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## SHIELDING THE DEMOCRATIC EDIFICE OF THE INDIAN CONSTITUTION VIS-A-VIS ARTICLE 32

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Amandeep Verma, Assistant Professor, Universal Law College, Lalru (Mohali)

### ABSTRACT

The Constitution of India is the biggest political document of India and is the Apex law of the country. It guarantees, rather it has gifted us with essential freedoms to live our life with dignity. These are so important to our existence that deprivation of these fundamental freedoms would be like a lock without key. Our fundamental freedoms are given in article 12 to article 32 of the Indian Constitution. The maker of our Constitution Dr. Bhimrao Ramji Ambedkar viewed Article 32 as the essence of the Indian Constitution and called it the “heart and soul” of the Indian constitution. It is the most important right as it provides remedy for injury to fundamental rights detailed in Part III of the Constitution of India. The option to move the Supreme Court by proper procedures for the requirement of the privileges given by this Part is ensured to every individual whose freedoms have been disregarded. The Supreme Court has the ability to give bearings or orders or writs, remembering writs for the idea of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever might be proper, for the authorization of any of the freedoms presented by this Part. The right ensured by this article will not be suspended besides as in any case accommodated by this Constitution. The maxim ‘Ubi Jus Ibi Remedium’ says 'Where there is a right, there is a remedy' which rightly explains Shielding the Democratic Edifice of the Indian Constitution. In this research paper we will look into the various remedies which we can seek if any of our fundamental right is violated.

**Keywords:** Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari.

## INTRODUCTION

The Indian Constitution gives us privileges, called Fundamental Rights to live our life with dignity and to safeguard these freedoms, there is a cure that really takes a look at the utilisation and abuse of these freedoms. Consequently, these key freedoms are made enforceable, i.e., one can move to the court if there is violation of their fundamental right and enforceability of the same. The maxim 'Ubi Jus Ibi Remedium' which means 'Where there is a right, there is a remedy' rightly explains Shielding the Democratic Edifice of the Indian Constitution. The Article 32 i.e., "Right to Constitutional Remedies" was made to ensure that no person stays denied of using their Fundamental Rights and confirms the choice to move to the Supreme Court if as well as Constitutional Right of any inhabitant has been "unduly denied". During the Constituent Assembly meeting, Dr. B.R Ambedkar had said that Article 32 is the embodiment of the Constitution, and opportunities given through it will continually be rehearsed in the Supreme Court aside from assuming any amendment which has been made in the Constitution. This right of the person to move toward the court is given under Article 32, which says that any person, whose fundamental right has been infringed, can reach to the Supreme Court for enforceability of such indispensable rights. The Article 32 likewise engages the Supreme Court to give writs for legitimate requirements of major freedoms. Because of this force of the Supreme Court, the Supreme Court is called the 'Guard of fundamental rights.'

## IMPORTANCE OF ARTICLE 32:

As remarked by Martin Luther King, 'Injustice anywhere is a threat to justice anywhere'.<sup>1</sup> Whenever there is a violation of any fundamental right, remedy can be sought under Article 32 of the Constitution. It gives the ability to the citizens of India to go directly to the Supreme Court of India accepting they feel that any of their Fundamental Rights have been injured. Article 32 arose to be the best safeguard that could be given to defend the fundamental rights of the person whose right has been infringed. Courts, as the legitimate sentinel of guarding the fundamental rights are furnished with sacrosanct instrument in the form of Writs. In India, the capacity to give alleviation by means of writs has been vested in the High Court and the high court. It is to some degree a catalyst fixes open for those individuals, whose principal right has been harmed, to dare to court without delving into the subtleties of the red-tapism of the

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<sup>1</sup> Quote, available at <https://indianexpress.com/article/explained/this-quote-means-injustice-martin-luther-king-meaning-8644986/> (Feb. 4, 2024)

framework. Notwithstanding, this writ is a discretionary fix. The High Court under article 32 can give writs in the form of Habeas Corpus, Mandamus, Restriction, Certiorari and Quo-Warranto for defending the fundamental rights of the person. A comparative capacity to give writs is given to the high court similarly under Article 226. There is a main difference between (Article 32 and Article 226), the hon'ble Supreme Court can give cure through writs when the fundamental right is ignored or encroached upon, it is obligatory in nature and the high court can give cure too but it is optional in nature not compulsory.

## VARIOUS WRITS UNDER ARTICLE 32 OF THE INDIAN CONSTITUTION:

- 1. Habeas Corpus:** Habeas Corpus is a Latin expression which signifies 'you may have the body'. It tends to be characterised as the legal order given by the Supreme Court or high court by which an individual who is restricted by any open or private organisation might get his delivery. It tends to be documented by any individual for the benefit of the individual kept or by the confined individual himself. In the case of *Ichhu devi v. Union of India*,<sup>2</sup> the court held that there is no need of following a detailed procedure always, even a postcard is adequate to be considered as a writ for Habeas Corpus. Likewise, in the case of *Sunil Batra v. Delhi Admin*, a letter by a convict asserting harsh torment towards an individual convict is viewed as a writ for habeas corpus. In the landmark case of *ADM Jabalpur v. Shivkant Shukla* also popularly known as the 'Habeas Corpus case', it was held right to not be unlawfully detained can be suspended even during an emergency. In the case of *Nilabati Behera v. State of Orissa*,<sup>3</sup> compensation was being awarded by the SC on the concept of compensatory jurisprudence. In the case of *Rudul Shah v. State of Bihar*,<sup>4</sup> and in the case, it was held by the Supreme Court that in cases of violation of fundamental rights, it is necessary to compensate by way of exemplary costs.
- 2. Mandamus:** Literal meaning of Mandamus is Command. Mandamus is given in the structure container requested by the high court or high court to any protected sculpture or non-sculpture body to do or to avoid to follow through with something, which the organisation is obliged to do or not to do and is in the form of a public obligation. The Conditions for the enforceability of the writ of mandamus are that there should be a public

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<sup>2</sup> AIR 1980 SC 1983

<sup>3</sup> 1993 2 SCC 746

<sup>4</sup> (1983) 4 SCC 141

obligation. In *Gujarat State Finance Corp. v. Lotus Hotels Pvt. Ltd.*,<sup>5</sup> The Supreme Court held they had an obligation private in nature and emerging out of agreement between the public authority instrumentality and private substance was enforceable through this writ. Secondly, there should be explicit interest and refusal. Thirdly, there should be a reasonable right to uphold the obligation. Fourthly, the right should stay alive on the date of the request. Lastly, any remaining grounds on which certiorari and disallowance can be given. In the cases of *Sohanlal v. Union of India*<sup>6</sup>, the Supreme Court held that mandamus can lie against a private individual if he has colluded with a public authority. In *S.P. Gupta v. Union of India*, it was held that a writ of Mandamus cannot be issued against the president and likewise in *C.G. Govindan v. State of Gujarat*, was refused against the Governor.<sup>7</sup>

3. **Prohibition:** This writ is as old as common law, it means to prohibit or prevent. Writ of Prohibition is a legal request given by the Supreme Court or a high court to any sacred, legal or non-legal office to keep these organisations from proceeding with their procedures on the accompanying grounds: overabundance or absence of locale, maltreatment of their locales, disregarding guideline of normal equity, in contradiction of rule that everyone must follow, Misrepresentation and Encroachment of basic privileges. In *S. Govind Menon v. Union of India* (1967) it was held that a writ of prohibition can be issued in both circumstances of excess jurisdiction and absence of jurisdiction. In case of *Hari Vishnu v. Syed Ahmed Ishaque* (1955), a difference between certiorari and prohibition writs was made, the writ of prohibition can only be filed during the pendency of proceedings.
4. **Certiorari:** Certiorari is a Latin word that means “to certify”. Certiorari is a Latin expression which signifies 'to illuminate'. It is a legal request coordinated by the Supreme Court or the high court to any sacred body, legal body or non-legal body or to an individual. This writ is coordinated for requiring the records of any activity to be confirmed by the court. Furthermore, can likewise be given for subduing the authoritative activities, as done in *AK Karipak v. union of India*, by suppressing the activity of the determination board. There are sure grounds where the writ of certiorari can be given, which are as per the following: Absence of purview, Overabundance of locale, Maltreatment of locale, Infringement of guideline of normal equity, Mistake of regulation obvious on the essence

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<sup>5</sup> 1983 SC 848

<sup>6</sup> 1957 SCR 738

<sup>7</sup> Significance of Article 32, available at <https://blog.iplayers.in/significance-of-article-32-of-the-constitution-of-india-right-to-constitutional-remedies/> (Feb. 4, 2024)

of record and Extortion. In the case of *Naresh S. Mirajkar v. State of Maharashtra*, the High Court held that judicial orders are open to correction by the writ of certiorari and the writ is not available against the High Court. In *Surya Dev Rai v. Ram Chander Rai & Ors.*, the High Court has explained upon the significance and extent of the writ. The court held that Certiorari is accessible against inferior courts and yet not against high court.

5. **Quo Warranto:** Quo Warranto signifies 'by what authority'. It is a legal request given by the Supreme Court or high court by which any individual who possesses an autonomous office is approached to show by h what authority he guarantees it. Accordingly, it gives the legal executive a weapon to control the chief, the council and legal and non-legal bodies in issues of arrangement to public workplaces. In *Niranjan Kumar Goenka v. University of Bihar*,<sup>8</sup> the person against whom the request of this writ was made was not holding a public office, the court held that this writ cannot be issued against a person not holding a public office.

#### **Conditions for award of Quo Warranto:**

- Office should be a public office.
- Public office should be considerable in nature.
- The individual should be in real ownership of the workplace.
- The workplace should be held in repudiation of regulation.

There is an extremely slight distinction between the writ of Prohibition and certiorari, writ of prohibition is given when the procedures are forthcoming in nature or are underway, while the writ of certiorari is given when the procedures have ended and authority has given an ultimate conclusion.

#### **WHEN SUPREME COURT CAN REFUSE THE REMEDY**

The right to move to the Supreme Court is a Fundamental Right under Article 32 whenever there is an infringement of the rights. The Supreme Court has a duty to protect and guard the

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<sup>8</sup> AIR 1973 PAT 85

fundamental rights guaranteed by the Constitution. In the following conditions, the Supreme Court may refuse to grant the remedy:

- Res Judicata – Res Judicata is applicable on a writ petition filed under Article 32. The exception to this rule is the writ of Habeas Corpus but it cannot be filed on the same facts again.
- Inordinate Delay in Filing Petition without reasonable explanations.
- If the petition is Malicious, it can be dismissed.
- If the petition is made via Misrepresentation or Suppression of Material facts it can be dismissed at any stage.
- Existence of adequate alternative remedy is not absolute rule of law and there can be valid exceptions.

## **ARTICLE 32 AND ARTICLE 226**

Article 32 is a Fundamental Right, in comparison Article 226 is a constitutional right that gives the High Court's discretionary powers. Article 226 clearly states that the High Court's effectiveness is throughout the territories in alliance to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases any Government within those territories' directions, orders or writs. The scope of Article 226 is broader than Article 32 as legal rights other than fundamentals can also be enforced through it.

## **THE PROCEDURE OF FILING WRITS PETITIONS**

The procedure for filing the writ petitions in the Supreme Court under Article 32 is as under:

1. The Petitioner must approach the Supreme Court with requisite documents like identity proof, residential proof, photographs, etc.
2. The draft of the petition must have the name and address of the aggrieved party along with the material facts.
3. The Writ petition has to be sent to the Supreme Court.

4. The Court will set the date of hearing of the petition, on this date the court on acceptance of the petition will issue a notice to the respondent. Another date is set for the hearing of both the parties.
5. After hearing both the parties, the court gives its judgment and grants relief.

## **CONCLUSION**

The Supreme Court is made the defender of principal privileges. As remarked by Martin Luther King, 'Injustice anywhere is a threat to justice anywhere'. So, the Indian Judiciary has been vested with the power. It is furnished with power and controls to give cures in the event that these privileges are encroached upon by Article 32 of the constitution. The maxim 'Ubi Jus Ibi Remedium' says 'Where there is a right, there is a remedy' which rightly explains Shielding the Democratic Edifice of the Indian Constitution. Dr. B.R Ambedkar, the father of the Indian constitution appropriately called it the 'heart and soul of the constitution' and the most important right in the Indian Constitution from which all other rights derive its authority. The remedy via writs can be refused by the court if there is malafide petition, res judicata, unexplained delay, misrepresentation of facts, etc. From the above-referred to realities, it may be grasped that Article 32 represents the impartial rule of regular equity. Moreover, the writs permit Public Interest Cases to be recorded for the bigger interest of general society.