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# Comparative Analysis of Article 32 and Article 226

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## ABSTRACT

*This research paper aims to provide a comparative analysis of Article 32 and Article 226 of the Indian Constitution, which deal with the power of the judiciary to issue writs. The paper will examine the scope and applicability of these provisions, as well as their differences and similarities. The paper will begin by providing an introduction to Article 32 and Article 226, and will discuss the thoughts of the constituent assembly on these provisions. It will then proceed to examine the key differences between the two provisions, including their scope, applicability, and binding effect.*

*The paper will also discuss the various types of writs that can be issued under Article 32 and Article 226, and will examine some important case laws that have dealt with the interpretation and application of these provisions. In addition, the paper will discuss the role of the judiciary in enforcing fundamental rights through these provisions, and will examine the importance of ensuring that citizens have access to an effective remedy against violations of their rights. Overall, this research paper aims to provide a comprehensive analysis of Article 32 and Article 226 of the Indian Constitution, and to highlight their importance in safeguarding the rights of Indian citizens.*

**Keywords:** *Fundamental Rights, Article 32, Article 226, Public Interest litigation, petitions, Similarities, Dissimilarities.*

## I. INTRODUCTION

*“True peace is not merely the absence of war; it is the presence of Justice.”*

- Jane Addams

Article 32 and Article 226 are two important provisions of the Indian Constitution that deal with the power of the judiciary to issue writs. Both these provisions provide for the enforcement of fundamental rights and have been designed to ensure that citizens have an effective remedy against any violation of their rights by the State or any other authority.

The constituent assembly of India, which was responsible for framing the Constitution, attached great importance to the provisions of Article 32 and Article 226. These provisions were seen as

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essential to protect the fundamental rights of citizens and to ensure that the judiciary had the power to enforce those rights. During the debates on the Constitution, several members of the constituent assembly spoke in favor of Article 32, emphasizing its importance in ensuring that citizens could seek redress for any violation of their fundamental rights.

Dr. Ambedkar stated that: “If I was asked to name 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 the very soul of the Constitution and the very heart of it and I am glad that the House has realized its importance.” and as a means of ensuring that the State was held accountable for its actions.

Article 32 provides for the right to constitutional remedies and empowers the Supreme Court to issue writs for the enforcement of fundamental rights guaranteed under Part III of the Constitution. Article 226, on the other hand, provides for the power of the High Court to issue writs, orders or directions for the enforcement of fundamental rights as well as for any other purpose. While both these provisions serve the same purpose, there are some key differences between them. Article 32 is a fundamental right in itself and is therefore available to all citizens of India, while Article 226 is a power vested in the High Courts and can be invoked only by those who are within their jurisdiction. In addition, while the Supreme Court can issue writs only for the enforcement of fundamental rights, the High Courts can issue writs for any purpose, including the enforcement of fundamental rights, the protection of public interest, and the enforcement of contractual obligations, among others.

Another significant difference between the two provisions is that the decisions of the Supreme Court under Article 32 are binding on all courts in India, while the decisions of the High Courts under Article 226 are binding only within their territorial jurisdiction. Both Article 32 and Article 226 serve the same purpose of ensuring that citizens have an effective remedy against violations of their rights, there are some key differences between them in terms of their scope, applicability, and binding effect.

## **II. WRITS**

Writs are judicial orders issued by courts of law to uphold the rights and liberties of citizens. The concept of writs originated in England and was brought to India during the British colonial period. Writs are issued to protect the fundamental rights of citizens and to ensure that the powers of the government are not misused.

In India, writs are issued under Articles 32 and 226 of the Constitution of India. Article 32 empowers the Supreme Court to issue writs for the enforcement of fundamental rights, while

Article 226 empowers the High Courts to issue writs for the enforcement of fundamental rights as well as for other purposes.

The five types of writs that can be issued under these articles are:

1. Habeas Corpus: This writ is issued to produce a person who has been detained unlawfully before a court of law.
2. Mandamus: This writ is issued to public officials, corporations or inferior courts to perform their public duty.
3. Certiorari: This writ is issued to quash a decision of an inferior court or tribunal.
4. Prohibition: This writ is issued to prohibit an inferior court or tribunal from exceeding its jurisdiction.
5. Quo Warranto: This writ is issued to inquire into the legality of a person's claim to hold a public office.

Writs play an important role in ensuring that the rule of law is upheld in India. They are a powerful tool for citizens to seek relief against any infringement of their fundamental rights or against any misuse of power by the government or public officials.

### **(A) Habeas Corpus**

A writ of Habeas Corpus is issued by a court to a person who has been detained unlawfully or has been deprived of their liberty. The writ is a constitutional remedy that protects individuals from arbitrary detention or imprisonment. It is a means by which a person can challenge their detention before a court of law. Article 22 of the Constitution of India mandates it for the police to present a detained person before the magistrate within 24 hours of his arrest (excluding the travelling time), failure of which would lead to the release of the detained person.

Grounds for issuing a writ of Habeas Corpus:

1. Unlawful detention: The writ of Habeas Corpus can be issued if a person is being detained without lawful authority. This can include cases where a person has been detained without a warrant or where the detention has exceeded the time limit specified by law.
2. Wrongful detention: The writ of Habeas Corpus can be issued if a person is being detained on wrongful grounds. This can include cases where a person has been detained for political reasons or where the detention is based on false or fabricated evidence.
3. Irregularities in detention: The writ of Habeas Corpus can be issued if there are

irregularities in the detention. This can include cases where the person has not been informed of the reasons for their detention or where they have been denied access to legal counsel or medical treatment.

Circumstances where the writ of Habeas Corpus cannot be issued:

1. If the detention is lawful: The writ of Habeas Corpus cannot be issued if the detention is lawful. For example, if a person has been detained on the basis of a valid arrest warrant or as part of a criminal investigation.
2. If the person has been convicted: The writ of Habeas Corpus cannot be issued if the person has been convicted and is serving a sentence. In such cases, the person can challenge their conviction through the process of appeal.
3. If the detention is outside the jurisdiction of the court: The writ of Habeas Corpus can only be issued if the person is being detained within the jurisdiction of the court.

Important Judgements:

1. *ADM Jabalpur v. Shivkant Shukla* (1976)<sup>3</sup>: In this case, the Supreme Court held that during a state of emergency, the right to move the court for a writ of Habeas Corpus can be suspended. This decision was widely criticized and was overruled by a subsequent decision of the Supreme Court in 2017.
2. *K.S. Puttaswamy v. Union of India* (2017)<sup>4</sup>: In this case, the Supreme Court held that the right to life and personal liberty under Article 21 of the Constitution includes the right to privacy. The court also held that the writ of Habeas Corpus can be used to protect the right to privacy.
3. *State of Jammu and Kashmir v. M.S. Shantwana* (1978)<sup>5</sup>: In this case, the Supreme Court held that the writ of Habeas Corpus can be used to challenge preventive detention. The court also held that the detention order must be based on objective and relevant materials and that the detaining authority must apply its mind to the facts before issuing the order.

## **(B) Mandamus**

Mandamus is a Latin term which means “we command”. Mandamus is a writ issued by a court ordering a public authority to perform its statutory or public duty. It is issued to compel the

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<sup>3</sup> *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207

<sup>4</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1

<sup>5</sup> *State of Jammu and Kashmir v. M.S. Shantwana*, (1978) 3 SCC 405

authority to do something which it is legally bound to do but has failed to do so. The grounds for issuing a writ of mandamus are as follows:

1. **Legal Duty:** The petitioner must have a legal right to demand the performance of a legal duty by the authority.
2. **No Alternative Remedy:** The petitioner must not have any other adequate legal remedy available to him/her.
3. **Public Duty:** The legal duty sought to be enforced must be a public duty and not a private one.
4. **Discretionary Power:** Mandamus cannot be issued to compel the exercise of discretionary power.
5. **Non-Performance of Duty:** Mandamus can only be issued when there is a failure to perform a statutory duty, and not when there is an error in the exercise of that duty.

Circumstances where the writ of mandamus cannot be issued are as follows:

1. **Against Private Individuals or Bodies:** Mandamus cannot be issued against private individuals or bodies as it is only applicable to public authorities.
2. **Against Judicial or Quasi-Judicial Bodies:** Mandamus cannot be issued against a judicial or quasi-judicial body when it is exercising its discretionary powers.
3. **Political Matters:** Mandamus cannot be issued in political matters, as the court cannot interfere in the political process.

Some of the important judgments related to the writ of mandamus are:

1. **Calcutta Discount Co. Ltd. v. Income Tax Officer<sup>6</sup>:** In this case, the Supreme Court held that the writ of mandamus can be issued only in cases where there is a clear and specific legal right and a corresponding legal duty.
2. **K.R. Lakshmanan v. State of Tamil Nadu<sup>7</sup>:** In this case, the Supreme Court held that the writ of mandamus can be issued to compel a public authority to perform its statutory duty, but not its discretionary duty.
3. **State of Maharashtra v. Milind and others<sup>8</sup>:** In this case, the Supreme Court held that the writ of mandamus can be issued to enforce the fundamental rights of a person.

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<sup>6</sup> Calcutta Discount Co. Ltd. v. Income Tax Officer, AIR 1961 SC 372.

<sup>7</sup> K.R. Lakshmanan v. State of Tamil Nadu, (1996) 2 SCC 226.

<sup>8</sup> State of Maharashtra v. Milind and others, (2001) 1 SCC 4.

4. *State of Gujarat v. Akhil Gujarat Pravasi V.S. Mahamandal*<sup>9</sup>: In this case, the Supreme Court held that the writ of mandamus can be issued to compel a public authority to perform its public duty, even if it involves spending money.

### **(C) Certiorari**

Certiorari is a writ issued by a higher court to a lower court or tribunal, ordering the latter to either review its own decision or to send the case record to the higher court for review.

The grounds for issuing a writ of certiorari include:

1. **Excess of Jurisdiction:** Certiorari can be issued if a tribunal or a lower court has exceeded its jurisdiction while making a decision.
2. **Error of Law:** A writ of certiorari can be issued if a tribunal or a lower court has committed an error of law apparent on the face of the record.
3. **Procedural Irregularity:** If a tribunal or a lower court has acted in violation of the principles of natural justice or has acted in a procedurally irregular manner, a writ of certiorari can be issued.

Some of the important judgments related to the writ of certiorari are:

1. *State of Punjab v. Shri Sukh Raj Bahadur*<sup>10</sup>: In this case, the Supreme Court held that certiorari can be issued only when a tribunal or a lower court acts without jurisdiction or in excess of jurisdiction or in violation of principles of natural justice or commits an error of law.
2. *R v. Electricity Commissioners*<sup>11</sup>: In this case, the court held that a writ of certiorari can be issued even if there is no excess of jurisdiction, but the tribunal has committed an error of law apparent on the face of the record.
3. *Associated Cement Companies Ltd. v. P.N. Sharma*<sup>12</sup>: In this case, the court held that a writ of certiorari cannot be issued if an alternative remedy is available to the aggrieved party, unless there is a violation of principles of natural justice or the order is passed without jurisdiction.
4. *Madan Lal v. State of J&K*<sup>13</sup>: In this case, the court held that the writ of certiorari is not a regular appeal and it cannot be used as a substitute for appeal.

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<sup>9</sup> *State of Gujarat v. Akhil Gujarat Pravasi V.S. Mahamandal*, (2004) 3 SCC 214.

<sup>10</sup> *State of Punjab v. Shri Sukh Raj Bahadur*, AIR 1968 SC 1089.

<sup>11</sup> *R v. Electricity Commissioners*, [1924] 1 KB 171.

<sup>12</sup> *Associated Cement Companies Ltd. v. P.N. Sharma*, AIR 1965 SC 1595.

<sup>13</sup> *Madan Lal v. State of J&K*, AIR 1958 J&K 55.

**(D) Prohibition**

Prohibition is a writ issued by a higher court to a lower court or tribunal to prevent it from exceeding its jurisdiction or acting contrary to the principles of natural justice. The purpose of this writ is to prohibit the lower court or tribunal from continuing with the proceedings in a case where it has acted beyond its jurisdiction or has acted in contravention of the principles of natural justice.

The key difference between certiorari and prohibition is that certiorari is issued to quash an order already passed by a lower court or tribunal, whereas prohibition is issued to prevent a lower court or tribunal from acting beyond its jurisdiction or in contravention of the principles of natural justice.

Some of the important judgments related to the writ of prohibition are:

1. *State of Madhya Pradesh v. Bhailal Bhai* (1964)<sup>14</sup>: In this case, the Supreme Court held that prohibition can be issued not only against judicial and quasi-judicial bodies but also against administrative bodies and other authorities who exercise judicial or quasi-judicial functions.
2. *Indian Aluminium Co. v. State of Kerala* (1996)<sup>15</sup>: In this case, the Supreme Court held that prohibition can be issued not only against a court or tribunal but also against an administrative authority, if it is acting in a judicial or quasi-judicial capacity.
3. *Kanta Kathuria v. Manak Chand Surana* (1970)<sup>16</sup>: In this case, the Supreme Court held that prohibition cannot be issued against a body or authority that is acting purely in an administrative capacity and not in a judicial or quasi-judicial capacity.
4. *State of Bihar v. J.A.C. Saldanha* (1980)<sup>17</sup>: In this case, the Supreme Court held that prohibition can be issued against a lower court or tribunal to prevent it from acting in violation of the principles of natural justice, even if such violation does not amount to a jurisdictional error.

**(E) Quo Warranto**

Quo Warranto literally means "by what warrant" in Latin, and is a writ that is used to challenge the legal authority of a person holding a public office. The writ of quo warranto can be issued against a person who holds an office, franchise, or liberty or enjoys a privilege or immunity.

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<sup>14</sup> *State of Madhya Pradesh v. Bhailal Bhai*, AIR 1964 SC 1006.

<sup>15</sup> *Indian Aluminium Co. v. State of Kerala*, (1996) 7 SCC 637.

<sup>16</sup> *Kanta Kathuria v. Manak Chand Surana*, AIR 1970 SC 694.

<sup>17</sup> *State of Bihar v. J.A.C. Saldanha*, (1980) 1 SCC 554.



Conditions for issuing a writ of quo warranto:

- The person against whom the writ is sought to be issued must hold a public office.
- The person must have usurped the public office.
- The public office must be a substantive and not merely a ministerial office.

Some of the important judgments related to the writ of quo warranto are:

1. *State of Bihar v. Bal Mukund Sah*, (2000)<sup>18</sup>: In this case, the Supreme Court held that the writ of quo warranto can be issued against a person even if he or she has not been appointed to a public office, but is merely functioning as if he or she is holding the public office.
2. *R. Vasantha Kumar v. Hafeez S. Abdul Kareem*, (2010)<sup>19</sup>: In this case, the Supreme Court held that the writ of quo warranto can be issued against a person who is holding a public office even if he or she was appointed to the office under a valid law, but is not eligible to hold the office.
3. *State of Uttar Pradesh v. Nawab Hussain*, (1977)<sup>20</sup>: In this case, the Supreme Court held that the writ of quo warranto can be issued against a person who is holding a public office even if he or she was appointed to the office by a valid authority, but the appointment was made in violation of the rules or procedures governing the appointment.

### III. JURISDICTION OF SUPREME COURT AND HIGH COURT UNDER ARTICLE 32 AND 226

The fundamental principle of Common law as well as Indian law system is based on the well-known maxim *Ubi Jus Ibi Remedium* which means that *wherever there is right there is remedy*. Article 32 and Article 226 of the Indian Constitution are two of the most important provisions for the protection of fundamental rights of the citizens. These two Articles deal with the powers of the Supreme Court and the High Court respectively, to issue writs for the enforcement of fundamental rights. Let's take a closer look at each of these provisions, their jurisdiction and the case laws associated with them.

#### (A) Article 32:

Article 32 of the Indian Constitution provides for the right to move the Supreme Court by

<sup>18</sup> *State of Bihar v. Bal Mukund Sah*, (2000) 4 SCC 640

<sup>19</sup> *R. Vasantha Kumar v. Hafeez S. Abdul Kareem*, (2010) 3 SCC 655

<sup>20</sup> *State of Uttar Pradesh v. Nawab Hussain*, AIR 1977 SC 1548

appropriate proceedings for the enforcement of fundamental rights. This means that if a citizen feels that his fundamental rights have been violated, he can directly approach the Supreme Court for relief. The Supreme Court has been given the power to issue five types of writs under Article 32, which are namely Habeas Corpus, Mandamus, Certiorari, Prohibition, and Quo warranto.

The jurisdiction of the Supreme Court under Article 32 is very wide and extends to the enforcement of not only fundamental rights but also other legal rights. The Supreme Court has been empowered to issue any order or direction that is necessary for the enforcement of such rights. The Supreme Court has used its powers under Article 32 to protect the rights of citizens in several cases.

Let us now look at some case laws that provide insights on the application of Article 32.

**1. Maneka Gandhi v. Union of India (1978)<sup>21</sup>**

In this case, the Supreme Court held that Article 21 of the Constitution guarantees the right to life and personal liberty, which includes the right to travel abroad. The court further held that the right to travel abroad can only be restricted if there is a law in place that prescribes the procedure for doing so. The petitioner in this case had challenged the order of the passport authority impounding her passport, which restricted her right to travel abroad. The Supreme Court held that the order was violative of the petitioner's fundamental rights and directed the passport authority to return the passport.

**2. Sunil Batra v. Delhi Administration (1978)<sup>22</sup>**

In this case, the Supreme Court held that a prisoner has the right to move the court under Article 32 for the enforcement of his fundamental rights, even while he is in custody. The court further held that the fundamental rights of a prisoner do not come to an end merely because of his incarceration, and that it is the duty of the State to ensure that the prisoner's fundamental rights are protected.

**3. Olga Tellis v. Bombay Municipal Corporation (1985)<sup>23</sup>**

In this case, the Supreme Court held that the right to livelihood is a fundamental right guaranteed under Article 21 of the Constitution. The court further held that the right to livelihood includes the right to live with dignity, and that the State has a duty to ensure that the basic necessities of life are provided to all citizens. The petitioner in this case had challenged the eviction of pavement dwellers by the municipal corporation. The court held that the eviction was violative

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<sup>21</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597.

<sup>22</sup> Sunil Batra v. Delhi Administration, (1978) 4 SCC 494.

<sup>23</sup> Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180.

of the petitioner's fundamental rights and directed the State to provide alternative accommodation to the evicted persons.

#### 4. Vishaka v. State of Rajasthan (1997)<sup>24</sup>

In this case, the Supreme Court held that sexual harassment at the workplace violates the fundamental rights of women under Articles 14, 19 and 21 of the Constitution. The court further held that it is the duty of the State to ensure that women are protected from sexual harassment at the workplace, and directed the State to implement guidelines to prevent sexual harassment at the workplace.

#### **(B) Article 226:**

Article 226 of the Indian Constitution provides for the power of the High Court to issue writs for the enforcement of fundamental rights as well as other legal rights. The High Court has been given the power to issue five types of writs under Article 226, which are similar to the writs issued by the Supreme Court. However, the jurisdiction of the High Court is limited to the territorial limits of the state in which it is situated.

The High Court can also issue writs for the enforcement of the rights of a person who is not a citizen of India but is within its jurisdiction. In addition to this, the High Court can also issue writs to protect the interests of a person who is not a party to the case before it.

The jurisdiction of the High Court under Article 226 is wider than that of the Supreme Court under Article 32 as it can issue writs for the enforcement of other legal rights besides fundamental rights. Some of the landmark cases where the High Court used its power under Article.

#### **(C) Exception to jurisdiction**

There have been instances where the Supreme Court has entertained writ petitions under Article 32 even when there was no question of fundamental rights involved. These instances have been recognized as exceptions to the normal rule that the Supreme Court can issue writs only for the enforcement of fundamental rights. Let's take a look at some of these exceptions along with the relevant case laws:

1. **Public Interest Litigation (PIL):** The Supreme Court has recognized PIL as an exception to the rule that a person must have a personal interest in the case in order to file a writ petition. Under PIL, any citizen can approach the Supreme Court on behalf of the general

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<sup>24</sup> Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

public and seek relief for a matter of public interest. In *S.P. Gupta v. Union of India*<sup>25</sup>, the Supreme Court held that PIL is a "sine qua non for the health and growth of a democratic society" and a "powerful instrument for judicial activism".

2. **Environmental Protection:** The Supreme Court has recognized environmental protection as an exception to the rule that a writ petition can be filed only for the enforcement of fundamental rights. In *M.C. Mehta v. Union of India (1986)*<sup>26</sup>, the Supreme Court entertained a writ petition on the issue of pollution in the Ganga river, even though no question of fundamental rights was involved. The Court held that the right to a pollution-free environment is a part of the right to life under Article 21 of the Constitution.
3. **Constitutional Interpretation:** The Supreme Court has also entertained writ petitions for the purpose of interpreting the Constitution even when there is no question of fundamental rights involved. In *Kesavananda Bharati v. State of Kerala (1973)*<sup>27</sup>, the Supreme Court entertained a writ petition challenging the validity of a constitutional amendment on the ground that it violated the basic structure of the Constitution. The Court held that the basic structure of the Constitution cannot be amended.
4. **Preventive Detention:** The Supreme Court has also entertained writ petitions challenging preventive detention orders even when no question of fundamental rights was involved. In *A.K. Roy v. Union of India (1982)*<sup>28</sup>, the Supreme Court entertained a writ petition challenging the validity of a preventive detention order on the ground that it was mala fide and motivated by extraneous considerations.

The jurisdiction of the Supreme Court under Article 32 is primarily limited to the enforcement of fundamental rights, there have been instances where the Court has entertained writ petitions even when no question of fundamental rights was involved. These exceptions have been recognized by the Court as necessary for the protection of the rule of law and the promotion of social justice.

These are some matters where the Supreme Court move out of its described ambit of jurisdiction where there was no question of the Fundamental Rights but a constitutional significance

- (1) misuse of the ordinance-making power by the State of Bihar;
- (2) appointment of the Judges of the High Courts and the Supreme Court
- (3) issues related with the procedure to remove a Supreme Court Judge.

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<sup>25</sup> *S.P. Gupta v. President of India and Ors*, AIR 1982 SC 149

<sup>26</sup> *M.C. Mehta v. Union of India*, (1986) 1 SCC 471.

<sup>27</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225

<sup>28</sup> *A.K. Roy v. Union of India*, (1982) 1 SCC 271

**(D) Against whom application under Article 32 lies**

Under Article 32 of the Indian Constitution, any person can file a writ petition before the Supreme Court for the enforcement of their fundamental rights. The writ can be filed against any authority, including the State and its instrumentalities, that has violated or is likely to violate the fundamental rights guaranteed under Part III of the Constitution.

Article 32 of the Indian Constitution enables any person to move the Supreme Court for the enforcement of their fundamental rights. The writ petition can be filed against any authority, including the State and its instrumentalities, that has violated or is likely to violate the fundamental rights guaranteed under Part III of the Constitution. Let us explore in-depth insights on the entities that can come under the ambit of the State and other authorities.

**1. The State and its instrumentalities**

The State and its instrumentalities, including the executive, legislative and judicial branches, can come under the ambit of Article 32. This includes government departments, agencies, and public servants. For instance, a writ petition can be filed against the police for illegal detention or torture, or against a government department for denying someone their right to education.

**2. Private entities performing public functions**

Private entities that are performing public functions can also come under the ambit of the State and can be subject to a writ petition under Article 32. This means that any private entity that is performing a function that is typically performed by the State, such as providing education or healthcare services, can be held accountable under Article 32. The landmark judgment in this regard was delivered in the case of *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* (2002), where the Supreme Court held that even if a private entity is not directly performing a public function, but is exercising a public duty, it can be considered to be performing a public function.

**3. Private individuals or entities acting under the authority of the State**

Any private individual or entity that is acting under the authority of the State can also be held accountable under Article 32. This means that if a private individual or entity is given power or authority by the State to perform a specific function, they can be held accountable under Article 32 if they violate someone's fundamental rights. For instance, a private security guard who is given the authority to detain someone by the police can be held accountable under Article 32 if they violate the detainee's fundamental rights.

Overall, the scope of Article 32 is quite broad, and it provides a powerful tool for citizens to

seek remedies for any violations of their fundamental rights. The Supreme Court has consistently held that the State and its instrumentalities, as well as private entities performing public functions or acting under the authority of the State, can be held accountable under Article 32 for violations of fundamental rights.

### **(E) Liberalization of locus standi**

Locus standi, which means the right to bring a legal action, has been traditionally very restrictive in Indian jurisprudence. Only a person whose legal rights were affected could approach the courts. However, with the increasing importance of public interest litigation (PIL) in the 1980s, the Supreme Court of India adopted a more liberal approach to locus standi.

The liberalization of locus standi allowed citizens to bring PILs to enforce fundamental rights, even if their own rights were not directly affected. This allowed the courts to intervene in cases where the violation of fundamental rights affected a large section of society or the public at large, even if no individual had a personal stake in the matter.

The landmark case that marked the liberalization of locus standi was the case of *Mumbai Kamgar Sabha v. Abdulbhai* (1976)<sup>29</sup>. In this case, the Supreme Court recognized the right of workers to approach the courts on behalf of their colleagues, who were unable to do so due to their economic and social conditions. The Court held that it was necessary to adopt a liberal approach to locus standi in cases where the rights of the workers were affected.

Subsequently, the Supreme Court expanded the scope of PILs to include environmental issues, women's rights, and the rights of marginalized communities. In *S.P. Gupta v. Union of India* (1981)<sup>30</sup>, the Supreme Court held that any person or organization could approach the court on behalf of the public interest, and the court could take cognizance of the matter even if the person or organization had no personal interest in the case.

The liberalization of locus standi has had a significant impact on Indian jurisprudence, as it has allowed citizens to hold the government and other public authorities accountable for their actions. PILs have been instrumental in bringing about social and legal reforms, such as the right to education, the right to information, and the protection of the environment.

However, there have been criticisms of the liberalization of locus standi, as it has allowed for frivolous PILs to be filed in court, wasting the time and resources of the judiciary. Nonetheless, the liberalization of locus standi has been a crucial development in Indian jurisprudence, as it has expanded the scope of access to justice and has allowed for the protection of fundamental

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<sup>29</sup> *Mumbai Kamgar Sabha v. Abdulbhai*, AIR 1976 SC 1455.

<sup>30</sup> *S.P. Gupta v. President of India and Ors*, AIR 1982 SC 149

rights in cases where individuals may not have had the means to seek legal remedies. This is considered as a highly effective weapon in the armory of law for reaching social justice to the common man.

### **(F) Delay and Laches**

Delay and laches are two legal concepts that deal with the time frame within which a legal action can be taken. Delay refers to the time period between when a cause of action arises and when legal action is taken to address it. Laches refers to the unreasonable delay in taking legal action that results in the loss of a right or remedy.

In Indian jurisprudence, delay and laches are relevant in writ petitions filed under Article 32 and Article 226 of the Constitution. The courts have the discretion to dismiss writ petitions if they are filed after an unreasonable delay or if the petitioner has been guilty of laches.

The rationale behind the application of delay and laches is to ensure that legal remedies are sought in a timely manner, and that parties do not sit on their rights and delay seeking legal remedies. Delay and laches also prevent the reopening of old cases and the disruption of settled legal rights.

However, the application of delay and laches is not absolute. The courts have recognized that there may be circumstances that justify the delay or laches, such as the inability to take legal action due to economic or social conditions. The courts may also consider the gravity of the violation of the rights involved in the case.

In several cases, the Supreme Court of India has applied the doctrine of delay and laches. In *S.P. Gupta v. Union of India* (1981)<sup>31</sup>, the court held that a writ petition filed after a long delay would not be entertained, as it would lead to the disruption of settled rights. In *Dattaraj Nathuji Thaware v. State of Maharashtra* (2005)<sup>32</sup>, the court held that delay and laches could not be used as a technical bar to justice, and that the court must consider the facts and circumstances of each case.

The concepts of delay and laches play an important role in Indian jurisprudence, particularly in the context of writ petitions under Article 32 and Article 226 of the Constitution. While delay and laches can result in the dismissal of a legal action, the courts have recognized that there may be circumstances that justify the delay, and that the facts and circumstances of each case must be considered.

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<sup>31</sup> *S.P. Gupta v. President of India and Ors*, AIR 1982 SC 149

<sup>32</sup> *Dattaraj Nathuji Thaware v. State of Maharashtra*, (2005) 1 SCC 590.

**(G) Alternative Remedy**

In the legal context, alternative remedy refers to the existence of other legal remedies or procedures available to an aggrieved party apart from the one that they have chosen to pursue. The principle of alternative remedy requires that a party should first exhaust all available remedies before approaching a court of law for redressal.

The principle of alternative remedy is based on the idea that disputes should be resolved through administrative or quasi-judicial mechanisms before they are brought to the courts. This principle ensures that the courts are not unnecessarily burdened with disputes that can be resolved through other means, and that the parties involved have an opportunity to address their grievances in a more expeditious and cost-effective manner.

In the context of writs, a party should first exhaust all other available legal remedies before filing a writ petition under Article 32 or Article 226 of the Constitution. This principle is based on the idea that writs are extraordinary remedies that should be used sparingly and only when no other adequate remedy is available.

The Supreme Court of India has consistently held that a writ petition should not be entertained if an alternative remedy is available to the petitioner. The court has held that writ jurisdiction is discretionary and that it should not be used to bypass other remedies or to entertain cases that can be resolved through other legal processes.

The principle of alternative remedy has been applied in a number of cases involving writ petitions. In *A.V. Venkateswaran v. Union of India* (1986)<sup>33</sup>, the Supreme Court held that a writ petition under Article 32 should not be entertained if the petitioner has an alternative remedy available to them, even if that remedy may not be as effective as a writ.

However, there are exceptions to the principle of alternative remedy. The Supreme Court has held that a writ petition may be entertained even if an alternative remedy is available if the petitioner can show that the alternative remedy is inadequate or ineffective. The court has also held that a writ petition may be entertained if the petitioner can show that their fundamental rights have been violated, and that they have no other adequate remedy available to them.

The principle of alternative remedy is an important principle in the context of writs. It ensures that writ jurisdiction is used appropriately and that parties exhaust all other available legal remedies before seeking a writ. However, the principle is not absolute, and the court may entertain a writ petition even if an alternative remedy is available in certain circumstances, such

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<sup>33</sup> *A.V. Venkateswaran v. Union of India*, AIR 1986 SC 1370.



as when the alternative remedy is inadequate or when fundamental rights have been violated.

### **(H) Suspension**

Article 226 of the Indian Constitution confers the power of High Courts to issue writs for the enforcement of fundamental rights and for any other purpose. Article 32 of the Indian Constitution confers the power to an individual to directly move the Supreme Court for the enforcement of fundamental rights. However, during an emergency situation, the President has the power to suspend the right to move the court for the enforcement of fundamental rights under Article 32, and the High Courts' power to issue writs under Article 226.

This power of the President is derived from Article 359 of the Indian Constitution, which states that during a national emergency, the President can issue a proclamation suspending the right to move any court for the enforcement of fundamental rights except those related to Articles 20 and 21. Article 359(1) also provides that the President can suspend the High Courts' power to issue writs under Article 226. This power of the President is not absolute, and the suspension of the right to move the court and the power of High Courts to issue writs must be justified by the circumstances that led to the emergency. In other words, the suspension of these rights and powers must be proportionate to the situation at hand. The Supreme Court of India has examined the validity and scope of the suspension of the right to move the court and the power of High Courts to issue writs during an emergency in several cases. In *ADM Jabalpur v. Shivakant Shukla* (1976)<sup>34</sup>, also known as the Habeas Corpus case, the Supreme Court held that during an emergency, the President's power to suspend the right to move the court and the High Courts' power to issue writs is absolute and cannot be questioned by the courts.

However, this decision was overruled in the landmark case of *Maneka Gandhi v. Union of India* (1978)<sup>35</sup>, where the Supreme Court held that the right to life and personal liberty under Article 21 is the most fundamental of all fundamental rights, and its suspension during an emergency would be unconstitutional. The Supreme Court held that the right to life and personal liberty cannot be suspended even during an emergency and that the Constitution must be interpreted in a way that upholds and protects these rights.

The suspension of the right to move the court for the enforcement of fundamental rights under Article 32 and the High Courts' power to issue writs under Article 226 during an emergency is a drastic measure that should be taken only in exceptional circumstances. Any suspension of these rights and powers must be justified by the circumstances, and it must be proportionate to

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<sup>34</sup> *ADM Jabalpur v. Shivakant Shukla*, AIR 1976 SC 1207

<sup>35</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

the situation at hand. The right to life and personal liberty cannot be suspended even during an emergency.

#### **IV. NEW DIMENSION OF WRIT JURISDICTION OF SUPREME COURT AND HIGH COURT UNDER ARTICLE 32 AND 226 -IN RECENT YEARS**

In recent years, the jurisdiction of the Supreme Court and High Courts under Article 32 and 226 of the Constitution has evolved and expanded in various ways, giving rise to new dimensions of writ jurisdiction. Some of these developments are:

- **Public Interest Litigation (PIL):** The concept of PIL has revolutionized the writ jurisdiction of the courts. PIL allows any person or organization to file a writ petition on behalf of a larger public interest, even if they do not have a personal stake in the matter. This has enabled the courts to take up a wide range of issues that would not have otherwise come before them, such as environmental degradation, corruption, and human rights violations.
- **Protection of personal liberties:** The courts have expanded their writ jurisdiction to protect personal liberties such as the right to privacy, right to life and liberty, and freedom of expression. The Supreme Court has struck down laws that violate these rights and has issued directions to protect them.
- **Judicial activism:** The courts have adopted a proactive role in enforcing constitutional rights and promoting social justice. This has led to the courts taking up cases on issues such as the right to education, health care, and social welfare schemes.
- **Technological advancements:** The use of technology has enabled the courts to expand their jurisdiction and make their processes more efficient. The courts have adopted online filing of petitions, video conferencing for hearings, and digital signatures to streamline their processes.
- **International law:** The courts have increasingly taken into account international law and principles while interpreting constitutional provisions. This has enabled the courts to uphold human rights and environmental norms in line with international standards.

The writ jurisdiction of the Supreme Court and High Courts under Article 32 and 226 has evolved and expanded in recent years, allowing the courts to take up a wide range of issues and uphold fundamental rights. The use of PIL, protection of personal liberties, judicial activism, technological advancements, and international law has given rise to new dimensions of writ jurisdiction.

**(A) Interpretation of Article 21 by the Supreme Court through writ jurisdiction**

Article 21 of the Indian Constitution is one of the most fundamental rights guaranteed to citizens. It states that "No person shall be deprived of his life or personal liberty except according to procedure established by law". The Supreme Court has interpreted this provision in a broad and expansive manner through its writ jurisdiction under Article 32 of the Constitution.

The Supreme Court has held that Article 21 is not restricted to mere physical existence but includes the right to live with dignity. The court has interpreted the right to life and personal liberty in a holistic manner to include various facets of a person's life. It has recognized that the right to life and personal liberty is not just negative in nature but also includes positive obligations on the state to provide certain basic necessities of life.

In a landmark judgment of *Maneka Gandhi v. Union of India*, the Supreme Court held that the right to life and personal liberty is not confined to mere animal existence but includes the right to live with dignity. The court held that the procedure established by law for depriving a person of their life or personal liberty must be just, fair, and reasonable. The court also held that the procedure must not be arbitrary, fanciful, or oppressive.

The Supreme Court has held that the right to life and personal liberty includes the right to health. In *Bandhua Mukti Morcha v. Union of India*, the court held that the right to life includes the right to a healthy environment. The court held that the right to life and personal liberty includes the right to clean air, water, and environment.

The Supreme Court has also held that the right to life and personal liberty includes the right to education. In *Unnikrishnan JP v. State of Andhra Pradesh*, the court held that the right to education is a part of the right to life and personal liberty. The court held that the state has a positive obligation to provide education to its citizens.

The Supreme Court has also held that the right to life and personal liberty includes the right to livelihood. In *Olga Tellis v. Bombay Municipal Corporation*, the court struck down a law that prohibited pavement dwellers from residing on the footpaths of Mumbai, as it violated the right to livelihood under Article 21. The court held that the right to livelihood is a part of the right to life and personal liberty.

The Supreme Court has also used its writ jurisdiction under Article 32 to provide relief to individuals whose right to life and personal liberty has been violated by the state or its agencies. In *DK Basu v. State of West Bengal*, the court laid down guidelines for the protection of the rights of arrested persons. The court held that the right to life and personal liberty of an arrested

person cannot be violated even during the course of investigation.

The Supreme Court has interpreted Article 21 of the Constitution in an expansive and holistic manner through its writ jurisdiction under Article 32. The court has recognized that the right to life and personal liberty includes various facets of a person's life, such as the right to health, education, livelihood, and a healthy environment. The court has also used its writ jurisdiction to provide relief to individuals whose fundamental rights have been violated by the state or its agencies.

### **(B) PIL and Judicial Activism**

PIL and Judicial Activism have had a significant impact on the writ jurisdiction of the Indian judiciary. The writ jurisdiction of the judiciary is an important tool for protecting the fundamental rights of citizens and ensuring that the rule of law is upheld. PIL and Judicial Activism have helped to expand the scope of the writ jurisdiction and ensure that the judiciary can effectively protect the rights of citizens.

PIL has been used extensively in the writ jurisdiction of the judiciary. PILs have been used to bring to the notice of the judiciary issues of public concern that need urgent attention. PILs have been used to promote social justice, protect the environment, and ensure the rule of law. The Supreme Court has allowed PILs to be filed even by persons who may not have a personal interest in the matter. This has helped to expand the scope of the writ jurisdiction and ensure that the rights of citizens are protected.

Judicial activism has also had a significant impact on the writ jurisdiction of the judiciary. Judicial activism refers to the proactive role of the judiciary in promoting social justice and protecting fundamental rights. Judicial activism has helped to ensure that the judiciary can effectively protect the rights of citizens. The judiciary, through its activism, has played a crucial role in upholding the rule of law and ensuring that the rights of citizens are protected.

In the context of writs, PIL and Judicial Activism have helped to expand the scope of the writ jurisdiction of the judiciary. PILs have been used to bring to the notice of the judiciary issues of public concern that need urgent attention. The judiciary, through its activism, has played a crucial role in upholding the rule of law and ensuring that the rights of citizens are protected. PIL and Judicial Activism have helped to ensure that the writ jurisdiction of the judiciary is used effectively to protect the rights of citizens and promote social justice.

### **(C) Award of Compensation for Infringement of Fundamental Rights**

The award of compensation for the infringement of fundamental rights is an important aspect

of the writ jurisdiction of the Indian judiciary. The judiciary has the power to award compensation to citizens whose fundamental rights have been violated. The award of compensation is a way to provide relief to citizens whose rights have been infringed upon and to deter future violations of fundamental rights.

The Supreme Court has recognized the power of the judiciary to award compensation in cases of infringement of fundamental rights. The Court has held that the power to award compensation is inherent in the writ jurisdiction of the judiciary. The Court has also held that compensation can be awarded in cases of both public and private law violations.

The award of compensation for infringement of fundamental rights has been recognized in various cases.

1. In *Rudal Shah v. State of Bihar*<sup>36</sup>, the Supreme Court awarded compensation to a person who had been wrongfully detained for over 14 years. The Court held that the detention was a violation of the person's fundamental right to life and liberty and awarded compensation to the person.
2. In *Nilabati Behera v. State of Orissa*<sup>37</sup>, the Supreme Court awarded compensation to the mother of a person who had died while in police custody. The Court held that the death was a violation of the person's fundamental right to life and liberty and awarded compensation to the mother.
3. In *Bhim Singh v. State of Jammu & Kashmir*<sup>38</sup>, the Supreme Court awarded compensation to a person who had been illegally detained for a prolonged period. The Court held that the detention was a violation of the person's fundamental right to life and liberty and awarded compensation to the person.

The award of compensation for infringement of fundamental rights is an important aspect of the writ jurisdiction of the Indian judiciary. The award of compensation serves as a deterrent to future violations of fundamental rights and provides relief to citizens whose rights have been violated

## **V. CONCLUSION**

Article 32 and Article 226 of the Constitution of India serve different functions in ensuring the protection of fundamental rights and upholding the rule of law. Article 32 is a fundamental right in itself and provides individuals with the right to move the Supreme Court for the enforcement

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<sup>36</sup> *Rudal Shah v. State of Bihar*, (1983) 4 SCC 141.

<sup>37</sup> *Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960.

<sup>38</sup> *Bhim Singh v. State of Jammu & Kashmir*, (1986) 2 SCC 615.

of their fundamental rights. It is a direct means of seeking redressal for violations of fundamental rights and has been described as the soul of the Constitution. On the other hand, Article 226 empowers the High Courts to issue writs for the enforcement of fundamental rights as well as for any other purpose. It is a broader power than Article 32 and is not limited to the protection of fundamental rights alone. This power has been described as the backbone of the Constitution and is a key aspect of the federal structure of India.

While both Article 32 and Article 226 are important in ensuring the protection of fundamental rights, they differ in their scope and the manner in which they are invoked. Article 32 is a fundamental right and provides for a direct remedy in case of violation of fundamental rights. Article 226, on the other hand, is a broader power that can be invoked for any purpose, including the enforcement of fundamental rights. While they serve different functions, they are complementary and reinforce each other in ensuring that the rights of individuals are protected and upheld. The difference in jurisdiction has implications for the reach and effectiveness of the two provisions in protecting fundamental rights.

Another important factor to consider in the comparative analysis of Article 32 and Article 226 is the role of the judiciary in upholding these provisions. The judiciary plays a critical role in interpreting and enforcing these provisions, and the effectiveness of these provisions depends to a large extent on the independence and integrity of the judiciary.

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**VI. REFERENCES**

1. Constitution of India, Bare Act (Universal, Lexis Nexis)
2. Black, Henry Campbell, “Black’s Law Dictionary”, 6th edition, p.1229
3. Bohra, Dr. Saroj, “Public Interest Litigation: Access to Justice”, Manupatra, July 2012, (April 7th, 2023, 10:30 PM)
4. V.N. Shukla’s, Constitution of India, 13th Edition, EBC (2019)
5. Priya Adlakha and Isha Tiwari, Erroneous use of Article 32- SC slams PIL seeking ban on Coco-Cola and Thumbs Up, (April 8th, 2023, 10:30 PM), <https://www.mondaq.com/india/trials-appeals-compensation/962224/erroneous-use-of-article-32-sc-slams-pil-seeking-ban-on-coca-cola-and-thumbs-up>
6. Harshit S. Jain, Asha Sundaram, A study on the advantages and disadvantages of Public Interest Litigation, Vol. 120, 4469-4479, (April 9th, 2023, 10:00 PM) <http://www.acadpubl.eu/>

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