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Writ Jurisdiction of the Supreme Court

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In this article, the writ jurisdiction of the Supreme Court is discussed in length along with case laws for the respective articles concerned with necessary jurisdiction. A person, whose rights have been violated, may seek redress from the court in order to attain justice accordingly. Article 32 and Article 226 of the Indian Constitution provide such jurisdiction of the Supreme Court and the High Courts respectively, for the enforcement and protection of such individual's basic rights. As the topic suggests, in this paper, Article 32 has been researched in depth, with necessary details to understand the concept of writs, the types of writs, and finally shedding some light on Article 226, which is the writ jurisdiction of the High court. Writ petitions usually move up the hierarchy of the Courts in an ascending order, which is why it is important to understand the basics, before getting into the details of the jurisdiction.

Keywords: *jurisdiction, enforcement, rights, hierarchy, ascending.*

INTRODUCTION

In a country such as India, it has to be understood that there are many laws and articles provided through and in the Indian Constitution, respectively, in order to maintain the proper functioning of the States. The most important aspect, which has to be always taken into consideration, is the population of the country (the second largest population in the world). If there is a matter of discussion of any law or article that relates to the country, the population cannot be overlooked,

as it is because of that, that the problems usually arise. It can be stated as the root cause of all the problems that infest the citizens living in the country. Now, just to take a look at the fundamental rights which every citizen of the country is entitled to under Article 19 of the Indian Constitution, it is safe to say that although the citizens do enjoy such rights, however, the proper enforcement of such rights in every aspect, from rural to urban areas, is the biggest problem the legal system of the country faces time and again. In theory, it does seem perfect and orderly, yet in practice, it is often the case that various contentions arise, and it becomes difficult to sustain the law and order, along with providing the basic rights to the citizens.

Therefore, to be clear in the perspective presented, in a country where the population is vast, and democracy lies within, which gives the right to every citizen to have their own say, it is important to understand that those rights will be mistreated in the system, due to many different reasons, and certain laws and articles have to be established to tackle those situations in order to provide the citizens with the necessary relief, as possible according to the case in hand. A writ petition is a formal written order that a judicial authority has issued to a person or entity to stop or perform a specific act. The word "writ" literally means "command in writing" in the name of the court. It is a legal document that orders a person or entity to stop performing a specific act.¹

TYPES OF WRITS

Under Articles 32 and 226 of the Indian Constitution, there are five types of writs, which are issued in different circumstances, serving different purposes. They are:

1. Habeas Corpus

(1) Habeas corpus, which means to have a body; (2) Freedom from unlawful detention, which means to release a person from imprisonment or unlawful custody; (3) Execution of orders, which means to stop a person from performing a specific act; and (4) Revocation of an order, which means to stop a person from performing a specific act.

¹ 'Writs in the Indian Constitution' (Cleartax, 1 April 2022) <<https://cleartax.in/s/writs>> accessed 14 July 2022

- If the court finds that the detention of a person was unlawful, it can immediately release the individual. This type of writ can be used to protect a person from the authorities' cruelty and maltreatment. It can also be used to ensure that the person is not subjected to any further maltreatment.
- This type of writ can be used to protect a person from the authorities' cruelty and maltreatment. It can also be used to ensure that the person is not subjected to any further maltreatment.²
- It is a procedural writ and does not constitute a substantive writ.³

2. Mandamus

- It means, 'we command'.
- This writ is issued to a public authority, in order to direct the said body, to perform any legal duty, which such body has refused or refrained itself from performing.
- The issuance of this writ is not authorized against a private body.
- Functions as to keep the public bodies in the jurisdiction.
- A person, who is addressing the court for issuance of Mandamus, must have a legal right to do so.
- Issued for the payment of interest.⁴
- In a situation where any assessment order is concerned, and the rules concerning the refund of taxes levied are in question, the writ of Mandamus can't be issued.⁵

3. Quo Warranto

- It means, 'by what warrant'.
- In this, any person who is holding an office of profit can be called upon by the court in order to show the authority of such person over that particular office.
- It prevents a person from holding any office, over which he has no legal authority⁶

² *Sunil Batra v Delhi Administration* (1980) AIR 1579

³ *Kanu Sanyal v District Magistrate Darjeeling & Ors.*, (1974), AIR 510

⁴ *All India Tea Trading Co. v S.D.O.* (1961), AIR 1962

⁵ *Suganmal v State of M.P.* (1964), AIR 1965

⁶ *Kumar Padma Padam Prasad v Union of India* (1992), AIR 1213

- It cannot be issued in respect of a private office.⁷

3. Certiorari

- It means, 'to certify'.
- When a higher court is of the opinion that a lower court or a tribunal court has passed an order, which is much higher than its own powers, in that case, the higher court can order to transfer the case to itself, to either pass a different order or destroy that earlier order altogether.⁸

Prohibition

- To prohibit the lower courts from doing something beyond their authority.
- It directs inactivity; hence it differs from the mandamus, which directs activity.
- The difference between Certiorari and Prohibition is that they are issued at different stages of the proceedings. When a case is decided, Certiorari is issued by the higher court, however, when a case is pending, Prohibition is issued.

ARTICLE 32 OF THE INDIAN CONSTITUTION

Now, as the definition of writ and the different types of writs have been cleared in the aforementioned part of the article, it is necessary to focus on Article 32, which deals with the Jurisdiction of the Supreme Court on the matters of writ petitions, for the violation of the fundamental rights of the citizens.

WHAT IS ARTICLE 32?

It is presented in Part III of the Indian Constitution. According to Article 32 of the Indian Constitution: -Remedies for enforcement of rights conferred by this Part -

⁷ *Jamalpur Arya Sabha v Dr. D Ram & Ors.*, AIR 1954, Pat. 297

⁸ *Pankaj Kumar Ganguly and Ors. v Bank of India and Ors.*, AIR 1957, CAL 560

1. By appropriate proceedings, the right to move the Supreme Court for the proper enforcement of rights is guaranteed.⁹
2. The Supreme Court shall have the power to issue writs, including Habeas Corpus, Mandamus, Quo Warranto, Certiorari, and Prohibition, whichever may be appropriate.¹⁰
3. If needed, without any kind of stopping, the Parliament may be law empower any other lower court, the powers of the Supreme Court under clauses (1) and (2), which can be used in the local jurisdiction of such court, all or any of the powers.¹¹
4. Unless the Constitution has provided for it to take into action, no rights conferred by this Part shall be suspended under any circumstances.¹²

SIGNIFICANCE OF ARTICLE 32

Article 32 is considered as the very soul of the Constitution of India, in the words of Dr. B.R. Ambedkar, the Father of the Indian Constitution. It is clear that, without Article 32, which leads to the protection of the fundamental rights of the citizens of India, the Constitution itself would nullify and would have no use as such is the case. The Constitution was solely developed in order for the betterment of the lives of the people living in the country and to provide an order to those lives, and Article 32 ensures that very fact, through the Apex Court. A country cannot sustain itself if the citizens are unsatisfied with the Judiciary and have a sense of mistrust, which might develop through the results of constant violation of fundamental rights. Hence, Article 32 is regarded to be one of the most important articles present in the Constitution.

Article 32 gives the right to an individual to seek justice in a court of law when in any case such an individual thinks that he was deprived of his right, or his right has been infringed by a particular proceeding or action as such.¹³ Under Article 32, the Parliament can empower any

⁹ Arfa Javaid, 'What is Article 32 of the Indian Constitution?' (*Jagran Josh*, 18 November 2020) <<https://www.google.com/amp/s/m.jagranjosh.com/general-knowledge/amp/article-32-of-indian-constitution-1605699265-1>> accessed 15 July 2022

¹⁰ *Ibid*

¹¹ *Ibid*

¹² *Ibid*

¹³ Alan.J, 'The Significance and Scope of Article 32 of The Indian Constitution' (*Lawsisto*, 27 January 2021) <<https://lawsisto.com/legalnewsread/OTU1Mw==/The-Significance-and-Scope-of-Article-32-of-the-Indian->

'Right to Constitutional Remedies. ²⁰Without this article, it is quite impossible for any citizen to approach the Supreme Court in order to seek relief in a matter of negligence to fundamental rights. The difference is quite clear and visible from the Judiciary standpoint. In any case, which deals with a civil or criminal matter, the person who is appealing, has to follow the hierarchy of the courts, by first appealing to one of the tribunal or district courts, then the High court, and finally the Supreme Court.²¹ However, in a case where the fundamental right of a citizen is violated, he or she can choose to file a writ petition to the Supreme Court under Article 32, or the High Court under Article 226.²² This has to be taken into account that Article 32 is a Fundamental right, unlike Article 226.²³

RECENT OBSERVATIONS OF THE SUPREME COURT ON ARTICLE 32

Sameet Thakkar was arrested for the third time in 17 days. He is a Nagpur-based man, who was arrested for defamatory content on Twitter against the Chief Minister of Maharashtra. However, when applied to the Supreme Court, the bench transferred the case and order him first, to approach the High Court.²⁴

In the case of Bhima Koregaon, Telugu poet and activist Dr. P Varavara Rao challenged the Bombay High Court against its order that rejected his bail plea for permanent medical bail. He was detained in jail in 2018. He sought relief under Article 32 to the Supreme Court, where the Apex Court directed the Bombay High court to proceed with the case as soon as possible, on the terms of the plea for permanent medical bail. It observed that if any competent court has taken up the case into its terms, then the decision lies with the such court.²⁵

²⁰ *Ibid*

²¹ *Ibid*

²² *Ibid*

²³ *Ibid*

²⁴ 'Post against Maharashtra CM: Sameet Thakkar arrested thurd time in 17 days' (*The Times of India*, 12 November 2020), <https://www.google.com/amp/s/m.timesofindia.com/city/mumbai/posts-against-maharashtra-cm-sameet-thakkar-arrested-third-time-in-17-days/amp_articleshow/79182033.cms> accessed 15 July 2022

²⁵ 'Bhima Koregaon case: SC extends activist Varavara Rao's interim bail' (*Hindustan Times*, 12 July 2022) <<https://www.google.com/amp/s/www.hindustantimes.com/india-news/bhima-koregaon-case-sc-extends-activist-varavara-rao-s-interim-bail-101657605125091-amp.html>> accessed 15 July 2022

ARTICLE 226 OF THE INDIAN CONSTITUTION

This Article resides in Part V of the Indian Constitution. It forecasts the power of the High Courts to issue writs such as Habeas Corpus, Mandamus, Certiorari, Quo Warranto, and Prohibition, to any person, or public authority regardless of whether it is a Government authority or not.²⁶

DIFFERENCE BETWEEN ARTICLE 32 & ARTICLE 226

(1) Type

Article 32 is a Fundamental Right whereas Article 226 is a constitutional right.²⁷

(2) Scope

Article 32 is much narrower in scope as it can only be issued for the enforcement of Fundamental Rights, whereas Article 226 can be issued in all three rights such as Fundamental, Constitutional and Legal.²⁸

(3) Suspension

During the time of emergency Article 32 is suspended, whereas it is impossible to suspend Article 226.²⁹

(4) Jurisdiction

Article 32 has wider jurisdiction, as it empowers the Supreme Court to issue writs all over India. The Apex Court has much broader territorial jurisdiction. Whereas, in the case of Article 226, it only empowers the High Courts to issue writs in its local jurisdiction, which results in a narrower scope.³⁰

²⁶ Pushkraj Deshpande, 'Article 226 and 227 of the Indian Constitution-Their Scope, Powers and Differences' (Mondaq, 12 April 2018) <<https://www.mondaq.com/india/court-procedure/691090/articles-226-and-227-of-the-constitution-of-india-their-scope-powers-and-differences>> accessed 15 July 2022

²⁷ Samisksha Mehta, 'Article 32 and Article 226-Different Articles with same motive' (Law Column, 20 June 2021) <<https://www.lawcolumn.in/article-32-and-article-226-different-articles-with-same-motive/>> accessed 15 July 2022

²⁸ 'Difference Between Article 32 and Article 226 of the Indian Constitution' (Law Corner, 5 December 2020) <<https://lawcorner.in/write-a-note-on-article-32-and-226-what-is-the-difference-between-article-32-and-226-of-indian-constitution/>> accessed 15 July 2022

²⁹ *Ibid*

³⁰ *Ibid*

(5) Discretionary Power

Article 32 is a Fundamental Right that cannot be denied by the Supreme Court, whereas in the case of Article 226, it depends on the discretion of the High Court to either issue writs or completely deny the issuance.³¹

CONCLUSION

There is no doubt that a wide amplitude is given to the enforcement and protection of the Fundamental rights through the Indian Constitution, which is most welcome. The main reason for the violation of such rights, which has been established over the years through various case laws, is the arbitrary power that a higher authority holds and takes advantage of such a situation to further its own cause. This leads to the violation of fundamental rights, and for that very purpose, to tackle the violation, and offer relief to the citizens who are the victims of such violation, Article 32 and Article 226 have been established, and are considered important parts of the Constitution.

By enlarging the scope of Article 32 and Article 226, the judiciary has brought justice and revolutionized constitutional jurisprudence throughout the country. Terms such as Judicial Review and Judicial activism are considered a healthy trend, which has made the Constitution a living and dynamic document. There has to be a balance between the Judiciary and the citizens of the country, and the doctrine of separation of powers adheres to such balance, as Judiciary itself cannot be the final answer to all the problems in the administration. Wherever improvement is needed, it must be a coordinated effort of all the organs of the state.

³¹ Yogesh Sharma, 'What is the Difference between Article 32 and Article 226 of the Indian Constitution?' (*Law Circa*, 18 June 2019) <<https://www.google.com/amp/s/lawcirca.com/what-is-the-difference-between-article-32-and-article-226-of-the-indian-constitution/amp/>> accessed 15 July 2022