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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WRIT JURISDICTION OF SUPREME COURT

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ABSTRACT

This abstract provides quick overview of writ jurisdiction of supreme court in India. The writ jurisdiction of Supreme Court of India is one of the most powerful tools available to citizens to enforce their fundamental rights. The writ of habeas corpus, mandamus, prohibition, certiorari, and quo warranto are the issued by the Supreme Court to protect the rights of citizens against any illegal or arbitrary action by the state or its agencies. The writ jurisdiction of Supreme Court of India is an essential feature of the Constitution that provide a mechanism for the protection of the fundamental rights of citizens. This article explores the significance of the writ of Supreme Court and its role in upholding the rule of Law in India.

The writ jurisdiction of Supreme Court of India is based on the principle of judicial review, which is the power of the courts to examine the constitutionality of legislative and executive actions. The writs are issued by the Supreme Court to ensure that the state and its agencies act in accordance with the Constitution and do not violate the Fundamental Right of the citizens. The writs are also issued to ensure that the state and its agencies act within the limits of their authority and do not abuse their power.

The writ of habeas corpus is issued to ensure that a person who has been illegally detained is released. The writ of mandamus is issued to compel a public official or a public body to perform a duty that is required by law. The writ of prohibition is issued to prevent a public official or a public body from acting beyond its jurisdiction. The writ of certiorari is issued to quash an order passed by a lower court or a tribunal that is without jurisdiction or in violation of the principles of natural justice. The writ of quo warranto is issued to prevent a person from holding a public office to which he or she is not entitled.

The writ jurisdiction of the Supreme Court is significant as it provides a mechanism for the

protection of the fundamental rights of citizens. The writs are issued by the Supreme Court to ensure that the state and its agencies act in accordance with the Constitution and do not violate the fundamental rights of citizens. The writ jurisdiction of the Supreme Court is also significant as it provides a check on the arbitrary exercise of power by the state and its agencies.

The writ jurisdiction of the Supreme Court has been used in several landmark cases. In the case of *Kesavananda Bharati v. State of Kerala*, the Supreme Court held that the basic structure of the Constitution cannot be amended. In the case of *Maneka Gandhi v. Union of India*, the Supreme Court held that the right to life and personal liberty under Article 21 of the Constitution is not limited to mere animal existence but includes the right to live with dignity. The court also held that the procedure established by law must be just, fair, and reasonable.

This article is also significant as it provides for the enforcement of fundamental rights against private individuals and entities. This is important as it ensures that the fundamental rights of the citizens are protected not only against the state but also against private individual and entities. The article further provides for the suspension of the rights to move the Supreme Court during a national emergency. This provision is essential to ensure that the state can take necessary measures to deal with the emergency situations. However, the Supreme Court can examine the validity of the emergency and the actions taken by the state during the emergency.

1. Introduction

Article 32 of the Constitution of India is one of the most significant provisions that guarantees the right to constitutional remedies. It provides for the enforcement of fundamental rights and is regarded as the cornerstone of the Constitution. Article 32 of the Constitution of India gives the citizens of India the right to move the Supreme Court for the enforcement of their fundamental rights. This article explores the significance of Article 32 in the Indian Constitution and its role in upholding the rule of law in India. The significance of Article 32 of the Indian Constitution lies in its role in upholding the rule of law in India. The Constitution of India is the supreme law of the land, and the fundamental rights guaranteed under the Constitution are sacrosanct. Article 32 provides a mechanism for the enforcement of these fundamental rights and ensures that the state and its agencies act in accordance with the Constitution. The writ jurisdiction of the Supreme Court is an essential feature of the Constitution that provides a check on the arbitrary exercise of power by the state and its agencies. The writ jurisdiction of the Supreme Court has been used in

several landmark cases. In the case of *Kesavananda Bharati v. State of Kerala*, the Supreme Court held that the basic structure of the Constitution cannot be amended. In the case of *Maneka Gandhi v. Union of India*.

2. Why writ is important

Writs are important because they help protect the rights of citizens against the state and its agencies. The state has a monopoly on the use of force, and it is essential to have a mechanism that ensures that this power is not misused. Writs provide a check on the arbitrary exercise of power by the state and its agencies and ensure that the state acts in accordance with the Constitution. Writs are also important because they provide a mechanism for the protection of individual liberty. Writs are legal orders issued by courts to protect the rights of citizens. They are essential for upholding the rule of law and ensuring that the state and its agencies act in accordance with the Constitution. Writs provide a mechanism for the enforcement of fundamental rights and are an essential feature of the Indian Constitution. The writ of habeas corpus is considered the most fundamental of all writs, as it protects the liberty of the individual. This writ is issued to ensure that a person who has been illegally detained is released. The writ of mandamus is issued to compel a public official or a public body to perform a duty that is required by law. The writ of prohibition is issued to prevent a public official or a public body from acting beyond its jurisdiction. The writ of certiorari is issued to quash an order passed by a lower court or a tribunal that is without jurisdiction or in violation of the principles of natural justice. The writ of quo warranto is issued to prevent a person from holding a public office to which he or she is not entitled.

The significance of writs lies in their role in upholding the rule of law in India. The Constitution of India is the supreme law of the land, and the fundamental rights guaranteed under the Constitution are sacrosanct. Writs provide a mechanism for the enforcement of these fundamental rights and ensure that the state and its agencies act in accordance with the Constitution. The writ jurisdiction of the Supreme Court is an essential feature of the Constitution that provides a check on the arbitrary exercise of power by the state and its agencies.

3. Why Article 32 is the soul of the Indian Constitution

Article 32 is often considered the "soul" of the Indian Constitution because it safeguards our fundamental rights and acts as a powerful tool for citizens to seek justice and protect their liberties.

It grants individuals the right to approach the Supreme Court directly for the enforcement of their fundamental rights. This means that if someone believes their rights have been violated, they can directly approach the Supreme Court without going through lower courts. Article 32 ensures that the Supreme Court acts as the custodian and guardian of our fundamental rights. It empowers individuals to challenge any action or law that infringes upon their fundamental rights, such as the right to equality, freedom of speech, or the right to life and personal liberty. This provision plays a crucial role in upholding the principles of justice, equality, and democracy in our country. The Supreme Court, through Article 32, has delivered landmark judgments that have protected and expanded the scope of our fundamental rights. These judgments have shaped the legal landscape and set precedents for future cases. Article 32 serves as a check and balance mechanism, ensuring that the government and its agencies act within the boundaries of the Constitution and do not violate the rights of the citizens. It acts as a safeguard against any arbitrary or unconstitutional actions by the state. The provision also reflects the vision of the framers of the Constitution, who wanted to establish a strong and independent judiciary that could protect the rights and liberties of the people. It ensures that the judiciary remains a pillar of democracy and acts as a shield for the citizens against any violation of their fundamental rights. In summary, Article 32 is considered the "soul" of the Indian Constitution because it empowers individuals to seek justice, protects their fundamental rights, and upholds the principles of justice, equality, and democracy. It's a powerful provision that ensures the citizens' rights are safeguarded and the government remains accountable.

4. Prerogative writs

Prerogative writs are a type of writ issued by courts that are used to protect the rights of citizens against the state and its agencies. These writs are issued by the High Courts and the Supreme Court of India and are an essential feature of the Indian legal system. The main prerogative writs are habeas corpus, mandamus, prohibition, certiorari, and quo warranto.

- **Habeas corpus**

The writ of habeas corpus is the most fundamental of all the prerogative writs. It is issued to ensure that a person who has been illegally detained is released. The writ of habeas corpus is used to protect the liberty of the individual and is an essential safeguard against arbitrary detention by the state. The writ of habeas corpus can be issued by any court, and it is the duty of the court to ensure that the person who has been detained is produced before it. Habeas corpus is a legal writ that is

used to protect the individual's liberty by ensuring that a person who has been detained is produced before a court. It is issued to prevent arbitrary detention by the state and is an essential safeguard against the abuse of power. The writ of habeas corpus can be issued by any court, and it is the duty of the court to ensure that the person who has been detained is released if the detention is found to be illegal.

There are many case laws related to habeas corpus, but some of the most significant include:

1. *Ex parte Merryman* (1861) - The case held that the President does not have the power to suspend the writ of habeas corpus, only Congress does.
2. *Boumediene v. Bush* (2008) - The case held that detainees at Guantanamo Bay have the right to challenge their detention through the writ of habeas corpus.
3. *Rasul v. Bush* (2004) - The case held that foreign nationals detained at Guantanamo Bay have the right to challenge their detention through the writ of habeas corpus.
4. *Hamdi v. Rumsfeld* (2004) - The case held that U.S. citizens detained as enemy combatants have the right to challenge their detention through the writ of habeas corpus.

- **Mandamus**

Mandamus is a legal writ issued by a court to compel a public official or public body to perform a duty that is required by law. It is used to ensure that public officials and public bodies act in accordance with the law and do not exceed their jurisdiction. The writ of mandamus can be issued against any public official or public body, and it is the duty of the court to ensure that the duty is performed.

There are many case laws related to mandamus, but some of the most significant include:

1. *Marbury v. Madison* (1803) - The case held that the Supreme Court has the power to issue writs of mandamus against government officials.
2. *United States v. Nixon* (1974) - The case held that the President is not immune to the writ of mandamus and must comply with court orders.
3. *Cheney v. United States District Court* (2004) - The case held that the courts have the power to issue writs of mandamus against the Vice President.
4. *In re: Al-Nashiri* (2015) - The case held that the military commission system at Guantanamo Bay could be subject to the writ of mandamus.

- **Prohibition**

The writ of prohibition is issued to prevent a public official or a public body from acting beyond its jurisdiction. This writ is used to prevent the misuse of power by public officials and public bodies. The writ of prohibition can be issued against any public official or public body, and it is the duty of the court to ensure that the jurisdiction is not exceeded. The writ of prohibition is a legal writ that is used to prevent a lower court or tribunal from exceeding its jurisdiction or acting beyond its authority. It is issued by a higher court to prevent a lower court or tribunal from taking action that is illegal or beyond its power. The writ of prohibition is an important safeguard against the abuse of power by lower courts or tribunals, and it is used to ensure that they act within the limits of their jurisdiction. The writ of prohibition can be issued against any court or tribunal, and it is the duty of the higher court to ensure that the lower court or tribunal does not exceed its jurisdiction.

There are many case laws related to prohibition writ, but some of the most significant include:

1. *Ex parte Young* (1908) - The case held that the writ of prohibition could be used to enjoin state officials from violating federal law.
2. *Cheney v. United States District Court* (2004) - The case held that the writ of prohibition could be used to prevent a lower court from exceeding its jurisdiction.
3. *United States v. Nixon* (1974) - The case held that the writ of prohibition could be used to enforce a subpoena against the President.
4. *In re: United States* (2019) - The case held that the writ of prohibition could be used to prevent a lower court from issuing an order that would interfere with the President's power to conduct foreign affairs.

- **Quo Warranto**

Quo warranto is a legal term that refers to a writ used to challenge the authority or legitimacy of a person holding a public office or position. It's like asking, "By what authority do you hold this position?" This writ is a powerful tool to ensure that public offices are held by individuals who are qualified and have the legal right to occupy those positions. Quo warranto can be filed by any interested person who believes that someone is unlawfully holding a public office or position. The purpose is to determine whether the person in question has the legal right or authority to hold that office. If the court finds that the person is holding the office without proper authority, they may

be removed from the position. Quo warranto plays a crucial role in maintaining the integrity of public offices and upholding the principles of accountability and transparency in governance. It helps prevent the misuse of power and ensures that only deserving individuals hold public positions.

There are many case laws related to prohibition writ, but some of the most significant include:

1. *State of Rajasthan v. Union of India*, AIR 1977 SC 1361- In this case, the Supreme Court used the power of quo warranto to examine the appointment of a Chief Ministers without following the constitutional provisions was invalid.
2. *Lily Thomas v. Union of India* (Writ Petition (Civil)798 of 1995) – In this case the Court used Quo Warranto to question the appointment of convicted legislators. The court ruled that convicted individuals cannot hold public office and issued a writ of quo warranto to remove them.
3. *Rajesh Awasthi v. Nand Lal Jaiswal*, (2013)

- **Certiorari**

A writ of certiorari is a legal document used to request a higher court to review a lower court's decision. It's like asking a fancy court to check if the other court made any mistakes. It's a way to get a second opinion from a higher authority. The writ explains why the lower court's decision should be reviewed and can be an important step in the appeals process. The writ of certiorari is super important for the Indian Constitution. The writ of certiorari allows the Supreme Court to step in and correct any errors or illegalities that may have occurred during the lower court proceedings.

There are many case laws related to prohibition writ, but some of the most significant include:

1. *Kesavananda Bharati v. State of Kerela*, (1973) 4 SCC 225; AIR 1973SC 1461- It's a landmark judgement where the Supreme Court used the power of certiorari to review and strike down certain amendments to the Constitution.
2. *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; (1978) 1 SCC 248- In this case the Supreme Court expanded the scope of the certiorari writ to protect the fundamental rights of individuals. The court held that the right to personal liberty includes the right to a fair and reasonable procedure.

Deference between Article 32 and Article 226

Article 32 and Article 226 of the Indian Constitution both play significant roles in safeguarding the fundamental rights of individuals, but they have some key differences. Article 32 is often referred to as the "Right to Constitutional Remedies." It empowers individuals to directly approach the Supreme Court of India for the enforcement of their fundamental rights. Article 32 is considered the heart and soul of the Constitution, as it acts as a protector and guarantor of individual rights. It provides a powerful mechanism for seeking justice and remedies for the violation of fundamental rights. The Supreme Court has the authority to issue writs, orders, or directions for the enforcement of these rights. Article 32 is a fundamental right in itself and cannot be suspended except during a state of emergency. Article 226 grants power to the High Courts of India to issue writs, orders, or directions for the enforcement of fundamental rights as well as for any other purpose. Article 32, which can only be invoked in cases of fundamental rights violations, Article 226 has a wider scope. It allows individuals to seek remedies for not just fundamental rights violations but also for matters concerning ordinary legal rights, contractual disputes, administrative actions, and more. The jurisdiction of the High Courts under Article 226 covers both the territories within their respective states as well as Union territories.

The key differences between Article 32 and Article 226 are:

- **Scope:** Article 32 is limited to the enforcement of fundamental rights, while Article 226 has a broader scope and covers a wide range of legal issues.
- **Forum:** Article 32 provides the right to directly approach the Supreme Court, which is the highest court in the country. On the other hand, Article 226 allows individuals to approach the High Courts of their respective states or Union territories.
- **Fundamental Right Status:** Article 32 itself is a fundamental right, ensuring the protection of fundamental rights. In contrast, Article 226 does not have the same status as a fundamental right.

Both Article 32 and Article 226 serve as crucial pillars of the Indian Constitution, ensuring access to justice and the protection of individual rights. They provide avenues for individuals to seek legal remedies and hold authorities accountable. Whether it's the Supreme Court under Article 32 or the High Courts under Article 226, these provisions empower individuals to seek justice and uphold the principles of justice, equality, and the rule of law.

Conclusion

The Supreme Court's writ jurisdiction is significant as it acts as a safeguard against the infringement of fundamental rights and ensures the rule of law. The Supreme Court, being the highest court in the country, has the authority to issue writs not only against the actions of the government but also against private individuals or entities if they violate fundamental rights. The writ jurisdiction of the Supreme Court is a powerful tool in upholding the principles of justice, equality, and the rule of law. It serves as a check on the actions of the executive and ensures that individuals have access to justice and legal remedies. The Supreme Court's power to issue writs acts as a deterrent against any violation of fundamental rights and helps maintain the balance between individual rights and the authority of the state. In conclusion, the writ jurisdiction of the Supreme Court plays a crucial role in protecting and enforcing fundamental rights. It provides a mechanism for individuals to seek justice and hold authorities accountable. The Supreme Court's power to issue writs ensures that the principles enshrined in the Indian Constitution are upheld and that the rights of individuals are safeguarded.