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

ABSTRACT:

In this research paper, we have talked about the significance and true meaning of the Article 32 of the Indian Constitution coupled with some of the famous landmark judgements so that the readers are able to truly understand the nature, meaning and application of this Article. I have also dropped a little information about the Indian Constitution at the beginning for further connective reading and understanding of this research article. Further, I have talked about how this article 32 is necessary for providing to be a foundation of our Constitution and then talked about it several parts in relation to issue of writs by the Courts followed by the illustrations of different kinds of writs provided in this article 32 provided by the Constitution. To add more texture to my research, I have added quotes stated by Dr. B.R. Ambedkar, who was the Chairman of the Constitution Drafting Committee. The end part of this article is concluded with the importance of Article 32 and my personal opinion which is completely gathered by my own ideas and thoughts over the Article 32 of the Indian Constitution.

KEYWORDS: Constitution, article, violation, fundamental rights, judgements.

INTRODUCTION:

“I feel that the constitution is workable, it is flexible and it is strong enough to hold the country together both in peacetime and in wartime. Indeed, if I may say so, if things go wrong under

the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is that Man was vile.”¹

The above statement was mentioned by Dr. B.R. Ambedkar.

Constitution of India, drafted by Dr. B.R. Ambedkar, who was the chairman of the Constitution Drafting Committee, also known as the ‘Father of Constitution’. Constitution of India is the longest written document in the world which was adopted on 26th January, 1950, also known as ‘Republic Day’. The structure of the Constitution is based on Irish, Canadian, mainly British and United States and many more.

Constitution is the most supreme law of the land. It defines the framework of making new laws, giving power and authority to Union and State, enshrines fundamental rights and duties of the citizens, Directive Principle State Policies, structure of government at State and Union levels. It makes a political, national and common identity for the individuals it has said about.

Initially, it had 395 Article, 8 Schedules and 22 Parts but with the passage of time, things change and certain amendments were inculcated in it and now it has 448 Articles, 12 Schedules and 25 Parts.

Article 32 – Right to Constitutional Remedies:

Part 3 of the Indian Constitution, also the basic structure of our Constitution, contains Articles from 12-35. This part is the most crucial part of the Constitution as it talks about the fundamental rights and duties of the citizens of India of which the Indians were earlier deprived of during the colonial rule.

Article 32 of the Constitution reads about ‘Right to Constitutional Remedies’. This article provides remedies to individuals residing in India in case of infringement of their fundamental rights and not because of any illegalities of the administration.

In *L. Chandra Kumar v. Union of India*², the court held:

¹ Rajdeep Singh Rao, What are different parts of the Constitution and what do they deal with?, National University of Juridical Sciences, Kolkata, (August 11, 2017), *The Indian Constitution - Explanation of all the parts and schedule* (iPLEADERS.IN).

² *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 (India).

‘Even if the courts could be approached in the absence of this article, the fact of its being a fundamental right to approach directly the highest court of the country assigns special significance given to the fundamental rights in the Constitution which has been further recognized and strengthened by declaring this article part of the basic structure of the constitution.’³

Also, in another case, *Romesh Thappar v. State of Madras*⁴, it was declared:

“...Court should, in the words of Patanjali Sastri J., regard itself ‘as the protector and guarantor of fundamental rights’, and should declare that ‘it cannot, consistently with the responsibility laid upon it, refuse to entertain applications seeking protection against infringement of such rights.’”⁵

Article 32 makes the apex court of India, the Supreme Court, a shield and a guarantor of privileged rights of individuals. Further, the ability to issue writs by individuals also goes under this part wherein it goes under the jurisdiction of Supreme Court.

Thus, by this article, courts also have the power to issue writs such as mandamus, prohibition, quo warranto, habeas corpus and so on of such nature.

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WHAT ARE WRITS UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA?

Whenever there is a violation or infringement of a fundamental right of an individual, the courts i.e., the Supreme Court and the High Court then have the authority to issue writs which are basically written orders which orders constitutional remedies.

Just as the army protects a nation, similarly, the Supreme Court of India protects or better to say, defends the fundamental rights of its individuals. This article has provided various types of writs that can be issued on the orders of Supreme Court and Hight Court against violation of fundamental rights of any citizen.

There are 5 in types:

³ V.N. Shukla & Mahendra Pal Singh, *Constitution of India*, 342, (Abhinandan Malik ed, 2021).

⁴ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124,126

⁵ V.N. Shukla & Mahendra Pal Singh, *Constitution of India*, 342, (Abhinandan Malik ed, 2021)

1. **Habeas Corpus-** This writ in Latin means ‘*You should have the Body of*’⁶. This writ protects the fundamental right safeguarded in Article 21 of the Constitution which is right to liberty. Here liberty is protected and guaranteed against unlawful detention. So, the Supreme court orders the authorities who have arrested the person to bring that body before the apex court.

This writ can be issued against both, public as well as private authorities.

However, to issue this writ, there must be an unlawful detention, the detention must be outside the jurisdiction of court, detention is not by a suitable court and when the trial is not for the contempt of court.

2. **Mandamus-** Literally, it means, ‘*We enjoin, from mandare to enjoin*’⁷. Under this, a writ is issued by a court of contempt to an inferior court or a government officer or a body to perform a particular act to rectify the earlier decision or failure to act.
3. **Prohibition-** It stops a government body or any office to act beyond its power and limits.
4. **Certiorari-** Literally meaning is ‘*To be Informed*’⁸. This writ is given by a court higher in power to an inferior court or tribunal ordering them either to move a case pending with them to itself or subdue their request for a situation. It is given on the grounds of an abundance of purview or absence of locale or mistake of regulation. It forestalls as well as solutions for the missteps in the legal executive.
5. **Quo Warranto-** It literally means ‘*By what authority or warrant*’⁹. The Quo Warranto letter is a type of legal control that inspects the activities of the managerial office that has employed the individual.

In a case, Charanjit Lal Chowdhury v. Union of India¹⁰,

*“Article 32 gives the court wide discretion in the matter of framing writs to suit the exigencies of a particular case and the application of the petitioner cannot be thrown out simply on the ground that the proper writ or discretion has not been prayed for.”*¹¹

⁶ *Habeas Corpus*, Merriam Webster’s Dictionary of Law, First edition, 2005.

⁷ *Mandamus*, Merriam Webster’s Dictionary of Law, First edition, 2005.

⁸ *Certiorari*, Merriam Webster’s Dictionary of Law, First Edition, 2005.

⁹ *Quo Warranto*, Merriam Webster’s Dictionary of Law, First Edition, 2005.

¹⁰ Charanjit Lal Chowdhury v. Union of India, AIR 1951 SC 41 53.

¹¹ V.N. Shukla and Mahendra Pal Singh, Constitution of India, 344, (Abhinandan Malik ed, 2021).

CONCLUSION:

With the developing legal assistance, lawful letters, support, social movements across the nation, moved to the courts in regard of violation of fundamental rights of majority of citizens were reviewed as writ petitions and the alleviation of pay was furthermore permitted by writ purview.

Article 32 has been the core of the Constitution of India since the Constitution was adapted in 1950. India Constitution runs and administers our nation. Though the Constitution was adapted 72 years from now but it was and has always been the foundation of a huge sovereign, democratic, republic, and a liberal nation with no gender or any form of discrimination. This foundation has always been there for any cutting-edge regulation the Parliament needs to enact with the forthcoming challenges.

In my personal opinion, this article has truly been the core of the basic structure of our Constitution. In the absence of this article, the citizens could have no place to stand without their fundamental rights being violated. Dr. B.R. Ambedkar has truly called Article 32 as the *'The spirit of the Constitution and exceptionally heart of it.'*¹²

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¹² Sampark Sampad, Right to Constitutional Remedies- Article 32: An Analysis, (December 18,2020), Right to constitutional remedies - Article 32: An Analysis | Law column.

- V.N. Shukla and Mahendra Pal Singh, Constitution of India, 344, (Abhinandan Malik ed, 2021).



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