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## ARTICLE 32: SCOPE AND APPLICABILITY

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***Abstract:** The fundamental rights were enshrined in the Constitution, which completely protected the fundamental human liberty. To turn these rights into real freedoms, a comprehensive legal clause safeguarding these rights was inserted into the Constitution within. The enforceability of these rights was inclusive as a human right in Article 32, and an almost equivalent clause was included as a constitutional right in Article 226. This article guarantees remedies for the protection of human rights. The founding fathers appeared to agree on the need for legislative remedies for the protection of human rights from the beginning of the Constituent Assembly. This paper examines the article's scope, enforcement, and essential implications.*

**Keyword:-** Constitution of India, Article 32, Enforceability, Supreme Court, Scope



### **1.Introduction**

Article 32 of the Indian Constitution grants the freedom to approach the Supreme Court of India in fair proceedings to uphold the privileges granted by Part III of the Indian Constitution. The clause simply leaves the doors of the Supreme Court open in the same manner as the doors of Chancery Court were open onced.

As a result of this article, we can infer that an assured right is granted to people for the protection of fundamental rights, since the law gives an individual the right to directly approach the Supreme Court without following a longer process of first applying to lower courts, and the primary purpose of Writ Jurisdiction under Article 32 is to uphold fundamental rights.

Part III of the Constitution includes other human protections, such as equality, freedom of speech and expression, life and personal liberties, and religious freedom. Only if any of these fundamental rights are violated can a citizen specifically approach the Supreme Court under Article 32.

Even the father of the Constitution, Dr. B.R.Ambedkar stated *“If I was asked to name any particular 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 (Article 32). It is the very soul of the Constitution and the very heart of it.”*<sup>1</sup>

## 2.Writs under Article 32

In the event of an infringement of fundamental rights, the supreme court can be approached by the citizens under Article 32. In the event of an infringement of fundamental rights, there are five forms of writs that may be issued:

- **Habeas Corpus:** In simple terms it signifies, ‘produce the body’. This indicates that the main object of this writ is to argue against an individual's wrongful imprisonment. Its aim is to protect a person from illegal harm caused by the administrative system.
- **Mandamus:** It simply translates to ‘We Command.’ This writ is granted by a supreme court to a lower court or government officer for the proper implementation of obligatory and specifically ministerial duties.
- **Certiorari:** It simply translates to ‘to be certified.’ It is given where control is wrongfully exercised and the attention to the judgement of the case is on it.
- **Prohibition:** This is a writ that requires a lower court not to do something that the law prohibits it from doing. The main goal is to prevent an inferior court from abusing its powers or acting in contravention of Natural Justice provisions.
- **Quo Warranto:** It translates as ‘by what means.’ This writ shall be used in public service cases and shall be issued to prevent citizens from serving in public office to which he is not entitled.

## 3.Scope of Article 32

This article discusses the final of the Fundamental Rights; it is remedial in essence rather than substantive. It is, however, no less significant than the other privileges. According to Dr. Ambedkar, *“just as the remedy of habeas corpus is recognized as the bulwark of liberties in England, this Article has been considered as the heart and soul of the Constitution.”*

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<sup>1</sup> <https://lawsisto.com/legalnewsread/OTU1Mw==/The-Significance-and-Scope-of-Article-32-of-the-Indian-Constitution>

Justice Gajendragadhkar stated “*The Fundamental Right to move this Court can therefore be appropriately described as the cornerstone of the democratic edifice raised by the Constitution. That is why it is natural that this Court should, regard itself ‘as the protector and guarantor of Fundamental Rights’ and should declare that it cannot, consistently with the responsibility laid upon it, refuse to entertain applications seeking protection against infringements of such rights.*”<sup>2</sup>

The remedies for enforcing the rights granted by this Article are as follows:

- This Article guarantees the freedom to approach the Apex Court by suitable proceedings for the purpose of enforcing rights.
- The Supreme Court has the authority to issue instructions, directives, or writs, including those of the form of habeas corpus, prohibition, quo warranto, mandamus, and certiorari, that are essential for the execution of right granted.
- Without regard to the powers imposed on the Supreme Court by clauses (1)<sup>3</sup> and (2)<sup>4</sup>, parliament may by statute authorise any other Court to exercise its authority or any of the powers used by the Supreme Court under clauses (1)<sup>5</sup> and (2)<sup>6</sup>.
- Except as otherwise provided by this Constitution, the right granted by article 32 shall not be suspended.

#### 4. Restriction under Article 32

- **Res Judicata:** Based on public policy considerations, the Supreme Court has placed a major limit on the exercise of its authority under Article 32 by introducing the doctrine of res judicata. It is in the long term interests of humanity that substantive decisions of courts of relevant authority have finality and that parties are not subjected to the same type of litigation twice. As a result, an individual cannot file several petitions under Article 32 for the same cause of action.

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[http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/S000020LA/P001369/M010318/ET/1513750403JPLAW-11-Q-I.pdf](http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000020LA/P001369/M010318/ET/1513750403JPLAW-11-Q-I.pdf)

<sup>3</sup> Article 32(1), Constitution of India

<sup>4</sup> Article 32(2), Constitution of India

<sup>5</sup> *Ibid*, 3.

<sup>6</sup> *Ibid*, 4.

But as established by *Amalgamated Coalfields v. Janapada Sabha, Chinolvara*<sup>7</sup>, “*res-judicata would not apply if orders sought to be challenged through successive writ petitions as for example, when a petition challenging the validity of the tax assessment for one year is dismissed by the Supreme Court, a similar order passed for the subsequent year can be challenged through a new writ petition on some grounds not raised earlier in the first writ petition.*”

In *Lallubhai v. Union of India*<sup>8</sup>, the Supreme Court observed that “*the doctrine of constructive res judicata is applied only to civil actions and civil proceedings. This principle of public policy is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of habeas corpus under Art. 32 on fresh grounds not taken in the earlier petition for the same relief.*”

Where a writ petition under Article 226 is dismissed by the High Court, a writ petition under Article 32 cannot be filed in the Supreme Court to obtain relief in the same matter. The principle of *res judicata* states that if a judgement is rendered by a court of competent jurisdiction, it is binding on the parties unless reversed or amended through an appeal, amendment, or other legal process.

- ***Doctrine of Laches:*** Laches or unreasonable delay on the part of the petitioner can render him unable to file a writ petition under Art. 32 to impose his Fundamental Right. The Court denies the petitioner's request for remedy on the grounds of laches unless there is a fair cause for the wait. As a result, the aggrieved party should file the lawsuit as soon as possible. In *Rabindra Nath v. Union of India*<sup>9</sup>, the Court rejected a writ petition lodged under Arts. 14 and 16 to appeal the seniority clause enacted fifteen years earlier.
- ***Alternative Relief Is Available:*** The presence of an alternative solution does not preclude the award of remedy under Article 32.<sup>10</sup> Also under Article 226, the availability of an alternative solution is not grounds for excluding adequate redress in cases including violations of fundamental rights.<sup>11</sup> In *Kharak Singh v. State of U.P.*<sup>12</sup>, it was held that “*in*

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<sup>7</sup> AIR 1961 SC 964.

<sup>8</sup> AIR 1981 SC 728.

<sup>9</sup> AIR 1970 SC 470 : (1970) 1 SCC 84.

<sup>10</sup> *K.K. Kochunni Moopil Nair v. State of Madras*, AIR 1959 SC 725

<sup>11</sup> *U.P. State V Mohd. Nooh* AIR 1959 SC Sb, *Kharak Singh V State of U.P.* AIR 1963. SC. 1295.

<sup>12</sup> AIR 1963 SC 1295.

*cases involving the breach of fundamental rights, even under Article 226, the existence of an alternative remedy is no ground for the refusal of proper relief. The existence of an alternative relief is no bar to the grant of remedy under article 32.”*

- **No Direct Place under Article 32:** In *Bhisham Das v. State of Punjab*<sup>13</sup>, it was held that *“writ petition as regards regularization of service would require detailed investigation into the facts.”* The court ordered the petitioner to first approach the State Government with a plea for regularisation.

### **5. Against whom writ can be issued**

The protections granted to citizens by the Fundamental Rights enshrined in Part III of the Constitution are an assurance against State interference, as opposed to violations of those rights by private parties. The usual law of land provides adequate protection for private acts.

- In *P. D. Shamdasani v. Central Bank of India*<sup>14</sup>, the petitioner filed an application under Article 32 to seek protection from the Court on the premises that the conduct of another private individual – the Central Bank of India – violated his property rights under Articles 19 (1) (f) and 31. The petition was dismissed by the Supreme Court. Fundamental Rights may be used to sue the government. In Article 12, the word ‘state’ is specified. The acts of each of the entities included in the definition of the word ‘State’ in Article 12 may be questioned in court under Article 13(2) for infringing Fundamental Rights. The most important phrase in Art. 12 is ‘other authorities.’ The Constitution makes no mention of this phrase. The Supreme Court also broadened the phrase "other authority" in Art. 12 and extended the reach of the Fundamental Rights, bringing more and more bodies into the scope of the Fundamental Rights.
- In *Rajasthan State Electricity Board v. Mohanlal*<sup>15</sup>, the Supreme Court held that *“a State electricity board, set up by a statute, having some commercial functions to discharge, would be an ‘authority’ under Article 12.”*
- In *A.R. Antulay v. R.S. Nayak*, the Court held that *“the Court cannot pass an order or issue a direction which would be violative of Fundamental Rights of citizens, it can be*

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<sup>13</sup> AIR 1961 SC 1570.

<sup>14</sup> AIR 1952 SC 59

<sup>15</sup> AIR 1967 SC 1857

*said that the expression "State" as defined in Article 12 of the Constitution includes judiciary also."*

## **6. Conclusion**

Fundamental Rights must be enforceable in order to be effective. The Constitution not only guarantees those Fundamental Rights, but it also guarantees the right, under Article 32, to expressly petition the highest court in the land for the protection of certain Fundamental Rights. The Supreme Court has the authority to grant writs such as habeas corpus, mandamus, prohibition, quo warranto, and certiorari. Parliament can also authorise other courts to execute these rights. Except as interpreted by the Constitution, the right granted by article 32 cannot be suspended. For instance, during an Emergency Proclamation, (a) the ability to petition the Court for protection of all of the Fundamental Rights, except articles 20 and 21, can be suspended under article 359, and (b) the administrative and legislative authority of the State shall not be limited under article 358 by the rights to freedom guaranteed by article 19. Article 32 should only be used to uphold the Constitution's Fundamental Rights. Article 32 is not concerned with an improper order or even the unconstitutionality of laws unless it actually impacts or infringes on any of the Fundamental Rights. Since the right to statutory redress under article 32 is a Fundamental Right in and of itself, the Supreme Court does not deny relief for a breach of a particular Fundamental Right.