



Writ Jurisdiction and the State

For Prelims: [Supreme Court \(SC\)](#), [Scheduled Banks](#), [NBFCs](#), [Writ Jurisdiction](#), [State](#), [RBI](#), [Statutory Bodies](#), [Fundamental Rights](#), [Parliament](#), [Municipalities](#), [Panchayats](#), [Article 12](#), [Articles 32 and 226](#).

For Mains: Application of writ jurisdiction on private bodies, Type of writs and scope.

[Source: DH](#)

Why in News?

In *S. Shobha vs. Muthoot Finance Ltd Case, 2025*, the [Supreme Court \(SC\)](#) ruled that **private companies**, including [scheduled banks](#) and [NBFCs](#), are **not** subject to [writ jurisdiction](#) as they **do not perform public functions or duties**.

- The SC held that **NBFCs are not a "State"** under Article 12 and **'function' test** should decide the **maintainability of a writ application**.

What are the Key Highlights of the Case?

- **Case Background:** The appellant argued that though NBFCs are not a "State" under Article 12, NBFCs violating [RBI rules](#) should be **subject to writ jurisdiction**.
- **Supreme Court Verdict:** Being subject to **regulatory guidelines** under a statute **does not** automatically make an entity subject to **writ jurisdiction**.
- **Function Test:** Writ jurisdiction applies only if an entity performs public duties such as **governmental or essential public functions imposed by a statute** or statutory rule.
 - Writ jurisdiction applies to **state authorities**, [statutory bodies](#), **state-owned or funded private bodies**, and private entities performing **public duties**.
 - NBFCs duties are confined to **account holders and borrowers**, not the general public.
- **Public Law Element Requirement:** If a private body **denies rights** concerning a public duty imposed on it, a writ can be enforced.

What are Writs?

- **About:** A writ is a **legal order** issued by [Constitutional courts](#) under [Articles 32 and 226](#) of the Indian Constitution to **protect citizens' rights**. It is adopted from English "**prerogative writs**."
- **Authority to Issue Writs:**
 - **Supreme Court (Article 32):** Can issue writs only for the enforcement of [Fundamental Rights](#) (FRs).
 - **High Courts (Article 226):** Can issue writs for the enforcement of **FRs** and **other legal rights**.
 - **Before 1950:** Only the High Courts of **Calcutta, Bombay, and Madras** had the power to issue writs.

- **Parliament (Under Article 32):** Can empower **any other court to issue writs**, but **no such provision** has been made yet.

▪ **Types of Writs and Their Scope:**

Writ	Purpose	Issued To	Court's Role
Habeas Corpus	"To Have the Body" - Protects individuals from illegal detention.	Any public authority or private individual responsible for unlawful detention .	Examines the legality of detention and orders release if unlawful.
Mandamus	"We Command" - Directs a public official, body, corporation, tribunal, or government to perform a duty they have failed to fulfill.	Government officials, public corporations, tribunals, and courts.	Directs the performance of a duty that has been neglected.
Prohibition	"To Forbid" - Prevents lower courts or tribunals from exceeding their jurisdiction or acting illegally.	Higher courts (Supreme Court or High Courts).	Prevents unlawful actions or excess jurisdiction .
Certiorari	"To Be Certified" - Transfers a case or quashes an illegal or unconstitutional order of a lower court/tribunal.	Judicial or quasi - judicial bodies , administrative authorities (after 1991 SC ruling).	Quashes illegal or unconstitutional orders , or transfers cases.
Quo Warranto	"By What Authority" - Prevents illegal occupation of a public office by a person not entitled to hold it.	Any person wrongly occupying a substantive public office .	Challenges unlawful occupation of public offices.

Differences in Writ Jurisdiction of SC and HC:

Aspect	Supreme Court	High Court
Scope of Enforcement	Can issue writs only for FRs violations.	Can issue writs for FRs and other legal rights (broader scope) .
Territorial Jurisdiction	Can issue writs throughout India .	Can issue writs only within its territorial jurisdiction , except when the cause of action arises within its jurisdiction.
Nature of the Right	Writ jurisdiction is a FRs itself (Article 32), so the court cannot refuse to exercise it .	Writ jurisdiction is discretionary (Article 226) , meaning the High Court may refuse to issue a writ.

What is the Definition of a State under Article 12?

- **About:** [Article 12](#) has defined the term “State” for the purposes of **Part III (FRs)** that has been used in **different provisions** concerning [fundamental rights](#).
- **Scope of ‘State’:** According to Article 12, the State includes the following:
 - **Government and Parliament of India**, and **Government and legislature of states** (i.e., **executive and legislative** organs of the government).
 - All [local authorities](#), that is, [municipalities](#), [panchayats](#), district boards, improvement trusts, etc.
 - All other authorities, that is, **statutory or non-statutory authorities** like [LIC](#), [ONGC](#), [SAIL](#), etc.
 - Thus, the State has been defined in a **wider sense** so as to include **all its agencies**. It is the actions of these agencies that can be challenged in the courts as violating the Fundamental Rights.
- **Judicial Stand:** The **SC** in the ***Binny Ltd Case, 2005*** held that even a **private body or an agency** working as an **instrument of the State** falls within the meaning of the ‘State’ under **Article 12**.

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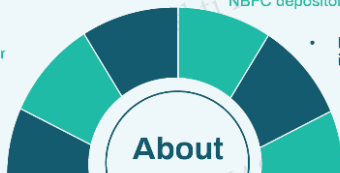
Non-Banking Financial Companies (NBFCs)

A Non-Banking Financial Company (NBFC) provides loans, acquires financial securities, and offers leasing & insurance services. However, it excludes companies primarily engaged in agriculture, industrial activities, trading, or real estate.

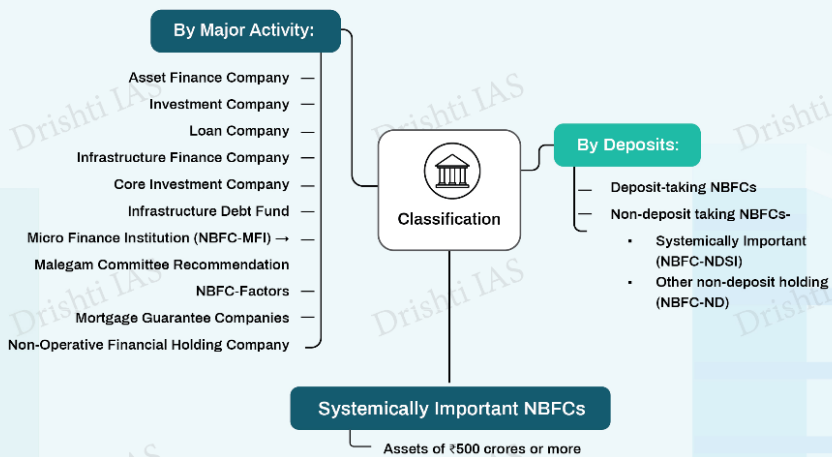


About:

- Do not have a banking license; not part of the payment system; cannot issue cheques
- Can accept public deposits for 12-60 months (no demand deposits)
- Registration → Companies Act, 1956
- Insurance by Deposit Insurance & Credit Guarantee Corporation → not available for NBFC depositors
- NBFCs require an investment-grade credit rating
- Key Services Offered- Personal loans, Home loans, Vehicle Financing, Gold Loans, Microfinance, Infrastructure Financing, Insurance Services, Investment Management



Classification:



Regulation:

Type of Institution	Regulatory Authority
NBFCs registered with RBI	RBI
Housing Finance Institutions	National Housing Bank
Merchant Banking Companies, Venture Capital Fund Companies, Stock Broking, Collective Investment Schemes (CIS)	SEBI
Nidhi Companies, Mutual Benefit Companies	Ministry of Corporate Affairs (MCA)
Chit Fund Companies	State Government
Insurance Companies	IRDAI
Non-Banking Non-Financial Companies	Statute- Companies Act 1956 Regulator- Ministry of Corporate Affairs Enforcement Agency- State Governments

Benefits of NBFCs:

- Financial Inclusion
- Innovative Products
- Liquidity
- Support for MSMEs

Challenges of NBFCs:

- Funding Constraints
- Asset Quality & Credit Risk
- Regulatory Compliance
- Corporate Governance



Conclusion

The **Supreme Court and High Courts** issue writs to address **violations of fundamental and legal rights**, focusing on entities performing **public duties**. Writ jurisdiction is determined based on whether the **entity performs public duties**. Only **statutory bodies** and entities performing governmental functions are subject to writs.

Drishti Mains Question:

Discuss the scope of writ jurisdiction under Articles 32 and 226 of the Indian Constitution.

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims

Q. In India, Judicial Review implies (2017)

- (a) the power of the Judiciary to pronounce upon the constitutionality of laws and executive orders.
- (b) the power of the Judiciary to question the wisdom of the laws enacted by the Legislatures.
- (c) the power of the Judiciary to review all the legislative enactments before they are assented to by the President.
- (d) the power of the Judiciary to review its own judgements given earlier in similar or different cases.

Ans: (a)

Q. Who/Which of the following is the custodian of the Constitution of India? (2015)

- (a) The President of India
- (b) The Prime Minister of India
- (c) The Lok Sabha Secretariat
- (d) The Supreme Court of India

Ans: (d)

Mains

Q. Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of a large number of public interest petitions praying for issuing guidelines to executive authorities. (2020)

