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Conspectus on Article 32: Analysis of Writs and Public Interest Litigation

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The Constitution of India in its Article 32¹ confers powers in its Part III, to affirm the right to move to the highest authority in India. This right is the 'Right to Constitutional Remedies' by empowering the Supreme Court to issue directions, rules, orders, or writs in nature of Habeas Corpus, Mandamus, Writ of Prohibition, Quo Warranto and Certiorari. They can be issued against the 'state' upon a violation of Fundamental Rights. Part III of the Indian Constitution guarantees an avenue for redressal and not mere provision for enumeration of rights. The architects of the Constitution believed that individual liberty cannot be higher than the security of the nation and hence, these rights are subject to certain limitations. Along with the mentioned writs, a developed interpretation of Article 32 includes the right to approach the Supreme Court upon violation of rights of people at large. This mechanism of 'Public Interest Litigation' has evolved through years being an efficient platform to voice against prevalent injustice in the form of violation of Fundamental Rights. Although it adds to the burden of cases due to the filing of frivolous cases, there is still a dire need to recognize the grievances and differentiate the urgency on a reasonable basis. The article seeks to analyze the development of Writs through various precedents and its synopsis to throw light on its growth and role in Public Interest Litigation.

Keywords: *Article 32, Fundamental Rights, Writs, Public Interest Litigation*

¹ Constitution of India, art 32

INTRODUCTION

The Constitution of India guarantees Fundamental Rights to both citizens and non-citizens. It is included with other rights like the Right to Equality², Right to Freedom of Religion³, Right to Speech and Expression⁴, and Right to Life and Personal Liberty⁵. But in order to enforce the Fundamental Rights, an effective mechanism has been provided in Article 32⁶ of the Constitution. **Article 32(1)** confers power on the Supreme Court, by proper proceedings to enforce Fundamental Rights. **Article 32(2)** empowers to issue writs in the nature of *Habeas Corpus*, *Mandamus*, *Prohibition*, *Quo Warranto*, and *Certiorari*. Powers under Clause 2 can be exercised within the court's local limits of jurisdiction if empowered by a law made by the parliament as enshrined in **Article 32(3)**.

A writ does not create or establish a legal right, but rather enforces a previously established basic right. Except as allowed by the Constitution, these rights cannot be suspended under Article 32(4). Supreme Court decision in *Daryao vs State of Uttar Pradesh* recognised the significance of individual liberty and the preservation of Fundamental Rights. Besides writs, the court has the authority to grant declarations, directives, and other reliefs. It implies that where there is a right, there is an equal and opposite remedy. A legal dilemma of the most horrific sort, this article grants highly prized privileges. In order to determine whether a fundamental right has been violated, the court must examine the act's direct and unavoidable effects. When a fundamental right is violated, a person is doomed. Because it is the culmination of the whole chapter, M. V. Pylee is correct that the provisions under this article provide a highly practical approach to Fundamental Rights.⁷

Against whom writs can be issued:

² Constitution of India, art 14

³ Constitution of India, art 25

⁴ Constitution of India, art 19

⁵ Constitution of India, art 21

⁶ Constitution of India, art 32

⁷ Nirmalendu Bikash Rakshit, 'Right to Constitutional Remedy: Significance of Article 32' (1999) 34 *Economic and Political Weekly*

'State' is defined under **Article 12**⁸. Such a right is available against the state and the authorities mentioned under Article 12. A private body that performs the function of 'state' will also come under this ambit of court as per *Para Tools Corp v C V Imanual*⁹.

Who can apply?

Such a right stands with *locus standi*, with the realm of the Supreme Court. As a general principle, a person whose Fundamental Rights are infringed has the *locus standi* to move to the apex court under Article 32 for enforcing his right. The power of the apex court is not restricted to the above-mentioned writs because:

- a. The power of the court is 'inclusive'
- b. The court has the power to use writs in the nature of the specific five writs

In *Romesh Thappar v The State of Madras*¹⁰, the apex court ruled that a petitioner can approach the Supreme Court directly without going to the High Court first. This right imposes an obligation on the Supreme Court to discharge complaints of infringement of Fundamental Rights of a person or a class of persons. It held that remedy is guaranteed as the court is regarded as the guarantor and protector of Fundamental Rights.

Powers of the Court:

The court has the power to grant damages to compensate the loss a person suffers due to a violation of Fundamental Rights. The polluter pays principle developed in *M.C. Mehta v. Kamal Nath*¹¹, where the court identified environmental pollution as a wrong against the public and granted damages for relief and restoration. The court has a wide power to issue directions, for example in *Visakha v State of Rajasthan*,¹² guidelines were laid down to discourage sexual harassment at the workplace.

⁸ Constitution of India, art 12

⁹ *Para Tools Corp v C V Imanual & Ors* 1969 AIR 1306

¹⁰ *Romesh Thappar v The State of Madras* 1950 AIR 124

¹¹ *MC Mehta v Kamal Nath & Ors* [2000] 6 SCC 213

¹² *Visakha v State of Rajasthan* [1997] 6 SCC 241

The power under Article 32 can be invoked when a law declares a particular administrative action as final as held in *Prem Chand v Excise Commissioner*¹³. The court struck down the provision which required furnishing of security to plead to the Court under Article 32. It was regarded as a vindication of the Fundamental Rights as it discriminated against the poor and Article 32 cannot be encumbered by such rights. The Court has to play the role of a 'sentinel on the qui vive' as its solemn duty of a guardian. The court held that Article 32 cannot be curtailed by any law, all authorities of the country are bound by directions of the court and have to aid the court.¹⁴ These powers are not fettered by any legal constraints, the court even has plenary power to correct its mistake while guarding the Fundamental Rights.¹⁵ As per **Article 32(4)**, the provision in the Constitution can confer restrictions on Fundamental Rights. When an emergency is proclaimed under **Article 352**¹⁶, Fundamental Rights can be suspended.

WRITS

1. *Habeus Corpus*:

The writ of *Habeas Corpus* is used to 'have the body' or 'release the body' if a person is illegally detained without any lawful justification. It enables immediate determination of an individual's right to freedom. As per **Article 21**¹⁷, "no person can be denied of their right to life and liberty unless according to the procedure established by law". There being no strict rules of pleading, a letter or postcard can activate the court to look into the unlawful detention as per *Ichhu Devi v Union of India*¹⁸. *Sunil Batra v Delhi Administration*¹⁹ highlighted the 'Epistolary jurisdiction' meaning cognizance of a letter from individuals complaining has been treated as writ petitions. A person can claim this writ even when illegally detained by a private party.²⁰

¹³ *Prem Chand v Excise Commissioner* 1963 AIR 996

¹⁴ *Lala Ram v Supreme Court of India* 1967 AIR 847

¹⁵ *S. Nagaraj v State of Karnataka* [1993] JT 1993 (4) SC 27

¹⁶ Constitution of India, art 352

¹⁷ Constitution of India, art 32

¹⁸ *Ichhu Devi Choraria v UOI & Ors* 1980 AIR 1983

¹⁹ *Sunil Batra v Delhi Administration* 1980 AIR 1579

²⁰ *Madhu Bala v Narendra Kumar* AIR 1982 SC 938

*Kanu Sanyal v Dist. Magistrate, Darjeeling*²¹ held that the court could examine the legality of the detention without producing the person in the court who is detained. In *Rudul Sah v State of Bihar*²² issues and damages were granted when the petitioner was kept in jail for fourteen years even though he was acquitted. It was a sordid and disturbing state of affairs for which the administration was liable entirely. The right is available even to non-citizens. In *Bodhisattwa v Ms. Subhra Chakraborty*²³, a Bangladeshi woman was raped, the court awarded relief as her Fundamental Right under Article 21 was violated. In *Bhim Singh v State of Jammu & Kashmir*²⁴, the court awarded damages for illegal detention in police custody which was unconstitutional.

2. *Quo Warranto*

Quo Warranto means ‘by what order’ (only in respect of a public office of a substantive character). It calls upon a holder of the public office to show to the court the authority with which he holds that office. The court has the power to oust a person wrongfully holding a public office. The Court can protect a citizen from being deprived of a public office, to which he is entitled. Every public office is held by certain qualifications, the court has the power to scrutinize the qualifications whose authority or appointment is questioned (*Durga Chand v Administrator*²⁵).

Conditions to be satisfied:²⁶

- a. Public office
- b. The public office must be created by a statute
- c. The office must be a substantive one, not merely an employment
- d. Some contravention of the Constitution or statutory provision

To file this writ, a personable injury need not be necessary. The motives of appointing an officer in making the appointment are irrelevant in a *Quo Warranto* petition. A petition was

²¹ *Kanu Sanyal v Dist Magistrate Darjeeling* 1974 AIR 510

²² *Rudul Sah v State of Bihar* [1983] 4 SCC 141

²³ *Bodhisattwa v Ms Subhra Chakraborty* 1996 AIR 922

²⁴ *Bhim Singh MLA v State of Jammu & Kashmir* AIR 1986 SC 494

²⁵ *Durga Chand & Anr v Administrator & Ors* AIR 1971 Delhi 73

²⁶ M P Jain, *Indian Constitutional Law* (first published 1962, 8th edn, LexisNexis 2018)

filed against the CM of Rajasthan in *Purshottam Lal v The State of Rajasthan*²⁷, on the grounds of an invalid election. This was held to be properly raised only through an election petition, it wasn't held to be an office as per *Quo Warranto*. He was bound to prove his eligibility. In *Jogendra Nath v State of Assam*²⁸, the questioned position of the CM was quashed, as there was an alternate remedy provided by the statute which was not exhausted. Mere appointment or eligibility to the position cannot be questioned until that person accepts and holds that position.²⁹

3. *Mandamus*

"Mandamus is a judicial order directing a public official to fulfil a public obligation connected to his position and is issued by the court. If no particular remedy has been given by law, it attempts to avoid the disorder that results from a failure of justice and enforcement." In *Kerala Scheduled Tribes Case*³⁰, a law required to restore 'equal' extent of land was questioned, the court directed the state to restore the land with further directions.

Mandamus can be issued when:

- a. Breach of a legal duty of an authority who is legally compelled to perform to do so
- b. The performance of the duty should be imperative and not discretionary
- c. Specific demand or refusal of duty
- d. A clear right of enforcement of the duty

*"To compel performance of public duties that could be administrative, ministerial, or statutory."*³¹ Mandamus cannot be denied if the duty to be enforced is not a statutory duty, it can be enforced by charter, common law, custom, or contract. It cannot be issued to the executive to make a rule in the exercise of its delegated legislation." In *The State of Madhya*

²⁷ *Purshottam Lal Sharma v State of Rajasthan & Ors* AIR 1979 Raj 18

²⁸ *Jogendra Nath Hazarika v State of Assam & Ors* AIR 1982 Gau 25

²⁹ *Puranlal Lakhanpal v Dr PC Ghosh & Ors* AIR 1970 Cal 118

³⁰ *MP Choithy v State of Kerala* [2020] SCC OnLine Ker 4254

³¹ Constitution of India, art 32

*Pradesh v Mandawar*³², the Madhya Pradesh government had passed a statute to grant dearness allowance. It was a discretionary power and could not be enforced by Mandamus.

In conclusion, a Mandamus writ cannot be issued against:

- a. Private body or individual
- b. Duty is discretionary
- c. Against Governors or the President
- d. Private contracts
- e. The Chief Justice

4. *Writ of Certiorari*

The *Writ of Certiorari* means to quash the decision (taken by a lower tribunal). It means to 'rectify' and is used as a curative writ. If the court has already given an unconstitutional decision, *Certiorari* can quash as a remedy to what has already been done. This Writ can be issued even if it is between two private parties as held in *Surya Dev Rai v. Ram Chander Rai*.³³ The position must be held in excess of their legal authority³⁴ and should deal with a substantive matter.³⁵

The Supreme Court in *Syed Yakoob v K.S. Radhakrishnan*³⁶ held that both the writ of *Certiorari and Prohibition* can be issued on either of the following grounds:

- a. "When the concerned body proceeds to act in excess of or without jurisdiction;
- b. Fails to exercise its jurisdiction;
- c. An error of law is apparent on the face of the record in the challenged decision of the body;
- d. The inferior tribunal's findings are based on no evidence;
- e. Proceeds to act that is in violation of the principles of natural justice;
- f. Proceeds to act under an invalid law, ultra vires or unconstitutional;

³² *The State of Madhya Pradesh v G C Mandawar* 1954 AIR 493

³³ *Surya Dev Rai v Ram Chander Rai & Ors* [2003] 6 SCC 675

³⁴ *Province of Bombay v Kushaldas S Advani & Ors* 1950 AIR 222

³⁵ *Nagendra Nath Bora & Anr v The Commissioner of Hills* 1958 AIR 398

³⁶ *Syed Yakoob v KS Radhakrishnan & Ors* 1964 AIR 477

g. Proceeds to act contravening the Fundamental Rights.”

In *Anisminic Ltd. v Foreign Compensation Commission*³⁷, the House of Lords gave a broad connotation to ‘jurisdictional error’. Sometimes a tribunal can exceed its jurisdiction or give a decision in bad faith; a decision with no power to make. In such considerations, the court can issue writs to quash the decision. This Writ is supervisory and the Court exercising it is not to act as an appellate court.

5. *Writ of Prohibition*

Both the writs of *Certiorari* and *Prohibition* are issued on similar grounds. The former is used to quash while the latter is ‘to stop’ before the proceedings are completed. The purpose is to prevent rather than cure. *Roopa Ashok Hurra v Ashok Hurra*³⁸ laid conditions for a curative petition:

- a. No other chance
- b. Gross injustice
- c. Exemplary cost if it lacks merit

The High Court can prevent a subordinate court from acting under an unconstitutional law; prohibit the body from moving further. Both these writs usually are issued against the body that acts in contravention of its duty to follow natural justice. Whether this happens depends from case to case but its vagueness and flexibility can be measured using two elements:

- a. The body in question should be free from bias. The adjudicator must be disinterested and unbiased and a person should not be a judge in his own case.
- b. It should hear the person whose rights are violated before it decides the matter.

No one should be condemned unheard, according to *Board of Education v. Rice*.³⁹ It means every party affected should be given a sufficient opportunity to meet the case against him, this can be achieved through written or oral representations.

³⁷ *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147

³⁸ *Roopa Ashok Hurra v Ashok Hurra* [2002] (4) SCC 388

³⁹ *Board of Education v Rice* [1911] AC 179 416

ROLE OF PUBLIC INTEREST LITIGATION

It has been recognized under Article 21 that the socio-economic conditions in a country with considerable poverty, ignorance, and illiteracy could be an impediment to judicial access. It has been recognized by the American Jurisprudence. It is not defined in any act or statute but it is interpreted by the power given to the public by judicial activism. To protect the interest of such marginalized sections of the society, the concept of Public Interest Litigation or PIL has come into existence through **Article 32 and Article 226**⁴⁰. It involves an element of violation and for litigation to benefit the poor and the underprivileged. In the *Hussainara Khatoon case*,⁴¹ an article was published in the newspaper regarding personal liberty violation and on the condition of undertrial prisoners, a PIL was sought to relax the *locus standi* rule in order to protect these people.

“It serves as a much broader function than being an espousal for the weaker section. Any member of the public, on a *bona fide* ground, can move to the court for judicial enforcement of the Fundamental Rights of such persons or class of persons. As per the case of *M.C. Mehta v Union of India*,⁴² it was held that the court has wide jurisdiction and can devise any appropriate procedure to enforce Fundamental Rights, including all incidental or ancillary power required for a pollution-free environment.” As per *S.P. Gupta v Union of India*,⁴³ “any member of the public having a sufficient interest for judicial redress arising from public breach of duty or a violation of a provision of the Constitution can avail this remedy. In *Chaitanya Kumar v The State of Karnataka*,⁴⁴ it was held that the court cannot uphold mischievous executive actions when exposed, when arbitrariness and perversion are brought out, the court cannot refuse its duty.”

⁴⁰ Constitution of India, art 226

⁴¹ *Hussainara Khatoon & Ors v Home Secretary, State of Bihar* 1979 AIR 1369

⁴² *M.C. Mehta & Anr v Union of India & Ors* 1987 AIR 1086

⁴³ *S.P. Gupta v Union of India* AIR 1982 SC 149

⁴⁴ *Chaitanya Kumar v State of Karnataka* 1986 AIR 825

ANALYSIS AND CONCLUSION

Article 32 is a tool of paramount importance in a country like India. With cultural and traditional differences, demographic trends, and the huge population, the need to safeguard the Fundamental Rights becomes imperative as it deals with 'Rights to Constitutional Remedies'. It affirms the right to move to the apex authority by appropriate proceedings to enforce such rights. Former Chief Justice of India SA Bobde has opined that *"There is no doubt that if a citizen of India is deterred in any way from moving the court in the exercise of his right under Article 32, it would amount to a serious interference in the administration of justice in the country."*⁴⁵ Overburdening of the Court due to the filing of frivolous cases makes recognition of the urgent problems more difficult with the necessity to expedite cases. One solution could be undertaking the establishment of specific tribunals to ease the burden of the apex court. Secondly, the number of judges appointed to the Supreme Court and High Courts can be increased for quicker disposal and redressal of cases. Thirdly and most importantly, the power of the court should not be undermined by shifting or sharing the power of PIL to other subordinate courts. The power resides within the ambit and interpretation of Article 32 and its pristine power must remain intact.

Moreover, its refusal to accept cases is inconsistent with the Constitution as applications to the apex court directly interfere with the administration of justice in the nation and such infringements cannot be overlooked. Thus, the technique of PIL serves to provide an effective remedy to enforce the rights and interests of a group. Degraded laborers, tortured inmates, and undertrials, women, deprived classes, exploited children, beggars and many other have been given relief through the mechanism of Writ jurisdiction of the Supreme Court. The greatest contribution being Public Interest Litigation, also enhancing the accountability of the government towards the poor and their human rights. Keeping in mind the cautiousness, the judiciary must undertake to avoid Judicial Overreach or violate the Separation of Powers principles. Inordinate delays of the pending cases may render the judicial value minimal in the

⁴⁵ Sadaf Modak, 'Explained: What have been the Supreme Court's recent observations on Article 32?' (*The Indian Express*, 19 November 2020) <<https://indianexpress.com/article/explained/article-32-and-supreme-court-fundamental-rights-7055040/>> accessed 12 August 2021

eyes of those seeking redressal. PILs can also lead to problems of competing rights or frivolous cases with the vested interests of parties. Apart from that, Article 32 is a vital instrument of social change to make justice accessible and guaranteed.