



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and

a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB, LLM degrees from Banaras Hindu University & PHD from university of Kota. He has successfully completed UGC sponsored M.R.P for the work in the Ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; PH.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St. Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing PH.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of Law, Forensic Justice and Policy Studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Inter-country adoption laws from Uttarakhand University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, PH.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, PH.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University. More than 25 Publications in renowned National and International Journals and has authored a Text book on CR.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ARTICLE 32: RIGHT TO CONSTITUTIONAL REMEDIES — THE HEART AND SOUL OF THE INDIAN CONSTITUTION

AUTHORED BY - ARSHIA GUPTA
(BBA LLB (H), 2024-29, URN: 2471128)
IILM UNIVERSITY GURUGRAM

Abstract

The Indian Constitution enshrines not only fundamental rights but also a direct remedial mechanism to enforce them through Article 32, which empowers individuals to seek remedies before the Supreme Court for violation of their fundamental rights. This provision, described by Dr. B.R. Ambedkar as the “Heart and Soul of the Indian Constitution”, ensures that rights are not merely declaratory but enforceable. This paper examines the historical evolution of Article 32¹, its scope and nature as a fundamental right, the writ jurisdiction of the Supreme Court, and its relation to Article 226². It also analyses major judicial interpretations that have shaped this article, such as Rashid Ahmed v. Municipal Board Kairana³, Maneka Gandhi v. Union of India⁴ and K.S. Puttaswamy v. Union of India⁵. The study finds that Article 32 remains the cornerstone of India’s constitutional democracy, ensuring that citizens have a guaranteed and effective mechanism to protect their fundamental rights.

Keywords: Fundamental Rights, Article 32, Writ jurisdiction, Remedial Mechanism

Introduction

Research Problem and Central Question

This research addresses a pivotal constitutional question:

How does Article 32 function as the ultimate safeguard of fundamental rights, and what challenges hinder its effective enforcement in India?

¹ INDIA CONST. art. 32.

² INDIA CONST. art. 226.

³ Rashid Ahmed v. Municipal Board Kairana, AIR 1950 SC 163.

⁴ Maneka Gandhi v. Union of India, AIR 1978 1 SCC 248

⁵ K.S. Puttaswamy v. Union of India, AIR 2017 10 SCC 1.

Although the Constitution guarantees several fundamental rights, their true efficacy depends on mechanisms that ensure enforceability. Article 32 bridges the gap between constitutional ideals and practical justice by empowering individuals to seek direct relief from the Supreme Court. The paper evaluates whether this constitutional guarantee continues to serve as a robust instrument of justice or whether it has been diluted through procedural bottlenecks and judicial limitations.

And to what extent does Article 32 fulfil its role as the Constitution’s “heart and soul” in guaranteeing effective remedies against State violations? The analysis examines judicial trends that have either expanded or constrained this guarantee and the balance between accessibility and judicial discipline in writ jurisdiction.

Background and Context

When the framers of the Indian Constitution debated the framework of fundamental rights, they understood that mere declarations would be meaningless without an enforceable mechanism. As Dr. B.R. Ambedkar declared in the Constituent Assembly:

*“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 heart and soul of the Constitution.”*⁶

Article 32 guarantees citizens the right to move the Supreme Court directly for the enforcement of fundamental rights through appropriate writs. By constitutionalizing the remedy itself, the framers merged substantive rights with procedural enforcement, embodying the principle that justice must be **immediate, effective, and universal**.

Objectives and Significance

This paper aims to:

1. Explain the historical evolution and doctrinal foundation of Article 32.
2. Analyse its scope, nature, and interrelationship with Article 226.
3. Examine how the Supreme Court has interpreted and expanded Article 32 through landmark judgments.
4. Evaluate challenges to its accessibility and efficacy.

The study is significant because Article 32 embodies the operational essence of

⁶ Constituent Assembly Debates, Vol. VII (Dec. 9, 1948).

constitutionalism—the belief that power must be controlled by law and that citizens must have accessible legal remedies against the State’s arbitrariness.

Structure of the Paper

The research is organized as follows:

- **Part I** explores the historical background and evolution of Article 32.
- **Part II** analyses its nature, scope, and relation with Article 226.
- **Part III** examines the writs available under it.
- **Part IV** assesses the role of judicial activism and public interest litigation.
- **Part V** discusses limitations and contemporary challenges.
- **Part VI** provides comparative perspectives from other constitutions.
- **Part VII** concludes with reflections on its continuing relevance.

Part I – Historical Background and Evolution

1. Constituent Assembly Debates

The inclusion of Article 32 into the Indian Constitution was the result of deliberate constitutional anticipation. Members of the Constituent Assembly recognized that a Bill of Rights without judicial remedies would be an empty declaration. Members of the drafting committee such as **K.M. Munshi, Alladi Krishnaswamy Ayyar, and B.N. Rau** stressed the need for a constitutional provision ensuring enforceability of rights through judicial review.

Dr. Ambedkar insisted that fundamental rights should be “justiciable” and “enforceable”. The framers, therefore, placed Article 32 in Part III, making it a **fundamental right in itself**. This decision distinguished India’s Constitution from the British model, where Parliament remains supreme and the judiciary lacks the power to strike down laws.

The phrase “right to move to the Supreme Court” represented an unprecedented empowerment of the citizens, transforming courts from passive arbiters into *guardians of the Constitution*. The Supreme Court was envisioned as a **“sentinel on the qui vive,”** which refers to a watchful guardian ever alert to protect liberty from executive and legislative transgressions.

The drafting history shows that the framers intended Article 32 not merely as a procedural clause but as an integral component of the right itself. Unlike in the United Kingdom, where writs were part of royal prerogatives, the Indian Constitution democratized these remedies, granting every citizen a constitutional right to approach the apex court.

2. Colonial and Comparative Influences

The concept of judicial remedies originates from English common law, where prerogative writs such as *habeas corpus*, *mandamus*, and *certiorari* were issued by the King's Bench as instruments of royal prerogative. However, in England, they were not available as a right but at the discretion of the Crown.

The framers democratized this remedy by granting every citizen a **constitutional right** to such writs. The American influence was also significant: in *Marbury v. Madison*⁷, Chief Justice John Marshall declared that “it is emphatically the province and duty of the judicial department to say what the law is.” This case established the doctrine of judicial review but lacked a textual equivalent of Article 32. India thus went a step further by constitutionalizing both *judicial review* and *access to remedies*, thereby ensuring that enforcement itself became a fundamental right.

3. Early Judicial Interpretation

The post-independence judiciary initially interpreted Article 32 narrowly. In *Rashid Ahmed v. Municipal Board, Kairana*⁸ the Court held that the right to move the Supreme Court is itself a fundamental right but confined to violations of fundamental rights, not of ordinary legal rights. This demarcation preserved the sanctity of constitutional jurisdiction.

The resilience of Article 32 was gravely tested during the Emergency (1975–77). In *ADM Jabalpur v. Shivkant Shukla*⁹, the Supreme Court infamously held that even the right to life could be suspended during an emergency, denying citizens the writ of *habeas corpus*. The judgment remains a dark chapter in Indian constitutional history. However, its repudiation in *Maneka Gandhi v. Union of India*¹⁰ and later in *K.S. Puttaswamy v. Union of India*¹¹ reaffirmed that the right to life and liberty is inalienable and cannot be suspended arbitrarily.

By the 1980s, Article 32 had evolved into a dynamic instrument of constitutional governance. The rise of public interest litigation (PIL) transformed it from an individual remedy into a vehicle for collective justice. As Justice Bhagwati noted, “the purpose of Article 32 is to reach the poor and the deprived, not to remain confined to the elite.”

⁷ *Marbury v. Madison* 5 U.S. 137 (1803).

⁸ *Rashid Ahmed v. Municipal Board Kairana*, AIR 1950 SC 163.

⁹ *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 2 SCC 521.

¹⁰ *Maneka Gandhi v. Union of India*, AIR 1978 1 SCC 248.

¹¹ *K.S. Puttaswamy v. Union of India*, AIR 2017 10 SCC 1.

4. The Transformative Vision

Article 32 thus embodies a transformative vision of justice—linking constitutional morality with social realities. It ensures that the Constitution is not a passive document but a living charter of rights. Its genius lies in combining procedural simplicity with substantive depth, enabling courts to breathe life into the abstract ideals of liberty and equality. As a result, Article 32 has become both the guardian and the guarantor of India’s constitutional ethos.

Part II – Nature and Scope of Article 32

1. A Fundamental Right in Itself

Article 32(1)¹² explicitly states that “the right to move the Supreme Court... shall not be suspended except as otherwise provided for by this Constitution.” The Supreme Court has consistently held that this right is a fundamental right in itself. In *L. Chandra Kumar v. Union of India*¹³, the Court declared that judicial review under Articles 32 and 226 is part of the basic structure of the Constitution and therefore beyond the amending power of Parliament.

Thus, Article 32 functions on two levels: as a **substantive right** (to seek constitutional remedies) and as a **procedural mechanism** (to enforce other rights). This dual character is unique to the Indian constitutional framework.

2. Locus Standi and Public Interest Litigation

Originally, Article 32 petitions were limited to aggrieved individuals whose own fundamental rights were violated. However, in *S.P. Gupta v. Union of India*¹⁴, Justice P.N. Bhagwati revolutionized access to justice by relaxing the traditional doctrine of *locus standi*. He held that any public-spirited citizen could file a petition on behalf of the disadvantaged or those unable to access the courts.

This expansion transformed Article 32 into a powerful instrument for **social justice**. It laid the foundation for **Public Interest Litigation (PIL)**, through which the Supreme Court began addressing systemic violations affecting large groups—such as bonded labourers, prisoners, and environmental victims.

3. Relationship with Article 226

Article 226, which empowers High Courts to issue writs “for the enforcement of any of the

¹² INDIA CONST. art. 32, cl. 1.

¹³ *L. Chandra Kumar v. Union of India*, AIR 1997 3 SCC 261.

¹⁴ *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

rights conferred by Part III and for any other purpose,” overlaps with Article 32. However, their functions differ. Article 32 provides **direct access to the Supreme Court** for enforcing fundamental rights, while Article 226 offers a broader remedy before High Courts for both legal and constitutional rights.

In *K.K. Kochunni v. State of Madras*¹⁵, the Court clarified that the existence of Article 226 does not curtail the power of the Supreme Court under Article 32. Both coexist as parallel safeguards. High Courts act as the first guardians, while the Supreme Court remains the ultimate constitutional sentinel.

Nevertheless, the Court has occasionally directed litigants to approach High Courts first to prevent overburdening the apex docket. In *P.N. Kumar v. Municipal Corporation of Delhi*¹⁶, it was held that although the right to move the Supreme Court is itself fundamental, the Court retains discretion to refuse relief when alternate remedies are available.

4. Jurisdictional Scope and Procedural Innovations

While Article 32 extends only to fundamental rights, its remedial scope is expansive. The Court has used ancillary powers under Article 142 to deliver “complete justice.” Procedural innovations—such as epistolary jurisdiction—have made enforcement flexible; for instance, in *Sunil Batra v. Delhi Administration*¹⁷, a prisoner’s letter was treated as a writ petition, reaffirming that procedural formality cannot defeat substantive rights.

Article 32 thus performs both preventive and remedial functions: it prevents future violations through injunctions and remedies ongoing infringements through corrective orders.

5. Preventive and Remedial Dimensions

Article 32 serves both **preventive** and **remedial** functions. It can be invoked to pre-emptively restrain the State from infringing rights or to correct ongoing violations. For instance, the Court has issued prohibition orders preventing unlawful detentions and mandamus orders compelling positive governmental action. The preventive role is critical in ensuring that the judiciary remains proactive rather than merely reactive.

¹⁵ *K.K. Kochunni v. State of Madras*, AIR 1959 SC 725.

¹⁶ *P.N. Kumar v. Mun. Corp. of Delhi*, AIR 1987 4 SCC 609.

¹⁷ *Sunil Batra v. Delhi Admin.*, AIR 1978 4 SCC 494.

Part III – Writs under Article 32

Article 32(2) authorizes the Supreme Court to issue “**directions or orders or writs**” in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto*, and *certiorari*. These writs are flexible instruments of justice, tailored to safeguard fundamental rights.

1. Habeas Corpus

The writ of *habeas corpus*—literally meaning “produce the body”—is the cornerstone of personal liberty. It compels authorities to present a detained person before the Court and justify the legality of the detention. In *ADM Jabalpur v. Shivkant Shukla*¹⁸, the Court’s denial of habeas corpus during the Emergency provoked widespread condemnation. Later cases such as *Maneka Gandhi v. Union of India*¹⁹ and *K.S. Puttaswamy v. Union of India*²⁰ restored its vitality, emphasizing that the right to life and liberty cannot be suspended even in crises. Today, *habeas corpus* embodies judicial vigilance against executive abuse.

2. Mandamus

The writ of *mandamus* commands a public authority to perform its legal duty. It ensures governmental accountability and prevents administrative paralysis. In *Comptroller & Auditor General v. K.S. Jagannathan*²¹, the Court held that *mandamus* could compel authorities not only to act but to act **fairly and reasonably**. The writ has been used to enforce environmental duties, welfare schemes, and service rights, reinforcing constitutional governance.

3. Certiorari

The writ of *certiorari* quashes decisions of inferior courts or tribunals issued without or in excess of jurisdiction. In *State of Uttar Pradesh v. Mohd. Nooh*²², the Supreme Court clarified that *certiorari* corrects jurisdictional errors apparent on record and ensures adherence to natural justice. This writ has gained prominence in administrative law, where tribunals often adjudicate matters affecting rights.

¹⁸ *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 2 SCC 521.

¹⁹ *Maneka Gandhi v. Union of India*, AIR 1978 1 SCC 248.

²⁰ *K.S. Puttaswamy v. Union of India*, AIR 2017 10 SCC 1.

²¹ *Comptroller & Auditor Gen. v. K.S. Jagannathan*, AIR 1986 2 SCC 679.

²² *State of U.P. v. Mohd. Nooh*, AIR 1958 SC 86.

4. Prohibition

The writ of *prohibition* operates preventively—it restrains a subordinate court or tribunal from exceeding its jurisdiction. The Supreme Court has invoked this writ to prevent contemptuous encroachments upon jurisdictional limits. Its preventive nature exemplifies Article 32’s forward-looking design, aimed at forestalling violations rather than merely repairing them.

5. Quo Warranto

The writ of *quo warranto* (“by what authority”) challenges the legality of a person’s claim to public office. In *University of Mysore v. C.D. Govinda Rao*²³, the Court held that any citizen may file a *quo warranto* petition to ensure that public offices are not unlawfully occupied. This writ reinforces **rule of law and democratic accountability**, ensuring that appointments adhere to constitutional and statutory norms.

Together, these writs constitute the remedial framework through which Article 32 breathes life into the Constitution’s guarantees.

Part IV – Judicial Activism and Expansion of Article 32

1. The Rise of Public Interest Litigation (PIL)

The 1980s witnessed the metamorphosis of Article 32 from a purely individual remedy to an instrument of collective justice. Justice P.N. Bhagwati and Justice V.R. Krishna Iyer lead the way for this transformation by expanding the Court’s *locus standi* doctrine in a series of landmark judgments. In *S.P. Gupta v. Union of India*²⁴, the Court ruled that “where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right,” any member of the public acting in good faith may maintain an application.

This innovation gave rise to the doctrine of **Public Interest Litigation (PIL)**. PILs allowed issues of poverty, bonded labour, environmental degradation, and prison reforms to reach the Supreme Court through Article 32 petitions. In *Hussainara Khatoon v. State of Bihar*²⁵, a series of petitions revealed the plight of undertrial prisoners languishing in jails for years without trial. The Court’s intervention recognized the **right to speedy trial** as implicit in Article 21.

Subsequently, in *M.C. Mehta v. Union of India*²⁶, the Court addressed issues ranging from

²³ Univ. of Mysore v. C.D. Govinda Rao, AIR 1965 SC 491.

²⁴ S.P. Gupta v. Union of India, AIR 1982 SC 149.

²⁵ Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369.

²⁶ M.C. Mehta v. Union of India, AIR 1987 SC 1086.

environmental pollution to industrial safety, extending constitutional protection to the right to a clean environment. Article 32 became the principal constitutional channel for social reform, elevating the judiciary into a proactive guardian of collective rights.

2. Expanding Fundamental Rights through Judicial Interpretation

Article 32 petitions played a central role in expanding the substantive meaning of fundamental rights, particularly Article 21. In *Maneka Gandhi v. Union of India*²⁷, the Supreme Court rejected the narrow interpretation of “procedure established by law” and read into it the requirement of **fair, just, and reasonable procedure**. The decision overruled *A.K. Gopalan v. State of Madras*²⁸ and established that the right to life includes not merely existence but a life with dignity.

Subsequent judgments under Article 32 further broadened Article 21’s scope:

- *Olga Tellis v. Bombay Municipal Corporation*²⁹ recognized the right to livelihood.
- *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*³⁰ recognized the right to health.
- *Unni Krishnan v. State of Andhra Pradesh*³¹ declared education up to age 14 a fundamental right.
- *Subhash Kumar v. State of Bihar*³² and *M.C. Mehta*³³ reaffirmed the right to a pollution-free environment.
- Finally, *K.S. Puttaswamy v. Union of India*³⁴ affirmed the **right to privacy** as intrinsic to liberty and dignity.

These judicial developments, facilitated through Article 32 petitions, illustrate how the Court’s remedial jurisdiction reshaped the very meaning of fundamental rights.

3. Epistolary Jurisdiction and Access to Justice

To make the Supreme Court more accessible to the poor and marginalized, the Court developed what is known as **epistolary jurisdiction**. Under this principle, even a **letter, postcard, or**

²⁷ *Maneka Gandhi v. Union of India*, AIR1978 1 SCC 248.

²⁸ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

²⁹ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1985 3 SCC 545.

³⁰ *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, AIR 1996 4 SCC 37.

³¹ *Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors.*, 1993 AIR 2178, 1993 SCR (1) 594, 1993 (1) SCC 645.

³² *Subhash Kumar v. State of Bihar*, AIR 1991 1 SCC 598.

³³ *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

³⁴ *K.S. Puttaswamy v. Union of India*, AIR 2017 10 SCC 1.

telegram written by an individual can be treated as a formal writ petition under Article 32. This was a major step in breaking down traditional procedural barriers that often prevented disadvantaged people from seeking justice.

The concept first came into prominence in *Sunil Batra v. Delhi Administration*³⁵, where a prisoner wrote a letter describing the **harsh and unlawful treatment** he was facing in prison. The Supreme Court treated the letter as a legitimate petition, thereby intervening to protect his fundamental rights. Similarly, in *People's Union for Democratic Rights v. Union of India*³⁶, also known as the Asiad Workers' Case, the Court received a letter about the **exploitation and poor working conditions of labourers**. The Court converted this communication into a full writ petition, resulting in direct action to safeguard the workers' rights.

Through epistolary jurisdiction, the Supreme Court **prioritized substance over form**. It showed that justice should not be denied simply because someone cannot follow formal legal procedures or lacks literacy. This approach reflects Dr. Ambedkar's vision that constitutional remedies should be **living tools available to every citizen**, not just a privilege for the educated or wealthy. By recognizing letters and telegrams as legitimate petitions, the Court made fundamental rights **practically enforceable for all**, ensuring that even the most vulnerable could have their grievances heard and addressed.

4. Judicial Creativity and the Separation of Powers Debate

While judicial activism under **Article 32** has been praised for **giving voice to the marginalized and powerless**, it has also faced criticism. Critics argue that, in some cases, the Supreme Court has **stepped into areas traditionally reserved for the legislature or executive**, raising concerns about overreach and upsetting the **separation of powers**.

A prominent example is *Vineet Narain v. Union of India*³⁷, also known as the "Hawala case," where the Supreme Court issued detailed **guidelines to ensure the independent investigation of corruption cases**. While these measures strengthened accountability, some critics felt that the Court was **interfering in the functioning of investigative agencies**, which normally fall under the executive branch. This sparked a debate on **how far judicial activism should go** without encroaching on other constitutional institutions.

Despite such criticisms, the judiciary defends its interventions as a **constitutional duty** to

³⁵ Sunil Batra v. Delhi Admin., AIR 1978 4 SCC 494.

³⁶ People's Union for Democratic Rights v. Union of India, AIR 1982 3 SCC 235.

³⁷ Vineet Narain v. Union of India, AIR 1998 1 SCC 226.

protect fundamental rights. In *People's Union for Democratic Rights v. Union of India*³⁸, Justice P.N. Bhagwati emphasized that when **the poor and disadvantaged seek justice**, the Court must **act compassionately and practically**, rather than getting bogged down in procedural technicalities.

In essence, judicial activism under Article 32 has evolved into a form of **judicial humanism**—a commitment to **ensuring real, substantive justice**. It prioritizes protecting citizens' rights and addressing social inequalities over strict adherence to formal procedures. By doing so, the Court ensures that **constitutional guarantees are meaningful and accessible**, especially for those who cannot advocate for themselves.

Part V – Limitations and Contemporary Challenges

1. Overburdened Supreme Court Docket

The growing popularity of **Article 32** as a direct remedy has resulted in a **massive increase in petitions** filed before the Supreme Court. By 2024, over **80,000 cases were pending**, with a large number concerning alleged violations of fundamental rights. However, not all these cases involve serious constitutional issues; many are **routine administrative grievances** that could be resolved at lower levels. This surge in petitions places a **heavy burden on the Court**, often causing delays in addressing matters of genuine constitutional significance.

In *P.N. Kumar v. Municipal Corporation of Delhi*³⁹, the Supreme Court clarified that while citizens **have a fundamental right to approach the Court**, the Court can exercise **discretion** to direct certain cases to the **appropriate High Courts under Article 226**. This approach balances the citizen's right to seek remedies with the need to **manage the Court's workload effectively**. It ensures that Article 32 remains **reserved for issues of national importance or severe violations of fundamental rights**, rather than being overwhelmed by routine complaints.

In other words, the Court recognizes that **access to justice must be practical as well as constitutional**, preserving the **effectiveness and sanctity of Article 32** while still protecting citizens' rights.

2. Overlap and Coordination with Article 226

The simultaneous existence of **Articles 32 and 226**—which both empower courts to issue writs

³⁸ *People's Union for Democratic Rights v. Union of India*, AIR 1982 3 SCC 235.

³⁹ *P.N. Kumar v. Municipal Corp. of Delhi*, AIR 1987 SC 1929.

for enforcing fundamental rights—can sometimes create **confusion and inefficiency**. Many litigants choose to **bypass High Courts** and directly approach the Supreme Court, a practice often referred to as **forum shopping**. While the Supreme Court has, on occasions, **discouraged such practices**, the overlap between the two remedies continues to pose challenges.

This dual structure, though a strength in offering multiple avenues for protection, can also **slow down the judicial process** and lead to **duplicative efforts**. Litigants might file similar petitions in both forums, stretching judicial resources and delaying resolution of other cases.

To address this, several constitutional scholars have suggested a **more structured framework**: High Courts should act as the **primary forums for enforcing fundamental rights**, while the Supreme Court should function mainly as the **final court of constitutional interpretation**. Such a system would preserve the **accessibility of Article 32** for urgent or exceptional cases, while ensuring that routine matters are handled efficiently at the High Court level. This approach balances **speed, accessibility, and judicial efficiency** without undermining the fundamental guarantee of constitutional remedies.

3. Emergency Suspensions and Constitutional Resilience

The **1975–77 Emergency** in India exposed the **vulnerability of Article 32** under authoritarian conditions. In *ADM Jabalpur v. Shivkant Shukla*⁴⁰, the Supreme Court's majority held that during the suspension of fundamental rights, citizens could **not file petitions for habeas corpus**, effectively **paralyzing Article 32**. This decision demonstrated that even a fundamental right could be rendered powerless if constitutional safeguards were ignored or overridden.

In response, post-emergency reforms, particularly the **Forty-fourth Constitutional Amendment of 1978**, were introduced to **strengthen the protection of fundamental rights**. The Amendment ensured that certain core rights, especially **Articles 20 (protection in respect of conviction for offences) and 21 (protection of life and personal liberty)**, could **not be suspended even during emergencies**.

Later, in *L. Chandra Kumar v. Union of India*⁴¹, the Supreme Court reaffirmed that **judicial review under Articles 32 and 226 is part of the Constitution's basic structure**, meaning it cannot be amended or abrogated. This landmark judgment **reinstated the supremacy of Article 32**, reaffirming its role as a **cornerstone of constitutional governance** and a **guarantee that citizens can always seek judicial protection of their fundamental rights**.

⁴⁰ *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 2 SCC 521.

⁴¹ *L. Chandra Kumar v. Union of India*, AIR 1997 3 SCC 261.

These developments highlight that while Article 32 faced historical challenges, **constitutional safeguards and judicial interpretations have reinforced its resilience**, ensuring it continues to function as the **ultimate protector of citizens' rights** in India.

4. Accessibility, Cost, and the Digital Divide

Despite its **strong constitutional foundation**, Article 32 remains **out of reach for many citizens** due to **geographical and financial barriers**. Most petitioners must travel to **New Delhi**, where the Supreme Court is located, which can be **costly and time-consuming**, particularly for individuals from rural areas or economically disadvantaged backgrounds.

While the Supreme Court has **introduced e-filing systems and virtual hearings** to improve accessibility, these technological solutions are **not yet uniformly available**. Many rural litigants **lack internet access, digital literacy, or the resources to participate online**, creating a **digital divide** that risks turning a fundamental right into a **privilege reserved for the connected and affluent**.

To truly **democratize Article 32**, structural reforms are needed. This could include establishing **regional benches of the Supreme Court**, making physical access easier for people across India. Additionally, **strengthening legal aid services** and outreach programs would ensure that **constitutional remedies are genuinely available to all**, regardless of location, economic status, or literacy. Such measures would uphold the **vision of Dr. Ambedkar**, ensuring that the right to constitutional remedies remains **practical, effective, and inclusive** for every citizen.

5. Institutional Self-Restraint and Need for Reform

Judicial over-enthusiasm, if unchecked, can transform Article 32 from a remedy into a source of governance. The Court has recognized this risk and increasingly emphasizes **institutional self-restraint**. In *State of Uttar Pradesh v. Jeet S. Bisht*⁴², the Supreme Court warned that “judicial directions should not be perceived as encroachment but as guidance within constitutional boundaries.”

Proposed reforms include:

- Strengthening High Courts to handle fundamental-rights petitions.
- Establishing regional benches of the Supreme Court.
- Codifying simplified procedures for indigent litigants.
- Promoting awareness of constitutional remedies at the grassroots level.

⁴² State of U.P. v. Jeet S. Bisht, AIR 2007 6 SCC 586.

These measures would ensure that Article 32 continues to embody Ambedkar's vision of a living and accessible Constitution.

Part VI – Comparative Constitutional Perspective

1. United States

The U.S. Constitution is often regarded as a pioneer in rights jurisprudence, but it does not provide an equivalent of Article 32. Judicial review was established in *Marbury v. Madison*⁴³, allowing courts to strike down unconstitutional laws. However, citizens cannot directly approach the U.S. Supreme Court; they must first exhaust lower courts. This hierarchical approach limits immediate access to judicial remedies, highlighting the unique democratic commitment of India to allow citizens direct access to the Supreme Court to protect fundamental rights.

2. United Kingdom

The UK follows a system of parliamentary sovereignty rather than a written constitution. While prerogative writs exist under common law, their issuance is discretionary, and they do not constitute a guaranteed remedy. The Human Rights Act 1998⁴⁴ incorporated the European Convention on Human Rights, allowing courts to issue “declarations of incompatibility”, but they cannot strike down parliamentary legislation. In contrast, India's Article 32 provides a constitutionally entrenched and enforceable mechanism, giving citizens stronger protection and direct access to justice.

3. South Africa

Section 38 of the South African Constitution (1996)⁴⁵ closely mirrors Article 32, permitting any person acting in the public interest to approach courts for enforcement of rights. South Africa also recognizes broad locus standi, enabling public-spirited individuals to represent those unable to approach the courts themselves. This framework has been instrumental in advancing socio-economic rights, such as in *Government of the Republic of South Africa v. Grootboom*⁴⁶ (right to housing) and *Minister of Health v. Treatment Action Campaign*⁴⁷ (right

⁴³ *Marbury v. Madison* 5 U.S. 137 (1803).

⁴⁴ Human Rights Act 1998, c. 42 (U.K.).

⁴⁵ S. Afr. Const., 1996, § 38.

⁴⁶ *Government of the Republic of S. Afr. v. Grootboom*, 2001 (1) SA 46 (CC).

⁴⁷ *Minister of Health v. Treatment Action Campaign*, 2002 (5) SA 721 (CC).

to healthcare). Like India, South Africa prioritizes practical access to justice over rigid procedural limitations.

4. Canada

The Canadian Charter of Rights and Freedoms (1982) provides remedies under Section 24(1)⁴⁸, empowering courts to grant “such remedy as the court considers appropriate and just.” However, Canada does not allow direct access to its Supreme Court; petitioners must navigate a multi-tiered judicial system. Despite this, Canadian courts, similar to India, have used purposive interpretation to expand rights and ensure substantive justice, though the process is more layered and less immediate.

5. European Union

The Charter of Fundamental Rights of the European Union (2000)⁴⁹ mainly provides administrative remedies, and the **European Court of Justice (ECJ)** reviews compliance of member states. Unlike India, EU citizens cannot directly approach national courts for constitutional enforcement and often rely on regional institutions. India’s model stands out because it grants immediate and domestic access to remedies, empowering citizens directly.

6. Lessons for India

Comparative analysis reveals that India’s constitutional design is exceptionally citizen-focused: it democratizes judicial remedies by making them directly enforceable. However, to maintain this distinctiveness, India should:

- Strengthen decentralized enforcement through High Courts to reduce the Supreme Court’s burden.
- Exercise judicial restraint to preserve the balance of powers among the legislature, executive, and judiciary.
- Modernize procedural frameworks to make constitutional remedies accessible to all, including the rural and economically disadvantaged.

Thus, while other global jurisdictions offer insights, none combine rights, remedies, and direct judicial access as effectively as Article 32, making it a truly distinctive feature of India’s constitutional democracy.

⁴⁸ Canadian Charter of Rights and Freedoms, s. 24(1) (1982).

⁴⁹ Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1.

Part VII- Recommendations

While Article 32 remains a **powerful instrument for enforcing fundamental rights**, its **practical implementation faces several challenges**. To ensure that this constitutional safeguard continues to serve its intended purpose, several recommendations can be considered:

1. Strengthen High Courts for Efficient Fundamental Rights Enforcement

High Courts, empowered under **Article 226**, are the **first line of defence** for fundamental rights. Strengthening their capacity—through additional judges, specialized constitutional benches, and administrative support—can **reduce the burden on the Supreme Court**, ensuring faster adjudication of rights-related cases. By enabling High Courts to effectively handle routine and regional matters, the Supreme Court can focus on cases of **national importance or novel constitutional interpretation**.

2. Establish Regional Supreme Court Benches

Access to the Supreme Court is often limited for citizens residing far from New Delhi. Establishing **regional benches** could provide **geographical accessibility**, reduce travel costs, and make Article 32 remedies more **inclusive**. Such benches would allow citizens from different states to approach the apex court **without undue hardship**, promoting **equitable access to justice** across India.

3. Codify Simplified Procedures for In Forma Pauperis Litigants

Many citizens who seek relief under Article 32 are **economically disadvantaged** and may struggle with legal formalities. Codifying **simplified procedures for in forma pauperis litigants** (those filing as indigent) would remove procedural barriers, ensuring that **constitutional remedies are genuinely accessible to all**, regardless of financial or educational background.

4. Promote Legal Literacy and Awareness

Awareness of fundamental rights and the remedies available under Article 32 remains **low among marginalized populations**. Initiatives such as **legal literacy campaigns, outreach programs, and pro bono services** can empower citizens to **assert their rights effectively**. By combining **education with access**, the promise of constitutional remedies can reach its full potential.

5. Balance Judicial Activism with Institutional Restraint

Judicial activism under Article 32 has expanded the **scope of fundamental rights** and enhanced social justice. However, overreach risks **blurring the separation of powers** and can generate administrative challenges. Courts should continue to **protect citizens' rights proactively** while exercising **restraint in policy matters**, preserving a **healthy balance between judiciary, legislature, and executive**.

By implementing these recommendations, India can **strengthen the practical effectiveness of Article 32**, ensuring that it remains not only the *"heart and soul"* of the Constitution but also a **living, accessible, and dynamic instrument of justice** for all citizens.

Part VIII – Conclusion

Article 32 epitomizes the soul of Indian constitutionalism. It operationalizes the philosophy that rights without remedies are empty declarations. By granting citizens direct access to the Supreme Court, the framers ensured that the Constitution's guarantees are not theoretical but enforceable.

From its conception in the Constituent Assembly to its expansion through PILs, Article 32 has evolved into a dynamic instrument of social justice. It has transformed the Supreme Court from a traditional adjudicator into a **constitutional guardian** capable of addressing systemic injustices and protecting individual liberty.

Yet, this very dynamism poses challenges. Judicial overreach, docket congestion, and unequal access threaten to dilute the efficiency and integrity of Article 32. The future of this constitutional remedy depends on balancing **vigour with restraint**, ensuring that the judiciary remains both active and accountable.

Dr. Ambedkar's metaphor remains enduringly apt: Article 32 is indeed the *"heart and soul"* of the Constitution. But a heart must beat steadily, not erratically. The continued vitality of Article 32 depends on sustaining its rhythm—responsive to injustice yet restrained by constitutional humility. As long as it beats, the Indian Constitution will continue to live as a testament to the rule of law and the enduring promise of justice for all.