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# Judicial Remedies and Constitutional Safeguards Analyzing the Interplay between Articles 32 and 226

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## ABSTRACT

*The Indian Constitution enshrines the fundamental right to constitutional remedies, ensuring the protection and enforcement of fundamental rights through Articles 32 and 226. While Article 32 empowers individuals to directly approach the Supreme Court for the enforcement of fundamental rights, Article 226 provides the High Courts with broader jurisdiction, extending not only to fundamental rights but also to other legal rights. This article explores the similarities and differences between these provisions, highlighting their respective scopes, powers, and limitations. The study delves into the five writs—Habeas Corpus, Mandamus, Certiorari, Prohibition, and Quo Warranto—and their application in judicial review. Key research questions address the maintainability of petitions under Article 32 following dismissal under Article 226 and the extent of the Supreme Court's power beyond issuing writs. Through an analysis of landmark judgments, this paper affirms that while both provisions serve as crucial mechanisms for upholding constitutional rights, Article 32 remains the "heart and soul" of the Constitution, ensuring judicial oversight and reinforcing the rule of law.*

**Keywords:** Fundamental Rights, Article 32, Article 226, Writ Jurisdiction, Supreme Court, High Court, Judicial Review, Constitutional Remedies, Rule of Law, Public Interest Litigation (PIL).

## I. INTRODUCTION

As we know that “Right without remedy is of no use”. Therefore, we have Art. 32 in the constitution i.e. “Right to constitutional remedy”. Whenever your fundamental right is getting violated you can always approach the SC. Dr. B.R. Ambedkar on Art. 32,

“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.....”

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But what if any other legal right of a person has been violated, then he can approach High Court under Art. 226. Art. 226 provides remedy for both violation of fundamental rights as well as any other legal right.

There is also a misconception that Article 32 is only limited to issue writs but actually the Supreme Court has power to issue: (a) order, (b) direction, (c) writs.

- (a) Order – for compensation. Ex- you have been illegally detained by somebody, then the Supreme Court can issue a writ to release you but compensation is also essential here as there was loss of reputation, loss of personal liberty, etc.
- (b) Directions – If there is a case in the court and there is no law governing the issue of the case then the Supreme Court will itself act as a law governing to the issue.<sup>2</sup>
- (c) Writs – this can be issued by 2 courts i.e. High Court under Art. 226 and Supreme Court under Art. 32.

There are five types of i.e. Habeas corpus, Mandamus, Certiorari, Prohibition, Quo Warranto. Whenever we study about writ jurisdiction, there arises a question what is difference between writ jurisdiction of the Supreme Court and High Court. There are few other research questions which will be dealt later on this project like whether an application is maintainable under Art. 32 after a similar application under Art. 226 is dismissed by the High court on merit, whether the power of Supreme court is confined to issuing writs only.

## **II. RELATION BETWEEN ART. 32 AND ART. 226**

Art. 32 itself is a fundamental right as Part III includes Art. 12-35. Art. 32 mainly talks about two types of rights and powers:

- (a) It says that if an individual's fundamental right is being violated, then he/she can directly use Art. 32 and approach the Supreme Court.
- (b) For the protection of fundamental rights, Art. 32 empowers the Supreme Court to issue 5 kinds of writs.

Due to Art. 32, the Supreme Court is known as “protector and guarantor” of fundamental rights. Dr. B.R. Ambedkar has called this Art. as “heart and soul” of the constitution because it gives rights to people to move Supreme court directly for enforcement of their fundamental rights. As Art. 32 is known as the soul of the constitution because the article itself a fundamental right. According to the Supreme court, Art. 32 cannot be amended even by way of amendment in the

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<sup>2</sup> Vishaka & Ors. v. State of Rajasthan AIR 1997 SC 3011.

constitution as it is the basic feature of the constitution.<sup>3</sup>

The powers which are vested under Art. 32, exactly same powers are also given under Art. 226. Thus, these two Art.s give you the power to approach the highest court of the country, in case your fundamental rights are violated. Also in order to protect your rights, it is not a rule that you have to first approach High Court and then supreme Court.<sup>4</sup> Although, when you directly approach Supreme Court, you will have to explain as to why you did not first approach High Court.<sup>5</sup>

#### **(A) Similarities between Art. 32 and Art. 226**

Two major similarities:

1. For the enforcement of Fundamental rights both Art. 32 and 226 can be invoked.
2. The power to issue Writs can be done by both the Supreme Court and High Court under Art. 32 and Art. 226 respectively.

#### **(B) Differences between Art. 32 and Art. 226**

Sl. No.	Art. 32	Art. 226
1.	Only fundamental rights enforcement	Both fundamental rights as well as other legal Rights enforcement <sup>6</sup>
2.	Scope is narrow	Scope is wide
3.	Power to issue writs is of the Supreme Court	Power to issue writs is of High Court
4.	Power to issue the writs is mandatory	Power to issue writs is discretionary
5.	It is a fundamental Right	It is not a fundamental Right

<sup>3</sup> L. Chandra Kumar vs Union Of India AIR 1997 SC 1125.

<sup>4</sup> Romesh Thapper vs State of Madras AIR 1956 SC 124.

<sup>5</sup> Union of India vs Paul Manickam and anr. AIR 2003 SC 4622.

<sup>6</sup> Jeshingbhai Ishwarlal vs Emperor AIR 1950 Bom 363.

6.	Territorial Jurisdiction is wide	Territorial Jurisdiction is narrower than the Supreme Court.
7.	During the period of Emergency Art. 32 is suspended	It cannot be suspended during emergency

### III. 5 TYPES OF WRITS

There are 5 types of writs:

1. Habeas Corpus
2. Mandamus
3. Certiorari
4. Prohibition
5. Quo Warranto

#### 1. Habeas Corpus

- It means ‘to have a body’ or to produce a body.
- This is the most powerful and most used writ.
- If state illegally detains a person, then such an individual by himself or through his relatives or friends can use this writ for the release of that person.
- So, whenever you use this writ, Supreme Court or High Court ask the detaining authority that on what basis the person was detained? If the basis is found to be unreasonable, then the detention ends and he is to be released with immediate effect. Additionally, he/she may be provided with exemplary damages.<sup>7</sup>
- This writ cannot be used:
  - a) Detention is lawful
  - b) Contempt of court
  - c) Detention is outside the jurisdiction of court
  - d) Detention is by a competent court

#### 2. Mandamus

<sup>7</sup> Rudul Shah vs State of Bihar AIR 1983 SC 1086.

- It means ‘we command’.
- You can use this writ on any statutory, non-statutory, university, tribunal, etc. and command them to perform their public duty.
- In general, through this writ, you can command a public official to perform his public duty.<sup>8</sup>
- There is one pre requisite condition for the application of this writ i.e. there should be a **public duty**.

### 3. Certiorari

- It means ‘to be certified’.
- Through this writ, Supreme Court and High Court can command the lower courts to submit its records – for their review.
- In the review it is checked that whether the lower court judgements are illegal or not.<sup>9</sup>  
When can lower court’s judgement be illegal?
  - a) Excess of jurisdiction
  - b) Lack of jurisdiction
  - c) Jurisdiction is unconstitutional
  - d) Violation of principle of Natural justice

- If the lower court judgements are found to be illegal, then they are quashed.<sup>10</sup>

### 4. Prohibition

- It means ‘to forbid’.
- There is a very slight difference between prohibition and certiorari; as we know ‘prevention is better than cure’, here ‘prevention’ is prohibition and ‘cure’ is certiorari.

As we have learned that if an illegal judgement is announced by lower court then it has to be quashed by High court or Supreme Court i.e. to cure the mistake we have to use certiorari.

But, if before the judgement is announced, if you want to prevent the mistake then we use the writ of prohibition.

### 5. Quo Warranto

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<sup>8</sup> Gujarat state financial corp. vs lotus hotels AIR 1983 SC 848.

<sup>9</sup> Gullapalli Nageswara Rao vs APSRTC 1959 AIR 308.

<sup>10</sup> A.K. Kraipak vs UOI AIR 1970 SC 150.

- It means ‘by what authority’.
- By using the writ, courts can question any public officer that by what authority have you assumed this public office?
- If the officer’s title is defective – then he has to vacate the office.
- Among the 5 writs, only Quo Warranto can be filed by anyone.

#### **(A) Research Questions**

##### **1. Whether an application is maintainable under Art. 32 after a similar application under Art. 226 is dismissed by the High court on merit?**

*Res Judicata* is a rule of public policy which states that “no court shall try any suit or issue in which the subject matter and parties are the same and had already been tried by the court of competent jurisdiction. This principle is present in Section 11 of the Code of Civil Procedure.

The Supreme Court held that, if a question has been once decided by the Supreme Court under Art. 32 the same question cannot be re-opened,<sup>11</sup> again under Art. 226. In *Daryao v. State of U.P.*,<sup>12</sup> it was held that the rule of *res judicata* acts as a bar to the maintainability of the petition under Art. 32 where the matter had already been ‘heard’ and ‘decided’ by the High Court under Art. 226. Court also considered the rule of *res judicata* as a sound public policy and not just merely a technical rule as judgements pronounced by courts with competent jurisdiction should be binding in nature which is an essential part of Rule of law. But there is an important exception to rule of *res judicata*. In *Gulam Sarvar v. Union of India*,<sup>13</sup> the Court held that in the writ of habeas corpus, the rule of *res judicata* is not applicable.

##### **2. Whether the power of Supreme court is confined to issuing writs only?**

The writ jurisdiction of the Supreme Court under Article 32(2) is not restricted only to the issuance of writs of habeas corpus, mandamus, prohibition, quo-warranto and certiorari.<sup>14</sup> It is much wider and is not bound by the procedural technicalities which are enumerated under English Law. The rights that are enumerated under Article 32(2) have an English origin. The writ jurisdiction is not limited to only the specific writs that is mentioned in the provision but it also includes the issuance of directions and order for enforcement of the fundamental rights. The Supreme Court is not bound to follow the procedural technicalities that is provided under the English law for exercise of the writ jurisdiction. However, in several case laws it was held

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<sup>11</sup> *Jagannath Baksh Singh vs State of UP*, AIR 1962 SC 1563.

<sup>12</sup> AIR 1961 SC 1457; *Har Swarup vs G.M. Central Rly.* AIR 1975 SC202.

<sup>13</sup> AIR 1967 SC 1335; *Lallubhai vs UOI* AIR 1986 SC 728.

<sup>14</sup> *Rashid Ahmad vs Municipal Board, Kairana* AIR 1950 SC 163.

by the Supreme Court that while exercising the writ jurisdiction the fundamental principles of the English law cannot be ignored. In *T. C. Basappav. T. Nagappa*,<sup>15</sup> the Supreme Court said:” “In view of the express provisions in our Constitution we need not now look back to the early history of the procedural technicalities of these writs in English law, not feel oppressed by the difference of change of opinion expressed in particular cases of Judges, we can make an order or issue a writ in the nature of certiorari, in all appropriate cases and in appropriate manner. So long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English Law.”

Thus, the provision of Art. 32(2) is very elastic and it allows necessary changes as per the circumstances for effective enforcement of the fundamental rights without always taking the legislative sanction. The writ jurisdiction under Art. 32 is a matter of right and the Supreme Court cannot refuse to grant relief even if the petitioner had not approached under proper writs. The Court can frame such writs as the exigencies of a particular case demand.<sup>16</sup>

#### **IV. CONCLUSION**

Now, we know that whenever your fundamental right is violated we can always approach the Supreme Court under Art. 32 and we can also approach High court for violation of fundamental rights but in addition to that we can approach “for any other purpose” as well which includes both legal rights and constitutional rights. Example of legal right can be, if there is violation of right to get maternity benefit. It is a legal right under The Maternity Benefits Act, 1961. Similarly, example of violation of constitutional rights can be violation of “Right to Vote”. The main question is where we can go if there is violation of freedom of speech and expression. In this case we can approach either the Supreme Court or High Court as it is a violation of fundamental right.

It is a well-known fact that, the Supreme Court and High Court have concurrent jurisdiction i.e. if there is violation of any fundamental right you can approach any of the court directly but if you approach directly to the Supreme Court then it may be asked that why didn’t you approach high Court first. There are some matters where you can directly approach the Supreme Court like matters of National Importance and its example can be petition challenging The Citizenship Amendment Act, 2019. In matters of urgent nature also one can directly approach the Supreme Court.

It can be concluded that, by enlarging the scope of Art.32 and Art.226, judiciary has brought

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<sup>15</sup> *T. C. Basappav. T. Nagappa* AIR 1954 SC 440.

<sup>16</sup> *Chiranjit Lal Chaudhari vs UOI* AIR 1951 SC 41.



justice and revolutionized constitutional jurisprudence which makes the constitution a living and dynamic document.

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