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## Article 32: The Soul and Heart of the Constitution

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*Fundamental Rights have always been at the heart of the Indian Constitution. As a result, it has offered remedies for enforcing such rights, and the article seeks to provide a complete review of Article 32, as well as its subsequent validation over time. This research study presents the conceptual overview as well as the relevant examples, as well as provides substantive interpretation. Priority has been given to understanding issues such as "Right to Move the Supreme Court" and "Writs." This presentation will concentrate on an in-depth examination of the provisions and their applicability in the Indian context.*

**Keywords:** *Article 32, Indian constitution, fundamental rights, writs, democracy.*

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### INTRODUCTION

The Indian Constitution is the incomparable law of the country. It was drafted to be perused and understood by laymen and lawmen the same, however following seventy years of independence, the essential arrangements of the Indian Constitution have developed so convoluted that even presently, a layman would be lost assuming he needs to go by the stripped language of the Constitution. What's more, the justification behind this is because there is a huge distinction between the essential message and what is being followed because of different decisions by Hon'ble Courts of Law, whether it is the Supreme Court, India's most

elevated courtroom, or the High Court. Today, the world's greatest democracy majority rules system stands tall and doing great since it has been built up now and then by its legal point of support, where some have been forfeited all through this respectable conflict. For almost two centuries, India has been administered by the British. However the British laid out conventional courtrooms in India, they didn't give passes judgment on impressive circumspection when they arranged the regulations. Therefore, when we laid out the Constitution in 1950, the official courtrooms didn't know to the point of straying from the understanding of the conditions of the regulations in actuality. Notwithstanding, with the crisis of 1975, the legal executive started its veritable shift from that of a police state to that of a government assistance state. From here on out, courtrooms have started to apply purposive translation, or the brilliant rule of understanding, to lawful regulations to give all-out equity. Dr. Ambedkar mentioned, *"If I were to pick any article in this Constitution as the most important – an article without which this Constitution would be a nullity – I could not refer to any other article except this one. It's the Constitution's spirit and heart, and I'm delighted the House recognizes its significance<sup>1</sup>."*

## UNDERSTANDING OF ARTICLE 32

Article 32(1)<sup>2</sup> ensures the right to petition the Supreme Court in "appropriate proceedings" for the enforcement of basic rights provided by Part III of the Constitution. There is no liberty to approach the Supreme Court by any means other than 'appropriate proceedings.' Only those actions are suitable that invoke, by original petition, the Supreme Court's jurisdiction to issue, depending on the nature of the case, writs, orders, or directions of the sorts mentioned in clause (2). In other words, if the government violates any fundamental right, Article 32 empowers the individual whose fundamental right has been infringed to petition the Supreme Court for the enforcement of his/her basic rights.

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<sup>1</sup> Revathi Krishnan, 'What is Article 32 which Ambedkar said was 'heart' and 'soul' of Constitution' (*The Print*, 17 November 2020) <<https://theprint.in/theprint-essential/what-is-article-32-which-ambedkar-said-was-heart-and-soul-of-constitution/546050/>> accessed 10 April 2022

<sup>2</sup> Constitution of India, 1950, art. 32(1)

Clause (2) of Article 32<sup>3</sup> empowers the Supreme Court to make necessary instructions or orders or writs such as habeas corpus, mandamus, prohibition, quo-warranto, and certiorari to enforce any of the rights.

Clause (3) of Article 32<sup>4</sup> provides that Parliament may by legislation enable any court to perform all or any of the functions enjoyed by the Supreme Court under Clause (2).

Pursuant to Clause (4)<sup>5</sup>, the privilege protected by Articles 32 is not suspended unless otherwise provided for by the Constitution. As a result, Article 32 provides a quick and low-cost remedy for protecting basic rights against legislative and executive interference.

### **ANALYSIS OF ARTICLE 32**

Under Article 32<sup>6</sup>, only the Fundamental Rights guaranteed by the Constitution can be enforced, not any other right such as non-fundamental constitutional rights, statute rights, customary rights, and so on.

Article 32 can only be used when a piece of legislation or an executive order directly violates one or more of the fundamental rights. Article 32 cannot be used to evaluate the legality of an executive order or a piece of legislation.

Article 32 rights cannot be suspended unless the procedure outlined in Article 35<sup>7</sup> is followed.

Article 32 can only be used to seek redress for violations of basic rights guaranteed in Part III of the Constitution (Article 12-35)<sup>8</sup>. In other words, it cannot be used to compel the execution of legal or constitutional rights.

The Supreme Court has original but not exclusive jurisdiction under Article 32. It runs concurrently with the high court's authority under Article 226<sup>9</sup>. It implies that in the event of a violation of basic rights, a person has the choice of going to the High Court or straight to the Supreme Court.

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<sup>3</sup> Constitution of India, 1950, art. 32(2)

<sup>4</sup> Constitution of India, 1950, art. 32(3)

<sup>5</sup> Constitution of India, 1950, art. 32(4)

<sup>6</sup> Constitution of India, 1950, art. 32

<sup>7</sup> Constitution of India, 1950, art. 359

<sup>8</sup> Constitution of India, 1950, art. 12-35

<sup>9</sup> Constitution of India, 1950, art. 226

If a party has previously exercised its rights under article 226 (i.e., a writ application is pending in the High Court), the Supreme Court may not intervene under article 32.

### THE SCOPE OF ARTICLE 32

Since the scope of article 32 is limited to the enforcement of fundamental rights, an appeal under this provision may arise if the opposing party is a state or authority as defined in article 12<sup>10</sup>. In any case, the Supreme Court has fundamentally altered the concept of state or authority under Article 12 in cases such as *Rajasthan Electricity Board v Mohanlal, International Airport Authority Case*<sup>11</sup>, *Ajay Hasia v Khalid Mujib*<sup>12</sup>, and the translation of "various specialists" under Art.12 incorporates this plethora of instrumentalities with the meaning of the state.

As a result, the writ not only disregards Art 226 of the Indian Constitution, but also violates Art 32 of the Indian Constitution. The inquiry is whether the writ is coordinated against a private individual or an enterprise for a break of essential freedoms. There is no trouble with article 226 in light of the fact that the High Court has the power to give writs against private people or partnerships too. In any case, there is no such rule in Art 32, and there is no sort or requirement under this Article. In light of this, we can reason that the Supreme Court, under Article 32, can give writs against people or organizations who encroach on fundamental privileges under Articles 17, 23, and 24<sup>13</sup>.

### TYPES OF WRITS<sup>14</sup>

- Article 32 of the Constitution specifies the following sorts of Writs:

#### Habeas Corpus

1. The term Habeas Corpus in Latin means 'to have the assemblage of'.

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<sup>10</sup> Constitution of India, 1950, art. 12

<sup>11</sup> *Rajasthan Electricity Board v Mohanlal, International Airport Authority* (1967), AIR 1857

<sup>12</sup> *Ajay Hasia v Khalid Mujib* (1981), AIR 487

<sup>13</sup> Constitution of India, 1950, art. 17, art. 23, and art. 24

<sup>14</sup> Ajay C., 'Types of Writs In Indian Constitution' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-68-types-of-writs-in-indian-constitution.html>> accessed 13 April 2022

2. By giving this writ, the Court orders the concerned individual or authority who has confined someone else, to deliver the body of the kept individual or detainee under the steady gaze of the court.
3. When the detained person is produced in front of the court, the latter examines the causes and legality of his detention. If the court concludes that the detention was unlawful or illegal, then the detained
4. A person is set free immediately.
5. The Habeas Corpus writ can be issued by the court against both individuals and public officials. This writ, however, cannot be issued under the following circumstances:
  - When detention is legal
  - When a detention order is granted by a competent court
  - When the detention occurs outside of the jurisdiction of a certain High Court
  - When the individual is detained for contempt of court or of legislation.
6. This petition can be submitted to High Court or Supreme Court on behalf of a wrongfully imprisoned individual by the general public, family, or friends.

### **Mandamus**

1. The Latin phrase Mandamus directly translates to 'We Command.
2. The court issues a writ of mandamus to a public authority, commanding him or her to undertake the public obligations that he or she is obligated to do but has refused or failed to do.
3. Any public authority, public body, subordinate courts, tribunals, or the government can be served with this writ.
4. However, it cannot be given in the following circumstances:
  - When the public obligation is optional rather than required.
  - To carry out a non-statutory function.
  - Where such discretion is in conflict with the law of the land.
  - In the case of any private individual or private organisation.
  - Against the President of India or any State Governor.
  - Against India's acting Chief Justice

5. A writ petition for Mandamus can only be filed when a public official refuses to discharge his or her public duty when asked by the petitioner.

### **Prohibition**

1. Prohibition literally means "to ban."
2. The writ of prohibition is issued by higher courts, such as the Supreme Courts and High Courts, to inferior courts, quasi-judicial organisations, or tribunals that attempt to exceed the jurisdiction or restriction imposed on them.
3. This writ stops lesser courts or tribunals from exceeding their authority or usurping jurisdiction that is not properly theirs.
4. This writ cannot be issued against any individual, authority, or body, public or private.

### **Certiorari**

1. Certiorari means "to be certified" or "to be informed."
2. The higher court issues a writ of certiorari to the lower court, instructing them to either transfer the matter pending with them to the higher court or to overturn the ruling reached by them in a case.
3. This writ is issued when the higher court believes that the lower court or tribunal has made a decision or issued an order that is outside their jurisdiction or when there is an error in the judgement.
4. Initially, this writ could only be issued to judicial and quasi-judicial organisations. However, the Supreme Court declared in 1991 that this writ might be issued even against administrative officials.

### **RELATED CASE LAWS AND THEIR OBSERVATION**

**M C Mehta v Union of India**<sup>15</sup>: The decision expanded the scope of public interest litigation to include social interest litigation. The Supreme Court's ability to offer remedial relief includes the authority to pay compensation in suitable instances.

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<sup>15</sup> *M C Mehta v Union of India* (1987), AIR 1087

**L Chandra Kumar vs Union of India**<sup>16</sup>: In terms of tribunals, the Supreme Court of India ruled that the section in Article 323A<sup>17</sup> that excludes High Court and Supreme Court jurisdiction under Articles 226/ 227 and 32<sup>18</sup> of the Constitution is invalid.

**Coffee Board vs CTO**<sup>19</sup>; **Star Mills vs State of UP**<sup>20</sup>: No question other than one pertaining to basic rights may be decided in an Article 32 process.

**Rupa Ashok Hurra v Ashok Hurra**<sup>21</sup>: To prevent a major miscarriage of justice, courts may enable a curative petition by a victim of a miscarriage of justice to seek a second review of the Court's final ruling.

**Shreya Singhal v Union of India**<sup>22</sup>

- Criminal / Civil Original Jurisdiction, Writ Petition (Civil) No 167 OF 2012.
- On March 24, 2015, the Supreme Court of India issued a decision invalidating Section 66A<sup>23</sup> of the Information Technology Act, 2000.

## CONCLUSION

To finish up the undertaking,<sup>24</sup> I might want to express that the maker of the Constitution gets that the freedoms conceded in Part III should be implemented by the courts, or they would remain as paper privileges. The simple attestation of fundamental rights is deficient except if there is a viable instrument for upholding them. The legal executive has worked effectively in protecting fundamental rights. It is viewed as the overseer of the Indian Constitution under Article 32. Article 32 is one more condition in our constitution, and in truth, no other nation has such an arrangement. No matter what the capacity of the court, truly following seventy years of freedom, we have been not able to make either friendly or financial equity. The

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<sup>16</sup> *L Chandra Kumar v Union of India* (1997) Appeal (Civil) No. 481/1980

<sup>17</sup> Constitution of India, 1950, art. 323A

<sup>18</sup> Constitution of India, 1950, art. 226, art. 227, and art. 32

<sup>19</sup> *Coffee Board, Bangalore v Joint Commercial Tax Officer* (1971), AIR 870

<sup>20</sup> *Star Mills v State of UP* (1983) 4 SCC 299

<sup>21</sup> *Rupa Ashok Hurra v Ashok Hurra* (2002) Writ Petition (Civil) No. 509/1997

<sup>22</sup> *Shreya Singhal v Union of India* (2015) Writ Petition (Criminal) No. 167/2012

<sup>23</sup> Information Technology Act, 2000, s 66A

<sup>24</sup> Neha Patel, 'The Uttar Pradesh Population (Control, Stabilization And Welfare) Bill, 2021: pros and cons with respect to the society' (*Ipleaders*, 1 August 2021) <<https://blog.ipleaders.in/the-uttar-pradesh-population-control-stabilization-and-welfare-bill-2021-pros-and-cons-with-respect-to-the-society/>> accessed 12 April 2022

simultaneous purview of the High Courts and the Supreme Court for infringement of fundamental rights has won the Supreme Court and the High Courts' high appreciation due to its status, approach, and ideas that utilize the country's assets. As the thoughts noted in the review paper, the Supreme Court has changed the Court's ward under Articles 32 and 226 to give equity to residents in view of their prerequisites. Obviously, the key reason for the law is that where there is a right, there should be a cure, since a right without a fix is a sand rope. In such a manner, our Constitution's arrangement for the authorization of crucial freedoms is a really surprising component. Be that as it may, the protected component is deficient in light of the fact that there is as yet a critical space between the lip and the cup.