**Introduction**

Fundamental Rights are contained in Part III of the Indian Constitution including the right to equality, right to life and liberty etc. Merely providing for Fundamental Rights is not sufficient. It is essential that these Fundamental Rights are protected and enforced as well.

To protect Fundamental Rights the Indian Constitution, under Articles 32 and 226, provides the right to approach the Supreme Court or High Court, respectively, to any person whose Fundamental Right has been violated. At the same time, the two articles give the right to the highest courts of the country to issue writs in order to enforce Fundamental Rights.

What is a writ?

Fundamentally, a writ is a formal written order issued by anybody, executive or judicial, authorised to do so. In modern times, this body is generally judicial. Therefore, a writ can be understood as a formal written order issued by a Court having authority to issue such an order. Orders, warrants, directions, summons etc. are all essentially writs.

A writ petition is an application filed before the competent Court requesting it to issue a specific writ.

What are the kinds of writs?

Articles 32 and 226 specifically provide for five kinds of writs. These writs are issued in different circumstances and have different implications. They are:

**Habeas Corpus**

‘Habeas Corpus’ literally means “to have a body of”. This writ is used to release a person who has been unlawfully detained or imprisoned. By virtue of this writ, the Court directs the person so detained to be brought before it to examine the legality of his detention. If the Court concludes that the detention was unlawful, then it directs the person to be released immediately.

Examples of unlawful detention are:

1. The detention was not done in accordance with the procedure laid down. For instance, the person was not produced before a Magistrate within 24 hours.
2. The person was arrested when he did not violate any law.
3. An arrest was made under a law that is unconstitutional.

This writ can be filed by the detained person himself or his relatives or friends on his behalf. It can be issued against both public authorities and individuals.

**Mandamus**

‘Mandamus’ means ‘we command’. It is issued by the Court to direct a public authority to perform the legal duties which it has not or refused to perform.

It can be issued by the Court against a public official, public corporation, tribunal, inferior court or the government. It cannot be issued against a private individual or body, the President or Governors of States or against a working Chief Justices.

Further, it cannot be issued in the following circumstances:

1. The duty in question is discretionary and not mandatory.
2. For the performance of a non-statutory function.
3. Performance of the duty involves rights of purely private nature.
4. Where such direction involves violation of any law.

A writ petition seeking mandamus must be filed by the person who has an interest in the performance of the duty by the public authority.

**Quo Warranto**

‘Quo Warranto’ means ‘by what warrant’. Through this writ, the Court calls upon a person holding a public office to show under what authority he holds that office. If it is found that the person is not entitled to hold that office, he may be ousted from it. Its objective is to prevent a person from holding an office he is not entitled to therefore preventing usurpation of any public office.  It cannot be issued with respect to a private office.

**Certiorari**

‘Certiorari’ means to ‘certify’. Certiorari is a curative writ. When the Court is of the opinion that a lower court or a tribunal has passed an order which is beyond its powers or committed an error of law then, through the writ of certiorari, it may transfer the case to itself or quash the order passed by the lower court or tribunal.

**Prohibition**

A writ of prohibition is issued by a Court to prohibit the lower courts, tribunals and other quasi-judicial authorities from doing something beyond their authority. It is issued to direct inactivity and thus differs from mandamus which directs activity.

**Who can file a writ petition?**

A writ petition can be filed by any person whose Fundamental Rights have been infringed by the State.

Under a Public Interest Litigation, any public-spirited person may file a writ petition in the interest of the general public even if his own Fundamental Right has not been infringed.

Where can a writ petition be filed?

Under Article 32, a writ petition can be filed in the **Supreme Court**. The Supreme Court can issue a writ only if the petitioner can prove that his Fundamental Right has been infringed. It is important to note that the right to approach the Supreme Court in case of a violation of a Fundamental Right is in itself a Fundamental Right since it is contained in Part III of the Constitution.

Under Article 226, a writ petition can be filed before any **High Court** within whose jurisdiction the cause of action arises, either wholly or in part. It is immaterial if the authority against whom the writ petition is filed is within the territory or not.

The power of the High Court to issue a writ is much wider than that of the Supreme Court. The High Court may grant a writ for the enforcement of fundamental rights or for any other purpose such as violation of any statutory duties by a statutory authority. Thus, a writ petition filed before a Supreme Court can be filed against a private person too.

Where a fundamental right has been infringed, either the Supreme Court or the High Court can be resorted to. It is not necessary to go to the High Court first and only thereafter approach the Supreme Court. However, if a writ petition is filed directly in the Supreme Court, the petitioner has to establish why the High Court was not approached first.