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News: SC transfers to itself all pleas related to same-sex marriage

- The Supreme Court on Friday transferred to itself petitions pending in various High Courts seeking legal recognition of same sex marriage.

Writ

- Writs are a **written order from the Supreme Court or High Court that commands constitutional remedies for Indian Citizens** against the violation of their fundamental rights.
- **Article 32 in the Indian Constitution deals with constitutional remedies that an Indian citizen can seek from the Supreme Court of India and High Court** against the violation of his/her fundamental rights.
- The **same article gives the Supreme Court power to issue writs for the enforcement of rights whereas the High Court has the same power under Article 226.**

Types of Writs in India

- The Supreme Court of India is the defender of the fundamental rights of the citizens. For that, it has original and wide powers. It issues five kinds of writs for enforcing the fundamental rights of the citizens. The five types of writs are Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo-Warranto

Habeas Corpus

- The Latin meaning of the word 'Habeas Corpus' is 'To have the body of.'
- This writ is used to enforce the fundamental right of individual liberty against unlawful detention.
- Through Habeas Corpus, Supreme Court/High Court orders one person who has arrested another person to bring the body of the latter before the court.
- The Supreme Court or High Court can issue this writ against both private and public authorities.

Habeas Corpus cannot be issued in the following cases:

- When detention is lawful.
- When the proceeding is for contempt of a legislature or a court.
- Detention is by a competent court.

- Detention is outside the jurisdiction of the court.

Mandamus

- The literal meaning of this writ is ‘**We command.**’
- This writ is used by the court **to order the public official who has failed to perform his duty or refused to do his duty, to resume his work.** Besides public officials, Mandamus can be issued against any public body, a corporation, an inferior court, a tribunal, or government for the same purpose.
- Unlike Habeas Corpus, **Mandamus cannot be issued against a private individual.**

Mandamus cannot be issued in the following cases:

- To enforce departmental instruction that does not possess statutory force
- To order someone to work when the kind of work is discretionary and not mandatory.
- To enforce a contractual obligation.
- Mandamus can't be issued against the Indian President or State Governors.
- Against the Chief Justice of a High Court acting in a judicial capacity.

Prohibition

- The literal meaning of 'Prohibition' is 'To forbid.'
- A court that is higher in position issues a Prohibition writ against a court that is lower in position to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. It directs inactivity.
- Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.
- It can't be issued against administrative authorities, legislative bodies and private individuals or bodies.

Certiorari

- The literal meaning of the writ of 'Certiorari' is 'To be certified' or 'To be informed.'
- This writ is issued by a court higher in authority to a lower court or tribunal ordering them either to transfer a case pending with them to itself or quash their order in a case.
- It is issued on the grounds of an excess of jurisdiction or lack of jurisdiction or error of law.
- It not only prevents but also cures for the mistakes in the judiciary.

- Pre-1991: The writ of Certiorari used to be issued only against judicial and quasi-judicial authorities and not against administrative authorities.
- Post-1991: The Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting the rights of individuals.
- It cannot be issued against legislative bodies and private individuals or bodies.

Quo-Warranto

- The literal meaning of the writ of 'Quo-Warranto' is 'By what authority or warrant.'
- Supreme Court or High Court issues this writ to prevent illegal usurpation of a public office by a person.
- Through this writ, the court enquires into the legality of a claim of a person to a public office.
- Quo-Warranto can be issued only when the substantive public office of a permanent character created by a statute or by the Constitution is involved.
- It can't be issued against private or ministerial office.
- This writ gives the right to seek redressal to any individual other than the aggrieved person.

- Article 32 also empowers Parliament to authorize any other court to issue these writs.
- Before 1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs.
- Article 226 empowers all the High Courts of India to issue the writs.
- Writs of India are borrowed from English law where they are known as 'Prerogative writs'.