

# THE INDIAN CONSTITUTION'S ARTICLE 32

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## INTRODUCTION

In the event of an infringement of such rights in line with Part III of the Indian Constitution, Article 32 gives citizens the authority to seek the Supreme Court, which guarantees essential rights to nationals of a country. A guardian and guarantor of basic rights are the Supreme Court. The Indian citizen may put in a complaint with the Supreme Court in an attempt to remedy a violation of the fundamental rights of the Indian. Without prejudice to the Supreme Court's powers under sections (1) and (2), Parliament may enable any other court, by legislation, to exercise all or some of the powers exercised by the Supreme Court under subsection (1) within the local limits of its jurisdiction (2).

Father Dr. B.R. Ambedkar once said India's Constitution, "If any single article of this constitution had been requested to be the most essential one, I could not refer to any other Article exempted in the one Article 32 without which this Constitution would be a nullity. It's the soul itself and the heart of the Constitution."

Only the High Courts of Calcutta, Bombay, and Madras could issue writs before 1950. The Supreme Court must be able to give instructions, orders, or writs, such as writs of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, among others. Article 226 enables all of India's high courts to issue writs. By passing laws specifying the local limits of the jurisdiction of such courts, Parliament can expand its authority to any other court (including local courts). Please keep in mind that Court Martial Article 33 exempts the tribunals formed under military law from the writ authority of the Supreme Court and the high courts. Writs of India are based on English law and are known as "Prerogative writs."

- **Habeas Corpus**

'To have the body of' is a phrase that what habeas corpus meant. This document safeguards a person against being unlawfully detained. Under this letter, a court order to produce the detainee before the court is given to a public authority. The request under this document may be submitted on behalf of the detained person, prisoner, or any other person. Even during an emergency under Article 359, Habeas Corpus's writings cannot be stopped.

- **Certiorari**

It is generally issued to a lower court by the Supreme Court and the High Courts to reverse the latter's judgement. It can be given to correct jurisdictional mistakes as well as legal errors. It can be issued against administrative authorities that infringe on people's rights.

- **Mandamus**

'We Command' is the literal translation. A writ of mandamus is a legal document that directs a subordinate court, a government officer, or a corporation or other institution to do specific acts or obligations. Mandamus, unlike Habeas Corpus, cannot be used against a private person. The writ of mandamus can be used to demand the completion of a job or, in some instances, the cessation of activity.

- **Quo-Warranto**

What does it mean when you say 'by what authority or warrant'? It is a court order issued against someone who usurps a public office. It investigates whether a person's takeover of public office is legal. A writ of execution cannot be issued against a governmental or private office.

- **Prohibition**

Meaning 'to prohibit' or 'to maintain order.' It is given to a subordinate court by a higher court to impose jurisdictional inaction (in case of excess or absence of jurisdiction). Only judicial and quasi-judicial authorities are subject to it. The writ is intended to serve as a deterrent. It cannot be used against administrative entities, legislative bodies, or private people or organisations.

## ARTICLE 32 AND ARTICLE 226

Article 32 is described as the "heart and soul" of the Indian Constitution since it ensures people's basic rights, whereas Article 226 allows HCs legislative powers while also guaranteeing fundamental rights. During an emergency, Article 32 cannot be suspended, but Article 226 can be. The SC cannot deny rights guaranteed by Article 32, but it can deny rights guaranteed under Article 33. In terms of powers, the two articles differ significantly, but they both assure that the people's fundamental rights are maintained and that the Constitution's provisions be followed.

## **SUPREME COURT COMPARISON WITH THE HIGH COURT IN WRITS**

While the Court is alone competent to give decisions for the enforcement of basic laws, the Supreme Court is competent to issue decisions for the enforcement of fundamental rights and all other matters. When it comes to issuing writs, the High Court has more power than the Supreme Court. The Supreme Court has the power to issue writs under Article 32, while the High Courts have the same power under Article 226. The Supreme Court may issue a writ against any person or authorities throughout the territory of India, but only within its jurisdiction, the high courts may. As a result, the High Court's writ jurisdiction is limited in scope.

## **PREVIOUS JUDGMENTS RELATED TO ARTICLE 32**

The Supreme Court stated in *Romesh Thappar vs State of Madras* (1950) that Article 32 offers a "guaranteed" remedy for fundamental rights enforcement. "This Court is thus formed as the custodian and guarantor of fundamental rights, and it cannot, in light of this role, refuse to hear applications seeking protection from infringements of such rights." the court observed.

During the Emergency, the Supreme Court held in *Additional District Magistrate, Jabalpur vs SS Shukla* (1976), that the right to constitutional remedies under Article 32 would be suspended during a national emergency.

**In a national case of an emergency, the President might, excepting under Articles 20 and 21, make the decisions suspending the right to transfer a case to any court for the enforcement of the rights under Article 32.**

## **CONCLUSION**

Constitutional experts are satisfied that the Supreme Court and each judge ultimately determine, at the discretion of each person, whether an intervention is justified in a matter which the High Court may, too, hear first. The question of Article 32 must be clarified by the courts to ensure that people do not lose their confidence in the system of justice as the final remedy for the infringement of their rights.