Any provision in any Constitution for Fundamental Rights is meaningless unless there are adequate safeguards to ensure enforcement of such provisions. Since the reality of such rights is tested only through the judiciary, the safeguards assume even more importance. In addition, enforcement also depends upon the degree of independence of the Judiciary and the availability of relevant instruments with the executive authority. Indian Constitution, like most of Western Constitutions, lays down certain provisions to ensure the enforcement of Fundamental Rights. These are as under:

(a) The Fundamental Rights provided in the Indian Constitution are guaranteed against any executive and legislative actions. Any executive or legislative action, which infringes upon the Fundamental Rights of any person or any group of persons, can be declared as void by the Courts under Article 13 of the Constitution.

(b) In addition, the Judiciary has the power to issue the prerogative writs. These are the extraordinary remedies provided to the citizens to get their rights enforced against any authority in the State. These writs are - Habeas corpus, Mandamus, Prohibition, Certiorari and Quo-warranto. Both, High Courts as well as the Supreme Court may issue the writs.

(c) The Fundamental Rights provided to the citizens by the Constitution cannot be suspended by the State, except during the period of emergency, as laid down in Article 359 of the Constitution.

A Fundamental Right may also be enforced by way of normal legal procedures including a declaratory suit or by way of defense to legal proceedings. However, Article 32 is referred to as the "Constitutional Remedy" for enforcement of Fundamental Rights. This provision itself has been included in the Fundamental Rights and hence it cannot be denied to any person. Dr. B.R. Ambedkar described Article 32 as the most important one, without which the Constitution would be reduced to nullity. It is also referred to as the heart and soul of the Constitution. By including Article 32 in the Fundamental Rights, the Supreme Court has been made the protector and guarantor of these Rights. An application made under Article 32 of the Constitution before the Supreme Court, cannot be refused on technical grounds. In addition to the prescribed five types of writs, the Supreme Court may pass any other appropriate order. Moreover, only the questions pertaining to the Fundamental Rights can be determined in proceedings against Article 32.
Under Article 32, the Supreme Court may issue a writ against any person or government within the territory of India. Where the infringement of a Fundamental Right has been established, the Supreme Court cannot refuse relief on the ground that the aggrieved person may have remedy before some other court or under the ordinary law. The relief can also not be denied on the ground that the disputed facts have to be investigated or some evidence has to be collected. Even if an aggrieved person has not asked for a particular writ, the Supreme Court, after considering the facts and circumstances, may grant the appropriate writ and may even modify it to suit the exigencies of the case. Normally, only the aggrieved person is allowed to move the Court. But it has been held by the Supreme Court that in social or public interest matters, any one may move the Court.

Any piece of legislation or law, which tends to interfere with the power of Supreme Court under Article 32 shall be declared as void. Hence, there is no way that the legislative or the executive authority can by-pass the power and responsibility entrusted to the Supreme Court by the Constitution. In a famous case titled as "Gopalan Vs State of Madras", the Supreme Court declared Section 14 of the Preventive Detention Act of 1950 as void, because as per the Supreme Court, the said Section acted as an iron curtain around the acts of the executive authority making the order of preventive detention.

WRITS

1. Writ of Habeas corpus:

It is the most valuable writ for personal liberty. Habeas Corpus means, "Let us have the body." A person, when arrested, can move the Court for the issue of Habeas Corpus. It is an order by a Court to the detaining authority to produce the arrested person before it so that it may examine whether the person has been detained lawfully or otherwise. If the Court is convinced that the person is illegally detained, it can issue orders for his release.

2. The Writ of Mandamus:

Mandamus is a Latin word, which means "We Command". Mandamus is an order from a superior court to a lower court or tribunal or public authority to perform an act, which falls within its duty. It is issued to secure the performance of public duties and to enforce private rights withheld by the public authorities. Simply, it is a writ issued to a public official to do a thing which is a part of his official duty, but, which, he has failed to do, so far. This writ cannot be claimed as a matter of right. It is the discretionary power of a court to issue such writs.

3. The Writ of Quo-Warranto:

The word Quo-Warranto literally means "by what warrants?" It is a writ issued with a view to restraining a person from acting in a public office to which he is not entitled. The writ of quo-warranto is used to prevent illegal assumption of any public office or usurpation of any public office by anybody. For example, a person of 62 years has been appointed to fill a public office whereas the retirement age is 60 years. Now, the appropriate High Court has a right to issue a writ of quo-warranto against the person and declare the office vacant.

4. The Writ of Prohibition:

Writ of prohibition means to forbid or to stop and it is popularly known as 'Stay Order'. It is a writ issued with a view to restraining a person from acting in a public office to which he is not entitled. The writ of quo-warranto is used to prevent illegal assumption of any public office or usurpation of any public office by anybody. For example, a person of 62 years has been appointed to fill a public office whereas the retirement age is 60 years. Now, the appropriate High Court has a right to issue a writ of quo-warranto against the person and declare the office vacant.
5. The Writ of Certiorari:

Literally, Certiorari means to be certified. The writ of certiorari is issued by the Supreme Court to some inferior court or tribunal to transfer the matter to it or to some other superior authority for proper consideration.

Writs of Prohibition and Certiorari

The writ of prohibition is issued by any High Court or the Supreme Court to any inferior court, prohibiting the latter to continue proceedings in a particular case, where it has no legal jurisdiction of trial. While the writ of mandamus commands doing of particular thing, the writ of prohibition is essentially addressed to a subordinate court commanding inactivity. Writ of prohibition is, thus, not available against a public officer not vested with judicial or quasi-judicial powers. The Supreme Court can issue this writ only where a fundamental right is affected.

The writ of certiorari can be issued by the Supreme Court or any High Court for quashing the order already passed by an inferior court. In other words, while the prohibition is available at the earlier stage, certiorari is available on similar grounds at a later stage. It can also be said that the writ of prohibition is available during the tendency of proceedings before a sub-ordinate court, certiorari can be resorted to only after the order or decision has been announced. There are several conditions necessary for the issue of writ of certiorari, which are as under:

(a) There should be court, tribunal or an officer having legal authority to determine the question of deciding fundamental rights with a duty to act judicially.

(b) Such a court, tribunal or officer must have passed an order acting without jurisdiction or in excess of the judicial authority vested by law in such court, tribunal or law. The order could also be against the principle of natural justice or it could contain an error of judgment in appreciating the facts of the case.

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