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ANALYSIS OF ARTICLE 32 OF THE CONSTITUTION OF INDIA: RIGHT TO CONSTITUTIONAL REMEDIES

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ABSTRACT:

Article 32 is the cornerstone of the Indian Constitution. It is one of the fundamental rights listed in the Constitution to which each citizen is entitled[1]. Article 32 deals with the 'Right to Constitutional Remedies', or affirms the right to move the Supreme Court by appropriate proceedings for the enforcement of the[2] rights conferred in Part III of the Constitution.[3] Article 32 plays a critical role in maintaining the rule of law, safeguarding citizens' rights, and ensuring governmental actions align with principles of justice[4] and equality. The Supreme Court has declared that 'Article 32 of the Indian Constitution is a basic feature of the Constitution'**.** Thus[5], it cannot be abridged or taken away even by way of a Constitutional Amendment Act.[6] But only Fundamental Rights, and not any other rights**,** can be enforced under Article 32, unlike Article 226.[7]

INTRODUCTION:

Ambedkar had once said, "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[8]— I could not refer to any other article except this one (Article 32). It is the very soul of the Constitution and the very heart of it."[9]

[1] IAS baba, https://iasbaba.com/2020/11/supreme-court-interpretation-of-article-32-over-the-years/ (last visited Sep. 11, 2024).
[2] Id. at 1743
[3] Student Manupatra, http://student.manupatra.com/academic/abk/constitutional-law-of-india/CHAPTER-6.htm (last visited Sep. 11, 2024).
[4] Hetal Master, Article 32 of the Constitution of India - Right to Move Supreme Court for Enforcement of Fundamental Rights, Linked in (Sep.11, 2024, 9:29 PM), https://www.linkedin.com/pulse/role-article-32-safeguarding-rights-vllp2017.
[5] Drishti IAS, https://www.drishtiias.com/to-the-points/Paper2/fundamental-rights-part-2 (last visited Sep. 11, 2024).
[6] NEXT IAS, https://www.nextias.com/blog/right-to-constitutional-remedies/ (last visited Sep. 11, 2024).
[7] Id. at 1743.
[8] Surbhi Kumari, All about Article 32 of the Constitution of India, law bhoomi (Sep. 11, 2024, 9:35 PM), https://lawbhoomi.com/all-about-article-32-of-the-constitution-of-india/.
[9] Law foyer, https://lawfoyer.in/article-32-right-to-constitution-remedies/ (last visited Sep.11, 2024).

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The maxim 'Ubi Jus Ibi Remedium' meaning 'where there is a right, there is a remedy' is one of the cardinal principles of the Common Law. It is true that a declaration of fundamental Rights is senseless unless and until there is a compelling instrument for the enforcement of those rights and legal remedies for the violation of such rights.

Article 32 ensures the enforcement of Fundamental Rights enshrined in part III of the constitution, including the right to equality, life, and freedom from discrimination.[10] It guarantees observance of the rule of law and upholds democratic principles.[11] PIL has been an indispensable avenue for promoting justice and ensuring that the rights of the marginalized and disadvantaged are protected. Article 32 forms the basis for PIL, affording citizens the right to approach the Supreme Court for the enforcement of rights in the interest of public welfare. It also makes sure that public bodies act within legal limits and are made accountable for their actions.

This article which acts as the guardian of fundamental rights is itself a fundamental right and it's a part of the basic structure, meaning it cannot be abridged or taken away by a constitutional amendment act[12]. It guarantees the right to move the Supreme Court by 'appropriate proceedings', there is no limitation in regard to the kind of proceedings envisaged in Article 32(1) except that the proceeding must be "appropriate". The Supreme Court and High Courts have been given the power to issue appropriate directions, orders, and writs. Writs which the Supreme Court can issue include- Habeas corpus, mandamus, prohibition, quo-warranto, and certiorari.

This article gives an explanation of how Article 32 provides for an expeditious and inexpensive remedy for the protection of fundamental rights from legislative and executive interference.

HISTORICAL BACKGROUND:

Article 32 of the Indian constitution, which provides a direct remedy for the enforcement of fundamental rights has a rich historical background rooted in the nation's struggle for

[10] The Economic Times, https://economictimes.indiatimes.com/news/new-updates/ambedkar-jayanti-2024-why-is-article-32-considered-the-heart-and-soul-of-the-indian-constitution/articleshow/109284149.cms (last visited Sep. 11, 2024).

[11] Nicole Bibbins Sedaca, what is democracy, and why does defending it matter?, Freedom House (Sep. 11, 2024, 9:45 PM), https://freedomhouse.org/article/what-democracy-and-why-does-defending-it-matter

[12] India.gov.in, https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-forty-fourth-amendment-act-1978 (last visited Sep. 11, 2024).

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independence and the vision of its founding fathers. Its inclusion reflects the framer's commitment to justice and constitutional values.

Influenced by the freedom movement, our leaders accentuated the need for a legal framework to guard citizen's rights. Dr. Ambedkar in particular embodied Article 32 in the constitution, to ensure that fundamental rights were not merely theoretical but could be actively enforced. It is pregnant with the significance of direct remedy, making sure that justice is accessible to everyone, not just those with resources.

Indian legal system in drafting Article 32 has been considerably influenced by the British legal system. Concepts such as judicial review and the capacity to issue writs were borrowed from British Laws. However, in the British legal system, the exclusive right to remedies was discretionary and is known as prerogative orders. Whereas in India by enshrining in the constitution itself, the jurisdiction to issue writs, Article 32 ensures that if an individual feels that his fundamental right is violated he can directly approach the Supreme Court, thus justice is accessible to all and the government respects individual rights.

EXPLANATION OF ARTICLE 32:

Article 32 consists of several clauses that outline the rights and powers associated with fundamental rights.

Article 32(1), guarantees the right of the individual to approach the Supreme Court for the enforcement of fundamental rights by "appropriate proceedings". Under Art 32(1), there is no limitation in regard to the kind of proceedings to enforce rights conferred by part III of the constitution, except it must be 'appropriate'. It is not obligatory for the court to follow an adversary system. Constitution makers deliberately did not lay down any particular form of proceeding for the enforcement of fundamental rights because they knew that in a country like India where there is so much poverty, ignorance, illiteracy, deprivation, and exploitation, any insistence on a right formula of proceeding would become self-defeating. (*S.P. Gupta and others v. President of India and others*[13]).

In *Mohanlal Sharma v. State of U.P*[14], a telegram was treated as a writ petition. A telegram was sent to the court from the petitioner alleging that his son was murdered by the police in the police lock-up. The court directed the case to be referred to C.B.I. for thorough investigation.

[13] S.P. Gupta and others v. President of India and others, AIR 1982 SC 149
[14] Mohanlal Sharma v. State of U.P, AIR (1989) 2SCC 609

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Article 32(2), confers power on the Supreme Court to issue appropriate directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto, and certiorari. A writ doesn't lie to create or establish a legal right but, to enforce a fundamental right that has already been established. (*R.S.I.D.I.Corpn.v. S.S.Co-op Hsg. Society, Jaipur*, AIR 2013 SC 1226(1235)).

By this Article, the Supreme Court has been constituted as a protector and guarantor of fundamental rights conferred by part III (*Romesh Thapper v. State of Madras*)[15]. The language used in Article 32(2) is very wide. The power of the Supreme Court is not confined to issuing only writs but any direction or order or writ whichever is appropriate to enforce the fundamental rights nor is bound to follow the procedural technicalities of English Law.

Under **clause (3) of Art.32**, Parliament may by law empower any other court to exercise, within the local limits of its jurisdiction, any powers exercisable by the Supreme Court under clause (2). The words "any other court" can only mean any other court other than the high court because high courts already have been invested with such power under Article 226.

According to **Article 32(4)**, the right guaranteed by this article shall not be suspended except as otherwise provided for by the Constitution. This clause is very significant as it establishes the inalienability of the right to approach the Supreme Court, even in times of crisis. However, there are certain exceptions,

- **Proclamation of Emergency**: During a national emergency declared under Article 352, the president is empowered under Article 359 to declare the suspension of the right to move to court for the enforcement of such right conferred by part III. However, certain articles such as Article 20 (protection in respect of conviction of offenses) and 21 (protection of life and personal liberty), cannot be suspended even during an emergency.
- By virtue of **Article 33**, the Parliament is empowered to restrict by law the application of fundamental rights to (a) the members of armed forces, (b) the forces charged with the maintenance of public order, (c) the persons employed in any bureau or other organization established by the State for the purposes of intelligence, (d) persons employed in telecommunication set up for the purposes of any Force, bureau or organization referred to in art.33.

[15] Romesh Thapper v. State of Madras, AIR 1950 SC 124

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- By virtue of **Article 34**, the Parliament may by law indemnify any person in the service of the Union or of a State, for the acts done in the maintenance or restoration of law in any area where Martial Laws are in force. So an Act of indemnity passed by Parliament cannot be challenged on the ground that it violates fundamental rights.

MECHANISMS OF ENFORCEMENT OF ARTICLE 32:

The Supreme Court is empowered to issue writs for the enforcement of fundamental rights, such as

Habeas Corpus – The literal meaning of this writ means "**to have the body of**". It is an order issued to a person by the court who has detained another person to produce the body of the latter before it. The court then examines the cause and legality of detention. It would set the detained person free if the detention was found to be illegal.

Mandamus - The literal meaning of this term is '**we command**'. It is a command issued by the court to a public official, asking him to perform his official duties that he has failed or refused to perform.

Prohibition – The literal meaning of this term is '**to forbid**'. It is issued by a higher court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it doesn't possess.

Certiorari – The literal meaning of this writ is '**to be certified or to be informed**'. It is issued by a higher court to a lower court or tribunal either to transfer a pending case with the latter or to squash the order of the latter in a case.

Quo-Warranto – The literal meaning of this term is '**by what authority or warrant'.** It is issued by the court to inquire into the legality of a claim of a person to a public office.

To file a petition under Article 32, any individual whose fundamental rights are violated may submit a writ petition to the Supreme Court. The procedure involves drafting the petition, submitting it to the court, and awaiting a preliminary hearing to determine if the case will be admitted for further proceedings.

JUDICIAL INTERPRETATION AND EVOLUTION OF ARTICLE 32:

Judicial interpretation plays a crucial role in shaping the constitutional framework of any nation, and in India, the Supreme Court has been instrumental in interpreting various provisions

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of the Constitution, particularly Article 32. Let's look at some significant cases that carved this article over the years.

Kesavananda Bharati v. State of Kerala (1973)[16]

The Kesavananda Bharati case is often regarded as one of the most significant judgments in Indian constitutional history. The case arose when Kesavananda Bharati, the head of a religious mutt in Kerala, challenged the constitutional validity of several amendments made to the Constitution[17], particularly the 24th, 25th, and 29th Amendments. These amendments aimed to limit the power of the judiciary and the scope of fundamental rights. The Supreme Court, in a historic 7-6 decision, established the "basic structure doctrine," asserting that while Parliament has the authority to amend the Constitution, it cannot alter its fundamental features. The Court held that the power of judicial review is an integral part of the basic structure, thereby reinforcing the significance of Article 32 as a means for individuals[18] to seek justice against legislative encroachments on their rights. This case underscored the judiciary's role as a guardian of fundamental rights and set a precedent for future interpretations of constitutional amendments.

Bandhua Mukti Morcha v. Union of India (1984)[19]

In this landmark case, the Supreme Court addressed the issue of bonded labor, recognizing the right to life and personal liberty under Article 21 as inclusive of the right to a dignified life[20]. The Court held that the state has an obligation to ensure that individuals are not subjected to inhumane conditions, thereby expanding the interpretation of fundamental rights to include socio-economic rights. This case underscored the judiciary's role in protecting marginalized communities and enforcing rights through Article 32.

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Maneka Gandhi v. Union of India[21] **(1978)**

[16] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461
[17] Shivendra Pratap Singh, Case Law-Kesavananda Bharati v. State of Kerala (1973): A Detailed Analysis, Kanooni Rai (Sep.11, 2024, 9:50 PM), https://kanoonirai.com/kesavananda-bharati-v-state-of-kerala-1973-a-detailed-analysis/.
[18] Supreme Court of India, https://judgments.ecourts.gov.in/KBJ/?p=home/intro (last visited Sep.11, 2024)
[19] Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802
[20] Akanksha1, Right to Livelihood and Article 21 of Constitution of India, Legal Service India (Sep.11, 2024, 9:55 PM), https://www.legalserviceindia.com/legal/article-16235-right-to-livelihood-and-article-21-of-constitution-of-india.html.
[21] Maneka Gandhi v. Union of India, AIR 1978 SC 597

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The Maneka Gandhi case was pivotal in redefining the scope of Article 21, which guarantees the right to life and personal liberty. The Supreme Court ruled that any law depriving a person of their liberty must be just, fair, and reasonable, thereby linking Article 21 with Article 32.[22] This case established that the right to a fair procedure is a fundamental right, reinforcing the judiciary's commitment to uphold individual rights against arbitrary[23] state action. The interpretation of Article 32 was thus broadened to ensure that individuals could challenge any law or action that violated their rights.

Vineet Narain v. Union of India (1996)[24]

This case further exemplified the judiciary's proactive role in governance and accountability. The Supreme Court intervened to address the inaction of the Central Bureau of Investigation (CBI) in cases involving high-profile corruption. The Court emphasized that the judiciary has a duty to step in when the executive fails to act, thereby reinforcing the principle of judicial review. The ruling highlighted the importance of Article 32 as a tool for ensuring accountability and integrity in public life, marking a significant evolution in the interpretation of the article.

Over the years, the interpretation of Article 32 has evolved significantly, reflecting changing societal values and the judiciary's responsiveness to contemporary issues. Initially, the focus was primarily on civil and political rights, but the scope has gradually expanded to encompass socio-economic rights. The trend of judicial activism has also influenced the interpretation of Article 32. The Supreme Court has adopted a proactive stance in addressing issues of public interest, allowing for public interest litigations (PILs) to be filed under Article 32. This has enabled the judiciary to intervene in matters of social justice, environmental protection, and human rights, thereby expanding the reach of Article 32 beyond individual grievances to encompass collective rights.

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DISTINCTION BETWEEN ARTICLE 32 AND 226:

While both Article 32 and Article 226 serve the essential function of protecting individual rights within the Indian legal system, they do so in distinct ways. Article 32 holds a unique status in the Indian legal framework as it is explicitly recognized as a fundamental right,

[22] Drishti IAS, https://www.drishtiias.com/printpdf/supreme-court-s-role-in-upholding-civil-liberties (last visited Sep. 11, 2024).
[23] Akhil Yadav and Devesh Shukla, A CRITICAL ANALYSIS ON RIGHT TO FAIR TRIAL UNDER INDIAN LAWS, 12 IJCRT 648, 1 , 2024, https://ijcrt.org/papers/IJCRT24A4109.pdf
[24] Vineet Narain v. Union of India, AIR 1998 SC 889

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whereas Article 226 is a constitutional right. The Supreme Court's authority under Article 32 is not only exclusive but also paramount, as its decisions supersede those of the High Courts under Article 226.

The writ jurisdiction of the High Court is wider than the writ jurisdiction of the Supreme Court.[25] The Supreme Court has the power to issue writs only for the purposes of enforcement of fundamental rights whereas the High Court has the power to issue writs for the purposes[26] of enforcement rights and also for any other purposes thus allowing for a more comprehensive judicial intervention. This broader jurisdiction enables High Courts to address a variety of legal grievances, including administrative actions, statutory violations, and other legal rights that may not necessarily fall under the category of fundamental rights.

Moreover, Article 226 allows High Courts to issue writs not only within their territorial jurisdiction but also to any authority or person outside their jurisdiction if the cause of action arises within it.[27] This flexibility enhances the ability of the judiciary to provide justice and uphold the rule of law, making Article 226 a powerful tool for legal redress.

LIMITATIONS AND CRITICISMS:

Many citizens, especially in rural areas, are unaware of their rights under Article 32. Economic barriers and illiteracy further hinder their rights and access to justice. The Supreme Court is located in New Delhi, making it geographically inaccessible for many citizens from distant parts of the country. This centralization poses a significant barrier to justice. The Supreme Court is often inundated with cases, leading to delays in the hearing and resolution of petitions filed under Article 32. This backlog undermines the effectiveness of the provision as a swift remedy for rights violations. While Article 32 is a fundamental right, the Supreme Court retains discretion in admitting cases, leading to inconsistencies in how petitions are handled. Further, during emergencies right to file Article 32 can be suspended undermining its effectiveness.

[25] Forum IAS, https://forumias.com/blog/jurisdiction-of-sc/ (last visited Sep. 11, 2024).
[26] Priyal Jain, Writ jurisdiction of Supreme Court, I Pleaders (Sep. 11, 2024, 10:00 PM), https://blog.ipleaders.in/writ-jurisdiction-of-supreme-court/.
[27] Indian Kanoon, https://indiankanoon.org/doc/577402/ (last visited Sep. 11, 2024).

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CONCLUSION:

Article 32 of the Indian Constitution is a cornerstone of Indian democracy and the legal system.[28] Article 32 serves as the ultimate protector of fundamental rights.[29] It ensures that citizens have a direct and effective means to seek redressal if their rights are violated. Article 32 has been a powerful tool for marginalized groups in India to fight for their rights and challenge discrimination. The abolition of untouchability under Article 17 has been a key issue for Dalit rights activists. Through PIL petitions under Article 32, they have challenged practices like denying Dalits entry into temples and using public facilities. The Supreme Court has issued strong rulings against untouchability, making it a punishable crime. Adivasi groups have used Article 32 to fight for their land rights. Muslim women have approached the Supreme Court under Article 32 to challenge discriminatory practices like triple talaq. Environmental activists like M.C. Mehta have filed many PIL petitions under Article 32 to protect forests, wildlife, and public health. However, its implementation faces significant challenges, including accessibility, judicial backlog, economic barriers, and procedural complexities. Additionally, criticisms regarding judicial overreach, selective application, and delays highlight the need for reforms to ensure that Article 32 can effectively serve its purpose. Addressing these challenges and criticisms is essential for upholding the constitutional promise of justice for all citizens.

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[28] Gyan Chakra, https://gyanchakra.co.in/blog/upsc/understanding-article-32-of-the-indian-constitution/ (last visited Sep. 11, 2024).

[29] Himandree Manakia, Article 32: Your Writ Jurisdiction Roadmap to Justice and Right to constitutional remedies, Legal Service India (Sep. 11, 2024, 10:00 PM), https://www.legalserviceindia.com/legal/legal/article-15119-article-32-your-writ-jurisdiction-roadmap-to-justice-and-right-to-constitutional-remedies.html

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