

## Unit-5

### Law relating to Intellectual property

#### Introduction

Intellectual property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. Intellectual property rights (IPR) refers to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time. These legal rights confer an exclusive right to the inventor/ creator or his assignee to fully utilize his invention/ creation for a given period of time.

#### Meaning of intellectual property

**Intellectual property** is a set of intangibles owned and legally protected by a company from outside use or implementation without consent.

Examples of intellectual property include an author's copy right on a book or article, a distinctive logo design representing a soft drink company and its products, unique design elements of a web site, or a patent on a particular process to, for example, manufacture chewing gum.

#### Main forms of IP

The four main types of intellectual property are **patents, trademarks, copyrights, and trade secrets.**

**Patents:** A patent is an exclusive right granted for an invention , which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.

There four different types of patents

Utility patent

Provisional patent

Design patent

Plant patent

#### Utility patent

This is what most people think of when they think about a patent. It's a long, technical document that teaches the public how to use a new machine, process, or system.

The kinds of inventions protected by utility patents are defined by Congress. New technologies like genetic engineering and internet-delivered software are challenging the boundaries of what kinds of inventions can receive utility patent protection.

#### Provisional patent

United States law allows inventors to file a less formal document that proves the inventor was in possession of the invention and had adequately figured out how to make the invention work. Once that is on file, the invention is patent pending. If, however, the inventor fails to file a formal utility patent within a year from filing the provisional patent, he or she will lose this filing date. Any public disclosures made relying on that provisional patent application will now count as public disclosures to the United States Patent and Trademark Office (USPTO).

#### Design patent

This patent offer protection for an ornamental design on a useful item. The shape of a bottle or the design of a shoe, for example, can be protected by a design patent. The document itself is almost entirely made of pictures or drawings of the design on the useful item. Design patents are notoriously difficult to search simply because there are very few words used in a design patent. In recent years, software companies have used design patents to protect elements of user interfaces and even the shape of touch screen devices.

#### Plant patent

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#### Copyright,Trademarks, Patents and Designs, Secrets

#### Copyright

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Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.

### Trade marks

The objective of the **TRADE MARKS** Act, 1999 is to register trade marks applied for in the country and to provide for better protection of trade.

A trademark is a **sign capable of distinguishing the goods or service of one enterprise from those of other enterprises**. Trademarks are protected by intellectual property rights. The example of Trade mark:

Trademarks can be bought and sold. For instance, **Nike (NKE) purchased the instantly recognizable Swoosh logo in 1971 from a graphic arts students for a one-time price of \$35**. Trademarks also can be licensed to other companies for an agreed-upon time or under certain conditions, which can result in crossover brands.

The trade mark and its types

Trademarks are of various types; **product marks, service marks, collective mark, certification marks, shape marks**, etc. The purpose of the trademark is the same, irrespective of its type. It allows the consumers to distinguish the source of the product/service and assures the quality of the product or service.

TM stands for trademark. The TM symbol (often seen in superscript like this: <sup>TM</sup>) is usually used in connection with an unregistered mark- a term, slogan, logo, or other indicator - to provide notice to potential infringers that common law rights in the mark are claimed. Use of the TM symbol does not guarantee that the owner's mark will be protected under trademark laws. The symbol does not guarantee that the owner's mark will be protected under trademark laws. The owner may use the TM symbol regardless of whether an application for registration has been filed or whether the trademark is registered. The owner can continue to use the TM symbol even if an application for registration of the mark is refused.

SM stands for service mark (often seen in superscript like this: <sup>SM</sup>). It functions similarly to the TM symbol, in that it is used to provide notice of a claim of common law rights in a mark, but it is used in connection with a service. A service mark covers services, such as banking or legal services, rather than tangible goods. Use of the SM symbol does not guarantee that the owner's mark will be protected under trademark laws. As with the TM symbol, the registration status of the service mark does not impact an owner's ability to use the SM symbol.

The symbol ® is a notice of registered trademark ownership. It is used to advise the public that a trademark or service mark is registered, providing notice of the legal ownership status of the mark with which it is used. The ® symbol should be used only in connection with registered trademarks or service marks. In most jurisdictions, the ® may be used only after registration of the mark is granted. In most jurisdictions, use of ® with an unregistered mark is a civil or criminal offense.

### Symbols be used

There is some flexibility as to how and where to use the TM, SM, or ® symbol. Typically, it is placed in the upper right-hand corner, in the lower right-hand corner, or level with the mark or logo itself - each is an acceptable way of displaying the relevant symbol. While there is no specific requirement regarding the font or size of these symbols, most often they are placed adjacent to the mark, in superscript (raised) font, for example, COCA-COLA<sup>®</sup>. Generally, the TM, SM, or ® symbol need only appear with the first or most prominent mention of a mark in documents, such as press releases, articles, and company reports.

### Trade mark symbol is illegal

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problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.

### **Design**

Design is the process of imaging and planning the creation of objects, systems, buildings, vehicles, etc. It is about creating solutions for people.

### **Secrets**

A piece of information that is not generally known or is not known by someone else and should not be told to others.

### **Law relating to Copyright in India including Historical evolution of Copy Rights Act, 1957,**

The Copy right Act of 1957 came into force on the 21<sup>st</sup> of January, 1958 replacing the 1911 act. The act besides amending the copyright law also introduced milestone changes such as provisions for setting up copyright office under the control of Registrar of copy right for registration of books and other works of art.

### **Meaning of copyright – computer programs**

Software copyright is used by software developers and proprietary software companies to prevent the unauthorized of their software. Free and open source licenses also rely on copyright law to enforce their terms.

### **Ownership of copyrights and assignment**

The owner of the copyright has the power to assign his entire rights or assign only some of the rights. In case the rights are split up there is only partial assignment.

Assignee will be the owner of the copyright as regard rights so assigned, the owner will be the owner of the copy right of remaining rights.

### **Criteria of infringement, Piracy in Internet**

Section 65A states that “any person who circumvents an effective technological measure applied to protect any of the rights conferred by this Act, to infringe such rights, Shall be punishable with imprisonment which may extend to two years and shall also be liable to fine”. Such punishment is bound to deter several.

### **Remedies and procedures in India**

Article 32 is the “soul of the Constitution and the very heart of it”.

The best conferment of the Constitution is the Fundamental Rights.

Somehow or another, they frame the rampart of our Constitution. Each one of these Rights is trivial if there exists no instrument to authorize them.

Article 32 gives such a component. That is the reason it is the gem, the delegated wonder, the heart, and the spirit of the Constitution.

### **Right to constitutional remedies**

- Article 32 is known as the “spirit of the constitution and exceptionally heart of it” by Dr. Ambedkar. Preeminent Court has included it in fundamental structure regulation. Further, it is clarified that privilege to move to Supreme Court can't be suspended with the exception of generally given by the Constitution. This suggests this privilege suspended amid a national crisis under article 359.
- Article 32 marks the Supreme court the safeguard and underwriter of the major rights. Further, the capacity to issue writs goes under the original jurisdiction of the Apex Court. This implies an individual may approach SC straightforwardly for a cure as opposed to by appeal.
- Article 32 can be used only to get a remedy for fundamental rights enshrined in Article 12-35. It isn't there for some other legal right for which diverse laws are accessible.

### **What is WRIT?**

A precept in writing, couched in the form of a letter, running in the name of the king, president, or state, issuing from a court of justice, and sealed with its seal, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as the commencement of a suit or other proceeding or as incidental to its progress, and requiring the performance of a specified act, or giving authority and commission to have it done. For the names and description of various particular writs, see the following titles.

- In old English law. An Instrument In the form of a letter; a letter or letter of attorney. This is a very ancient sense of the word.
- In the old books, "writ" is used as equivalent to "action;" hence writs are sometimes divided into real, personal, and mixed.
- In Scottish law. Writing ;an instrument in writing , as a deed, bond, contract,etc.

### **Constitutional Philosophy of Writ Jurisdiction**

An individual whose privilege (Fundamental Right) is encroached by an arbitrary administrative action may approach the Court for a suitable remedy. Article 32(2) of the Constitution of India gives : "The Supreme Court will have the capacity to issue bearings or requests or writs, incorporating writs in the idea of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever might be suitable, for the requirement of any of rights given by this Part." Article 32 is a basic Right directly under part-III of the Constitution. Under this Article, the Supreme Court is enabled to loosen up the customary standard of Locus Standi and permit general society to intrigue case in the name of public interest litigation (PIL).

### **Comparative Analysis of Article 32& 226**

Article 32 isn't to be conjured for encroachment of an individual right of the agreement (contract), nor is to be summoned for unsettling questions of India, on the other hand says, "Not with standing anything in Article 32, every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority , including in appropriate cases, any Government, with in those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose".

As is obvious from the uncovered dialect, this Article ensures a person to move the High Court for implementation of the fundamental rights and also for implementation of some other lawful right. Article 226 gives wide powers on the High Courts. It fills in as a major repository of legal capacity to control organization. Its capacity under Article 226 can't be diminished by enactment. In this manner, forces of High Courts gave under Article 226 are more extensive when contrasted with forces presented on the Supreme Court Article 32 of the Constitution of India.

### **Types of WRITS**

#### **Habeas Corpus :**

This writ is in the nature of an order calling upon the person who has detained another to produce the latter before the Court, in order to let the Court, know on what ground he has been confined and to set him free if there is no legal justification for the confinement. In *Rudulsah v. State of Bihar* added a new dimension to judicial activism and raised a set of vital questions, such as, liability of State to compensate for unlawful detention, feasibility of claiming compensation from the State under Article 32 for wrongful deprivation of fundamental rights, propriety of the Supreme Court passing an order for compensation on a habeas corpus petition for enforcing the right to personal liberty.

- **The General Principle :**

The principle on which Habeas Corpus function is that a person illegally detained in confinement without legal proceedings is entitled to seek the remedy of habeas corpus.

- **Nature of Writs:**

While deciding whether Habeas Corpus writs are civil or criminal in nature, it was held in *Narayan v. Ishwarlal* that the court would rely on the way of the procedures in which the locale has been executed.

### **How a Writ of Habeas Corpus is filled?**

An application for habeas corpus can be made by any person on the behalf of the prisoner/ detenu as well as the prisoner/ detenu himself.

Even a letter to the judge mentioning illegalities committed on prisoners in jail can be admitted. In *Sunil Batra v. Delhi Administration.*, a convict had written a letter to one of the Judges of the Supreme Court alleging in human torture to a fellow convict. The late justice Krishna Iyer treated this letter as a petition of habeas corpus and passed appropriate orders.

Courts can also act Suo motu in the interests of justice on any information received by it from any quarter/source.

### Habeas Corpus is not issued in certain cases

Where the person who is detained or against whom the writ is issued is not within the jurisdiction of the Court.

To save the release of a person who has been imprisoned by a court for a criminal charge.

To interfere with a proceeding for contempt by a Court of record or by Parliament.

**Implication in Emergency :** In the Landmark case of **ADM Jabalpur v. Shivakant Shukla** which is also known as the Habeas Corpus case, it was held that the writ of Habeas Corpus can be suspended even during the emergency (**Article 359**).

**Damages:** The Court may also award exemplary damages. In **Bhim Singh v. State of Jammu & Kashmir**, the Hon'ble Apex Court awarded the exemplary damages of Rs.50,000/- (At that time this was a very significant amount).

Thus, writ of habeas corpus is a bulwark of personal liberty. It has been described as "a great constitutional privilege" or "first security of civil liberty". The most quintessential element is a speedy and effective remedy.

### Notable Cases for Writ of Habeas Corpus:

**In Kanu Sanyal v. District Magistrate**, while enunciating the real scope of writ of habeas corpus, the Supreme Court opined that while dealing with a petition for writ of habeas corpus, the court may examine the legality of the detention without requiring the person detained to be produced before it.

In **Nilabati Behera v. State of Orissa**, the Orissa police took away the son of the petitioner for the purposes of interrogation & he could not be traced. During the pendency of the petition, his dead body was found on railway track. The petitioner was awarded compensation of Rs.1,50,000.

### Mandamus

- "A writ issued by a court to compel performance of a particular act by lower court or a governmental officer or body, to correct a prior action or failure to act." It is used for enforcement of various rights of the public or to compel the public statutory authorities to discharge their duties and to act within the bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties.
- **The rule of Locus Standi:** is strictly followed while issuing writ of mandamus. The petitioner has to prove that he has a right to enforce public duty in his favour. The mandamus is "neither a writ of course nor a writ of right but that it will be granted if the duty is in nature of public duty and it especially affects the right of an individual, provided there is no more appropriate remedy".

### The necessary conditions for the issue of the writ of mandamus are:

1.	Error of jurisdiction	= Lack of jurisdiction/ Excess of jurisdiction.
2.	Jurisdictional facts	
3.	Violation of the principles of natural justice	= Principles of Rule against bias and Rule of Audi alterum partem
4.	Error of law apparent on the face of record	-
5.	Abuse of jurisdiction	-

### Conditions for Issue of Writ of Mandamus

1. Their ought to be a legal right of the applicant for the performance of the legal duty.
2. The nature of the duty must be public. In **The Praga Tools Corporation v. C.V. Imanul**, and **Sohanlal v. Union of India**, the Supreme Court stated that mandamus might under certain circumstances lie against a private individual if it is established that he has colluded with a public authority.
3. On the date of the petition, the right which is sought to be enforced must be subsisting.

4. The writ of Mandamus is not issued for anticipatory injury. But Anybody who is likely to be affected by the order of a public officer is entitled to bring an application for mandamus if the officer acts in contravention of his statutory duty.

#### **Exceptions & Limitations (Mandamus)**

In India, mandamus will lie not only against officers who are bound to do a public duty but also against the Government itself as Article 226 and 361 provided that appropriate proceedings may be brought against the Government concerned.

#### **Further, Mandamus will not be granted against the following persons:**

1. The president or the Governor of a State, for the exercise and performance of the powers and duties of his Office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. In India, it will not lie upon the President and the Governor of a State in their personal capacities.
2. Mandamus does not lie against a private individual or body whether incorporated or not except where the State is in collusion with such private party, in the matter of contravention of any provision of the Constitution or a Statute or a Statutory Instrument.
3. It will not lie against the State legislature to prevent from considering enacting a law alleged to be violative of constitutional provisions.
4. It will not lie against an inferior or ministerial officer who is bound to obey the orders of his superiors.

**Inferior Courts :** This writ is also available against inferior Courts or other Judicial bodies when they have refused to exercise their jurisdiction and thus to perform their duty.

**Alternate Remedy:** Mandamus is not refused on the ground that there is an adequate alternative remedy where the petitioner complains that his fundamental right is infringed.

In **Rashid Ahmad v. Municipal Board**, it was held that in relation to Fundamental Rights the availability of alternative remedy cannot be an absolute bar for the issue of writ through the fact may be taken into consideration.

Hence the writ of mandamus is to protect the interest of the public from the powers given to them to affect the rights and liabilities of the people. This writ makes sure that the power or the duties are not misused by the executive or administration and are duly fulfilled. It safeguards the public from the misuse of authority by the administrative bodies. Thus, Writ of Mandamus is a general remedy whenever justice has been denied to any person.

#### **Landmark Cases for Writ of Mandamus**

- The courts are unwilling to issue writ of mandamus against high dignitaries like the President and the Governors. In the case of **S.P. Gupta v. Union of India**, judges were of the view that writ cannot be issued against the President of India for fixing the number of judges in High Courts and filling vacancies.
- In **C.G. Govindan v. State of Gujarat**, it was refused by the court to issue the writ of mandamus against the governor to approve the fixation of salaries of the court staff by the Chief Justice of High Court under Article 229. Hence, it is submitted that the Governor or the President means the state or the Union and therefore issuance of mandamus cannot take place.

#### **Prohibition**

- **Meaning:** A writ of prohibition, also known as a 'stay order', is issued to a lower court or a body to stop acting beyond its powers.
- **The Purpose:** The basic purpose is to secure that the jurisdiction of an inferior court or tribunal is properly exercised and that it does not usurp the jurisdiction which it does not possess. Thus, writ of prohibition is available during the pendency of the proceedings and before the order is made.
- **The Principle:** Prohibition is a writ of preventive nature. The principle of this is 'Prevention is better than cure'.
- **The writ of prohibition can be issued on the following grounds:**

1. Absence or Excess of jurisdiction
2. Violation of the principles of natural justice
3. Unconstitutionality of a Statute
4. Infraction of Fundamental Rights.

### Landmark Case Laws for Writ of Prohibition

- In the case of **East India Commercial Co. Ltd v. Collector of Customs** a writ of prohibition was passed directing an inferior Tribunal prohibiting it from continuing with the proceeding on the ground that the proceeding is without or in excess of jurisdiction or in contradiction with the laws of the land, statutes or otherwise.
- Also, it was held in the case of **Bengal Immunity Co. Ltd**, the Supreme Court pointed out that where an inferior tribunal is shown to have seized jurisdiction which does not belong to it than that consideration is irrelevant and the writ of Prohibition has to be issued as a right.

### Certiorari

- **Meaning:** The writ of certiorari issued to quash a decision after the decision is taken by a lower tribunal while prohibition is issuable before the proceedings are completed. The law has always been, that a writ of certiorari is issued against the acts or proceedings of a judicial or quasi-judicial body conferred with power to determine question affecting the rights of subjects and obliged to act judicially.
- **The Purpose:** of the writ of certiorari is not only negative in the sense that it is used to quash an action but it contains affirmative action as well. It is preventive as well as curative in nature. The power of judicial review is not restricted where glaring injustice demands affirmative action.

### Ways in Which a Writ of Certiorari is Issued?

Certiorari is not issued against purely administrative or ministerial orders and that it can only be issued against judicial or quasi-judicial orders.

1. Either without any jurisdiction or in excess
2. In violation of the principles of Natural Justice.
3. In opposition to the procedure established by law.
4. If there is an error in judgement on the face of it

### The conditions necessary for the issue of the writ of certiorari are:

1. Anybody of persons.
2. Having legal authority
3. To determine questions affecting the rights of subjects
4. Having the duty to act judicially.

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5. Act in excess of legal authority

The grounds on which the writ of certiorari may be issued are:

1. Error of Jurisdiction	Lack of jurisdiction.
2. Excess of jurisdiction.	a) Abuse of jurisdiction.
	b) Error of law apparent on the face of the record.
	c) Violation of principles of natural justice.

### Landmark Cases On Writ of Certiorari

- In **Naresh S. Mirajkar v. State of Maharashtra**, it was said that High Court's judicial orders are open to being corrected by certiorari and that writ is not available against the High Court.
- In the case of **T.C. Basappa v. T. Nagappa & Anr.**, it was held by the constitution bench that certiorari maybe and is generally granted when a court has acted (i) without jurisdiction or (ii) in excess of its jurisdiction.
- In **Surya Dev Rai v. Ram Chander Rai & Ors.**, the Supreme Court has explained the meaning, ambit and scope of the writ of Certiorari. It was held that Certiorari is always available against inferior courts and not against equal or higher court.
- In **A.K. Kripak v. Union of India**, it was held that the Supreme Court should issue the writ of certiorari to quash the selection list of the Indian Forest Service on the ground that one of the selected candidates was the ex-officio member of the selection committee.

### Quo Warranto

- **Meaning:** The writ of Quo Warranto (by what warrant) is issued to inquire about the legality of a claim by a person or authority to act in a public office, which he or she is not entitled to. The writ of Quo Warranto is a mode of judicial control in the sense that the proceedings review the actions of the administrative authority which appointed the person.

The writ is issued to the person ousting him from holding a public post to which he has no right. It is used to try the civil right to a public post. Accordingly, the use of the writ is made in cases of usurpation of a public office and removal of such usurper. Conversely, it protects citizen from being deprived of public office to which he may have a right. A petition for the writ of Quo Warranto **can be filed by any person** though he is not an aggrieved person.

The conditions necessary for the issue of a writ of Quo Warranto are:

1. The office must be public and it must be created by a statute or by the constitution itself. In the case of **Jamalpur Arya Samaj v. Dr D. Ram**, the writ was denied on the ground that writ of quo warranto cannot lie against an office of a private nature. And also, it is necessary that office must be of substantive character.
2. The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another.
3. There has been a contravention of the Constitution or a statute or statutory instrument, in appointing such person to that office.
4. The claim should be asserted on the office by the public servant i.e. respondent.

The court issues the Writ of Quo Warranto in the following cases:

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1. When the public office is in question and it is of a substantive nature. A petition against a private corporation cannot be filed.
2. The office is created by the State or the Constitution.

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### **Ownership of copyrights and assignment**

The owner of the copyright has the power to assign his entire rights or assign only some of the rights. In case the rights are split up there is only partial assignment.

Assignee will be the owner of the copyright as regard rights so assigned, the owner will be the owner of the copy right of remaining rights.

### **Criteria of infringement, Piracy in Internet**

Section 65A states that “any person who circumvents an effective technological measure applied to protect any of the rights conferred by this Act, to infringe such rights, Shall be punishable with imprisonment which may extend to two years and shall also be liable to fine”. Such punishment is bound to deter several.

### **Remedies and procedures in India**

Article 32 is the “soul of the Constitution and the very heart of it”.

The best conferment of the Constitution is the Fundamental Rights.

Somehow or another, they frame the rampart of our Constitution. Each one of these Rights is trivial if there exists no instrument to authorize them.

Article 32 gives such a component. That is the reason it is the gem, the delegated wonder, the heart, and the spirit of the Constitution.

### **Right to constitutional remedies**

- Article 32 is known as the “spirit of the constitution and exceptionally heart of it” by Dr. Ambedkar. Preeminent Court has included it in fundamental structure regulation. Further, it is clarified that privilege to move to Supreme Court can't be suspended with the exception of generally given by the Constitution. This suggests this privilege suspended amid a national crisis under article 359.
- Article 32 marks the Supreme court the safeguard and underwriter of the major rights. Further, the capacity to issue writs goes under the original jurisdiction of the Apex Court. This implies an individual may approach SC straightforwardly for a cure as opposed to by appeal.
- Article 32 can be used only to get a remedy for fundamental rights enshrined in Article 12-35. It isn't there for some other legal right for which diverse laws are accessible.

### **What is WRIT?**

A precept in writing, couched in the form of a letter, running in the name of the king, president, or state, issuing from a court of justice, and sealed with its seal, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as the commencement of a suit or other proceeding or as incidental to its progress, and requiring the performance of a specified act, or giving authority and commission to have it done. For the names and description of various particular writs, see the following titles.

- In old English law. An Instrument In the form of a letter; a letter or letter of attorney. This is a very ancient sense of the word.

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- In the old books, "writ" is used as equivalent to "action;" hence writs are sometimes divided into real, personal, and mixed.
- In Scottish law. Writing ;an instrument in writing , as a deed, bond, contract,etc.

### **Constitutional Philosophy of Writ Jurisdiction**

An individual whose privilege (Fundamental Right) is encroached by an arbitrary administrative action may approach the Court for a suitable remedy. Article 32(2) of the Constitution of India gives : "The Supreme Court will have the capacity to issue bearings or requests or writs, incorporating writs in the idea of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever might be suitable, for the requirement of any of rights given by this Part." Article 32 is a basic Right directly under part-III of the Constitution. Under this Article, the Supreme Court is enabled to loosen up the customary standard of Locus Standi and permit general society to intrigue case in the name of public interest litigation (PIL).

### **Comparative Analysis of Article 32 & 226**

Article 32 isn't to be conjured for encroachment of an individual right of the agreement (contract), nor is to be summoned for unsettling questions of India, on the other hand says, "Not with standing anything in Article 32, every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority , including in appropriate cases, any Government, with in those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose".

As is obvious from the uncovered dialect, this Article ensures a person to move the High Court for implementation of the fundamental rights and also for implementation of some other lawful right. Article 226 gives wide powers on the High Courts. It fills in as a major repository of legal capacity to control organization. Its capacity under Article 226 can't be diminished by enactment. In this manner, forces of High Courts gave under Article 226 are more extensive when contrasted with forces presented on the Supreme Court Article 32 of the Constitution of India.

### **Types of WRITS**

#### **Habeas Corpus :**

This writ is in the nature of an order calling upon the person who has detained another to produce the latter before the Court, in order to let the Court, know on what ground he has been confined and to set him free if there is no legal justification for the confinement. In *Rudulsah v. State of Bihar* added a new dimension to judicial activism and raised a set of vital questions, such as, liability of State to compensate for unlawful detention, feasibility of claiming compensation from the State under Article 32 for wrongful deprivation of fundamental rights, propriety of the Supreme Court passing an order for compensation on a habeas corpus petition for enforcing the right to personal liberty.

- **The General Principle :**

The principle on which Habeas Corpus function is that a person illegally detained in confinement without legal proceedings is entitled to seek the remedy of habeas corpus.

- **Nature of Writs:**

While deciding whether Habeas Corpus writs are civil or criminal in nature, it was held in *Narayan v. Ishwarlal* that the court would rely on the way of the procedures in which the locale has been executed.

### **How a Writ of Habeas Corpus is filled?**

An application for habeas corpus can be made by any person on the behalf of the prisoner/ detenu as well as the prisoner/ detenu himself.

Even a letter to the judge mentioning illegalities committed on prisoners in jail can be admitted. In *Sunil Batra v. Delhi Administration.*, a convict had written a letter to one of the Judges of the Supreme Court alleging in human torture to a fellow convict. The late justice Krishna Iyer treated this letter as a petition of habeas corpus and passed appropriate orders.

Courts can also act Suo motu in the interests of justice on any information received by it from any quarter/source.

## Habeas Corpus is not issued in certain cases

Where the person who is detained or against whom the writ is issued is not within the jurisdiction of the Court.

To save the release of a person who has been imprisoned by a court for a criminal charge.

To interfere with a proceeding for contempt by a Court of record or by Parliament.

**Implication in Emergency :** In the Landmark case of **ADM Jabalpur v. Shivakant Shukla** which is also known as the Habeas Corpus case, it was held that the writ of Habeas Corpus can be suspended even during the emergency (**Article 359**).

**Damages:** The Court may also award exemplary damages. In **Bhim Singh v. State of Jammu & Kashmir**, the Hon'ble Apex Court awarded the exemplary damages of Rs.50,000/- (At that time this was a very significant amount).

Thus, writ of habeas corpus is a bulwark of personal liberty. It has been described as "a great constitutional privilege" or "first security of civil liberty". The most quintessential element is a speedy and effective remedy.

### Notable Cases for Writ of Habeas Corpus:

In **Kanu Sanyal v. District Magistrate**, while enunciating the real scope of writ of habeas corpus, the Supreme Court opined that while dealing with a petition for writ of habeas corpus, the court may examine the legality of the detention without requiring the person detained to be produced before it.

In **Nilabati Behera v. State of Orissa**, the Orissa police took away the son of the petitioner for the purposes of interrogation & he could not be traced. During the pendency of the petition, his dead body was found on railway track. The petitioner was awarded compensation of Rs.1,50,000.

## Mandamus

- "A writ issued by a court to compel performance of a particular act by lower court or a governmental officer or body, to correct a prior action or failure to act." It is used for enforcement of various rights of the public or to compel the public statutory authorities to discharge their duties and to act within the bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties.
- **The rule of Locus Standi:** is strictly followed in while issuing writ of mandamus. The petitioner has to prove that he has a right to enforce public duty in his favour. The mandamus is "neither a writ of course nor a writ of right but that it will be granted if the duty is in nature of public duty and it especially affects the right of an individual, provided there is no more appropriate remedy".

### The necessary conditions for the issue of the writ of mandamus are:

1.	Error of jurisdiction	= Lack of jurisdiction/ Excess of jurisdiction.
2.	Jurisdictional facts	
3.	Violation of the principles of natural justice	= Principles of Rule against bias and Rule of Audi alterum partem
4.	Error of law apparent on the face of record	-
5.	Abuse of jurisdiction	-

## Conditions for Issue of Writ of Mandamus

1. There ought to be a legal right of the applicant for the performance of the legal duty.
2. The nature of the duty must be public. In **The Praga Tools Corporation v. C.V. Imanuel**, and **Sohanlal v. Union of India**, the Supreme Court stated that mandamus might under certain circumstances lie against a private individual if it is established that he has colluded with a public authority.
3. On the date of the petition, the right which is sought to be enforced must be subsisting.
4. The writ of Mandamus is not issued for anticipatory injury. But Anybody who is likely to be affected by the order of a public officer is entitled to bring an application for mandamus if the officer acts in contravention of his statutory duty.

### Exceptions & Limitations (Mandamus)

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In India, mandamus will lie not only against officers who are bound to do a public duty but also against the Government itself as Article 226 and 361 provided that appropriate proceedings may be brought against the Government concerned.

**Further, Mandamus will not be granted against the following persons:**

5. The president or the Governor of a State, for the exercise and performance of the powers and duties of his Office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. In India, it will not lie upon the President and the Governor of a State in their personal capacities.
6. Mandamus does not lie against a private individual or body whether incorporated or not except where the State is in collusion with such private party, in the matter of contravention of any provision of the Constitution or a Statute or a Statutory Instrument.
7. It will not lie against the State legislature to prevent from considering enacting a law alleged to be violative of constitutional provisions.
8. It will not lie against an inferior or ministerial officer who is bound to obey the orders of his superiors.

**Inferior Courts :** This writ is also available against inferior Courts or other Judicial bodies when they have refused to exercise their jurisdiction and thus to perform their duty.

**Alternate Remedy:** Mandamus is not refused on the ground that there is an adequate alternative remedy where the petitioner complains that his fundamental right is infringed.

In **Rashid Ahmad v. Municipal Board**, it was held that in relation to Fundamental Rights the availability of alternative remedy cannot be an absolute bar for the issue of writ through the fact may be taken into consideration.

Hence the writ of mandamus is to protect the interest of the public from the powers given to them to affect the rights and liabilities of the people. This writ makes sure that the power or the duties are not misused by the executive or administration and are duly fulfilled. It safeguards the public from the misuse of authority by the administrative bodies. Thus, Writ of Mandamus is a general remedy whenever justice has been denied to any person.

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### Landmark Cases for Writ of Mandamus

- The courts are unwilling to issue writ of mandamus against high dignitaries like the President and the Governors. In the case of **S.P. Gupta v. Union of India**, judges were of the view that writ cannot be issued against the President of India for fixing the number of judges in High Courts and filling vacancies.
- In **C.G. Govindan v. State of Gujarat**, it was refused by the court to issue the writ of mandamus against the governor to approve the fixation of salaries of the court staff by the Chief Justice of High Court under Article 229. Hence, it is submitted that the Governor or the President means the state or the Union and therefore issuance of mandamus cannot take place.

### Prohibition

- **Meaning:** A writ of prohibition, also known as a 'stay order', is issued to a lower court or a body to stop acting beyond its powers.
- **The Purpose:** The basic purpose is to secure that the jurisdiction of an inferior court or tribunal is properly exercised and that it does not usurp the jurisdiction which it does not possess. Thus, writ of prohibition is available during the pendency of the proceedings and before the order is made.
- **The Principle:** Prohibition is a writ of preventive nature. The principle of this is 'Prevention is better than cure'.
- **The writ of prohibition can be issued on the following grounds:**

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1. Absence or Excess of jurisdiction
2. Violation of the principles of natural justice
3. Unconstitutionality of a Statute
4. Infraction of Fundamental Rights.

### Landmark Case Laws for Writ of Prohibition

- In the case of **East India Commercial Co. Ltd v. Collector of Customs** a writ of prohibition was passed directing an inferior Tribunal prohibiting it from continuing with the proceeding on the ground that the proceeding is without or in excess of jurisdiction or in contradiction with the laws of the land, statutes or otherwise.
- Also, it was held in the case of **Bengal Immunity Co. Ltd**, the Supreme Court pointed out that where an inferior tribunal is shown to have seized jurisdiction which does not belong to it than that consideration is irrelevant and the writ of Prohibition has to be issued as a right.

### Certiorari

- **Meaning:** The writ of certiorari issued to quash a decision after the decision is taken by a lower tribunal while prohibition is issuable before the proceedings are completed. The law has always been, that a writ of certiorari is issued against the acts or proceedings of a judicial or quasi-judicial body conferred with power to determine question affecting the rights of subjects and obliged to act judicially.
- **The Purpose:** of the writ of certiorari is not only negative in the sense that it is used to quash an action but it contains affirmative action as well. It is preventive as well as curative in nature. The power of judicial review is not restricted where glaring injustice demands affirmative action.

### Ways in Which a Writ of Certiorari is Issued?

Certiorari is not issued against purely administrative or ministerial orders and that it can only be issued against judicial or quasi-judicial orders.

1. Either without any jurisdiction or in excess
2. In violation of the principles of Natural Justice.
3. In opposition to the procedure established by law.
4. If there is an error in judgement on the face of it

### The conditions necessary for the issue of the writ of certiorari are:

1. Anybody of persons.
2. Having legal authority
3. To determine questions affecting the rights of subjects
4. Having the duty to act judicially.

5. Act in excess of legal authority

**The grounds on which the writ of certiorari may be issued are:**

1. Error of Jurisdiction	Lack of jurisdiction.
2. Excess of jurisdiction.	a) Abuse of jurisdiction.
	b) Error of law apparent on the face of the record.
	c) Violation of principles of natural justice.

**Landmark Cases On Writ of Certiorari**

- In **Naresh S. Mirajkar v. State of Maharashtra**, it was said that High Court's judicial orders are open to being corrected by certiorari and that writ is not available against the High Court.
- In the case of **T.C. Basappa v. T. Nagappa & Anr.**, it was held by the constitution bench that certiorari maybe and is generally granted when a court has acted (i) without jurisdiction or (ii) in excess of its jurisdiction.
- In **Surya Dev Rai v. Ram Chander Rai & Ors.**, the Supreme Court has explained the meaning, ambit and scope of the writ of Certiorari. It was held that Certiorari is always available against inferior courts and not against equal or higher court.
- In **A.K. Kripak v. Union of India**, it was held that the Supreme Court should issue the writ of certiorari to quash the selection list of the Indian Forest Service on the ground that one of the selected candidates was the ex-officio member of the selection committee.

**Quo Warranto**

- **Meaning:** The writ of Quo Warranto (by what warrant) is issued to inquire about the legality of a claim by a person or authority to act in a public office, which he or she is not entitled to. The writ of Quo Warranto is a mode of judicial control in the sense that the proceedings review the actions of the administrative authority which appointed the person.

The writ **is issued to the person** ousting him from holding a public post to which he has no right. It is used to try the civil right to a public post. Accordingly, the use of the writ is made in cases of usurpation of a public office and removal of such usurper. Conversely, it protects citizen from being deprived of public office to which he may have a right. A petition for the writ of Quo Warranto **can be filed by any person** though he is not an aggrieved person.

**The conditions necessary for the issue of a writ of Quo Warranto are:**

5. The office must be public and it must be created by a statute or by the constitution itself. In the case of **Jamalpur Arya Samaj v. Dr D. Ram**, the writ was denied on the ground that writ of quo warranto cannot lie against an office of a private nature. And also, it is necessary that office must be of substantive character.
6. The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another.
7. There has been a contravention of the Constitution or a statute or statutory instrument, in appointing such person to that office.
8. The claim should be asserted on the office by the public servant i.e. respondent.

**The court issues the Writ of Quo Warranto in the following cases:**

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3. When the public office is in question and it is of a substantive nature. A petition against a private corporation cannot be filed.
4. The office is created by the State or the Constitution.

