached for any other legal right other than fundamental rights. An important feature of Article 32 is that it is not found alongside other articles that define the Supreme Court's General Jurisdiction (Article 124-147). A palpable question arises, can writs be maintainable against a party that ceases to act as a private entity and takes up roles of public nature? In the case of the Board of Control For Cricket vs Cricket Association Of Bihar, the Supreme Court examined the nature of public duties and functions, opening that BCCI as an organization performed "clearly public functions" as the nature of functions and duties undertaken were inherently public. [Ravi. **Analysis Article 32 of the constitution of India**. *Researcher* 2023;15(4):10-17]. ISSN 1553-9865 (print); ISSN 2163-8950 (online). <http://www.sciencepub.net/researcher>. 03.doi:[10.7537/marsrsj150423.03](https://doi.org/10.7537/marsrsj150423.03).

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### Introduction:

One of the defining principles of Common Law is "Ubi Jus, Ibi Remedium". This maxim means "where there is a right, there is a remedy". The right to a remedy has been acknowledged as a fundamental right in all legal systems historically. Under Article 32 of the Indian constitution, every citizen of India has been given the right to seek constitutional remedy from the Supreme Court if they have been deprived of their fundamental rights. The Supreme Court is responsible for the administration of justice and also acts as the guardian of the constitution and the protector of fundamental rights. It would be meaningless to grant fundamental rights but not provide remedies for the enforcement of the rights if they are violated. This article discusses various aspects of Article 32, including historical and philosophical grounds, as well as the latest developments.

As said by Dr. B.R. Ambedkar that without this article the Constitution would be a nullity, saying it is the soul and the heart of the constitution. When article 32 was introduced, there was a debate in the Constituent Assembly which is at present known as NITI Aayog, whether article 32 can be suspended or limited during the period of emergency, and then it was decided that the article cannot be suspended except during the period of emergency. Thus, this article is the protector of the rights of the citizens of

India and is regarded as the heart and soul of the constitution.[1]

The constitutional remedies under Article 32 provided to the citizens are eloquent orders with immediate effects along with the results. That is the reason why it has always been considered as the powerful fundamental right embedded in the Indian Constitution. After all the study, it is clearly understandable that the Constitution of India is not rigid as on various cases it keeps on challenging the basis structure and the integral part of the Constitution. The Writs that are conferred by the Constitution have both prerogative powers and are discretionary in nature. Article 32 along with the parliament, entrusts the other courts to exercise the power of Supreme Court as it can be considered both the guarantor and protector enforced by the Judiciary of India where no citizen will be left unheard and deprived of his rights being the citizens of a democratic country.

### Historical background

The Indian Constitution in Part III (Article 12 to 35) contains the Fundamental Rights. It is the charter of freedom of the citizens of India. It is what the Magna Carta was; it contains the essential freedoms of the people of India. Article 32 is a constitutional safeguard for these rights. Dr B.R Ambedkar had referred to it as "the very soul of the Constitution and the very heart of it" during the Constituent Assembly debates.

H. M Seervai, the learned senior advocate and jurist in his works H.M. Seervai's Constitutional law of India, noted that "it is not surprising that the Constituent Assembly found in these writs the most effective means of enforcing a fundamental right.". Seervai further noted that – as long as these rights are not amended, the powers conferred by them cannot be taken away, any such law would be void under Article. 13.

### Concept and Purpose

Article 32 of the Indian Constitution gives the right to individuals to move to the Supreme Court to seek justice when they feel that their right has been 'unduly deprived'. The apex court is given the authority to issue directions or orders for the execution of any of the rights bestowed by the constitution as it is considered 'the protector and guarantor of Fundamental Rights'.

Under Article 32, the parliament can also entrust any other court to exercise the power of the Supreme Court, provided that it is within its Jurisdiction. And unless there is some Constitutional amendment, the rights guaranteed by this Article cannot be suspended. Therefore, we can say that an

assured right is guaranteed to individuals for enforcement of fundamental rights by this article as the law provides the right to an individual to directly approach the Supreme Court without following a lengthier process of moving to the lower courts first as the main purpose of Writ Jurisdiction under Article 32 is the enforcement of Fundamental Rights.

### Dr Ambedkar stated that:

"If I was asked to name any particular article in this Constitution as the most 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 the very heart of it and I am glad that the House has realized its importance."

To know more about right to constitutional remedies in brief, please refer to the video below:

### Nature of Writ Jurisdiction

The nature of Writ Jurisdiction provided under this Article is discretionary. There are five important factors for guiding this discretion.

| Factors Guiding the Discretion | Meaning   |
|--------------------------------|---|
| 1. Locus Standi                | Right to bring an action or to be heard before a court.   |
| 2. Alternative Relief          | Remedies sought in a lawsuit in various or alternative forms.   |
| 3. Res Judicata                | A case that has been decided.   |
| 4. Questions of the Fact       | An issue that involves resolution of a factual dispute or controversy.  |
| 5. Laches                      | A defence to an equitable action, that bars recovery by the plaintiff because of the plaintiff's undue delay in seeking relief. |

### Types of Writs

There are five types of Writs as provided under Article 32 of the Constitution:

#### 1. Habeas Corpus

##### • Meaning

It is one of the important writs for personal liberty which says "You have the Body". The main purpose of this writ is to seek relief from the unlawful detention of an individual. It is for the protection of the individual from being harmed by the administrative system and it is for safeguarding the freedom of the individual against arbitrary state action which violates

Fundamental Rights under Articles 19, 21 & 22 of the Constitution. This writ provides immediate relief in case of unlawful detention.

##### • When Issued?

Writ of Habeas Corpus is issued if an individual is kept in jail or under a private care without any authority of law. A criminal who is convicted has the right to seek the assistance of the court by filing an application for "writ of Habeas Corpus" if he believes that he has been wrongfully imprisoned and the conditions in which he has been held falls below minimum legal standards for human treatment. The court issues an order against prison warden who is holding an individual in custody

in order to deliver that prisoner to the court so that a judge can decide whether or not the prisoner is lawfully imprisoned and if not then whether he should be released from custody.

• Important judgments on Habeas Corpus

The first Habeas Corpus case of India was that in Kerala where it was filed by the victims' father as the victim P. Rajan who was a college student was arrested by the Kerala police and being unable to bear the torture he died in police custody. So, his father Mr T.V. Eachara Warriar filed a writ of Habeas Corpus and it was proved that he died in police custody.

Then, in the case of *ADM Jabalpur v. Shivakant Shukla* [1] which is also known as the Habeas Corpus case, it was held that the writ of Habeas Corpus cannot be suspended even during an emergency (Article 359). While deciding whether Habeas Corpus writs are civil or criminal in nature, it was held in *Narayan v. Ishwarlal* [2] that the court would rely on the way of the procedures in which the locale has been executed. This writ has been extended to non-state authorities as well which is evident from two cases. One from the *Queen Bench's case of 1898 of Ex Parte Daisy Hopkins* in which the proctor of Cambridge University detained and arrested Hopkins without his jurisdiction and Hopkins was released. And in the case of *Somerset v. Stewart* wherein an African Slave whose master had moved to London was freed by the action of the Writ.

• Circumstances when the writ of Habeas Corpus cannot be issued:

1. The detention is lawful.
2. The case is being prosecuted for failure to comply with a legislative or judicial mandate.
3. A competent court authorized the detention.
4. The jurisdiction of the court on detention is ultra vires.

## 2. Quo Warranto

• What does the writ of Quo Warranto mean?

Writ of Quo Warranto implies thereby "By what means". This writ is invoked in cases of public offices and it is issued to restrain persons from acting in public office to which he is not entitled to. Although the term 'office' here is different from 'seat' in legislature but still a writ of Quo Warranto can lie with respect to the post of Chief Minister holding an office whereas a writ of quo warranto cannot be issued against a Chief Minister, if the petitioner fails to show that the minister is not properly appointed or that he is not

qualified by law to hold the office. It cannot be issued against an Administrator who is appointed by the government to manage Municipal Corporation, after its dissolution. Appointment to public office can be challenged by any person irrespective of the fact whether his fundamental or any legal right has been infringed or not.

• The court issues the Writ of Quo Warranto in the following cases:

1. When the public office is in question and it is of a substantive nature. A petition against a private corporation cannot be filed.
2. The office is created by the State or the Constitution.
3. The claim should be asserted on the office by the public servant i.e. respondent.

• Important Case Laws

In the case of *Ashok Pandey v. Mayawati* [3], the writ of Quo Warranto was refused against Ms Mayawati (CM) and other ministers of her cabinet even though they were Rajya Sabha members.

Then in the case of *G.D. Karkare v. T.L. Shevde* [4], the High Court of Nagpur observed that "In proceedings for a writ of quo warranto, the applicant does not seek to enforce any right of his as such nor does he complain of any non-performance of duty towards him. What is in question is the right of the non-applicant to hold the office and an order that is passed is an order ousting him from that office."

The Writ of quo warranto was denied by the court in the case of *Jamalpur Arya Samaj v. Dr D. Ram* [5]. The writ was denied on the ground that writ of quo warranto cannot lie against an office of a private nature. And also it is necessary that office must be of substantive character. Whereas in the case of *R.V. Speyer* [6] the word 'substantive' was interpreted to mean an 'office independent to the title'. Also in *H.S. Verma v. T.N. Singh* [7], the writ was refused as the appointment of a non-member of the state legislature as C.M. was found valid in view of Article 164(4) which allows such appointment for six months.

• Circumstances when the writ of Quo Warranto cannot be issued

1. The writ of Quo Warranto cannot be issued for any private organization or person.
2. The writ of Quo Warranto cannot be issued for any body or an organisation that does not fall under the definition of "State" as defined under Article 12.
3. Absence of alternative remedy cannot be a ground for issuing a writ of Quo Warranto.

In the case of *Bharati Reddy v. The State Of Karnataka* (2018), the Hon'ble Supreme Court held

that a writ of quo warranto cannot be issued based on assumptions, inferences, or speculations concerning the fact of accomplishment of qualifying conditions. There must be an establishment of the fact that a public officer is abusing lawful powers not vested to him within the public authority.

### 3. Mandamus

#### •Writ of Mandamus

Writ of Mandamus means “We Command” in Latin. This writ is issued for the correct performance of mandatory and purely ministerial duties and is issued by a superior court to a lower court or government officer. However, this writ cannot be issued against the President and the Governor. Its main purpose is to ensure that the powers or duties are not misused by the administration or the executive and are fulfilled duly. Also, it safeguards the public from the misuse of authority by administrative bodies. The *mandamus* is “neither a writ of course nor a writ of right but that it will be granted if the duty is in nature of public duty and it especially affects the right of an individual, provided there is no more appropriate remedy” [8]. The person applying for mandamus must be sure that he has the legal right to compel the opponent to do or refrain from doing something.

#### •Conditions for issue of Mandamus

1. There must rest a legal right of the applicant for the performance of the legal duty.
2. The nature of the duty must be public.
3. On the date of the petition, the right which is sought to be enforced must be subsisting.
4. The writ of Mandamus is not issued for anticipatory injury.

#### •Limitations

The courts are unwilling to issue the writ of mandamus against high dignitaries like the President and the Governors. In the case of *S.P. Gupta v. Union of India* [9], judges were of the view that a writ cannot be issued against the President of India for fixing the number of judges in High Courts and filling vacancies. But in *Advocates on Records Association v. Gujarat* [10], the Supreme Court ruled that the judges’ issue is a justiciable issue and appropriate measures can be taken for that purpose including the issuance of mandamus. But in *C.G. Govindan v. State of Gujarat* [11], it was refused by the court to issue the writ of mandamus against the governor to approve the fixation of salaries of the court staff by the Chief Justice of High Court under Article 229. Hence, it is submitted that the Governor or the President means the

state or the Union and therefore issuance of mandamus cannot take place.

#### •Important Judgements

In *Rashid Ahmad v. Municipal Board* [12], it was held that in relation to Fundamental Rights the availability of alternative remedy cannot be an absolute bar for the issue of writ though the fact may be taken into consideration.

Then, in the case of *Manjula Manjori v. Director of Public Instruction*, the publisher of a book had applied for the writ of mandamus against the Director of Public Instruction for the inclusion of his book in the list of books which were approved as text-books in schools. But the writ was not allowed as the matter was completely within the discretion of D.I.P and he was not bound to approve the book.

In the case of *Binny Ltd. & Anr v. V. Sadasivan & Ors* (2005), the Hon’ble Supreme Court laid down the scope of mandamus. It stated that a writ of mandamus is not applicable against any private wrong. It can be issued only when any public authority exercises its duty unlawfully or refuses to perform its duty within the ambit of the law.

In the case of *Ramakrishna Mission v. Kago Kunya* (2019), The Supreme Court ruled that where a contract is of private nature or has no connection with any public authority, it does not fall within the purview of the writ of mandamus.

In the *Hari Krishna Mandir Trust v. State Of Maharashtra* (2020), the Hon’ble Supreme Court held that the High Courts are obligated by law to issue Writs of Mandamus in order to enforce a public duty.

### 4. Certiorari

#### •What does Writ of Certiorari mean?

Writ of Certiorari means to be certified. It is issued when there is a wrongful exercise of the jurisdiction and the decision of the case is based on it. The writ can be moved to higher courts like the High Court or the Supreme Court by the affected parties.

There are several grounds for the issue of Writ of Certiorari. Certiorari is not issued against purely administrative or ministerial orders and that it can only be issued against judicial or quasi-judicial orders.

#### •When is a writ of Certiorari issued?

It is issued to quasi-judicial or subordinate courts if they act in the following ways:

1. Either without any jurisdiction or in excess.
2. In violation of the principles of Natural Justice.
3. In opposition to the procedure established by law.
4. If there is an error in judgement on the face of it.

Writ of certiorari is issued after the passing of the order.

• Important Judgements on writ of Certiorari

In *Surya Dev Rai v. Ram Chander Rai & Ors.*, the Supreme Court has explained the meaning, ambit and scope of the writ of Certiorari. Also, in this it was explained that Certiorari is always available against inferior courts and not against equal or higher court, i.e., it cannot be issued by a High Court against any High Court or benches much less to the Supreme Court and any of its benches. Then in the case of *T.C. Basappa v. T. Nagappa & Anr.* [13], it was held by the constitution bench that certiorari maybe and is generally granted when a court has acted (i) without jurisdiction or (ii) in excess of its jurisdiction. In *Hari Bishnu Kamath v. Ahmad Ishaque* [14], the Supreme Court said that “the court issuing certiorari to quash, however, could not substitute its own decision on the merits or give directions to be complied with by the court or tribunal. Its work was destructive, it simply wiped out the order passed without jurisdiction, and left the matter there.” In *Naresh S. Mirajkar v. State of Maharashtra* [15], it was said that High Court’s judicial orders are open to being corrected by certiorari and that writ is not available against the High Court.

• Circumstances when the writ of Certiorari cannot be issued:

The writ of certiorari cannot be issued against:

1. An individual
2. A company
3. Any private authority
4. An association
5. To amend an Act or Ordinance
6. An aggrieved party who has an alternative remedy

In the case of *General Manager, Electrical Rengali Hydro Electric Project, Orissa and Others v. Giridhari Sahu and Ors.* (2019), the Hon’ble Supreme Court laid down the factors determining the validity of the writ of certiorari.

## 5. Prohibition

• What does Writ of Prohibition mean?

It is a writ directing a lower court to stop doing something which the law prohibits it from doing. Its main purpose is to prevent an inferior court from exceeding its jurisdiction or from acting contrary to the rules of Natural Justice.

• When is the writ of Prohibition issued?

It is issued to a lower or a subordinate court by the superior courts in order to refrain it from doing something which it is not supposed to do as per law. It is usually issued when the lower courts act in excess of their jurisdiction. Also, it can be issued if the court acts outside its jurisdiction. And after the writ is

issued, the lower court is bound to stop its proceedings and should be issued before the lower court passes an order. Prohibition is a writ of preventive nature. The principle of this is ‘Prevention is better than cure’.

• Important Case Laws

In case of *East India Commercial Co. Ltd v. Collector of Customs* [16], a writ of prohibition was passed directing an inferior Tribunal prohibiting it from continuing with the proceeding on the ground that the proceeding is without or in excess of jurisdiction or in contradiction with the laws of the land, statutes or otherwise. Then in the case of *Bengal Immunity Co. Ltd* [17], the Supreme Court pointed out that where an inferior tribunal is shown to have seized jurisdiction which does not belong to it then that consideration is irrelevant and the writ of Prohibition has to be issued as a right.

• Circumstances when the writ of Prohibition cannot be issued:

1. A writ of prohibition cannot be issued when a subordinate or a tribunal court is acting within the ambit of its jurisdiction.
2. A writ of prohibition cannot be issued in the situation of a mistake of a fact or law.
3. A writ of prohibition is not allowed for administrative authorities discharging administrative, executive or ministerial functions.

When can the Supreme Court dismiss a writ petition under Article 32 of Indian Constitution

Under Article 32, the Supreme Court can dismiss a writ petition in the following circumstances:

Non-filing of the writ in compliance with the court hierarchy

If a person files a writ petition in the Apex Court and the court dismisses his writ, the individual cannot file the writ petition again in another Court. But if a person files a writ petition in the high court and the court refuses his petition, he has the right to appeal against the decision of the Supreme Court under the principle of Natural Justice.

Principle of res judicata

*Res Judicata* is defined under Section 11 of the Civil Procedure Code, 1908. It is the Latin phrase for “a matter decided.” It means that a subsequent suit cannot be filed on the same cause of action and the same dispute by the parties to the suit. The principle of Res Judicata is based on three maxims:

1. *Nemo debet lis vaxari pro eadem causa* (no man should be vexed twice for the same cause)
2. *Interest publicae ut sit finis litium* (it is in the interest of the state that there should be an end to litigation)

3. *Res judicata pro veritate occipitur* (a judicial decision must be accepted as correct)

In the case of *Daryao And Others vs The State Of U.P. And Others* (1961), the Supreme Court ruled that the principle of *res judicata* will be applicable and even though article 32 is a fundamental right, any legal provision that overrides any fundamental right or any provision under law shall be found unconstitutional. Habeas Corpus is an exception to the principle of *Res Judicata* as held in the case of *Ghulam Sarwar v. Union of India* (1966)

Misrepresentation of facts

If the petitioner is found to have committed a substantial misrepresentation of key facts, the Supreme Court may dismiss the petition at any stage.

In the case of *Shri K. Jayaram & Others v. Bangalore Development Authority & Others* (2021), the Supreme Court held that the concealment of key information is a misuse of the legal process, depriving the appellant from the exceptional, equitable, and discretionary relief from Writ Courts.

Availability of alternative remedy

If the petitioner has another remedy, he must seek it rather than filing a writ petition. In the case of *State of U.P. & Anr v. U.P. Rajya Khanij Vikas Nigam S.S and Ors* (2008), The Hon'ble Supreme Court ruled that the petitioners must seek a suitable alternative remedy before filing a writ case.

Inordinate delay

In the case of *D. Gopinathan Pillai v. State Of Kerala & Anr* (2007), the Hon'ble Supreme Court held that inordinate delays cannot be accepted unless they are justified with reasonable, satisfactory, adequate, and suitable reason.

Malicious petition

If the petition submitted to the Supreme Court is found to be malicious or futile, the Supreme Court may dismiss it under Article 32.

The Hon'ble Supreme Court rejected the writ petition in *Shoukat Hussain Guru vs State (Nct) Delhi & Anr* (2008) because it lacked any rational grounds for it to be issued.

Against whom a writ can be issued

Part III of the Indian Constitution deals with fundamental rights. Article 32 is a fundamental right in itself. Violation of fundamental rights can be relieved by the filing of a writ petition under Article 32 to the Supreme Court or under Article 226 to the High Court. Writs are public law remedies. The rights granted to citizens through fundamental rights as outlined in Part III of the Constitution are a safeguard against state misconduct. Article 12 defines the word "State," which includes the following:

1. The Government and Parliament of India, i.e. the Union's Executive and Legislature.
2. Each state's government and legislature, i.e., the executive and legislative branches of government.
3. All local or other authorities in Indian territory.
4. All local and other authorities controlled by the Government of India.

In the case of *Ajay Hasia v. Khalid Mujib* (1981), under Article 12, the term "*local authority*" refers to a unit of local self-government such as a municipal committee or a village panchayat.

In the case of *Kishor Madhukar Pinglikar vs Automotive Research Association* (2022), the Hon'ble Supreme Court held that the presence of some aspect of public duty or function does not automatically constitute a body as a "state" under Article 12.

Suspension of fundamental rights

The six Fundamental Rights outlined in Article 19 are immediately suspended when a declaration of national emergency is made, in accordance with Article 358. The 44th Amendment Act of 1978 included two restrictions on the application of Article 358, namely:

1. When the national emergency is proclaimed owing to war or foreign invasion, rather than an armed rebellion and the six fundamental rights outlined in Article 19 be suspended.
2. At the times of emergency, Article 32 will be suspended.

The fundamental rights are merely suspended in their enforcement under Article 359, not their totality. During the emergency, the rights outlined in Articles 20 and 21 cannot be suspended.

Recent developments under Article 32 of Indian Constitution

The Supreme Court ruled in *Shashidhar M. v. Poornima C* (2019) that writ petitions for recalling directives in Special Leave Petition (SLP) are not maintainable.

In the case of *Skill Lotto Solutions Pvt Ltd. v. Union Of India* (2020), the Hon'ble Supreme Court held that "*Article 32 is an important and integral part of the basic structure of the Constitution. Article 32 is meant to ensure observance of rule of law. Article 32 provides for the enforcement of fundamental rights, which is the most potent weapon.*"

In the case of *Mohammad Moin Faridullah Qureshi v. The State Of Maharashtra* (2020), the Hon'ble Supreme Court held that when a judgement is declared final under Article 32, it cannot be disputed.

In the case of *Gayatri Prasad Prajapati v. State of Uttar Pradesh and Others* (2022), the Hon'ble

Supreme Court held that writ petitions cannot be filed for quashing a criminal proceeding or a First Information Report (FIR).

In the case of *Sharad Zaveri vs Union Of India* (2022), the Hon'ble Supreme Court ruled that not all conflicts involving places of worship may be taken before the Supreme Court under Article 32.

In the case of *Dharmraj Singh vs The State Of Bihar* (2022), the Hon'ble Supreme Court warned against submitting petitions pertaining to Section 482 of the Criminal Procedure Code, 1973 under the guise of Article 32.

Key differences between Article 32 and Article 226 : a tabular representation

| Article 32   | Article 226  |
|--|--|
| 1. Article 32 is a fundamental right in itself. The Supreme Court cannot refuse to consider any petition under Article 32. | 1. Article 226 has discretionary powers to High Court within judicial principles to consider any petition. |
| 2. Under Article 32, writ petitions are issued to enforce fundamental rights.  | 2. Under Article 226, writ petitions can be issued to enforce fundamental rights or for any other purpose. |
| 3. During the time of emergency, Article 32 is suspended.  | 3. During the time of emergency, Article 226 cannot be suspended.  |
| 4. Orders passed under Article 32 will supplant orders passed under Article 226.   | 4. The orders passed under Article 226 cannot supplant orders under Article 32.                            |
| 5. Article 32 has territorial jurisdiction over the entire country of India.   | 5. Article 226 has limited territorial jurisdiction.   |

Status of writs in other countries

United States

Writs are a residue of the English common law system in the United States. All Writs Act, a United States federal legislation that was first codified in the Judiciary Act of 1789 extends subject matter jurisdiction to U.S. federal courts as long as their issuance is necessary or appropriate in aid of the court's respective jurisdictions and agreeable to the usages and principles of law. In the modern era, the All Writs Act is applied when a legislative scheme is incomplete or ambiguous, *casus omissus*. Prerogative writs also called extraordinary writs or extraordinary remedies are issued by a judge exercising uncommon or discretionary power. The writs of habeas corpus, certiorari, mandamus, quo warranto, and procedendo are forms of prerogative writs. There are several further types of writs, including writs of execution and body attachment. Writs, however, are no longer vital in criminal cases because there are other ways to get the same relief under the Federal Rules of Appellate Procedure. The Federal Rules of Civil Procedure have also abolished a number of writs, including the writ of error, in civil matters.

England and Wales

The writs are issued on behalf of the applicant in the name of the Crown, who is the nominal plaintiff. Besides from habeas corpus, prerogative writs are discretionary remedies that have been recognised in England and Wales since 1938. The amended Civil Procedure Rules of 1998 abolished the writs of quo warranto and procedendo and renamed the certiorari as quashing orders, mandamus as mandatory orders, and prohibition as prohibiting orders.

Conclusion

The constitutional remedies provided to the citizens are the powerful orders with immediate effect. And the writs are mostly invoked against the state and are issued when PILs are filed. The Writ Jurisdictions which are conferred by the Constitution though have prerogative powers and are discretionary in nature and yet they are unbounded in its limits. The discretion, however, is exercised on legal principles. Therefore, the first essential on which the constitutional system is based in the absence of arbitrary power. Hence, the decision must be taken on the basis of sound principles and rules and should not be based on whims, fancies

or humour. And if a decision is not backed by any principles or rules, then such a decision is considered arbitrary and is taken not in accordance with the rule of law.

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