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# THE CONSTITUTIONAL HEART AND SOUL OF INDIA

## ARTICLE 32

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### ABSTRACT

“धर्म एव हतो हन्ति धर्मो रक्षति रक्षितः तस्- माद्धर्मो न हन्तव्यः मानो धर्मो हतोवधीत्”

*(Dharma destroys those who destroy it; Dharma protects those who protect it. Dharma does not destroy and cannot be destroyed.)*

*In my opinion, "If you defend the law, it will protect you" is a more accurate translation, with the implication that peace and harmony in society are guaranteed by the rule of law rather than the rule of man.*

The Indian constitution guarantees justice, freedoms, equality, and fraternity through the Judiciary. Indian democracy's judiciary protects citizens' rights and provides fair justice. Democracy requires impartial justice. A democratic judiciary must have integrity, impartiality, and intelligence. This article introduces the judiciary, its role, and independence. You will also learn about India's Judiciary's powers, statutes, leading cases, and publications on its independence.

The Supreme Court's Role in the Administration of Justice, Creation of Law, Provision of Judicial Opinion, and Protection and Guarantee of Fundamental Rights.

*“If I was asked to 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.... It is very soul of the Constitution and the very heart of it,”- Dr. B.R. Ambedkar<sup>1</sup>*

**Keywords:** Supreme Court, Constitution, Jurisdiction.

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<sup>1</sup> Dr. Bhimrao Ramji Ambedkar is known as the father of the Indian Constitution. He was the then Law Minister who introduced the final draft of the Constitution in the Constituent Assembly.

**Introduction:**

What about the claim made in the Preamble that "liberty of opinion and expression is the right of every citizen of the country"? If people have their rights taken away in this way, what options do they have to fight back?

Article 32 comes in to help at this time.

While it is true that the Constitution protects a number of basic liberties, it is also common knowledge that this is not enough to ensure that these protections will be upheld in political practise. If a right cannot be upheld in court, it is merely a "Paper right," and has no practical value. A list of rights is not enough; there must be a system in place to protect them. Accordingly, any Indian citizen who feels he is being denied his rights may petition the Supreme Court for relief under Article 32 of the Indian Constitution.

However, in its most recent ruling, *Union of India v. Paul Manickam*<sup>2</sup>, the Supreme Court ruled that a case must first be filed in the High Court that has jurisdiction over the matter in question and, if that court cannot resolve the matter, only then can the issue be brought before the Supreme Court. Since this discovery was made, many have questioned the actual reach and applicability of Article 32.

**History of Article 32:**

It was decided that all Indian citizens, regardless of their age, caste, or gender, would be guaranteed certain rights (called "Fundamental Rights") when the Indian Constitution was written.

- To be Treated Equally (Article 14-18)
- Freedom of Expression (Article 19-22)
- Protecting People from Exploitation (Article 23-24)
- Guaranteed Religious Liberty (Article 25-28)
- The Right to an Education and Culture (Article 29-30)
- Possession Protection (Article 19, 31)

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<sup>2</sup> (2003) 8 SCC 342

- Legal Options Under the Constitution (Article 32)

However, in 1978, the Right to Property was removed from the list of Fundamental Rights in the 44th Amendment to the Constitution, while all other rights were left unaltered. Article 32 was added to the Constitution in order to guarantee the protection of citizens' newly acquired fundamental rights.

Article 32, titled "Right to Constitutional Remedies," was enacted to ensure that no person is ever prevented from exercising their Fundamental Rights, and it confirms that anyone whose Constitutional Rights have been "unduly deprived" has the right to appeal to the Supreme Court.<sup>3</sup>

Dr. B.R. Ambedkar argued that Article 32 is the "heart and spirit" of the Constitution and that the Supreme Court is the only court with jurisdiction to enforce the rights guaranteed by it in the absence of an amendment.

Ubi Jus Ibi Remedium, which translates to "where there is a right, there must also be a remedy," is the legal concept upon which the right to constitutional remedies is founded. If an Indian citizen believes that a Fundamental Right has been violated, they have the option of going directly to the Supreme Court. It was decided that Article 32 was the best way to ensure that people's fundamental rights would be protected, and that "it is a right basic to all other Fundamental Rights." The courts, in their role as protectors of individual liberties, have the legal authority to issue judicial orders known as WRITS. Both the Supreme Court and the High Court can issue writs for the purpose of violating and enforcing the Fundamental Rights under Articles 32 and 226. Both courts have the power to issue orders, directives, and writs (such as Habeas corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari) for the purpose of enforcing the rights. However, Parliament has the authority to delegate such powers to any other court in order for that court to act as "Protector and guarantor" of such rights. Included among the writs executed by the courts are:

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<sup>3</sup> <https://primelegal.in/2021/01/24/article-32-heart-and-soul-of-the-constitution-by-khyati-bhatodkar-legal-asst-prime-legal/>

**Habeas Corpus** - Relates to Personal Liberty in circumstances of illegal detentions and unjust arrests, and it may be used to release an individual who, in the court's judgement, was arbitrarily arrested and detained by the executive power.

Then, in the Habeas Corpus case, also known as *ADM Jabalpur v. Shivakant Shukla*<sup>4</sup>, it was decided that the writ of Habeas Corpus cannot be suspended, not even in the face of an emergency (**Article 359**). Certiorari - A Re-examination of Administrative Authority Orders.

**Mandamus** - Instructing public officials, courts, and governments to carry out a statutory obligation, with the purpose of instructing lesser courts to do the most for defending and preserving citizens' fundamental rights.

In *Rashid Ahmad v. Municipal Board*<sup>5</sup>, it was determined that, in terms of Fundamental Rights, the availability of other remedies cannot be an absolute bar to the issuance of a writ, but the fact may be taken into account.

Then, in *Manjula Manjori v. Director of Public Instruction*<sup>6</sup>, the publisher of a book filed a writ of mandamus against the Director of Public Instruction to include his book on the list of textbooks allowed for use in schools. However, the writ was denied because the matter was entirely at D.I.P.'s discretion and he was not required to approve the book.

**Prohibition** — instructing the judicial and quasi-judicial authorities to halt procedures over which they lack Jurisdiction.

In the case of *East India Commercial Co., Ltd. v. Collector of Customs*<sup>7</sup>, an inferior Tribunal was served with a writ of prohibition ordering it to stop the proceeding on the grounds that it does not have jurisdiction, goes beyond the scope of its authority, or is contrary to the Constitution or other applicable law. In the subsequent case of Bengal Immunity Co. Ltd, the Supreme Court ruled that the issue of whether or not to issue a writ of Prohibition is moot if it can be shown that a lower court improperly exercised its authority.

**Quo Warranto** - To demonstrate a person's authority to occupy public office.

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<sup>4</sup> AIR 1976 SC 1207

<sup>5</sup> 1950 SCR 566

<sup>6</sup> A.I.R. 1952 Ori 344

<sup>7</sup> AIR 1960 Cal 1

Although Ms. Mayawati (CM)<sup>8</sup> and other members of her cabinet were members of the Rajya Sabha, the writ of Quo Warranto was denied against them in the case of *Ashok Pandey v. Mayawati*.<sup>9</sup>

The High Court of Nagpur later stated in *G.D. Karkare v. T.L. Shevde*<sup>10</sup> That "In proceedings for a writ of Quo Warranto, the petitioner does not attempt to vindicate any right of his as such nor does he complain of any non-performance of duty towards him." If an order is made, it will remove the non-applicant from office; hence, the issue at hand is his eligibility to hold the position.

### **A flaw in the Constitution**

Article 352<sup>11</sup> of the Constitution makes an exception when a state of emergency is declared by the president. During this period, citizens' rights are suspended, and no legal recourse is available. Even though a person is deprived of his fundamental rights, he does not have the right to petition the Supreme Court in an emergency. The only reason it has prevented citizens from seeking redress is that, in some instances, doing so could threaten national security.

### **Recent Events Regarding Article 32 of the Indian Constitution:**

The Supreme Court has ruled that writ petitions for recalling orders filed as part of a Special Leave Petition (SLP) cannot be maintained. This case was *Shashidhar M. v. Poornima C* (2019).

The Supreme Court of India held in *Skill Lotto Solutions Pvt Ltd. v. Union of India* (2020) that "Article 32 is a critical component of the Constitution's overall structure. Article 32's stated objective is to protect the sanctity of the legal system. Providing for the security of fundamental rights, as stated in Article 32, is the strongest tool at your disposal."

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<sup>8</sup> Kumari Mayawati (born 15 January 1956) is an Indian politician. She has served four separate terms as Chief Minister of Uttar Pradesh.

<sup>9</sup> Writ Petition (civil) 296 of 2007

<sup>10</sup> AIR 1952 Nag. 330

<sup>11</sup> National emergency under Article 352

Originally at the beginning, a National emergency could be declared on the basis of "external aggression or war" and "internal disturbance" in the whole of India or a part of its territory under Article 352.

The Supreme Court held in *Mohammad Moin Faridullah Qureshi v. The State of Maharashtra* (2020) that an appeal would be futile because a final judgement issued under Article 32 cannot be revisited.

An FIR or criminal proceedings cannot be challenged by a writ petition, as established by the Supreme Court in *Gayatri Prasad Prajapati v. State of Uttar Pradesh and Others* (2022). (FIR).

The Supreme Court of India ruled in the 2022 case *Sharad Zaveri v. Union of India* that Article 32 does not apply to all conflicts involving houses of religion.

The Supreme Court issued a warning in *Dharmraj Singh v. State of Bihar* (2022) about filing petitions under Article 32 that cite Section 482 of the Criminal Procedure Code, 1973.

## Conclusion

*"Injustice somewhere is a threat to justice everywhere,"* Martin Luther King once stated.

It's a harbinger of the worldwide contagion and universal rejection of evil and injustice. All the justice that has been done up to this point will be contaminated, and everyone will start to worry if it could happen to them. The elimination of bias and the promotion of equal treatment are equally crucial. To provide judicial oversight of executive actions, the concept of writ was incorporated in Common Law. Fundamental rights in India are safeguarded by writs thanks to Articles 226 and 32 of the country's constitution.

One of the remedies provided to individuals by the constitution is the ability to issue powerful directives with immediate effect. As a result of PIL filings, writs are often issued and employed in litigation against the state. Despite its discretionary, limitless nature, the Constitution's Writ Jurisdictions are not restricted in any way. However, the discretion is used in a lawful manner. As a result, the absence of arbitrary authority is the constitutional system's basic essential. Therefore, the decision shouldn't be based on whims or good humour but on rules and criteria. On the other hand, if there are no guiding principles or norms behind a decision, then it is not made in accordance with the rule of law.