ARTICLE 32 AND THE PROTECTION OF FUNDAMENTAL RIGHTS: AN ANALYSIS OF THE SUPREME COURT'S CONSTITUTIONAL ROLE

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ABSTRACT

Article 32 occupies a special place in the Indian constitutional scheme. Introducing it in the Constituent Assembly, Dr. B.R. Ambedkar described it as the very soul and heart of the Constitution. The provision makes the right to approach the Supreme Court for enforcement of Part III rights a fundamental right in its own right. This paper examines the text and structure of Article 32, the five writs available under it, and the way the Court's interpretation has moved over seven decades from a narrow, text-bound reading to an expansive, rights-oriented one. It traces the relaxation of standing and the rise of Public Interest Litigation (PIL), the link between Article 32 and the basic structure doctrine, and the self-imposed limits of res judicata, delay and alternative remedy. It closes with a discussion of present-day controversies, including the Court's attempts to set time limits on constitutional functionaries and the reversal of that approach in 2025.

Conceptual Foundations: The Constitutional Framework of Part III and Article 32

Part III lists the substantive rights of persons in India, but a list of rights means little unless someone can be compelled to honour it. Article 32, titled the "Right to Constitutional Remedies", supplies that compulsion for every right in Part III. The right to approach the Supreme Court for their enforcement is itself a fundamental right under Article 32(1). Because this guarantee sits inside Part III, ordinary legislation or an executive order cannot take it away.

Clauses of Article 32

- **Article 32(1):** guarantees the right to approach the Supreme Court through appropriate proceedings for enforcing Part III rights.

  Article 32(2): authorises the Court to issue directions, orders or writs, including habeas corpus, mandamus, prohibition, certiorari and quo warranto, to enforce any fundamental right.

- **Article 32(3):** allows Parliament, by law, to empower any other court to exercise the clause (2) powers within its local limits, without diminishing the Supreme Court's own jurisdiction.

- **Article 32(4):** provides that the right shall not be suspended except as the Constitution itself permits; the principal permitted case is a Presidential order under Article 359 during an Emergency.

Comparison with the corresponding provision for High Courts (Article 226)

Both the Supreme Court and the High Courts can issue writs, but the two jurisdictions differ in character:

Aspect	Article 32 (Supreme Court)	Article 226 (High Courts)
Constitutional status	Itself a fundamental right in Part III.	A constitutional power in Part VI; not a fundamental right.
Scope of enforcement	Enforcement of Part III rights only.	Part III rights and "any other purpose", which covers ordinary legal and statutory rights.

Nature of jurisdiction	The Court regards itself as the protector of fundamental rights, though in practice it may ask a petitioner to approach the High Court first.	Discretionary; relief may be declined where an adequate alternative remedy exists.
Territorial reach	Operates across India.	Confined to the High Court's territorial jurisdiction, including where the cause of action arises.
Suspension	Enforcement of rights named in an Article 359 order can be suspended.	Not touched by Article 359 for non-fundamental-right purposes.

The Five Constitutional Writs

Article 32(2) enables the Supreme Court to issue five writs.

The Writ of Habeas Corpus ("to have the body")

- **Purpose:** the principal safeguard against arbitrary arrest and illegal detention. The detaining authority must bring the detainee before the court and justify the custody.

- **Scope:** it lies against the State and, uniquely among the writs, may also be used against private persons who illegally confine someone.

  Ground rules: release follows where detention lacks legal authority or violates Article 22.

- **Major exceptions:** the writ will not issue where the person is held under a valid order of a competent court or under a lawful legislative or judicial process.

The Writ of Mandamus ("we command")

- **Purpose:** directs a public authority to perform a mandatory public duty that it has failed to perform.

- **Scope:** it may be issued to the executive, to other public bodies and to lower courts where a duty is imposed by law and left unfulfilled.

- **Ground rules:** the petitioner must show a legal right to the performance of the duty and a corresponding obligation on the respondent.

- **Major exceptions:** it does not lie against a purely private party, cannot compel the exercise of a genuinely discretionary power, and cannot be issued against the President or a Governor in respect of personal conduct (Article 361).

The Writ of Prohibition ("to forbid")

- **Purpose:** restrains a court or tribunal from continuing proceedings that exceed its jurisdiction or breach natural justice.

- **Scope:** it operates while the proceedings are still pending and is therefore preventive.

- **Ground rules:** it is confined to judicial and quasi-judicial bodies and does not reach purely administrative action.

The Writ of Certiorari ("to be certified")

Where prohibition prevents, certiorari corrects.

- **Purpose:** calls up the record of a decision already made and quashes it.

- **Scope:** available for want or excess of jurisdiction, breach of natural justice (*audi alteram partem*) or an error of law apparent on the face of the record.

- **Ground rules:** its reach has widened over time to cover administrative bodies whose decisions affect legal rights.

The Writ of Quo Warranto ("by what authority")

- **Purpose:** tests a person's claim to a public office.

- **Scope:** if the holder lacks the legal qualifications, the court can oust the holder from the post.

Ground rules: the office must be public, of a substantive character and created by statute or the Constitution.

Historical Evolution of Article 32

The case law on Article 32 shows a shift from a textual and formal reading to a substantive one that stresses the provision's protective role.

The Era of Textual Strictness: 1950s–1960s

Early decisions read the rights conservatively. In *A.K. Gopalan v. State of Madras* (AIR

1950 SC 27) the Court treated Articles 19, 21 and 22 as largely self-contained and read "procedure established by law" to mean any procedure laid down by an enacted law. Standing rules were applied strictly, so only a person whose own right was affected could petition. Yet even in this period the Court guarded Article 32 jealously: in *Prem Chand Garg v. Excise Commissioner* (AIR 1963 SC 996) it struck down a rule requiring petitioners to deposit security, holding that the Court's own rules cannot burden a fundamental right.

The Emergency: 1975–1977

The lowest point came in *ADM Jabalpur v. Shivkant Shukla* ((1976) 2 SCC 521), where the majority held that once a Presidential order under Article 359 suspended Article 21, detainees could not seek habeas corpus to challenge preventive detention. The decision is widely regarded as a grave failure of the judiciary. The Court formally repudiated it in *K.S. Puttaswamy v. Union of India* ((2017) 10 SCC 1).

The Era of Procedural Revolution: 1978–1990s

Maneka Gandhi v. Union of India (AIR 1978 SC 597) transformed Article 21 by requiring that any procedure depriving a person of life or liberty be fair, just and reasonable, and by reading Articles 14, 19 and 21 together. This enlarged the range of claims that could be brought under Article 32. At the same time the Court loosened the rules of standing and procedure. Its key features were:

- **Relaxation of standing:** a public-spirited person could sue on behalf of those who were unable to approach the Court. *S.P. Gupta v. Union of India* (AIR 1982 SC 149, decided in December 1981) is the leading authority.
- **Epistolary jurisdiction:** letters and postcards describing violations, for instance of

prisoners or bonded labourers, were treated as writ petitions, as in *Sunil Batra* (1978) and *Hussainara Khatoon* (1979).

Continuing supervision: the Court monitored compliance with its directions in cases involving collective or systemic harm.

Basic Structure Doctrine and Judicial Review

The standing of Article 32 as a protected part of the Constitution rests on the basic structure doctrine.

- ***Kesavananda Bharati v. State of Kerala*** **(1973):** Parliament's amending power under Article 368 cannot alter the basic structure of the Constitution, and judicial review is counted among its essential elements.
- ***Fertilizer Corporation Kamgar Union v. Union of India*** **((1981) 1 SCC 568):** cited for the importance of the Court's Article 32 jurisdiction within the constitutional scheme.
- ***L. Chandra Kumar v. Union of India*** **((1997) 3 SCC 261):** a seven-judge Bench held that judicial review by the Supreme Court and the High Courts is part of the basic structure. It therefore cannot be ousted by legislation, including statutes creating administrative tribunals, whose decisions remain open to scrutiny by the High Courts and, ultimately, the Supreme Court.

Procedural Rules Governing Article 32

Article 32 contains no express conditions, yet the Court has developed doctrines to prevent abuse and manage its docket.

The Doctrine of Res Judicata

In *Daryao v. State of U.P.* (AIR 1961 SC 1457) the Court held that a writ petition dismissed on the merits by a High Court under Article 226 cannot be re-agitated before the Supreme Court under Article 32. A dismissal without reasons or on a preliminary ground does not bar a fresh petition. Habeas corpus petitions are treated differently because unlawful detention is a continuing wrong.

The Doctrine of Laches (Unreasonable Delay)

No limitation period is stated in Article 32, but unexplained delay can defeat relief. In *Tilokchand Motichand v. H.B. Munshi* ((1969) 1 SCC 110) the Court declined relief to a petitioner who had waited too long, applying the maxim that the law assists the vigilant, not those who sleep over their rights.

The Doctrine of Alternative Remedy and High Court Primacy

Although the existence of another remedy does not oust Article 32, the Court usually prefers that petitioners first approach the High Court, unless the matter is of wider national significance or affects large numbers of people. This conserves the Court's time and benefits from the High Court's findings.

Contemporary Flashpoints

Present-day controversies concern both the limits of judicial power and judicial efficiency.

- **Regulating PIL:** concern that public interest petitions are sometimes misused for private or publicity ends, and that the Court's monitoring role strays into administration.
- **Personal liberty and judicial restraint:** the speed with which habeas corpus, bail and personal liberty claims should be heard directly under Article 32.
- **Scrutiny of constitutional functionaries:** whether and how courts may ensure that authorities perform their constitutional duties on time.
- **Tribunalisation and judicial oversight:** preserving the supervisory role of the constitutional courts over specialised tribunals.

The Supreme Court's Intervention in Constitutional Timelines

The most recent flashpoint concerns delay by Governors in acting on Bills passed by State legislatures. In its judgment of 8 April 2025 in the Tamil Nadu Governor dispute, the Court used its powers, including Article 142, to fix a time frame for Governors and the President and to treat Bills as approved if no action was taken within it. The President then made a reference under Article 143(1) with fourteen questions. On 20 November 2025 a five-judge Constitution

Bench headed by Chief Justice B.R. Gavai gave its opinion (*In re: Assent, Withholding or Reservation of Bills by the Governor and the President of India*, 2025 INSC 1333). It held that courts cannot prescribe fixed timelines for these functionaries, that the concept of "deemed assent" is not recognised by the Constitution and cannot be created through Article 142, and that the Governor's discharge of functions under Article 200 is not justiciable on the merits. It nonetheless reaffirmed that Governors cannot sit on Bills indefinitely, and indicated that limited judicial review remains available where there is prolonged and unexplained inaction. The episode shows the continuing tension between the Court's protective role and the separation of powers.

Landmark Judgments Shaping the Jurisprudence of Article 32

Year	Case	Ratio
1950	A.K. Gopalan v. State of Madras, AIR 1950 SC 27	Narrow reading of fundamental rights and "procedure established by law".
1976	ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521	Upheld suspension of habeas corpus during the Emergency; later repudiated in Puttaswamy (2017).
1978	Maneka Gandhi v. Union of India, AIR 1978 SC 597	Fair, just and reasonable procedure under Article 21; wider scope for rights enforcement.
1981	S.P. Gupta v. Union of India, AIR 1982 SC 149	Broadened standing and consolidated PIL.
1997	L. Chandra Kumar v. Union of India, (1997) 3 SCC 261	Judicial review by the Supreme Court and High Courts is part of the basic structure.

Conclusion

By making the remedy itself a fundamental right, the framers ensured that Part III would be more than a statement of aspirations. Over time the Supreme Court has used Article 32 to widen the reach of liberty, open its doors to the poor and the unheard, and protect judicial review from legislative erosion. The same record also shows the dangers of weak enforcement, as in the Emergency, and of overreach, as the debate on timelines for constitutional offices illustrates.

The enduring task is to keep the Court accessible and effective in defending rights while respecting the limits that the Constitution places on every institution, itself included.