



GS FOUNDATION BATCH FOR CSE 2024

Polity - 10 **(Right to Constitutional Remedies)**

Right to Constitutional Remedies:

For enforcement of fundamental rights.

Can directly approach supreme court.

Ambedkar: **“Very Heart and Soul of the constitution”**

Supreme court or the high courts has the powers to issue direction or orders or writs.

This right can't be suspended except in some situation as provided by the Constitution. (national emergency)

Thus supreme court has been declared as the defender and guarantor of fundamental rights.

5 writs:

- Habeas Corpus
- Mandamus
- Prohibition
- Certiorari
- Quo-Warranto

Writ Jurisdiction of Supreme Court

Writ Jurisdiction of High Courts

Habeas Corpus:

The Latin meaning of the word 'Habeas Corpus' is 'To have the body of.'

This writ is used to enforce the fundamental right of individual liberty against unlawful detention.

Supreme Court or High Court can issue this writ against both private and public authorities.

Habeas Corpus can not be issued in the following cases:

- When detention is lawful.
- When the proceeding is for contempt of a legislature or a court.
- Detention is by a competent court.

Mandamus

The literal meaning of 'Mandamus' is 'We command.'

This writ is used by the court to order the public official who has failed to perform his duty or refused to do his duty, to resume his work.

Mandamus can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

Mandamus cannot be issued against a private individual unless he is entrusted with a public duty

Prohibition

- The meaning of 'Prohibition' is 'To forbid.'
- A court which is higher in position issues Prohibition writ against a court which is lower in position to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.

Certiorari

- The meaning of the writ of 'Certiorari' is 'To be certified' or 'To be informed.' This writ is issued by a court higher in authority to a lower court or tribunal ordering them either to transfer a case pending with them to itself or to squash their order in a case.
- When:
 - Arbitrary exercise of jurisdiction
 - Error in law

- **Threat to natural flow justice**
- Pre-1991: The writ of Certiorari used to be issued only against judicial and quasi-judicial authorities and not against administrative authorities.
- Post-1991: Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting the rights of individuals.

Quo Warranto:

- The meaning of the writ of 'Quo-Warranto' is 'By what authority or warrant or what is your authority'.
- Quo-Warranto can be issued only when the substantive public office of a permanent character created by a statute or by the Constitution is involved.
- It **can't be issued against private or ministerial office.**

ARMED FORCES AND FUNDAMENTAL RIGHTS

- **Article 33** empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces, intelligence agencies and analogous forces.
- Any such law made by Parliament cannot be challenged in any **court on the ground of contravention of any of the fundamental rights.**
- Accordingly, the Parliament has enacted the Army Act (1950), the Navy Act (1950), the Air Force Act (1950), the Police Forces (Restriction of Rights) Act, 1966

Martial Law	National Emergency
1. It affects only Fundamental Rights.	1. It affects not only Fundamental Rights but also Centre-state relations, distribution of revenues and legislative powers between centre and states and may extend the tenure of the Parliament.
2. It suspends the government and ordinary law courts.	2. It continues the government and ordinary law courts.
3. It is imposed to restore the breakdown of law and order due to any reason.	3. It can be imposed only on three grounds—war, external aggression or armed rebellion.
4. It is imposed in some specific area of the country.	4. It is imposed either in the whole country or in any part

PRESENT POSITION OF RIGHT TO PROPERTY

- Originally the right to property was one of the seven fundamental rights under Part III of the Constitution dealt by Article 19 (1) (f) and Article 31.
- Article 31: **provided that no person shall be deprived of his property except by authority of law.**
- Since the commencement of the Constitution– the Fundamental Right to Property has been the most controversial. It has caused confrontations between the Supreme Court and the Parliament
- **It has led to a number of Constitutional amendments, that is, 1st, 4th, 7th, 25th, 39th, 40th and 42nd Amendments.**
- Through these amendments, Articles 31A, 31B and 31C have been added and modified from time to time to nullify the effect of Supreme Court judgements and to protect certain laws from being challenged on the grounds of contravention of Fundamental Rights.
- Therefore the **44th Amendment Act of 1978 abolished the right to property as a Fundamental Right** by repealing Article 19 (1) (f) and Article 31 from Part III Instead the Act inserted a new Article 300A
- Part XII under the heading 'Right to Property' the right to property still remains a legal right or a constitutional right **available to all persons though no longer a fundamental right**
- **It is not a part of the basic structure of the Constitution.**

The right to property as a legal right "as distinct from the Fundamental Rights has the following implications:

- can be regulated i.e., curtailed, abridged or modified without constitutional amendment by an ordinary law of the Parliament.
- case of violation, the aggrieved person cannot directly move the Supreme Court under Article 32.
- protects private property against executive action but not against legislative action
- No guaranteed right to compensation in case of acquisition or requisition of the private property by the state

However, under two situation giving compensation becomes mandatory:

- (a) When the State **acquires the property of a minority educational institution (Article 30);** and
- (b) When the State acquires **the land held by a person under his personal cultivation and the land is within the statutory ceiling limits** (Article 31 A).

Exception to Justiciability of Fundamental Rights:

Article 31B- Protection given to 9th Schedule- 31B was also added by 1st amendment act.

- the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part,
- and notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force

Judgement of Supreme Court:

- However, terming blanket immunity given to 9th schedule as violative of **judicial review** supreme court has held the any law placed in the 9th schedule on or after 24th April 1973 shall be subject to judicial review. Immunity from judicial review is available to only such laws which have been placed in the 9th schedule before this date.

Article 31C- saving of laws which give effect to certain DPSP.

Article 31C was added in the constitution by 25th Amendment 1971.

- 39 (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- 39 (c) that the operation of the economic system does not result in the concentration of wealth
- **42nd amendment act provided that any such law which is to give effect to any provisions of DPSP (part IV) shall not be held void but this portion of amendment was held unconstitutional in Minerva Mills Case (1980).**
- 42nd Amendment also provided that no such law shall be called in question by any court, again this provision was held **unconstitutional in Keshavananda Bharti Case**

Present Situation: If there is any law made by the parliament to give effect the provisions of 39(b) and (c) even if it violates article 14 and 19, they shall not be held void.

Hence, it is famously quoted that where article 31C comes in 14 and 19 goes out.