
CONSTITUTIONAL REMEDIES UNDER ARTICLES 32 AND 226: PILLARS OF FUNDAMENTAL RIGHTS PROTECTION

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ABSTRACT

Articles 32 and 226 of the Indian Constitution represent the constitutional bedrock of judicial protection for fundamental rights and constitutional remedies in India. Article 32 grants the Supreme Court of India the constitutional authority to issue writs and orders for the enforcement of fundamental rights, while Article 226 confers equivalent powers upon the High Court's with respect to fundamental rights and other matters of legal jurisdiction. These provisions embody the principle of constitutionalism and the rule of law, establishing the judiciary as the sentinel of the Constitution. This article provides a comprehensive examination of the constitutional framework governing these remedies, their historical development, landmark judicial pronouncements, categories of writs, and their evolution to address contemporary challenges in Indian society. Through analysis of seminal Supreme Court decisions and exploration of Public Interest Litigation, this work demonstrates how Articles 32 and 226 have become vital instruments for protecting human rights, ensuring governmental accountability, and advancing social justice in democratic India.

KEYWORDS: *Indian Constitution, Supreme Court, High Court, Remedies, Fundamental rights and etc.*

INTRODUCTION

The Indian Constitution, adopted on January 26, 1950, represents one of the world's most comprehensive and ambitious constitutional documents. Among its most distinctive features are the elaborate provisions for judicial protection of fundamental rights. Articles 32 and 226 stand as constitutional guarantees ensuring that no citizen's fundamental rights shall be violated with impunity and that the courts possess the authority to intervene for their protection. These

provisions transform the Indian judiciary from a mere arbiter of legal disputes into an active protector of constitutional rights and democratic values.

Dr. Bhimrao Ambedkar, the Principal Architect of the Indian Constitution, articulated the profound importance of these remedies during the Constituent Assembly debates. He declared, *“If I were asked to name any part of the Constitution as embodying the spirit of the Constitution, I would name Article 32. It is the heart and soul of the Constitution. Take away this Article and what remains is just a collection of procedural provisions.”*¹ This recognition underscores that the constitutional remedies provided by Articles 32 and 226 are not merely supplementary provisions but rather central to the entire constitutional scheme of protecting individual liberty and democratic governance in India.

The Supreme Court of India has consistently emphasized the vital importance of constitutional remedies under Articles 32 and 226. As noted by Justice H. R. Khanna in a landmark decision, the power of the Supreme Court and High Courts to issue writs for the enforcement of fundamental rights is not merely incidental but forms a core feature of the constitutional framework. In *Kesavananda Bharati v. State of Kerala*, the Court underscored that judicial review and the enforcement of fundamental rights constitute part of the basic structure of the Constitution.² Over the decades, Articles 32 and 226 have evolved beyond traditional writ jurisdiction to include innovative remedies capable of addressing complex and systemic violations of constitutional rights.

HISTORICAL AND CONSTITUTIONAL CONTEXT

The constitutional guarantee of remedies for the protection of fundamental rights emerged from the profound lessons of pre-independence India, where colonial governance had systematically suppressed individual liberties and democratic participation. The framers of the Indian Constitution resolved that independent India would establish robust constitutional safeguards against arbitrary governmental action. The insertion of Articles 32 and 226 reflected this commitment to establishing a constitutional democracy where the judiciary would serve as the final arbiter of constitutional questions and the protector of fundamental rights against both legislative and executive overreach.

The constitutional remedies were modeled upon similar provisions in earlier Indian constitutional arrangements, particularly the Government of India Act, 1935, which had granted powers to the Federal Court and High Courts to issue writs. However, the Indian framers expanded and enhanced these protections, recognizing that a federal democratic state comprising diverse populations and regions would require robust constitutional remedies to protect

¹ Constituent Assembly Debates, Vol. VII (remarks of Dr. B.R. Ambedkar).

² *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225, 703–04 (India) (Khanna, J.).

minorities and ensure governmental accountability.³ Articles 32 and 226 thus became distinctive features of the Indian Constitution, more expansive than comparable constitutional provisions in many other democracies.⁴

The distinction between Article 32 and Article 226 reflects the federalist structure of Indian governance. Article 32 provides for direct access to the Supreme Court for the enforcement of fundamental rights, making the Supreme Court the guardian of the Constitution.⁵ Article 226, in contrast, empowers each High Court to protect fundamental rights and enforce rights within its territorial jurisdiction. Together, these provisions create a two-tiered system of constitutional protection, ensuring that citizens have accessible forums for asserting their constitutional rights and that the highest court remains available for matters of constitutional significance affecting fundamental rights.

CONSTITUTIONAL TEXT AND FRAMEWORK

Article 32⁶ constitutes a constitutional guarantee of the right to approach the Supreme Court for the enforcement of fundamental rights. The provision is unique in that it grants citizens a fundamental right to seek judicial remedies; the right itself is justiciable. This distinctive feature means that any violation of Article 32's guarantee is itself a violation of a fundamental right, subject to constitutional remedy. The Supreme Court's power to issue writs extends to five traditional categories: habeas corpus, mandamus, prohibition, quo warranto, and certiorari, each serving distinct constitutional functions in protecting rights and ensuring governmental accountability.

Article 226⁷ confers upon the High Court's broad writ jurisdiction extending beyond fundamental rights to encompass "any other purpose." This expansive language has enabled the

³ India Const. arts. 32, 226; see also The Government of India Act, 1935.

⁴ M.P. Jain, *Indian Constitutional Law* 1635–38 (8th ed. 2018).

⁵ L. Chandra Kumar v. Union of India, (1997) 3 S.C.C. 261, 301 (India); India Const. art. 32.

⁶ "(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs like habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by this Part and for such other purposes as may be specified in any law made by Parliament by appropriate proceedings.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)."

⁷ "(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, the Government, directions, orders or writs, including writs like habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

High Courts to address a diverse array of constitutional and legal violations, making them the primary forum for most citizens seeking constitutional remedies. The High Courts' jurisdiction is not limited to the person aggrieved but extends to suo moto actions for protecting public interest. This provision establishes the High Court's as constitutional guardians within their territorial jurisdictions, with the power to intervene against governmental action that violates any legal right or principle of law.

The distinction between Article 32, which is limited to fundamental rights, and Article 226, which extends to any legal right or purpose, represents a deliberate constitutional design. Article 32 ensures that fundamental rights receive the highest level of protection through direct Supreme Court jurisdiction, while Article 226 provides a broader remedial power at the High Court level. This complementary structure ensures both universal protection of fundamental rights and accessibility of constitutional remedies to all citizens.

CATEGORIES OF CONSTITUTIONAL WRITS AND THEIR APPLICATION

The Indian Constitution provides for five traditional writs, i.e., *habeas corpus*, *mandamus*, *prohibition*, *quo warranto*, and *certiorari*, each serving distinct constitutional functions. These writs have ancient origins in English common law but have evolved considerably under the Indian constitutional framework to address contemporary violations and advance constitutional values.

The Constitution of India provides for five kinds of writ jurisdiction, which are following.

I. Habeas Corpus (Writ of Freedom)

Habeas corpus, meaning "you shall have the body," represents the most fundamental constitutional writ protecting personal liberty. It is issued to secure the release of a person who is illegally detained or imprisoned. The scope of habeas corpus under the Indian Constitution extends beyond traditional imprisonment to encompass unlawful restrictions on personal liberty in various forms. In the landmark case of *Sunil Batra v. Delhi Administration*,⁸ the Supreme Court observed that habeas corpus lies to protect not merely physical liberty but all forms of freedom from arbitrary governmental restraint. The Court recognized the writ's application to protect prisoners' rights, including the right to humane treatment, and expanded the concept of illegal detention to encompass substantive violations of constitutional rights.

(2) The power of a High Court under sub-clause (1) to issue directions, orders, or writs to any Government within the territories in relation to which it exercises jurisdiction shall not be limited to the enforcement of rights conferred by Part III.

(3) Where the High Court exercises powers under sub-clause (2), it shall preferably exercise the same on the petition of a person aggrieved."

⁸Sunil Batra v. Delhi Administration, A.I.R. 1980 S.C. 1579 (India).

II. Mandamus (Writ of Command)

Mandamus is issued to compel a governmental official or authority to perform a public duty that they are legally obligated to perform but have unlawfully refused or neglected. The writ is available not merely against arbitrary inaction but also against action in violation of statutory procedures or constitutional obligations. In the celebrated case of *Kesavananda Bharati v. State of Kerala*,⁹ the Supreme Court issued a mandamus compelling the state to allow admission to a religious institution despite governmental obstruction. The Court has repeatedly emphasized that mandamus lies to enforce not merely explicit statutory duties but also constitutional obligations and duties derived from the rule of law principle. The writ has proven particularly effective in compelling implementation of statutory welfare schemes, educational rights, and environmental protection measures.

III. Prohibition (Writ of Restraint)

Prohibition is issued to prevent an inferior court or administrative authority from exceeding its jurisdiction or exercising powers in violation of constitutional or legal principles. It operates prospectively, restraining unlawful action before it occurs. The Supreme Court has held that prohibition lies not merely where a court lacks jurisdiction entirely but also where it has exceeded the jurisdiction it possesses. The writ protects the constitutional structure by ensuring that lower courts and administrative bodies remain within their delegated spheres of authority. In numerous cases concerning administrative tribunals and specialized courts, the Supreme Court has invoked the prohibition to prevent usurpation of judicial authority or violation of procedural fairness.

IV. Quo Warranto (Writ of Authority)

Quo warranto, meaning "by what authority," is issued to challenge the right of a person to hold public office or exercise public authority. The writ ensures that only individuals satisfying constitutional and statutory qualifications hold public positions. In *Bhagwan Das v. State of Uttar Pradesh*,¹⁰ the Supreme Court applied quo warranto to unseat an official who lacked constitutional qualification for the position. The Court has held that quo warranto lies not merely where a person is wholly unauthorized to hold office but also where they hold office in violation of constitutional disqualifications or procedural defects in the selection process. This writ has become an important mechanism for ensuring that the constitutional scheme regarding public office remains operative and that individuals satisfying constitutional requirements exercise governmental authority.

⁹*Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

¹⁰*Bhagwan Das v. State of Uttar Pradesh*, A.I.R. 1976 S.C. 1393 (India).

V. Certiorari (Writ of Certainty)

Certiorari is issued to quash orders or decisions of inferior courts or administrative authorities that are made in violation of constitutional or legal principles. The writ operates to correct jurisdictional errors, procedural defects, or violations of natural justice. The Supreme Court has held that certiorari lies broadly to prevent arbitrariness in governmental action and to ensure compliance with constitutional principles. In cases addressing administrative decision-making, the Court has issued certiorari to quash orders violating procedural fairness, decisions based on irrelevant considerations, or actions exceeding statutory authority. The writ has proven effective in addressing violations in diverse contexts, including educational admissions, municipal administration, police action, and social security decisions.¹¹

PUBLIC INTEREST LITIGATION: EVOLUTION AND IMPACT

One of the most significant developments in Indian constitutional law has been the evolution of Public Interest Litigation through imaginative interpretation of Articles 32 and 226. PIL emerged in the 1980s as a mechanism to extend the reach of constitutional remedies beyond individual grievances to encompass broader questions affecting the public interest. This development transformed Articles 32 and 226 from provisions protecting individual rights into powerful instruments for advancing social justice and democratic accountability.¹² The Supreme Court recognized that the traditional requirement that only a person aggrieved by governmental action could seek remedies unnecessarily restricted the courts' ability to protect constitutional rights and enforce the rule of law. In a series of landmark decisions, *Justice P.N. Bhagwati* articulated an expanded vision of constitutionalism. Justice Bhagwati stated: "*The approach to judicial review in our country has to be quite different from that in the West because of the vast majority of people living below the poverty line and suffering from gross violations of their fundamental rights. The courts must fashion new remedies for vindication of rights of the poor and disabled.*"¹³ This philosophical approach enabled PIL as a constitutional innovation. PIL permits any citizen or social organization to approach the courts on behalf of persons unable to approach the courts themselves due to poverty, disability, or other impediments. This liberalization of locus standi (legal standing) has enabled the courts to intervene in matters affecting vast populations, environmental degradation, labor exploitation, prison conditions, educational deprivation, and governmental corruption. In cases such as the Environmental Pollution cases (1981-1990s), wherein the Supreme Court issued directions to protect Delhi's environment

¹¹M.P. Jain, *Indian Constitutional Law* 1635–40 (8th ed. 2018).

¹²India Const. arts. 32, 226.

¹³S.P. Gupta v. Union of India, 1981 Supp. S.C.C. 87, 232–33 (India).

against industrial pollution, PIL demonstrated its capacity to transcend individual grievance-based litigation and address systemic violations affecting public welfare.¹⁴

The Supreme Court has also expanded the remedial powers available under PIL. Traditional writs have been supplemented by continuing mandamus, whereby the Court retains jurisdiction to monitor compliance with its orders over extended periods. In cases addressing prison reforms, bonded labor abolition, and environmental remediation, the Court has issued directions extending over many years, appointing committees to oversee implementation and requiring periodic progress reports.¹⁵ This evolution has transformed constitutional remedies from discrete judicial pronouncements into ongoing processes for addressing systemic violations and advancing constitutional rights.

LANDMARK JUDICIAL DECISIONS SHAPING CONSTITUTIONAL REMEDIES

The Supreme Court's interpretation of Articles 32 and 226 has fundamentally shaped Indian constitutional law. Several landmark decisions have expanded the scope and effectiveness of constitutional remedies in protecting rights and advancing democratic values.

In *D.C. Saxena v. Union of India*, the Supreme Court emphasized that Articles 32 and 226 are not confined to granting individual relief but also empower courts to devise appropriate remedies to uphold constitutional values.¹⁶ The Court underscored that constitutional remedies may extend to addressing broader issues affecting the administration of justice and public institutions. This decision contributed to the jurisprudential foundation for judicial innovation in crafting remedies aimed at preserving constitutional integrity and accountability.

The landmark judgment in *Vishaka v. State of Rajasthan*¹⁷ demonstrated the Supreme Court's creative use of Article 32 to address violations of fundamental rights in the absence of legislative intervention. Recognizing that sexual harassment at the workplace violates Articles 14, 15, and 21, the Court laid down the Vishaka Guidelines to prevent and redress such harassment. This case exemplifies the transformative role of PIL, where the judiciary not only adjudicated rights but also formulated binding norms. These guidelines later formed the basis for the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. In *Bandhua Mukti Morcha v. Union of India*,¹⁸ the Supreme Court addressed the plight of bonded laborers and treated their condition as a violation of fundamental rights under Articles 21

¹⁴M.C. Mehta v. Union of India, (1987) 1 S.C.C. 395 (India); see also subsequent orders in the M.C. Mehta environmental cases.

¹⁵Bandhua Mukti Morcha v. Union of India, (1984) 3 S.C.C. 161 (India).

¹⁶D.C. Saxena v. Union of India, (1996) 5 S.C.C. 216 (India).

¹⁷Vishaka v. State of Rajasthan, (1997) 6 S.C.C. 241 (India).

¹⁸Bandhua Mukti Morcha v. Union of India, (1984) 3 S.C.C. 161 (India).

and 23. The Court issued wide-ranging directions for the identification, release, and rehabilitation of bonded laborers, thereby expanding the scope of habeas corpus to include economic exploitation. Justice P. N. Bhagwati emphasized that constitutional remedies must secure substantive liberty and not merely formal freedom. This case stands as a classic example of how PIL can function as an instrument of social transformation.

In *Narmada Bachao Andolan v. Union of India*,¹⁹ the Supreme Court dealt with issues arising from large-scale displacement due to dam construction projects. While upholding the project, the Court emphasized that development must be consistent with constitutional guarantees, including the rights to life, livelihood, and rehabilitation. The judgment highlighted that state actions affecting large populations must conform to principles of fairness, justice, and environmental sustainability. It thus reflects the judiciary's attempt to balance developmental objectives with fundamental rights protections.

EVOLUTION OF CONSTITUTIONAL REMEDIES: CONTEMPORARY APPLICATIONS

Over more than seven decades, Articles 32 and 226 have evolved to address contemporary challenges and violations that the constitutional framers could not have anticipated. The Supreme Court has expanded the scope of constitutional remedies through innovative interpretation, creating new remedial mechanisms and extending protection to previously unrecognized rights.

One significant development involves the recognition of rights beyond those explicitly enumerated in Part III of the Constitution. The Supreme Court has held that Article 32 protects fundamental rights not merely as stated in the Constitution but as they have evolved through judicial interpretation and constitutional development. This has enabled recognition of rights to privacy, dignity, shelter, education, and a clean environment, rights not explicitly listed in Part III but derived from the broader constitutional commitment to human dignity and democratic values. In the privacy case, the Supreme Court recognized privacy as a fundamental right derivable from the right to life and liberty, illustrating how Articles 32 and 226 protect not static rights but evolving constitutional commitments.

Articles 32 and 226 have also been invoked to address violations arising from private action. While traditionally understood to constrain governmental action, the Courts have recognized that fundamental rights may be violated through private conduct affecting public welfare or fundamental constitutional principles. Environmental pollution by private factories, exploitation by private employers, and discrimination by private institutions have all been addressed through constitutional remedies, particularly when the violation affects public interests or when

¹⁹Narmada Bachao Andolan v. Union of India, (2000) 10 S.C.C. 664 (India).

governmental failure to regulate enables the private violation. The digital age has presented novel challenges requiring adaptation of constitutional remedies. Issues concerning data privacy, surveillance, online harassment, and digital rights have been addressed through Articles 32 and 226. The Supreme Court's decisions regarding Aadhaar, the national identification system, exemplify how constitutional remedies have been adapted to address violations arising from digital governmental action while accommodating legitimate developmental objectives.

LIMITATIONS, CHALLENGES, AND CRITICAL ISSUES

Despite the significant evolution of constitutional remedies under Articles 32 and 226, several challenges and criticisms persist. The Supreme Court has occasionally been criticized for judicial overreach, the claim that the Court, in exercising writ jurisdiction, has exceeded appropriate constitutional boundaries and invaded the domain of coordinate branches of government. Critics argue that PIL, while serving important social justice functions, has sometimes enabled courts to substitute their judgment for that of democratically elected representatives regarding policy matters legitimately committed to other branches.

A significant practical challenge involves implementation and compliance with judicial orders. While the Supreme Court and High Courts possess constitutional authority to issue directives, enforcement remains problematic. Governmental bodies sometimes delay implementation or provide insufficient compliance with Supreme Court directions. The Court has responded by establishing oversight mechanisms and monitoring committees, but the fundamental tension between judicial authority and governmental resistance persists. In several environmental cases, judicial orders requiring pollution control or environmental remediation have met with substantial delays in implementation, raising questions about the practical effectiveness of constitutional remedies.

Additionally, the accessibility of constitutional remedies remains unequal across India's vast and diverse population. While PIL has extended the reach of constitutional protection to vulnerable populations, geographic disparities in access to courts, linguistic barriers, and the practical costs of litigation still limit many citizens' ability to invoke constitutional remedies. The proliferation of PIL has also created concerns regarding frivolous litigation and the potential for PIL to be misused for pursuing narrow interests cloaked in public interest rhetoric. The Supreme Court has responded by implementing stricter scrutiny of PIL petitions and requiring empirical demonstration that issues affect public interest.

COMPARATIVE PERSPECTIVE: ARTICLES 32 AND 226 IN GLOBAL CONTEXT

India's constitutional provisions for remedies and writs are notably expansive compared to similar provisions in other democracies. The United States Constitution, for example, does not explicitly provide a right to constitutional remedies; such rights are implied from the principle of judicial review established in *Marbury v. Madison*.²⁰ The German Constitution provides for constitutional remedies before the Federal Constitutional Court but limits access to defined categories of persons with constitutional standing. South Africa's Constitution provides for direct access to the Constitutional Court but similarly limits standing to defined categories.

Articles 32 and 226 distinguish themselves by making the right to constitutional remedies itself a fundamental right, accessible to any citizen and extended through PIL to encompass broader public interests. This distinctive feature reflects the Indian Constitution's profound commitment to constitutionalism and the rule of law as foundational to democratic governance. The expansive scope of writ jurisdiction under Article 226, extending beyond fundamental rights to any legal question, provides a breadth of constitutional remedies that exceeds comparable provisions in many democracies. These distinctive features have enabled the Indian judiciary to play a more active role in protecting constitutional rights and advancing democratic values than courts in many other nations.

CONCLUSION

Articles 32 and 226 of the Indian Constitution represent extraordinary constitutional commitments to judicial protection of fundamental rights and the rule of law. Through these provisions, the Constitution established a judicial mechanism for protecting individual liberty against arbitrary governmental action and for advancing democratic and constitutional values. The Supreme Court of India has consistently recognized the profound importance of these remedies. As Justice D.Y. Chandrachud has articulated: "Articles 32 and 226 are not mere procedural provisions but substantive guarantees of constitutional protection. They embody the principle that in a constitutional democracy, no violation of fundamental rights shall remain unremedied and no act of arbitrary governmental power shall escape judicial scrutiny."

The evolution of constitutional remedies through PIL demonstrates the Indian judiciary's adaptive approach to constitutional interpretation. The Court has recognized that constitutional protections must evolve to address contemporary challenges and that the judiciary possesses the authority and responsibility to fashion remedies addressing systemic violations affecting vast populations. This approach has enabled the Court to address violations affecting the most vulnerable populations, bonded laborers, environmental degradation affecting millions,

²⁰*Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

workplace harassment, and governmental corruption that might otherwise have remained beyond judicial reach.

Nevertheless, challenges persist. The practical effectiveness of constitutional remedies remains limited by implementation deficiencies, geographic inequalities in access, and the political economy of governmental compliance with judicial orders. The balance between vigorous judicial protection of constitutional rights and respect for democratic decision-making by coordinate branches remains contested. Future development of constitutional remedies will require maintaining robust protection of fundamental rights while addressing legitimately raised concerns regarding judicial institutional capacity and democratic accountability.

Ultimately, Articles 32 and 226 represent Dr. Ambedkar's recognition that constitutional guarantees of rights remain mere parchment unless effective mechanisms exist for their enforcement. Through these provisions, the Constitution established the judiciary as the sentinel of the Constitution, with authority and responsibility to protect fundamental rights and ensure governmental accountability. As Indian democracy faces contemporary challenges to constitutional rights and democratic values, these provisions remain vital instruments for protecting individual liberty, advancing social justice, and sustaining democratic governance. The ongoing evolution of constitutional remedies will likely reflect the Indian judiciary's commitment to fulfilling these foundational constitutional purposes while adapting to emergent challenges and respecting democratic institutional structures.

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