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Fundamental Rights Article 32 for Competitive Exams (2021)

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Fundamental Rights (Originally)

- Right to equality (Articles 14 – 18)
- Right to freedom (Articles 19 – 22)
- Right against exploitation (Articles 23 – 24)
- Right to freedom of religion (Articles 25 – 28)
- Cultural and educational rights (Articles 29 – 30)
- Right to property (Article 31)
- Right to constitutional remedies (Article 32)

Article 32

- Heart & Soul of Constitution
- Hello Mr. Please Come in Queue Writs
 - Habeas Corpus
 - Mandamus
 - Prohibition
 - Certiorari
 - Quo-Warranto

Writ Jurisdiction Supreme Court	Writ Jurisdiction High Court
Fundamental Right	Fundamental Right + Legal Right
Against a person or government throughout the territory of India	Within its territorial jurisdiction only or outside its territorial jurisdiction only if the cause of action arises within its territorial jurisdiction
SC may not refuse to exercise its writ jurisdiction. SC is constituted as a defender and guarantor of FR	HC may refuse to exercise its writ jurisdiction – Article 226 discretionary
<i>Writ Justification of Supreme Court High Court</i>	

- Habeas Corpus “to have a body”
 - It is a Latin term, which literally means ‘to have the body of’ .
 - It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it.
 - The court then examines the cause and legality of detention.
 - It would set the detained person free, if the detention is found to be illegal.
 - The writ, on the other hand, is not issued where the
 - detention is lawful,
 - the proceeding is for contempt of a legislature or a court,
 - detention is by a competent court, and
 - detention is outside the jurisdiction of the court.
- Mandamus “we command”
 - It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform.
 - The writ of *mandamus* cannot be issued
 - against a private individual or body;
 - to enforce departmental instruction that does not possess statutory force;
 - when the duty is discretionary and not mandatory;
 - to enforce a contractual obligation;
 - against the president of India or the state governors; and
 - against the chief justice of a high court acting in judicial capacity.
- Prohibition “to forbid”
 - It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.
 - Thus, unlike mandamus that directs activity, the prohibition directs inactivity.
 - The writ of prohibition can be issued only against judicial and quasi-judicial authorities.
 - It is not available against administrative authorities, legislative bodies, and private individuals or bodies.
- Certiorari “to be informed/certified”
 - It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case

- Previously, the writ of certiorari could be issued only against judicial and quasi-judicial authorities and not against administrative authorities.
- However, in 1991, the Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting rights of individuals.
- Like prohibition, certiorari is also not available against legislative bodies and private individuals or bodies.
- Prohibition, which is only preventive, certiorari is both preventive as well as curative
- Quo-Warranto “by what authority”
 - It is issued by the court to enquire into the legality of claim of a person to a public office.
 - Hence, it prevents illegal usurpation of public office by a person.
 - The writ can be issued only in case of a substantive public office of a permanent character created by a statute or by the Constitution.
 - It cannot be issued in cases of ministerial office or private office.
 - Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.

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