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NAAC ACCREDITED 'A' GRADE



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RIGHT TO CONSTITUTIONAL REMEDIES (ARTICLE 32)

Part III of the Constitution has not only given Fundamental Rights, but has also provided for adequate remedial measures in case someone is denied his Fundamental Rights or if his Fundamental Rights are violated. Article 32 of the Constitution embodies these remedial measures. Obviously, Article 32 is the most important of the Fundamental Rights. Abstract declarations of such rights in the Constitution are useless unless there is the means to make them effective. Dr. Ambedkar underscored the supreme importance of this Article by saying that "it is the very soul of the Constitution, and the very heart of it."

Article 32 provides for the following:

- 1) Article 32 (1) lays down that for the enforcement of the Fundamental Rights conferred by Part III of the Constitution, the right to move the Supreme Court is guaranteed.
- 2) According to Article 32 (2), in order to enforce any of the rights conferred in Part III, the Supreme Court is empowered to issue directions or orders or writs like *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*.
- 3) As per Article 32 (3), without affecting the power given to the Supreme Court by Articles 32 (1) and 32 (2), Parliament may by law give all or any of the powers exercisable by the Supreme Court under Article 32 (2) to any other Court.
- 4) According to Article 32 (4), the right guaranteed by Article 32 cannot be suspended except in instances as specified by the Constitution.

These instances as cited by the Constitution are the following:

- a. When Emergency is proclaimed under Article 352, the Fundamental Right to freedom, as given by Article 19, shall be automatically suspended.
- b. During this proclamation of Emergency, the President may suspend the enforceability of Fundamental Rights, as ensured by Article 32. However, this suspension shall not apply to Fundamental Rights given by Article 20 and 21.

Constitutional experience in all countries shows that the reality of the existence of Fundamental Rights is tested only in the courts. The power of the courts to enforce obedience to Fundamental Rights depends not only upon the impartiality and independence of the judiciary but also upon the effectiveness of the instruments available to it to compel such obedience against the executive or any other authority. In India, the Constitution has made provisions so that the Fundamental Rights are guaranteed not only against the action of the Executive but also against the actions of the Legislature. Any act of the Executive or Legislature which takes away any of these rights shall be void and the Courts are empowered to declare it as such. Again, the judiciary has been armed with the power to issue the various writs as mentioned above, in order that it may enforce such rights against any authority at the instance of an individual whose right has been violated. The power

to issue these writs for the enforcement of Fundamental Rights is given to the Supreme Court (Article 32) and High Courts (Article 226).

Writs:

- a. Habeas Corpus: The literal meaning of habeas corpus is 'to have the body.' If any detained person petitions for this writ, the Court may direct him who has detained to present the detained person personally before the Court. If the Court then, after considering the matter, is of the opinion that the detention is not according to law, it gives order for the release of the detained person. It may be added that habeas corpus is applicable not only against the state and public organization but also against private individuals.
- b. Mandamus: Mandamus literally means 'We order'. By this writ, the Court may compel the government or a public organization or a person connected with public interest to perform according to law duty related to public interest.
- c. Prohibition: By applying this writ, the higher court may prohibit the subordinate court to continue judicial proceedings in a matter which is beyond the jurisdiction of the latter or may take away from it to itself the legal jurisdiction which is beyond the powers of the subordinate court.
- d. Quo Warranto: The literal meaning of quo warranto is 'with what right'. Whenever a person claims that some other person has no legal claim to an office or a right then the court, by granting this writ, adjudged the validity of this claim. If this claim is declared valid by the Court in its judgment, the Court is entitles to remove that person from his office or deprive him of the right held by him.
- e. Certiorari: The literal meaning of certiorari is 'to be particularly informed.' If a subordinate court or an organization with judicial powers, gives a judgment after continuing judicial proceedings beyond its jurisdiction, then the superior court by applying this writ, may annul the judgment and give directions that the case be sent to it for fresh hearing.

It may be noted that under Article 32, the Supreme Court enjoys very wide powers in the matter of issuing writs to meet the requirements of any case. However, the Court's power does not include only the authority to issue writs. It can issue any order, including a declaratory order, and give any direction, as is required to give adequate relief to the petitioner. Further, the Supreme Court has itself declared that the jurisdiction given to it by Article 32 is 'an important and integral part of the basic structure of the Constitution.'