



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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WRIT JURISDICTION OF SUPREME COURT AND HIGH COURT UNDER CONSTITUTION OF INDIA: A COMPARATIVE ANALYSIS

ABSTRACT

The paper performs a detailed comparative analysis of the writ jurisdiction of High Courts and Supreme Court within the Indian legal system. The research looks at the hierarchical structure, scope, and functional distinctions between these two judicial entities in terms of their ability to issue writs for the protection of fundamental rights and other legal objectives. Throughout the paper, particular emphasis has been placed on writs and their many types; the paper digs into a comparison of Article 32 and Article 226 to comprehend the difference in writ jurisdiction between the Supreme Court and the High Court. References to various opinions provided by judges in specific cases have been made for a better comparison.

Research Methodology: The research method used is a comparative analysis.

Sources: Both primary sources and secondary sources have been used.

Objectives: The paper aims to draw a clear distinction between the writ jurisdiction of the Supreme Court and the High Court.

LIST OF CASES

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I. INTRODUCTION

The makers of the Constitution of India and its leaders aimed for India to be a “Sovereign, Socialist, Democratic, Secular and Republic¹” so that every citizen enjoyed liberty, dignity, equality, and justice while maintaining the nation's integrity. These principles were enshrined in the preamble of the Constitution of India, which is the supreme authority.

Part III of the Constitution of India gives us the fundamental rights to provide citizens with basic rights, and any infringement of such rights provides them with a legal remedy. This is done effectively through the enforcement of writs. Such components in the constitution of India show the components of justiciability and enforceability.² Therefore, the Constitution of India also provides various other rights, and consequently, the rights of Writs are another.

II. WRIT

Writs are written orders issued by the High Court or a Supreme Court directing constitutional remedies for Indian citizens who have had their fundamental rights violated. Therefore, a Writ is a Court instrument or order by which the Court (Supreme Court or High Courts) commands an individual, official, or authority to do or refrain from doing an act.

Article 226 of the Constitution, for enforcing fundamental rights, grants the High Court the authority to issue writs as well as for additional purposes. Similarly, under Article 32 of the Indian Constitution, the Supreme Court holds the authority to grant writs of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto, and Certiorari for implementing Fundamental Rights.

¹ OM, H. AND PARAKH, B.S. (2002) in Contemporary India: Textbook in Social Sciences for class IX. New Delhi: National Council of Educational Research and Training, pp. 405.

² Thakur, G. (2021) ‘Writ Jurisdiction: Scope and Limitations Faced By The Courts’, Indian Journal of Law and Legal Research, II(II), pp. 5–11.

III. UNDERSTANDING OF ARTICLE 32

Part III of the constitution enshrines the right to constitutional remedies in Article 32. Dr. Bhim Rao Ambedkar saw the right to constitutional remedies as the heart and spirit of the Constitution. The Supreme Court is designated under Article 32 as a guardian and guarantee of fundamental

rights. Article 32(1) provides that if the government violates any of the fundamental rights provided in

Part III of the Constitution states that the individual has the right to petition the Supreme Court for the enforcement of his fundamental rights. The Apex Court has the authority to issue writs, orders, or directions under Article 32(2).

It provides that the Supreme Court can issue five sorts of writs for the enforcement of any fundamental rights granted under Part III of the constitution: habeas corpus, mandamus, prohibition, quo warranto, and certiorari. The power to issue writs is the court's original jurisdiction.

Article 32(3) provides that the parliament may, by law, empower any of the courts within India's local jurisdiction to issue the writs, orders, or directives promised by Article 32(2). Article 32(4) stipulates that rights granted under Article 32 cannot be suspended unless specifically authorized by the constitution.

The Article follows the legal maxim "Ubi Jus Ibi Remedium," which states that where there is a right, there is a remedy. Article 32 is known as the constitution's "heart and soul"³ since it allows citizens to immediately approach the Supreme Court for the implementation of their fundamental rights. Article 32 is a basic right in and of itself, and it is the essence of the Constitution. According to the Supreme Court, Article 32 is a fundamental characteristic of the Constitution that cannot be changed, even by constitutional amendment.

Article 32 allows the Supreme Court to relax the conventional "Rule of Locus Standi" and adopt the procedure of Public Interest Litigations (PIL), in which citizens can enforce their rights in cases

³ Dr. BR. Ambedkar, Drafting Committee on Article 32 of the Constitution of India.

of bonded labor, undertrial of prisoners, right to information, and so on, even without approaching the court. The territorial reach of Article 32 extends not just within Indian territory but also to authorities operating outside of the nation, provided that these institutions of power are under the supervision of the Government of India. Article 32 must be read in connection with Article 142 of the Indian Constitution. Article 142 gives the Supreme Court the unique ability to perform

"complete justice" between the parties when the law or statute does not provide a remedy. In such cases, the Court may go above and beyond to resolve a disagreement in a manner appropriate to the facts of the case.⁴

IV. UNDERSTANDING OF ARTICLE 226

Chapter V of the Constitution contains Article 226. It gives the High Courts the authority to issue certain writs. Article 226 empowers the High Court to issue directions, orders, and writs, including writs of habeas corpus, mandamus, prohibition, quo warranto, and certiorari. Article 226 is used to protect not just fundamental rights but also other rights.

Article 226(1) states that, despite Article 32, the High Court has the authority to issue directions, orders, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, to any person, authority, government, or public officials for the enforcement of fundamental rights or any other rights under its own local jurisdiction. Article 226(2) states that even if the seat of government or authority or the person's residence is not within the High Court's local jurisdiction, the High Court may issue a direction or order to such government, authority, or person if the cause of action arises entirely or partially within its own jurisdiction⁵.

⁴ Khan, K. (2023) 'With Supreme Court's ruling on divorce, a look at its powers under Article 142 – and their criticism', The Indian Express, 7 December. Available at: <https://indianexpress.com/article/explained/explainedlaw/supreme-court-article-142-powerexplainedcriticism8586516/>.

⁵ Chakrabortya, A. (2022) 'Writ Jurisdiction of the Supreme Court', Jus Corpus Law Journal, pp. 935–943.

Article 226(3) states that

(i) When a high court issues an interim order against a party in the form of an injunction or stay or any proceedings relating to a petition under Article 226 without

(a) providing a copy of the petition or copies of all documents of the interim order to such party and (b) providing an opportunity to hear.

And if such party applies to the High Court for a vacation of such temporary order or petition and provides a copy of the application to the party in whose favor such interim order or petition is issued or to the party's counsel.

After that, the High Court must decide how to proceed with the application within two weeks of when it is received or within two weeks of when the copy of the application is provided, whichever comes first. If the High Court closes on the last day of that period, the decision must be made before the next day the High Court is open.

And if the High Court does not dispose of the application, the interim order will be vacated on the expiration of that period or, as the case may be, the expiration of the aid the next day.

Article 226(4) specifies that the power granted to the high court to issue a direction, order, or writ does not diminish the Supreme Court's jurisdiction granted under Article 32(2). Article 226 has a far broader scope than Article 32. Article 226 grants the authority to issue orders, directions, or writs not only to enforce fundamental rights but also to enforce other rights. Article 226 gives the High Court the ability to issue directions, orders, or writs to any individual, authority, government, or public official. Article 226 also discusses the interim order for writs and the method by which the High Court deals with interim orders. This Article gives the High Court's broad powers to supervise administrative conduct and ensures that no law limits or restricts their authority. Therefore, Individuals can approach the court not just for the enforcement of their fundamental rights but also for the enforcement of their legal rights.

V. TYPES OF WRITS

1. Habeas Corpus

Habeas Corpus is a Latin phrase that means "you must have the body."⁶ This Writ of Habeas

Corpus is issued as an order with the intention of summoning the person who has detained another individual to appear before the court to determine the legality of his detention. Following the presentation of the detainee, if the court decides the detention of the individual to be unconstitutional, the court then issues an order for the detainee's immediate release.

The purpose of this Writ is to secure the release of the individual who is being held illegally. The imprisoned individual can be released from either private custody or prison. Regarding the question of who is allowed to apply for a Writ of Habeas Corpus, the constitution of India states that any friend or relative of the aggrieved person may file a writ petition under Article 32 of the Indian Constitution in the Supreme Court and under Article 226 of the Indian Constitution in the High Court. If filed by someone other than the aggrieved party, then a reason must be stated. Even to compel the Court to investigate the legality of the aggrieved person's imprisonment, a postcard sent by the detainee from the prison would be enough.

Certain grounds for the Writ to be issued:

First and foremost, when the aggrieved person's detention is prima facie illegal, the illegal confinement must be continued at the time of the issuance of the Writ of Habeas Corpus. If the High Court denies the petition for habeas corpus under Article 226 of the Constitution, the petitioner may submit a plea for habeas corpus in the Supreme Court under Article 32 of the Indian Constitution. According to Article 32 of the Constitution, a writ of Habeas Corpus petition against a private individual who has wrongfully held the petitioner is not admissible. If the petitioner has been unlawfully held by the State, as defined in Article 12 of the Indian Constitution, a petition for

⁶ Sharma, D. (2023) 'An Analysis on Writs of Habeas Corpus under the Constitution of India', European Chemical Bulletin, (8), pp. 8792–8793. doi:10.48047/ECB/2023.12.8.714.

issuing a writ of Habeas Corpus may be filed against any defendant, whether private person or State.

ADM Jabalpur v. Shivkanth Shukla, 1976⁷

Shivkanth Shukla was a political activist who was arrested during a time of emergency and was detained without the holding of a trial under the Maintenance of the Internal Security Act.

Subsequently, the wife filed a writ petition of habeas corpus. The main issue surrounding this

matter was whether the court had the authority to question the validity of his detention and if fundamental rights, such as the right to life and personal liberty, could be suspended during a time of emergency. The court held that the fundamental rights could be suspended, which was highly criticized and was later overruled in 2017.

2. Mandamus

The superior courts use the Writ of Mandamus to command the inferior courts to do or refrain from doing anything. This order may also be issued to an inferior tribunal, board, corporation, or other sort of administrative authority⁸. Since the Supreme Court is the highest court in India, it has the authority to issue Writs of Mandamus even against the High Court, despite the fact that the High Court has been given the authority to issue such Writs under Article 226. As a result, a High Court can only issue this Writ under Inferior Courts, such as a district trial court.

This Writ is vital for enforcing the responsibility imposed by law or by the office that a person occupies. One of the essential aspects of the Writ of Mandamus is that it cannot be issued against a private individual; hence, only the State or anyone holding any post that falls under the concept of a public office can be forced to do or refrain from doing an act.

Certain conditions for issuing this writ

⁷ *ADM Jabalpur v. Shivkanth Shukla* AIR 1976 SC 1207.

⁸ Medar, I.S. (2017) 'A Writ of mandamus – An Overview', International Journal of Research and Analytical Review, 4(3), p. 182.

- The petitioner has a right recognized by law.
- The petitioner's right has been violated.
- The petitioner has requested that authorities do their responsibility, but this duty has not been performed.
- The absence of an adequate alternative remedy that the petitioner can use to enforce the authority's obligation is the final fundamental premise for Mandamus.

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- The petitioner must demonstrate to the Court that the authority owes him a duty and has failed to discharge that responsibility. This Writ can be issued against any administrative action that is illegal in nature.

Sohanlal v. Union of India, 1957:⁹ The Indian government gave plots to Pakistani immigrants who met the eligibility standards. However, the appellant was obliged to abandon the plot given to him, and as a result, he petitioned for the issuance of this order. The Supreme Court ruled that as long as a private individual has amalgamated with a public entity, a writ of mandamus can be issued against that individual¹⁰

3. Certiorari

The Latin phrase certiorari means "to certify." A "certiorari" is a judicial order issued by the Supreme Court or the High Courts to a court or another authority that performs judicial, quasijudicial, or body functions to send the records of unfinished proceedings to the court for review and to determine the lawfulness and validity of the order created by that authority¹¹. When

⁹ ***Sohanlal v. Union of India*** 1957 AIR 529 1957 SCR 738

¹⁰ Markhandeshwar, B.M. (2022) 'An Analysis of the Writ Jurisdiction of the Supreme Court', Indian Journal of Law and Legal Research, 4(4), p. 7.

¹¹ Certiorari (2022) Unacademy. Available at: <https://unacademy.com/content/wbpsc/study-material/polity/certiorari/> (Accessed: 15 November 2023).

compared to other Writs, Certiorari is a unique form of Writ. This Writ is remedial in nature, which indicates that its objective is to remedy an inaccuracy in the records.

A certiorari is a Writ granted by a higher court to a lower court. This can be given when the superior court wants to decide an issue in the case itself or when the subordinate court has exceeded its authority. This Writ can also be issued where there is a fundamental mistake in the subordinate court's procedure or a breach of natural justice principles. If the superior court discovers a breach of natural justice or a fundamental mistake in the method used, it has the authority to invalidate the order of the lower court.

4. Prohibition

This writ is issued to prevent a lower court or tribunal from taking an unconstitutional action. The proceedings of the lower court are immediately stopped upon the issuance of this writ, and the matter is then transferred to the body with jurisdiction. The word "stay order" is commonly used to characterize this document." Any court or quasi-judicial authority acting outside of its mandate is subject to this writ." Except in situations of legal error, this writ may be given under the same conditions as a writ of certiorari. Most of the time, the grounds for issuing writs of certiorari and prohibition overlap. They also share several characteristics. A court may issue a "writ of prohibition," also known as a judicial order, when a constitutional, statutory, or non-statutory entity or person seeks to exercise a power that is not theirs or goes beyond their jurisdiction. Therefore, to summarize, Prohibition means 'to prevent.'¹² Each Court is required to act within the boundaries of its authority. This writ of prohibition is issued to prevent a lesser Court or Tribunal from exceeding its constitutionally vested jurisdiction, acting without jurisdiction, or violating natural justice principles. A writ of prohibition can be issued not only against courts but also against authorities performing judicial or quasi-judicial functions.

Certain conditions for issuing this writ

- When a lower court or quasi-judicial authority has its jurisdiction - When a lower court acts in unlawful jurisdiction.

¹² Unit writs as remedies - egyankosh. Available at: <https://egyankosh.ac.in/bitstream/123456789/9943/1/Unit14.pdf> (Accessed: 20 November 2023).

- When a lower court or quasi-judicial court acts against natural justice.
- When there is an error apparent on the face of the judicial record.

In *S. Govinda Menon v. Union of India, 1967*¹³

The appellant faced several allegations of dishonesty, all of which were to be investigated by the government. As a result, a writ petition was filed to halt the steps initiated against him. The Kerala High Court concluded that both situations--excessive authority and lack of jurisdiction--allow for the issue of a writ of prohibition.

5. Quo Warranto

Quo warranto stands for 'What is your authority?' It is an Order calling into question the authority of a public official. It is issued against the bearer of a public office, requiring him to demonstrate the authority with which he holds such a position.

The purpose of this writ is to keep the executive in check while making appointments to public posts, as well as to safeguard the people. Any member of the public can file this writ.

Certain conditions for issuing this writ

- The office must be a public one.
- The office must be substantial in nature and have its own title.
- The respondent must be lawfully ineligible to hold public office.
- The respondent must have held the position in violation of the law.

VI. **DISTINCTION BETWEEN ARTICLE 32 AND ARTICLE 226**

The fundamental contrast between Articles 32 and 226 is that Article 32 can only be invoked for the execution of Fundamental Rights, but Article 226 has a broader scope since it can be enforced for violations of Fundamental Rights as well as other legal rights. It is also clear that Article 32 has a more limited meaning than Article 226.

¹³ *S. Govinda Menon v. Union of India* AIR 1967 SC 1274.

1. The High Court has the discretionary authority to issue writs under Article 226; however, the Supreme Court has no such discretion under Article 32.
2. If a party has previously sought the high court under Article 226 to seek remedies for an infringed right, the Supreme Court of India cannot use its authority under Article 32. If an appeal is filed before the Supreme Court addressing a similar complaint and remedy and the case before the High Court fails, the apex court cannot use its original jurisdictions but must continue on the appeal brought previously instead of starting over.
3. When the High Court provides a better remedy under Article 226, the Supreme Court refrains from establishing a new basis for the appeal and does not participate in giving an action. As a result, the Supreme Court placed a pause on hearing petitions under Article 32, a practice that has become commonplace.
4. The Supreme Court, under Article 32, has a broader territorial jurisdiction since the five writs can be issued across the country, as opposed to the High Court, which can only issue writs within its own jurisdiction.
5. In an emergency in the country, Article 226 cannot be suspended. This is quite the reverse with regard to Article 32, which remains in effect following the President's declaration of an emergency.

VII. CERTAIN DIFFERENCES BETWEEN THE WRIT JURISDICTION

The Supreme Court has exclusive and not concurrent jurisdiction. This implies that only the Supreme Court can issue writs for fundamental rights enforcement. Individuals who are seeking a remedy for violations of fundamental rights must approach the Supreme Court directly, as there is no other forum for such matters. The writ's jurisdiction extends not only to the enforcement of fundamental rights but also to conflicts between fundamental rights and the resolution of disputes between the Centre and states or between various states¹⁴.

While the High Courts have the authority to issue writs against both public and private organizations, the Supreme Court's writ power is confined to the enforcement of fundamental rights

¹⁴ Supreme Court of India Jurisdiction | SUPREME COURT OF INDIA. Available at: <https://main.sci.gov.in/jurisdiction> (Accessed: 15 November 2023).

against the state and its agents. Private people or entities are not subject to the Supreme Court's writ jurisdiction unless they are acting as agents or instrumentalities of the State.

- High Court

Each High Court exercises writ jurisdiction within the territorial limits of the state to which it is assigned. Within its territorial jurisdiction, the High Court can issue writs against any authority, whether it be the State, the Central Government, or private enterprises. Unlike the Supreme Court, the High Courts do not have exclusive writ jurisdiction. The Supreme Court and the High Courts can both issue writs to enforce fundamental rights, but the petitioner has the option to choose the forum. This allows individuals to contact the High Court directly when seeking remedies for

infringement of fundamental rights¹⁵. While the Supreme Court's writ jurisdiction's principal duty is to enforce fundamental rights, the High Court's writ jurisdiction is broader.

Writs can be issued by High Courts not only to defend and protect fundamental rights but also to guarantee that administrative actions are legal and to remedy errors made by lower courts and tribunals.

- Judicial Review

Another main difference between the writ jurisdiction of both the courts is the judicial review; in this sense, the Supreme Court has a broader scope of judicial review since it can examine the constitutional validity of laws and administrative actions. Comparatively, high courts have a lesser scope and are limited to examining administrative actions only for errors relating to jurisdiction, procedure, or bias.

- Res Judicata

Another important distinction is the principle of res judicata, which prohibits re-litigation of the same subject. The Supreme Court's decisions in exercising its writ power under Article 32 are binding on all courts in India. In contrast, High Court rulings under Article 226 are solely binding

¹⁵ Jurisdiction High Court of Punjab and Haryana. Available at: <https://highcourtchd.gov.in/?mod=jurisdiction> (Accessed: 15 November 2023).

within their own jurisdictions, allowing various High Courts to deliver distinct opinions on the same topic.

- Special Leave Petition

A Special Leave Petition (SLP) is a procedure that allows parties to appeal to the Supreme Court against decisions made by High Courts or tribunals. The Supreme Court can issue special permission to appeal against any judgment or decision under Article 136 of the Indian Constitution. This discretionary power enables the Supreme Court to ensure consistency in the interpretation and execution of legislation.

VIII. OPINION OF COURTS

In the case of *State of Orissa v. Gokulnanda Jena, 2003*,¹⁶ the court held the opinion that the ability of the High Court to hear a petition under Art. 226 is an original power, whereas the Supreme Court's power to hear an appeal under Art. 136 is an appellate power.

In many cases, the courts have noted that the power of the High Court is not limited to the issuance of writs; it can also give directions to enforce any of the Fundamental Rights or "for any other purpose." For instance, in the case of *Swayambar Prasad v. State of Rajasthan, 1972*¹⁷, where the court issued a direction instead of a writ.

The court held in the landmark judgment of *L. Chandra Kumar v. Union of India, 1995*¹⁸, that the authority of the Apex Court to issue Writs to uphold the fundamental rights is an aspect of the basic structure of the Constitution of India and for this reason cannot be amended or eliminated.

Therefore, Article 226 is more broad than Article 32 in that it allows for the enforcement of rights under Part III of the Constitution that are not fundamental rights. This can be inferred from the language used in Article 226, which states that directives may be issued "for any other purpose,"

¹⁶ *State of Orissa v. Gokulnanda Jena* (2003) 6 SCC 465; AIR 2003 SC 4207.

¹⁷ *Swayambar Prasad v. State of Rajasthan* AIR 1972 Raj 69.

¹⁸ *L. Chandra Kumar v. Union of India* AIR 1151, 1995 SCC (1) 400.

which implies that it involves matters even other than preserving fundamental rights. This term broadens a High Court's ability to protect individual statutory rights as well as non-fundamental constitutional rights.

IX. CONCLUSION

The Indian Constitution is actually a living constitution since it provides for enforceable rights and protects citizens' dignity and basic rights. Part III, the Fundamental Rights, is the most advanced set of freedoms and ideals designed to improve people's lives. Article 32, as properly stated by Dr. BR Ambedkar, is the heart and spirit of the Constitution since it gives remedies and relief to persons whose rights have been violated. Article 226 functions similarly to Article 32 but is only relevant in the High Court. Through the research, the distinction of the writ jurisdiction between the High Court and Supreme Court can clearly be observed.

Finally, the writ jurisdiction of both the Supreme Court and the High Courts is critical in maintaining the preservation of fundamental rights and the rule of law in India. While the Supreme Court's writ jurisdiction is exclusive, confined to fundamental rights, and has a greater scope of judicial review, the High Court's writ jurisdiction is concurrent, works within territorial borders, and addresses a broader range of concerns. These distinctions enable an effective system of checks and balances and add to India's judiciary's strength and integrity.

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