

ANALYSIS OF APPLICABILITY OF WRITS IN INDIAN CONSTITUTION

P. Ram Karunalayan

B.A. LL.B., (Hons), 1st Year, Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences

ABSTRACT

Indian Constitution is the supreme legislation of the sub continent and the apex court of India, the Honorable Supreme Court is considered to be the guardian of the Indian Constitution. Every suits in Indian courts are to be tried before the proper court of law with proper jurisdiction especially from lower to the appellate order. The framers of Indian Constitution has envisaged one can directly knock the doors of the Supreme Court and various High Courts of the State when the Fundamental Rights of them are violated. This research paper analyses the applicability of writs with respect to Indian Constitution by over-viewing its historical evolution, the constitutional provisions of writs are analysed and the role of judiciary in writs are highlighted. Finally the contemporary challenges in writ jurisdictions are analysed and possible solutions are found out in this research paper.

KEYWORDS: *Indian Constitution, Writs, Article 32, Article 226, Fundamental Rights.*

Article History

Received: 25 Aug 2025 | Revised: 28 Aug 2025 | Accepted: 02 Sep 2025

INTRODUCTION TO WRITS IN INDIA

The Constitution of India provides a powerful remedy for the protection of individual rights through the mechanism of writs. A writ is a formal written order issued by the Supreme Court under Article 32 and by the High Courts under Article 226, empowering them to act as guardians of the Constitution.¹ Derived from English law, writs in India serve as instruments to enforce the rule of law and prevent the misuse of power by authorities. While the Supreme Court can issue writs only for the enforcement of fundamental rights, the High Courts enjoy wider powers and may issue them for both fundamental rights and other legal rights. The Constitution recognizes five types of writs, and they are Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto, each designed to address specific situations of injustice or illegality. Thus, writ jurisdiction plays a vital role in ensuring accountability of the State, protecting citizens against arbitrary action, and upholding the spirit of justice guaranteed by the Constitution.²

WRITS - THE HEART AND SOUL OF INDIAN CONSTITUTION

Writs are often described as the heart and soul of the Indian Constitution because they act as the most effective safeguard for the protection of fundamental rights. The framers of the Constitution, inspired by the American and British legal systems, vested the power in the Supreme Court under Article 32 and the High Courts under Article 226 to issue writs

¹ <http://www.livelaw.in/evanescent-due-process-abuse-writ-jurisdiction-lieu-alternate-remedy> visited on 27.4.2018

² Information based on envisioning Justice in the 21 st century: Conference of the Chief Ministers and the Chief Justices of High Courts New Delhi on Sept. 18, 2004

against any unlawful action by the State or its authorities. Dr. B.R. Ambedkar famously referred to Article 32 as the very heart and soul of the Constitution, as it guarantees citizens the right to directly approach the Supreme Court for enforcement of fundamental rights.³

Through writs such as Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto, the judiciary ensures that liberty is protected, authorities remain within their jurisdiction, and public power is exercised fairly. While the Supreme Court can issue writs only for enforcing fundamental rights, High Courts have broader jurisdiction, as they can issue writs for both fundamental and other legal rights. This system makes the Indian judiciary a watchdog of democracy, preventing arbitrary, unjust, and unconstitutional acts. In essence, writs embody the spirit of constitutionalism and the rule of law, providing every citizen with an accessible remedy against injustice. They ensure that rights are not just theoretical but practically enforceable, which is why they are rightly called the heart and soul of the Indian Constitution.

CONSTITUTIONAL PROVISIONS OF WRITS

The Indian Constitution expressly empowers the Supreme Court and the High Courts to issue writs for the protection of rights and to uphold the rule of law. Article 32: Known as the “Right to Constitutional Remedies”, it empowers the Supreme Court to issue directions, orders, or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto, for the enforcement of fundamental rights. This article itself is a fundamental right, ensuring that individuals can directly approach the Supreme Court when their rights are violated. Dr. B.R. Ambedkar called it the “heart and soul of the Constitution”. Article 226: Grants power to the High Courts to issue writs not only for the enforcement of fundamental rights but also for any other legal right. This makes the writ jurisdiction of High Courts broader than that of the Supreme Court, though the latter has wider authority as the guardian of the Constitution. Together, Articles 32 and 226 form the backbone of the writ system in India, ensuring that the judiciary acts as a protector of citizens’ rights against arbitrary action of the State or its agencies.⁴

VARIOUS KINDS OF WRIT PETITIONS IN INDIA

The Constitution of India provides for five kinds of writs under Articles 32 and 226, empowering the Supreme Court and High Courts to protect rights and restrain unlawful actions of authorities. These writs are as follows.⁵

- Habeas Corpus (Means: “to have the body”)

Issued to release a person who is unlawfully detained or imprisoned.

It ensures personal liberty and protects against arbitrary detention.

Example: If someone is arrested without proper legal justification, the court can order their release through this writ.

³ Dr.Ashok k.jain ,Constitutional Law (Ascent publication)4th edition,2010

⁴ [http://www.indiastudychannel.com/resources/ The-origin-development-and-role-of-writ-petition in India](http://www.indiastudychannel.com/resources/The-origin-development-and-role-of-writ-petition-in-India) (visited on 29-4-2018).

⁵ The constitution of India as ammended by The Constitution (one hundred and first Amendment) Act,2016

- Mandamus (Means: “we command”)

Issued by the court to direct a public authority, tribunal, or government to perform a legal duty which it has failed or refused to perform.

It cannot be issued against private individuals or the President/Governor for their discretionary powers.

- Prohibition (Means: “to forbid”)

Issued by a higher court (Supreme Court/High Court) to a lower court or tribunal to prevent it from exceeding its jurisdiction or acting contrary to law.

It is a preventive writ, issued before the lower authority passes an order.

- Certiorari (Means: “to be certified”)

Issued by a higher court to quash the order or decision of a lower court, tribunal, or authority which has acted beyond its jurisdiction or violated the principles of natural justice.

Unlike prohibition, certiorari is both preventive and corrective in nature.

- Quo Warranto (Means: “by what authority”)

Issued to restrain a person from holding a public office to which they are not legally entitled.

Ensures that only duly qualified persons occupy public posts.

JUDICIAL INDEPENDENCE IN THE LIGHT OF WRITS

The doctrine of judicial independence is a cornerstone of the Indian Constitution, ensuring that the judiciary functions freely, without influence from the legislature or the executive. The power to issue writs under Articles 32 and 226 reflects this independence and strengthens the judiciary’s role as the protector of fundamental rights and the guardian of the Constitution. By granting the Supreme Court and High Courts the authority to issue writs such as Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto, the Constitution enables them to check arbitrary actions of the government, safeguard individual liberties, and enforce the rule of law. This writ jurisdiction allows courts to directly intervene whenever citizens’ rights are violated, irrespective of political or executive pressure.

Dr. B.R. Ambedkar called Article 32 the “heart and soul of the Constitution”, highlighting that without the power of writs, fundamental rights would remain mere declarations. The judiciary’s independent exercise of writ jurisdiction has historically played a vital role in landmark cases such as *Kesavananda Bharati v. State of Kerala* (1973) and *ADM Jabalpur v. Shivkant Shukla* (1976), where the question of rights and liberty came directly in conflict with state power. Thus, writs not only serve as a shield for citizens against injustice but also symbolize the independence of the judiciary, ensuring that no organ of the State can act beyond its constitutional limits. In this way, writ jurisdiction is one of the strongest manifestations of judicial independence in India.⁶

⁶ Russel T. Walker, *Is the Writ of Prohibition a Prerogative Writ*, 37 *Michigan Law Review*, 789-793 (1939).

CONTEMPORARY CHALLENGES IN FILING WRIT PETITIONS

While writs remain a powerful constitutional remedy, their effectiveness is often hampered by certain practical and systemic challenges in the Indian legal system. Some of the major challenges are as follows

- **Judicial Delays and Backlog:** A huge number of pending cases in the Supreme Court and High Courts often result in delays in the hearing of writ petitions, undermining their purpose as a speedy remedy.
- **Limited Accessibility:** Many citizens, especially from rural and marginalized communities, lack awareness of their constitutional rights and cannot easily access higher courts to file writ petitions.
- **High Costs of Litigation:** The process of filing and pursuing writ petitions involves considerable costs, including legal fees, which discourages economically weaker sections from approaching the courts.
- **Overburdened High Courts:** High Courts are empowered under Article 226 to issue writs for both fundamental rights and other legal rights, leading to a flood of petitions that sometimes dilute focus from urgent rights-based matters.
- **Executive Resistance and Non-Compliance:** At times, government authorities delay or fail to comply with writ orders, compelling further litigation and reducing the immediate impact of the writ remedy.
- **Procedural Complexities:** Strict procedural requirements, technicalities, and jurisdictional limitations often create hurdles for petitioners, especially those without strong legal representation.
- **Misuse of Writ Jurisdiction:** Some individuals misuse writ petitions for personal or political motives, leading to frivolous or vexatious litigation, which burdens the judiciary and delays genuine cases.
- **Lack of Speedy Enforcement:** Even when writs are granted, enforcement mechanisms may be slow or ineffective, especially against powerful government agencies or authorities.

MEASURES TO OVERCOME CHALLENGES IN WRITS

To ensure that writ petitions continue to serve as an effective constitutional remedy, several reforms and measures can be adopted:

- **Strengthening Judicial Infrastructure:** To increase the number of judges in the Supreme Court and High Courts to reduce pendency and in establishing fast-track benches for urgent writ petitions, especially involving personal liberty (e.g., Habeas Corpus).
- **Enhancing Accessibility:** To set up more circuit benches and virtual courts to make High Courts accessible to citizens in remote areas and to conduct legal awareness programs, particularly in rural areas, to educate people about their right to file writ petitions.
- **Reducing Litigation Costs:** To expand legal aid services under the Legal Services Authorities Act, 1987, ensuring free legal assistance for economically weaker sections and to encourage pro bono work by lawyers in writ matters involving public interest or human rights.
- **Streamlining Procedures:** To simplify the process of filing writ petitions by adopting user-friendly e-filing systems and to reduce technicalities that delay hearings and adopt time-bound guidelines for disposal of writs.

- **Ensuring Compliance with Writ Orders:** To establish strict accountability mechanisms for government officials who delay or refuse compliance and to impose penalties for non-compliance and provide compensation for petitioners where rights are denied due to administrative resistance.
- **Filtering Frivolous Petitions:** To implement preliminary screening mechanisms to curb misuse of writ jurisdiction for personal or political gain and to encourage Public Interest Litigation (PIL) only where genuine public interest is involved.
- **Effective Enforcement Mechanism:** To strengthen the power of courts to monitor and enforce compliance of their writ orders and to introduce contempt proceedings more effectively against willful disobedience of writs.

CONCLUSION

Writs occupy a central place in the Indian constitutional framework as they act as the most effective safeguard for protecting the fundamental rights and legal rights of citizens. By empowering the Supreme Court under Article 32 and the High Courts under Article 226 to issue writs, the Constitution ensures that the rule of law prevails over arbitrariness and that public authorities remain accountable. Despite challenges like judicial delays, accessibility issues, and misuse of writ jurisdiction, writs continue to serve as the “heart and soul of the Constitution”, reflecting the vision of Dr. B.R. Ambedkar. They are not merely legal remedies but a symbol of judicial independence and constitutional supremacy, ensuring that rights are not only guaranteed but also enforceable. Strengthening writ jurisdiction through reforms in procedure, accessibility, and enforcement will further enhance their role in safeguarding democracy and justice in India.

REFERENCES

1. *Abhe Singh Yadav, "Law of Writs"*
2. *Andrew Higgins, Legal Aid and Access to Justice in England and India, 26 NLSI REV. 13-30 (2014).*
3. *C.K. Takwani, "Lectures on Administrative Law"*
4. *Chaudhary's "Law of Writs"*
5. *Halsbury's Laws of England*
6. *Hilaire Barnett, "Constitutional & Administrative Law"*
7. *K.C. Joshi, Compensation Through Writs, 30 Journal Of The Indian Law Institute. 69 (1988).*
8. *Nirmalendu Bikash Rakshit, Right to Constitutional Remedy – Significance of Article 32, 34 Economic And Political Weekly. 2379-2381 (1999).*
9. *Pamela Nightingale, The Intervention of the Crown and Effectiveness of the Sheriff in The Execution of Judicial Writs, 123 The English Historical Rev. 1 (2008).*
10. *Prakhar Chauhan & Raghuveer Nath, The Dilution of Article 32 Convenience over Right, 7 GNLU L. REV. 71 (2020).*
11. *S.P. Sathe, "Administrative Law"*
12. *Yogendra Singh, Principle of Res Judicata and Writ Proceedings, 16 Journal Of Indian Law Institute. 399-414 (1974).*

