



THE MOST IMPORTANT LAW IN INDIA

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As an Indian Citizen you have certain fundamental rights. These rights cannot be taken away from you by any authority, officer, department or organization. These rights are guaranteed in the Constitution of India. In fact, some of the Fundamental Rights are also extended to, and enjoyed, by foreigners, for example, the Right to Equality before Law and Right to Freedom of Religion are enjoyed by both i.e. citizens as well as foreigners. The Fundamental Rights guarantee you some very essential rights such as Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, Right to Constitutional Remedies and now the Right to Education.

Each of these rights has been elaborated in detail in the Constitution of India and contains within them the very essence of life in a democratic country. Take them away, and the very foundation of democracy begins to shake. So what can be done, if ever, your fundamental rights are violated? The answer to this happens to be the most important Law in India

The Right to enforce all the Fundamental Rights is itself made a Fundamental Right under the Constitution of India. By virtue of Art. 32 of the Constitution of India, which contains this provision, can be summarized thus:

1. The Constitution guarantees the Right to move the Supreme Court for the enforcement of Fundamental Rights.
2. The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
3. Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause.
4. The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

There exists a similar provision (Art. 226), which extends the same powers to High Courts. The only difference being that whilst Supreme Court can be moved only for enforcement of Fundamental Rights, The High Courts can be moved for enforcement of Fundamental Rights and **for any other purpose**. This “any other purpose” clause, in fact, empowers the High Courts to deliver justice in an amazing range of cases. And to their credit, they have done so often.

When Art. 32 was being worked upon in the Constituent Assembly, it is believed that Dr. Ambedkar, the Architect and Father of the Constitution, remarked that if he were to be asked to name one particular article in the Constitution as the most important, or one without which the Constitution



would be meaningless, it would Art. 32. He felt it was the very soul and heart of the Constitution.

Here's a quick look at what Art. 32 or Art. 226 can do for you:

The Constitution (by virtue of the above Articles) broadly provides for five kinds of "prerogative" writs: *habeas corpus*, *certiorari*, *mandamus*, *quo warranto* and prohibition.

- The Writ of Prohibition is issued by a higher court to a lower court prohibiting it from taking up a case because it falls outside the jurisdiction of the lower court. Thus, the higher court transfers the case to itself.
- The Writ of Habeas Corpus is issued to a detaining authority, ordering the detainer to produce the detained person in the issuing court, along with the cause of his or her detention. If the detention is found to be illegal, the court issues an order to set the person free.
- The Writ of Mandamus is a command or an order from a superior court to a subordinate court or tribunal or public authority to perform its duty in case it is not doing it.
- The Writ of Quo Warranto is issued to restrain a person from acting in a public office to which he /she is not entitled.
- The Writ of Certiorari (Certiorari means "to be informed of what is going") is an order to a lower court from a superior court to transfer the matter to it or to any other court for deciding the matter.

It was once observed by the Supreme Court of India, and is widely believed to be true, that if a prisoner's right is flouted or legislative protection is ignored, The Supreme Court's writ will run, breaking through stone walls and iron bars, to right the wrong and restore the rule of law.

Of course, the above provisions need further study. But the intention behind these provisions is clear, to help you when you are most helpless. No particular format is required to seek help under this provision. For instance, in the past, High Courts have been known to convert complaints addressed to them by means of ordinary telegrams and postcards into Writ Petitions.