



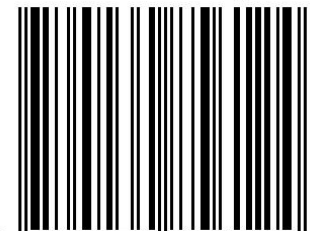
## Study about Writs in India and Habeas Corpus in India

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### Introduction

The Constitution of India assured greater protection of individuals rights and afforded larger freedom to the court to look into executive failures. The judiciary has provided various measures in preserving the liberty and freedom of the people of the country Each citizen of India has inherent right to challenge the constitutionality of any executive enactment restrains him from enjoying his fundamental rights. By judicial interpretations the fundamental rights, distribution of executive powers and other constitutional restrictions and limitations were provided a new meaning. The fundamental object of judicial review is to infuse life in the dry and abstract postulates of the constitution enabling it to be a living organism so as to satisfy the needs of the time.

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### Articles 32 and 226 of the Indian Constitution

Articles 32 and 226 of the Indian Constitution makes provisions for writs in the country. Under clause (2) of Article 32 the Supreme Court is empowered to issue appropriate direction, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition quo warranto and certiorari for the enforcement of any fundamental rights guaranteed by Art III of the constitution. By this article the Supreme Court has been constituted as a protector and guarantor of the fundamental rights and once a citizen has shown that there is infringement of his fundamental right the court cannot refuse to entertain petitions seeking enforcement of fundamental rights. Article 226(1) empowers every High Court, notwithstanding anything in Article 32, throughout the territories in relation to which it exercises jurisdiction to issue any person or authority, including appropriate cases any government, within those territories directions, orders or



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writs including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari for the enforcement of Fundamental Rights or for any other purpose.

Our Constitution entails the rules and guidelines; guiding, preaching and backing all the rights available and duties imposed upon the citizens as well as the non-citizens of the nation. No provision or legal principle listed in the constitution would truly be meaningful unless a mechanism exists for its enforcement. The concept of issuance of a writ has achieved its significance as it is one such enforcement device leading to achieving the benefit of fundamental rights in their literal sense. A writ is defined as a kind of special order sealed to any authority, government or any sovereign body in furtherance of abstinence or execution of a specified act.

There are five major types of writs viz. habeas corpus, mandamus, prohibition, quo warranto and certiorari. Each of them has different meaning and different implications. In India, both Supreme Court and High Court have been empowered with Writ Jurisdiction. Further, Parliament by law can extend power to issue writs to any other courts (including local courts) for local limits of jurisdiction of such courts.

- Habeas Corpus
- Mandamus
- Prohibition
- Certiorari
- Quo warranto

Issuance of any of these five writs has to be by the way of Article 32 or Article 226 for Supreme Court and High Court respectively. Article 226 has a broader jurisdiction than that of article 32 as SC can issue writs only when there is a fundamental right infringement, on the other hand, HC can issue these in both ordinary legal rights violation and fundamental rights violation. The writs available are namely Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto.

### **Habeas Corpus**

Habeas Corpus literally means ‘to have the body of’. Via this writ, the court can cause any person who has been detained or imprisoned to be physically brought before the court. The court



then examines the reason of his detention and if there is no legal justification of his detention, he can be set free. Such a writ can be issued in following example cases:

- When the person is detained and not produced before the magistrate within 24 hours
- When the person is arrested without any violation of a law.
- When a person is arrested under a law which is unconstitutional
- When detention is done to harm the person or is malafide.

Thus, Habeas corpus writ is called bulwark of individual liberty against arbitrary detention. A general rule of filing the petition is that a person whose right has been infringed must file a petition. But Habeas corpus is an exception and anybody on behalf of the detainee can file a petition. Habeas corpus writ is applicable to preventive detention also. This writ can be issued against both public authorities as well as individuals.

### **Writ of Habeas Corpus**

One of the important writs for individual freedom is “Habeas Corpus” which signifies “You may have the body”. In the event that any individual is kept in jail or a private care without legitimate legitimization; this writ is issued to the power limiting such individual, to create him/her under the watchful eye of the Court. The Court mediates here and requests that the power give the motivations to such confinement and if there is no legitimization, the individual kept is sans set. The candidate for this writ can either be the individual in detainment or any individual following up for his/her benefit to ensure his/her freedom. This writ accommodates quick help if there should arise an occurrence of unlawful detainment. It is the most significant writ for individual freedom. Habeas Corpus signifies, “Let us have the body.” A man, when captured, can move the Court for the issue of Habeas Corpus. It is a request by a Court to the keeping power to deliver the captured individual before it with the goal that it might inspect whether the individual has been kept legitimately or something else. On the off chance that the Court is persuaded that the individual is illicitly kept, it can issue orders for his discharge.

### **References :**

1. Article 32 in The Constitution Of India 1949
2. Writ of Habeas Corpus and Indian Constitution



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3. <https://academy.gktoday.in/article/types-of-writs-in-the-constitution-of-india/>