WRIT JURISDICTION: SCOPE AND LIMITATIONS FACED BY THE COURTS

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ABSTRACT

The paper majorly focuses on the Writ jurisdiction under Article 32 and Article 226 of the Indian constitution. The paper initially talks about the types of reliefs available and the functions of these articles and then progresses on to discuss the limitations of these articles on the judicial courts of law. The scope of the research paper limits to the powers of the Supreme Court and the High court to exercise these powers granted to them by the Constitution to protect the rights of the citizens from its infringement. The paper will also aim to discuss the interrelation between the two articles and what makes them distinct from each other. We shall also look into the various challenges faced by the courts when huge number of these petitions are filed before them and how they take cognizance of the matter and dispose them in the appropriate manner.
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I INTRODUCTION

The struggle for independence by the Indians against the colonial rule, was a long journey of torture, pain and suffering, yet a battle, that millions fought with an undying spirit and enthusiasm. This struggle bared its fruits when we eventually freed and got our independence. Since then, the policy makers and the leaders of our country wished for an India that was “Sovereign, Socialist, Democratic, Secular and Republic”, ensuring that every citizen enjoyed justice, equality and liberty alongside the right to dignity of individuals and maintaining the integrity of the nation.

The founding fathers of the nations enshrined these principles and ideals in the preamble of the Indian constitution after navigating and analysing across some of the best constitution in the world and integrating the best provisions from these Constitutions into our new Constitution, which became the supreme authority of law in the land.

Part III of the Constitution contains the Fundamental Rights, which were solely included to secure to its citizens the basic human rights, that they are to possess as a matter of right and any infringement of these right will provide them a legal backing in the courts of law. These rights reflect the component of justiciability and enforceability, which makes them efficient to operate through the mechanisms of writs. Writs are an instrument which gives the power to the court (Supreme Court or High Court) where it can issue an order or direct an authority or an individual to do an act or refrain from doing an act.

The Indian Constitution provides for remedies in cases where the basic and fundamental rights of the citizens are infringed due to arbitrary administrative action, by conferring writ jurisdiction to the Supreme Court and the High Court in the form of Article 32 and Article 226, respectively.

Writ jurisdiction is the most commonly used method to bring about administrative action before the competent courts of law. Since the commencement of the constitution and till date, numerous petitions and cases, against the arbitrary action of the governmental administration, have been filed under this area of writ jurisdiction, which has resulted in its domination over all other methods of judicial review of administrative action.

There have been instances of abuse of this power by the citizens, where the authority of these articles were taken beyond their scope, making them ultra vires to the constitution and rendering a violation to the rule of law. It is the duty of the court to ensure proper

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1 Beyond the authority
implementation and execution of these articles and dismissing petitions that go beyond its jurisdiction. There are certain limitations in both the articles (32 and 226), hence, it is necessary that these defects are corrected for better effectiveness and proficiency of the judicial system.
II ARTICLE 32 AND 226: SCOPE AND FUNCTIONS

Article 32 and 226: Scope and Functions

Article 32, as stated by Dr. BR Ambedkar, is the "very soul of the Constitution and the very heart of it". It follows the legal maxim of *Ubi Jus Ibi Remedium* which refers to where there is a right there is remedy. Contained in the Part III of the Constitution, it is one of the most important articles as it mentions and gives power to enforce the right of the citizens, before the courts to seek justice for their basic rights that have been arbitrarily or unduly infringed. This power of reinstating the right to the individuals/citizens is vested with the Supreme Court, which is the apex judicial body in the country, through the Constitution.

The Supreme Court stated the importance of Article 32 in the landmark case of *Prem Chand Garg v. Excise Commissioner*, where according to the words of Gajendragadkar J., "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."

The Supreme Court also in the case of *Fertilizers Corporation Kamgar Union v. Union of India*, observed that Article 32 forms an "integral part of the basic structure of the Constitution". The court held that, "It is meaningless to confer fundamental rights without providing an effective remedy for their enforcement, if and when they are violated". It is important to note that Article 32 is of a nature as it can be barred even during emergency. Article 32 also offers remedies against private persons for the enforcement of Article 17, 32 and 24.

Article 32 allows the Supreme Court to relax the conventional rule of *Locus Standi* and adopt the procedure of Public Interest Litigations (PIL), where the citizens, even without approaching the court, can enforce their rights in cases of bonded labour, undertrial of prisoners, right to

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2 Dr. BR Ambedkar, Drafting Committee on Article 32 of the Constitution of India
3 AIR 1963 SC 996
4 AIR 1981 SC 344
5 People’s Union for Democratic Rights v. Union of India, (1982) 3 SCC 235
6 The right to appear before the court
information, torture under police custody, etc. The territorial scope of Article 32 does not restrict just within the territory of India but also extends over those authorities functioning outside of the country provided that these institutions of authority fall under the control of the Government of India. Article 32 needs to be read in conjunction with Article 142 of the Constitution of India.

Article 226 is a right, similar to Article 32, given to the High Courts to issue writs for safeguarding and upholding the rights and liberties of the citizens of the country. In the case of Sarvepalli Ramaiah (D) Thr. Lrs. & Ors. v. District Chittoor Dist. & Ors., it was held by the Supreme court held that,

“Administrative decisions are subject to judicial review under Article 226 of the Constitution, only on grounds of perversity, patent illegality, irrationality, want of power to take the decision and procedural irregularity. Except on these grounds administrative decisions are not interfered with, in exercise of the extra ordinary power of judicial review”

The right to original jurisdiction to issue writs is reserved with the High Court according to the Constitution. The article provides huge powers to the High Courts to control administrative action and makes sure that no legislations are passed that curtails or restricts its powers. Individuals can move the court not only for the enforcement of their fundamental rights but also for their legal rights. The powers conferred by Article 226 on the High Courts are said to be wider than compared to the powers conferred on the Supreme Court under Article 32.

There are five types of writs that are made available under Article 32 and 226. They are known as the prerogative writs. This term has been derived from the English law where the king exercised his prerogative power of superintendence and ensured that the due rule of law was observed by his officers and tribunals. These prerogative writs are applicable in extra-ordinary circumstances where the usual legal remedies are not sufficient.

The 5 types of writs are as follows-

1. **Habeas Corpus**

The Latin definition of this term extends to “to have the body”. This writ can be issued by any person on behalf of the detainee/ prisoner, who has been unlawfully and unjustly detained without following the due procedure as laid down under Article 22. The detention is said to be
unlawful when the authority, who has the power of detention, uses this power in a disproportionate manner or abuses this power or has intentions that are mala fide. The court ones satisfied with the matters of application of the writ can issue orders directing the person who has unlawfully detained the person, to present the latter before the court, so that the court can evaluate the grounds on which he was detained and free him from such detention if no proper justification is found. The landmark case of *Sunil Batra v. Delhi Administration*, Justice Krishna Iyer considered the letters of the detainee, alleging torture by the jail authorities, as a petition for Habeas Corpus. The courts have the power to take *Suo moto* action, if the matter concerns justice and equality, received from any source. In the case of *Icchu Devi v. Union of India*, the Supreme Court took into cognizance that the court does not have to follow strict guidelines for pleading in the case of an application under the writ of Habeas Corpus.

2. **Mandamus**

The writ of mandamus is derived from the Latin phase “*We command*”. This writ is also called as the “writ of Justice” as the court can order any public authority or constitutional or statutory or non-statutory body to perform or carry out any duties as laid down by the law or restrain from carrying out any particular act or duty. The essential prerequisites for issuing a writ of mandamus, that are to be satisfied is that the petitioner should have an existing legal right and the respondent has the legal duty, that would compel his performance. In the case of *Vijay Mehta v. State of Rajasthan*, the Apex court held that a writ of mandamus cannot be issued to compel state governments to appoint commissions, as the government holds discretionary and optional powers in matters of appointment of commissions. In cases where the government refuses to handle matters that fall under its jurisdiction, the writ of mandamus can be issued.

For the writ of mandamus to be issued it is necessary to strictly follow the rule of *Locus Standi* and the petitioner has to show that he has the right to enforce duty on his behalf. This writ is available not only against public officers but also can be enforced against the government under article 226 and 361. However, it needs to be made sure that proper proceedings are administered against the government concerned. Inferior courts and other judicial bodies and tribunals can also be summoned using this writ in case they do not perform their duties by refusing their jurisdiction.

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7 *Ram Manohar Lohia v. State of Bihar*, AIR 1966 SC 740
8 AIR 1980 SC 1579
9 AIR 1980 SC 1984
10 AIR 1980 Raj 207
3. Quo Warranto
The writ of Quo Warranto translates to “what is your authority”. The writ questions the position of the officer holding the public office and whether he has the authority to hold such office of power. If the officer is seen to hold no official title, then he can be ousted through the implementation of this writ. In the case of Univ. of Mysore v. Govinda Rao\textsuperscript{12}, it was held that the court has the power to control elections or appointment to offices of law, with the aim of preventing a person from being deprived of an office of authority that he/ she is entitled to. The main function of the writ is to prevent unlawful usurpation of public office and allows any party, even if he/ she is not the aggrieved party, to seek redressal for their wrongs.

4. Certiorari
The Latin definition of this writ refers to “to certify”. It gives powers to the Supreme Court and the High Court to transfer pending cases and records from inferior courts or quasi-judicial courts, in order to scrutinise and decide the legal validity of such judgements and orders passed by them. The prerogative writ of Certiorari is of affirmative, preventive and curative in nature. this writ exercises a supervisory jurisdiction and the High Court is not allowed to exercise its powers of an appellate court. There are certain grounds under which this writ can be issued. Them being-

a. Jurisdictional error
b. Absence of jurisdiction
c. Overuse of the power of jurisdiction
d. Misuse of jurisdiction
e. Error of law on the record passed by the court
f. Disobedience of principles of natural justice

5. Prohibition
The writ of Prohibition is the translated from the Latin term meaning “to prohibit”. It is issued as an order from the superior courts to the inferior courts to stop or discontinue the proceedings, where it can be seen that they have gone \textit{ultra vires} to their jurisdictional powers. The writ focuses on keeping the inferior courts within the limits of their jurisdiction. Earlier, it could be enforced only upon judicial and quasi-judicial bodies. But as the realms of law and natural justice have been expanding for fairness and accountability in administrative actions, the

\textsuperscript{12} AIR 1965 SC 491
rigidity of the writ has been subsided, making it applicable over anybody, irrespective of the functions performed by them. The grounds to issue the writ of prohibition include-

a. Infringement of fundamental rights
b. Unconstitutionality of the provision or statute
c. Lack or excess of jurisdiction
d. Infringement of principles of natural justice
III DISTINCTION BETWEEN ARTICLE 32 AND 226

Distinction between Article 32 and 226

The main distinction that can be identified between Article 32 and 266 is that Article 32 can be invoked only for the implementation of the Fundamental rights, whereas Article 226 can be seen to have a wider as it can be enforced for violation of Fundamental rights as well as other legal rights. It can be observed that Article 32 has a more restricted definition compared to article 226. However, there can be exceptional circumstances, such as in the case of D.C. Wadhwa v. State of Bihar¹³ (abuse of ordinance making powers), Supreme Court Advocates on Record Ass. v. Union of India (appointment of Supreme Court and High Court judges), Sarojini Ramaswamy v. Union of India¹⁴ (matters relating to procedure for the removal of judges of the Supreme Court), where the Supreme Court has accommodated the writ petition under article 32 for enforcement of rights other than the fundamental rights.

Some other distinguishing features between the two articles include-

1. The High Court has the discretionary powers to issue writs under Article 226 however, no such discretion is allowed under article 32 for the Supreme Court.

2. If a party has already approached the high court under article 226 to seek remedies for their infringed right, the Supreme court of India cannot use its power under article 32. If an appeal is filed before the apex court regarding a similar complaint and relief and for the proceeding failed before the high court, it cannot use its original jurisdiction¹⁵ but continue on the appeal brough before instead of a fresh proceeding.

3. The Supreme court refrains from taking a new ground for the appeal and does not participating in providing an action when a better remedy is provided by the High court under article 226. Hence, a restraint is applied by the Supreme court on itself from entertaining petitions under article 32, which is a practice that is habitually followed now¹⁶.

¹³ AIR 1897 SC 597  
¹⁴ AIR 1992 SC 2219  
¹⁵ The Constitution of India, art. 131  
¹⁶ Tilokchand Motichand v. H. B. Munshi, Commissioner of Sales Tax, AIR 1970 SC 898
4. The Supreme Court under Article 32 has a larger territorial jurisdiction, as the five writs can be issued all over the country, in comparison to the High Court under Article 226, where the court can issue writ only under its own jurisdiction.

5. At the time of emergency, Article 226 cannot be suspended under any circumstances. On the contrary, Article 32 remains suspended at the announcement of emergency by the President.
IV LIMITATIONS OF ARTICLE 32 AND 226

Limitations of Article 32 and 226

The powers under Article 32 and 226 are unfettered and independent for using any kind of writ under its jurisdiction. There are no limitations imposed upon it by law, per say, but the High Court under Article 226 exercises certain self-imposed limitations. These limitations are not governed by the rule of law but imposed for the ease of the judges to dispose of the cases and decide as to how the discretion of the court will be applied. The court has the discretion to refuse the issues of orders of all writs other than Habeas Corpus, which is issued as “of right”, even when it is proved that the grounds for such writs exist.17

Some such limitations are as follows:

1. Alternative Remedies

When there is a possibility of the existence of another remedy to the petitioner, he/she is required to take up such remedies instead of opting for writ jurisdiction. In the case of Steel Ltd v. Kalyan and Har Shankar v. Dy. Excise Commissioner18, it was held that the High Court can refuse the exercise of its jurisdiction to issue writs if there are grounds for the application of other possible remedies to the litigant. But in the case of the infringement of Fundamental Rights, it is the duty of the Supreme Court to issue a writ under Article 32 and provide relief to him. Such cases are do not form part of the discretion of the court and cannot refuse relief on the grant of an alternative remedy. Therefore, once it has been established by the petitioner that there have been violation of the Fundamental Rights, the Court has to exercise its duty and issue an appropriate writ under Article 3219, irrespective to the fact as to whether the petitioner has an alternative remedy or not.

2. Laches or unreasonable delay

In the case of Durga Prasad v. Chief Controller, the court held that a writ petition should be filed within a reasonable time from the date that the order had been challenged, or else the petitioner will face the consequence of getting debarred from receiving relief of any form20.

17 Union of India v. T.R. Verma, AIR 1957 SC 882
18 1973(1) SCC 273; 1975(1) SCC 737
20 AIR 1970 SC 769
The court helps those who are vigilant and not those who sleep over their rights. When a party is aggrieved due to the violation of their Fundamental rights, he/she should move the court to expedite their process of getting justice and not cause any unreasonable delays. Unreasonable and inordinate delays give rise to a presumption of “abandonment of right to move the court”, which can be detrimental to the rights of the parties seeking relief. However, these presumptions of unreasonable delays can be rebutted before the court. There are no hard and fast rule regarding the matters of delays and laches but the discretion lies upon the court, referring to the circumstances and facts of the petition, to decide whether the writ petition should be discarded on the grounds of laches or not.

3. Res Judicata
In the landmark case of M.S.M. Sharma v. Krishan Sinha\(^{22}\), the Supreme court for the first time held that the principle of Res Judicata\(^{23}\) applies to writ petition under Article 32. When a writ petition filed before the Supreme Court or the High Court, has been dismissed on merits, then the succeeding petitions cannot be challenged under the same cause action. The principle of res judicata is also applicable when the party approaches the respective courts under Article 32 and 226. If the petition made by the aggrieved party is heard and rejected or approved, the same matter cannot be brought before any other court in the form of a writ proceeding\(^{24}\). However, the petitioner can take the recourse of filing a fresh writ petition if it is proved that the previous was rejected other than on merits.

4. Authorities against whom writs may be issued
Over the years, the range has been expanding over the matters as to against whom a writ petition can be filed or issued. This expansion of judicial law has taken place to prevent the arbitrary use of administrative powers which have an effect on the individual’s basic rights. The petition for writs usually lie against public and statutory bodies or an individual vested with administrative powers and public duty, however, writs can also be issued against private bodies and individuals, but it is required to prove an exceptional situation in such cases. There are no stated limitations or guidelines when it comes to filing writ petitions under Article 226 and 32 before the respective courts, against private company or persons. If it is proved that the a private

\(^{21}\) Mahadev Kalkar v. State Bank of Hyderabad, 1990(4) SCC 174
\(^{22}\) AIR 1960 SC 1186
\(^{23}\) Matter that is already adjudicated before the court
\(^{24}\) Daryao Singh v. State of UP, AIR 1961 SC 1457
body had infringed the Fundamental Rights of the aggrieved party, under Article 17, 23 and 24, he/she has the valid ground to file the writ petition under the competent court/courts.

5. **Locus Standi**

Locus Standi of the petitioner is a *sine qua non* for exercising the jurisdiction of the court. On the principle of certiorari, the court may use the concept of “aggrieved person” to make a general principle stating that those whose rights have been violated should file a writ petition before the court as Article 32 and 226 do not provide any strict definition as to who is entitled to file writ petition for the enforcement of the Fundamental Rights. The courts have liberalized this concept by allowing any person to move the courts, even by writing letters of the injustices caused by arbitrary powers of authorities. This is done so that justice can be easily accessible, convenient and free from cumbersome, for those sections of the society that lack the resources to appear before the court. It acts as a powerful instrument for the justice-seeking citizens to prevent exploitation and ensuring social and economic rights to the underprivileged and marginalised sector of the society. As stated in the case of *State of AP v. Parent of a student of Medical College*[^26^], the liberalization of locus standi is “a highly effective weapon in the armoury of law for reaching social justice to the common man.”


[^26^]: AIR 1985 SC 910
V CONCLUSION

Conclusion

The Constitution of India is truly a living document as it provides for rights that are enforceable in nature and safeguards the dignity and basic rights of the citizens. Part III, which are the Fundamental Rights, are the most advanced set of freedoms and principles framed to enhance the lives of individuals. Article 32 as rightly said by Dr. BR Ambedkar is the heart and soul of the Constitution as it provides for remedies and reliefs to the people who have been infringed of their rights. Article 226 works in the same capacity as Article 32 but is applicable in the High Court.

The paper helped me to get a better grasp on the concepts of writs jurisdictions, their scope, functions, distinctions and limitations. These prerogative writs are extremely necessary for the proper functioning of our democracy, as citizens are the most important resources of a country and their protection should be the outmost responsibility of the law. This paper provided me a look in the various distinctions that the two articles possess although being similar in function. Laws are meant to evolve over time and no law is made perfect, and Article 32 and 266 too have their own limitations, hence, it is the duty of our courts to make amendment to these articles so that they fit into the current trend and efficiently facilitate in the process of securing justice. The liberalization of Article 32 and 226 is one such step taken in the process to make them more approachable and accessible to the people.
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