



## ARTICLE 32: THE HEART AND SOUL OF THE CONSTITUTION OF INDIA

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**Aditi Raha\***

### ABSTRACT

*The Constitution of India is a legal framework which guarantees justice, equality, and liberty to the citizens of India. Article 32 is one of the most important articles. While discussing the Constitution of India, every law student should know about Article 32 of the Indian Constitution. Every law student must understand the article not only for academic but also for practical purposes, for using the practical power in real life. This article plays a crucial role in the Constitution of India. It is a part of the basic features of the Indian Constitution which cannot be taken away. Article 32 of the Constitution of India deals with remedies. A declaration of fundamental rights is indeed meaningless unless there is the required and effective machinery for those rights. Article 32 has many features, but the most significant feature is that it gives the power to the Supreme Court to issue writs on a breach of fundamental rights and the writs, namely-Habeas Corpus, mandamus, Prohibition, Certiorari and Quo Warranto. These writs have different functions, along with protecting the liberty and fundamental rights of every citizen of India, which cannot be refused by the Supreme Court. Remedy makes the real. If there is no remedy, there is no right.*

**Keywords:** Fundamental Rights, Writ Jurisdiction, Supreme Court, Remedies, Basic Structure Doctrine.

### INTRODUCTION

“It is the very soul of the constitution and the very heart of it.”

- Dr. Ambedkar

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\*BA LLB, THIRD YEAR, SOUTH CALCUTTA LAW COLLEGE.

What is Article 32? Article 32 is a very important part of the Constitution of India. This article is itself a fundamental right. Article 32 gives the right to enforce fundamental rights, to issue writs, and ensures the supremacy of the constitution. The clauses of this article are defined below.

**Clause 1:** Give the right to move the Supreme Court by appropriate processing for the enforcement of fundamental rights.

**Clause 2:** Give power The Supreme Court to issue writs.

**Clause 3:** Parliament may empower (by law) any other code to exercise within the local limits of its jurisdiction or the Power exercisable by the Supreme Court under clause 2.

**Clause 4:** The rights which are guaranteed by Article 32 should not be suspended as otherwise provided for in the Constitution.

Article 32 usually deals with the remedies for the enforcement of the fundamental rights of a citizen.

## IMPORTANCE

Article 32 is regarded as the heart and soul of the constitution. This article is considered one of the most crucial positions in the constitution. This article gives individual the right to move to the Supreme Court to seek the protection and enforcement of their fundamental rights, and issue rights to the Supreme Court. It gives power to parliament to empower any other code to issue directions and orders, and writs also. The article provides a simple, guaranteed and faster remedy for the enforcement of constitutional rights to citizens. The Supreme Court ruled that its power under this article is a basic feature of the Constitution of India. Whenever there is a violation of fundamental rights, any person can move the court for an appropriate remedy. There is no limitation on the Supreme Court to enforce the fundamental rights except that the process must be appropriate, which is defined under clause one of Article 32. Though it has a narrow scope, as it is applicable only in the case of a violation of fundamental rights.

## WRITS UNDER ARTICLE 32

To know the writs under Article 32, first we have to know what writs mean. Writs are basically the written orders which are issued by the Supreme Court as well as the high court, and this

writs adopted from English law, which are called prerogative writs. Both the High Court and the Supreme Court can order writs.

Article 32 guarantees the Supreme Court to issue writs. The Supreme Court can issue 5 types of writs under the article: Habeas Corpus, mandamus, prohibition, and quo warranto. They are described below.

**Habeas Corpus:** It means to have the body or release any person, or to have the body of a person who is wrongfully detained. The writ cannot be issued to private individuals or public bodies. The Habeas Corpus cannot be issued when the detention is by a competent court and the detention is outside the jurisdiction of the court.

**Mandamus:** Mandamus means mandatory. When superior court mandatorily orders the inferior court to perform an official duty in case of misuse of power or exceeding the scope of power, or giving decisions on irrelevant factors.

**Certiorari:** It means to certify. Which means a certificate was the higher court to the inferior court in case of exceeding the jurisdiction or for passing a wrong full judgement or overlooking the procedure established by law

**Prohibition:** To prohibit. Prohibition is to prohibit the inferior court not to misusing its procedural power, and it is to be remembered that it is issued only against judicial bodies.

**Quo Warranto:** Who wants to refer the warranty against a public office? Which means by warranty, when any person holds or occupies any public office wrongfully in the name of the public duty, then the court can issue Quo warranto. It means the court issues the writ for enquiry about the legality of the claim.

The applicants can directly apply for constitutional remedies to the Supreme Court, but the Supreme Court rules that they should first apply for a remedy at the High Court.

Article 32 of the Constitution of India is a simple but guaranteed remedy for the fundamental rights of Indian citizens. The Indian Constitution is the supreme law for every citizen of India. Part 3 of the Constitution, which is under articles 12 to 35, this with the fundamental rights and article 32 explains the right to constitutional remedies, which is a crucial fundamental right. This article guarantees to citizen that they can directly apply to the Supreme Court for their breach of fundamental rights, and they don't have to wait for the dilatory phase, and also, they

don't need to apply to the lower court and can move ahead. An applicant who applied to the Supreme Court for their fundamental rights and Article 32 cannot be rejected on any technical grounds, and the court can pass another order if required.

### **ARTICLE 32 VS. ARTICLE 226**

Article 32 of the Constitution of India gives power to the Supreme Court to enforce fundamental rights, whereas Article 226 gives power to the High Court for the enforcement of fundamental rights. A party should be free to approach either of the two courts on the bridge of fundamental rights under articles 32 and 226. But there are some slight differences between these two articles.

Article 32 itself is a fundamental right, and the Supreme Court is under a duty to grant relief for the violation of a substantial fundamental right. The stronger division holds that Article 32 is a basic feature of the constitution, which cannot be taken away even by amending the constitution.

Article 226 is the Power High Court to enforce fundamental rights and issue writs in breach of fundamental rights. When the action is awkward, partially or entirely under the jurisdiction of the High Court, a person should apply for writs in the jurisdiction of the High Court under Article 226. As it is stated above that you should first apply for a writ petition at the high court, where and other years alternative remedies are available no repetition can be maintained under Article 226. The high court can entertain a writ petition against any order passed or taken by the state under Article 226.

So, the differences are described shortly below:

- Article 32 gives power to the Supreme Court to issue writs, and Article 226 gives power to the High Court to issue writs.
- Article 32 is a fundamental right, and articles 2 to 6 are constitutional rights.
- Article 32 can be suspended in an emergency that has been declared by the president, but articles 2 to 6 cannot be suspended even in a time of emergency.
- The Supreme Court has broader territorial jurisdiction than the High Court, although the High Court have never had territorial jurisdiction.
- The area of the High Court concerning the power to issue writs is wider than the Supreme Court.

- Article 32 has a narrow scope as it is only applicable in case of violation of fundamental rights, but Article 226 has a broader scope as it is applicable not only in the case of violation of fundamental rights but also in legal rights.
- Under Article 32, as it is a fundamental right, it cannot be refused by the Supreme Court, but under Articles 2 to 6, the High Court may refuse.

## LIMITATIONS

**State Emergency:** Article 32 can be suspended during the state emergency, which is defined under Article 359 of the Indian Constitution.

**Scope:** The scope of Article 32 is never than articles 2 to 6, as it is only applicable to the fundamental rights.

**Discretionary Powers:** As it is stated above that it is a fundamental right, the Supreme Court cannot refuse the proceeding.

**Unavailability:** The Supreme Court has broader territorial registration, but it can be temporary and an exception.

**Misuse of Petition:** Any quotation to go to the Supreme Court for the misuse of their fundamental rights. However, the Supreme Court can't refuse it under Article 32.

## CONCLUSION

Article 32 is the most crucial provision of the Constitution of India. It ensures the fundamental rights of citizens, which is not just a theoretical promise, but is also practically enforced. The definition of Article 32 is not only bound in books. It has a great impact in real life. The article ensures that every citizen of India gets their fundamental rights and in any branch of fundamental rights, it with contents the power to issue rights to the Supreme Court and also a person can file or apply to the Supreme Court directly. This article is not only important for academics, but also it is important to be capable and responsible in the legal profession.

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