The provision of fundamental rights in the Constitution is by itself not very promising if safeguards are not provided that prevent its abuse by the government of the day. Fortunately, Article 32 of the Constitution provides citizens with the right to approach the courts and seek constitutional remedies.

**Q. What is the right to constitutional remedies?**

The right to constitutional remedies enables an individual to move the Supreme Court by appropriate proceedings seeking enforcement of their fundamental rights. It provides for remedies against legislative and executive interference in the exercise of fundamental rights.

**Q. How does the Supreme Court ensure enforcement of fundamental rights?**

The apex court can enforce fundamental rights by passing orders and writs.

**Q. What writs can be issued by the Supreme Court?**

The Supreme Court can issue the following writs:

- Habeas Corpus

- Mandamus

- Certiorari

- Prohibition

- Quo warranto

**Habeas Corpus**

**Q. What writs can the Supreme Court issue against illegal detention?**

Habeas Corpus is the writ issued by the Supreme Court to ensure protection against illegal detention and arrest. It literally means “to have the body”.

**Q. How can Habeas Corpus be used?**

It can be used to produce a person who has been detained illegally and free him/her. The apex court issues an order to the official responsible for imprisoning/detaining the individual asking for reasons why the person was jailed or detailed. If the reasons for having detained the person are found wanting, the court can order his/her immediate release.

**Q. Can Habeas Corpus be used to free a person from private detention?**

Yes.

**Q. Who files Habeas Corpus?**

It can be filed either by the detained person himself/herself or any person on behalf of the detainee.

**Q. What is the procedure for moving the Supreme Court on grounds of illegal detention?**

There is no strict procedure. Even a postcard from the detainee would do.

**Mandamus**

**Q. What is the writ of Mandamus?**

Mandamus is in the form of a command issued by the Supreme Court to any government, inferior court or other public official requiring them to perform duties associated with their offices. It can be issued when the petitioner believes that his rights have been violated as a result of an official not performing his/her duty and there is no alternative legal remedy.

**Q. When is Mandamus issued?**

Mandamus is issued when the apex court wants to compel an authority to perform their duties associated with their office. It can also be used to prevent an official from doing an act that he is not entitled to do.

**Q. What is the nature of Mandamus?**

Mandamus is issued in the nature of a civil proceeding.

**Prohibition and Certiorari**

**Q. What are Prohibition and Certiorari?**

Prohibition and Certiorari are used by the Supreme Court and various High Courts to inferior courts or other quasi-judicial bodies. They prevent a lower court from exceeding its jurisdiction. It cannot be issued against a public authority.

By issuing a writ of Prohibition, the Supreme Court or High Courts can prevent/prohibit a lower court or quasi-judicial body from taking up a case that is outside of its jurisdiction.

By issuing a writ of Certiorari, the Supreme Court or High Courts can cancel the decisions taken or judgements passed by a lower court or quasi-judicial body if the case is outside of its jurisdiction.

While Prohibition is preventive, Certiorari acts as a cure.

**Q. Who can file this writ?**

This writ can be filed by a person whose case is being decided by one of the lower courts. The person can claim that his case lies beyond the jurisdiction of the court in which the case is currently being heard.

**Q. Is the application of this writ a matter of right?**

No. This writ can be applied as a matter of right only after it has been determined by superior courts that the particular case is indeed beyond the jurisdiction of a lower court. The court can refuse to grant this writ.

**Q. What if a case is in trial?**

In that case, the Supreme Court, if a case of exceeding jurisdiction can be justified, will apply both Prohibition and Certiorari. Prohibition to prevent the lower court from hearing the case further and Certiorari to quash decisions that have already been taken.

**Quo Warranto**

**Q. What is quo warranto? When it is used?**

It means “what is your authority”. It is used by the courts to prevent a person from holding an office he is not legally entitled to.

**Q. Who can file this writ?**

It can be filed by any person who can demonstrate:

- The holder of an office is not legally entitled to hold that office

- The office in question is a public office

--Ends