

CONSTITUTIONAL LAW PROJECT

TOPIC

DYNAMIC APPROACH ADOPTED BY THE SUPREME COURT

UNDER ARTICLE 32 OF THE CONSTITUTION

&

DISTINCTION BETWEEN ARTICLE 32 & 226

OF THE CONSTITUTION

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INTRODUCTION

It is true that a declaration of fundamental rights is meaningless unless there is effective machinery for the enforcement of the rights.

It is remedy which makes the right real if there is no remedy there is no right at all. It was, therefore in the fitness of the things that our constitution –makers having incorporated a long list of fundamental rights have also provided for an effective remedy for the enforcement of these right under Article 32 of the constitution.

Article 32 is itself a fundamental right.

Article 226 also empowers all the High Courts to issue the writs for the enforcement of fundamental rights.

Article 32 (1) guarantees the right to move the supreme court by “ appropriate proceedings” for the enforcement of the fundamental rights conferred by part III of the constitution.

Article 32 (2) confers power on the supreme court to appropriate directions or orders or writs , including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto,and certiorari for the enforcement of any of the rights conferred by part III of the constitution.

Article 32 (3) under this clause parliament may by law empower any other court to exercise within the local of its jurisdiction all or of the powers exercisable by the supreme court under clause (2)

Article 32 (4) says that the right guaranteed by Article 32 shall not be suspended except¹ as otherwise provided for the constitution.

Article 32 thus provides for an expeditious and inexpensively remedy for the protection of fundamental rights from legislative and executive interference. ²

¹ Indian constitutional law ,by prof.M.P jain ,& Dr .J.N.Pandey

WRIT JURISDICTION OF SUPREME COURT

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 for the enforcement of any of the rights conferred by part III of the constitution

THERE ARE MAINLY FIVE TYPES OF WRITS

1) **WRIT OF HABEAS CORPUS**: It is the most valuable writ for personal liberty. Habeas Corpus means, **“Let us have the body.”** A person, when arrested, can move the court for the issue of Habeas Corpus. It is an order by a court to the detaining authority to produce the arrested person before it so that it may examine whether the person has been detained lawfully or otherwise. If the court is convinced that the person is illegally detained, it can issue order for his release.

CASE LAW: 1 Kanu Sanyal v The District Magistrate, Darjeeling (AIR 1974 SC 510)³

FACT: Kanu Sanyal was a top Communist leader. He was arrested and detained by the Visakhapatnam police. A Habeas Corpus petition was filed praying for production of Kanu Sanyal before the court. The Public Prosecutor argued that Habeas Corpus would be applicable, where the person was detained illegally, and in the case of Kanu Sanyal it could not apply, because he was legally detained

JUDGMENT: The court did not accept the state’s argument and ordered for the production of Kanu Sanyal

2 Bhim Singh v. State of J & K (1985)4 SCC 677⁴

FACT: The M.L.A Bhim Singh was detained by the police without any valid reasons.

² Constitutional law by ,prof .M.P JAIN & BY Dr J.N PANDEY

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³ AIR 1974 SC 510

⁴ (1985) 4 SCC 677

The Supreme Court ordered the police to release him and to pay Rs. 50,000 /- as damages for the violation of his constitutional Right.

2) **THE WRIT OF MANDAMUS:** Mandamus is a Latin word, which means “WE COMMAND” . Mandamus is an order from a superior court to a lower court or tribunal or public authority to perform an act, which falls within its duty. It is issued to secure the performance of public duties and to enforce private rights withheld by the public authorities. Simply, it is a writ issued to a public official to do a thing which is a part of his official duty, but, which, he has failed to do so far. This writ cannot be claimed as a matter of right. It is the discretionary power of a court to issue such writs.

CASE LAW: Sharif Ahmad v. H.T.A Meerut (AIR 1978 SC209)⁵

FACT: In this case, the Respondent/public Authority did not oblige the orders of the Tribunal. The petitioner approached the Supreme Court for the enforcement of the orders of the Tribunal. The Supreme Court gave the writ of Mandamus ordering the Respondent/public Authority to obey the orders of the Tribunal.

◆ the writ of Mandamus can be issued against the public Authority, who neglected its public duty, and did unconstitutional acts.

Sales Tax Officer v. Kanhaiyalal (AIR 1959 SC135)⁶

FACT: In this case, the S.T.O had collected the tax illegally from the petitioner⁷ who approached the Supreme Court. The Supreme Court issued the writ of Mandamus to the S.T.O to refund the tax illegally collected to the petitioner.

⁵ (AIR 1978 SC 209

⁶ (AIR 1959 SC 135

3) **THE WRIT OF QUO-WARRANTO:** The word Quo warranto literally means “BY WHAT WARRANT? “ , “BY WHAT AUTHORITY” It is a writ issued with a view to restraining a⁸ person from acting in a public office to which he is not entitled. The⁹ writ of quo-warranto is used to prevent illegal assumption of any public office or usurpation of any public office by anybody. For example, a person of 62 years has been appointed to fill a¹⁰ public office whereas the retirement age is 60 years . Now, the appropriate High court has a right to issue a writ of quo-warranto against the person and declare the office vacant.

4) **THE WRIT OF PROHIBITION:** The writ of prohibition means to forbid or to stop and it is popularly known as “STAY ORDER”. The writ of prohibition is based upon the principle: “prevention is better than cure”. This writ is issued when a lower court or a body tries to transgress the limit or powers vested in it. It is a writ issued by a superior court to lower court or a tribunal forbidding it to perform an act outside its jurisdiction. After the issue of this writ proceeding in the lower court etc. Come to a stop. The writ of prohibition is issued by any High court or the Supreme Court to any inferior court, prohibition the latter to continue proceeding in a particular case, where it has no legal jurisdiction of trial. While the writ of mandamus commands doing of particular thing, the writ of prohibition is essentially addressed to a subordinate court commanding inactivity. Writ of prohibition is, thus not available against a public officer not vested with judicial or quasi-judicial powers. The Supreme Court can issue this writ only where a fundamental right is affected.

¹⁰ Constitutional law By Prof. M.P.JAIN & By Dr . J.N .PANDEY
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5) **THE WRIT OF CERTIORARI**: Literally, certiorari means to be certified. The writ of certiorari is issued by the Supreme Court to some inferior court or tribunal to transfer the matter to it or to some other superior authority for proper consideration. The writ of certiorari can be issued by the Supreme Court or any High court for quashing the order already passed by an inferior court. In other words, while the prohibition is available at the earlier stage, certiorari is available during the tendency of proceedings before a sub-ordinate court; certiorari can resort to only after the order or decision has been announced. There are several conditions necessary for the issue of writ of certiorari, which are as under:

- a) There should be court, tribunal or an officer having legal authority to determine the question of deciding fundamental rights with a duty to act judicially.
- b) Such a court, tribunal or officer must have passed order acting without jurisdiction or in excess of the judicial authority vested by law in such court, tribunal or law. The order could also be against the principle of natural justice or it could contain an error of judgment in appreciating the fact of the case.¹¹

¹¹ Constitutional law By –Prof . M.P .JAIN & By M.P. JAIN
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LOCUS STANDI

WHO CAN APPLY? :- LOCUS STANDI

-♦ the traditional rule is that the right to move the Supreme Court is only available to those whose fundamental rights are infringed. The power vested in the Supreme Court can only be exercised for the enforcement of fundamental rights. The writ under which the remedy is asked under Article 32 must be correlated to one of the fundamental rights sought to be enforced. The remedy must be sought through appropriate proceeding.

DYNAMIC APPROACH UNDER LOCUS STANDI:

- ♦ The above traditional rule of locus standi that a petition under Article 32 can only be filed by a person whose fundamental right is infringed has now been considerably relaxed by the Supreme Court in its recent rulings.

- ♦ The court now permits public interest litigations or social interest litigations at the instance of ‘public spirited citizens’ for the enforcement of constitutional and ¹²other legal rights of any person or ¹³group of person who because of their poverty or socially or ¹⁴ economically disadvantaged position are unable to approach the court for relief.

¹³ Constitutional law By Prof. M.P.JAIN & By ,Dr PANDEY
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A) CASE LAW: IN A.B.S.K SANGH (FLY) V. UNION OF INDIA AIR 1981 SC 298¹⁵

FACT : It was held that the Akhil Bhartiya Soshil karmachari snagh (Railway) ,though an unregistered Association could maintain a writ petition under Article 32 for the redressal of a common grievance Access interest litigation & representative proceeding is the present constitutional jurisprudence.

- ◆ As a result of this broad view of locus standi permitting public interest litigation or social action litigation Supreme Court has considerably widened the scope of Article 32 of the constitution.
- ◆ The Supreme Court will now be ready to interfere under Article 32 wherever and whenever any injustice is caused or being caused by the state action to the poor and helpless persons who cannot approach the court.

B) CASE: BIHAR LEGAL SUPPORT SOCIETY .V. CHIEF JUSTICE OF INDIA¹⁶

((1986) 4 SCC 767)

FACT: The court made it clear that the strategy of public interest litigation has been evolved by this court with a view to bringing justice within easy reach of the poor & the disadvantaged sections of the community.

¹⁵ AIR 1981 SC 298

¹⁶ (1986) 4 SCC 767

C) CASE: IN PEOPLES UNION FOR DEMOCRATIC RIGHTS .V. UNION OF INDIA¹⁷

AIR 1983 SC 339

FACT : It was held that the peoples union for Democratic Rights and **LOCUS STANDI**

To file a petition for enforcement of various labour law under which certain benefits are conferred on the workers. The union brought this fact to the notice of the court through a letter

The court rejected the argument that such ' public interest litigation' would create arrears of cases and therefore they should not be encouraged.

BHAGWATI. J Declared No state had the right to tell its citizens that because a large number of cases of the rich are pending in our courts we will not help the poor to come to the courts for seeking justice until the staggering load of cases of people who can afford rich lawyers is disposed of.

D) CASE: BANDHU MUKTI MORCHA .V. UNION OF INDIA¹⁸ AIR 1984 SC 803

FACT : An organisation dedicated to the cause of release of bonded labours informed the supreme court through a letter that they conducted a survey of the stone – quarries situated in Faridabad District of the state of Haryana and found that there were a large number of labours working in these stone –quarries under inhuman and intolerable conditions and many of them were bonded labours.

The petitioners prayed that a writ be issued for proper implementation of the various provisions of the constitution and statutes with a view to ending the misery, suffering and helplessness of these labours and release of bonded labourers. The court treated the letter as writ- petition.¹⁹

¹⁷ AIR 1983 SC 339

¹⁸ AIR 1984 SC 803

◆JUDICIAL ACTIVISM OF THE SUPREME COURT²⁰◆

◆ the Supreme Court has now realised its proper role in a welfare state, and it is using this new strategy not only for helping the poor by enforcing their fundamental rights of persons but for the transformation of the whole society as an ordered and crime free society.

A) CASE: HUSSAINARA KHATOON V STATE OF BIHAR²¹ AIR 1979 SC 1369

FACT: The supreme court has held that speedy trial is an essential and integral part of the fundamental right to life and liberty enshrined in art .21 . In Bihar a number of under trial prisoners were kept in various jails for several years without trial. The court ordered that all such prisoners whose names were submitted to the court should be released forthwith. Since speedy trial was held to be a fundamental right guaranteed by Art, 21. The Supreme Court considered its constitutional duty to enforce this right of the accused persons.

B) CASE: BANDHU MUKTI MORCHA .V. UNION OF INDIA²² AIR 1984 SC 802

FACT: It has been held that the provisions conferring on the Supreme Court the power to enforce fundamental rights in the widest possible terms show the anxiety of the constitution – makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. It is not at all obligatory that an adversary procedure must be followed in proceedings under Article 32. For the enforcement of fundamental rights. There is no such compulsion in clause (2) of Article 32 or in any other part of the constitution. Public interest litigation for the enforcement of fundamental rights is very much included in Article 32.

²⁰ Judicial activism of the supreme court

²¹ AIR 1979 SC 1369

²² AIR 1984 SC 802

◆JUDICIAL ACTIVISM HAS SET RIGHT A NUMBER OF WRONGS COMMITTED BY THE STATES: ²³

1) **BAN ON SMOKING IN PUBLIC PLACES:** ²⁴ In a significant judgment the Supreme Court has directed all states and union territories to immediately issue orders banning smoking in public places and public transport, including railways.

2) **PROTECTION AGAINST IN HUMAN TREATMENT IN JAIL** ²⁵ :

A) CASE: **SUNIL BATRA .V. DELHI ADMINISTRATION AIR 1980 SC 1759** ²⁶

FACT: It has been held that the writ of habeas corpus can be issued not only for releasing a person from illegal detention but also for protecting prisoners from inhuman and barbarous treatment.

B) CASE : **VEENA SETHI .V. STATE OF BIHAR AIR 1983 SC 339** ²⁷

FACT: The court was informed through a letter that some prisoners who were insane at the time of trial but subsequently declared sane, were not released due to inaction of state authorities and had to remain in jails from 20 to 30 years. The court directed that they be released forth with

3) **CHILD WELFARE:** ²⁸

A) CASE: **MUNNA . V. STATE OF U.P (1982) 1 SCC 545** ²⁹

FACT: Public interest litigation was filed in the court on the basis of a news report about sexual exploitation of children by hardened criminals in Kanpur jail. The court directed the District judge, Kanpur to visit the jail and report the report confirmed the crime of sodomy committed against the

²³ Judicial activism has set right a number of wrongs committed by the states.

²⁴ Ban on smoking in public places.

²⁵ Protection against in human treatment in jail.

²⁶ AIR 1980 SC 1759.

²⁷ AIR 1983 SC 339.

²⁸ Child welfare.

²⁹ (1982) 1 SCC 545

children. The court directed the release of the children from jail and their shifting them to children's home.

B) CASE: M.C MEHTA .V. STATE OF TAMIL NADU AIR 1991 SC 417³⁰

FACT: It has been held that the children cannot be employed in match factories which are directly connected with the manufacturing process as it is a hazardous employment within the meaning of Employment of children Act . 1938 . They can, however be employed in packing process but it should be done in area away from the place of manufacture to avoid exposure to accidents.

4) PROTECTION OF ECOLOGY AND ENVIRONMENT POLLUTION³¹

A) CASE: RURAL LITIGATION AND ENTITLEMENT KENDRA. V STATE OF U.P³²

(1985) 2 SCC 431

FACT: The court ordered the closure of certain lime stone quarries on the ground that there were serious deficiencies regarding safety and hazards in them.

The court had appointed a committee for the purpose of inspecting certain lime stone –quarries. The committee had suggested the closure of certain categories of stone quarries having regard to adverse impact of mining operations there in. A large scale pollution was caused by lime stone quarries adversely affecting the safety and health of the people living in the area.

B) CASE: M.C MEHTA. V. UNION OF INDIA (1987) 4 SCC 463³³ **FACT:**

The Supreme Court ordered the closure of tanneries at Jammu near Kanpur, polluting the Ganga. The matter was brought to the notice of the court by the petitioner a social worker, through public interest litigation

³⁰ AIR 1991 SC 417

³¹ Protection of Ecology and Environment Pollution.

³² (1985) 2 scc 431

³³ (1987) 4 scc 463

C) CASE: SUBHAS KUMAR .V. STATE OF BIHAR AIR 1991 SC 420³⁴

FACT: It has been held that public interest litigation is maintainable for ensuring enjoyment of pollution free water and air which is included in the right of life under Article 21 of the constitution . If anything endangers or impairs that quality of life in violation of laws a citizen has right to have recourse to Article 32 for removing the pollution of water of air which may be detrimental to the quality of life.

D) CASE: BANGALORE MEDICAL TRUST V B. S MUDDAPPA (1991) 4 SCC 547³⁵

FACT: An open space which was reserved for Public Park was allotted to a private person for the purpose of construction a hospital by the Development Authority, Bangalore. The residents of the locality challenged the allotments on the ground that it was contrary to the object of the act. It was held that the residents of the locality have locus standi to challenge the allotment under Article 32 & 226 of the constitution. A private nursing home could neither be considered to be an amenity nor could it be considered improvement over necessity like a public park. A park is a necessity not a mere amenity, for maintaining ecology in urban areas opens space and park is necessary.

5) POWER TO COMMUTE DEATH SENTENCE INTO LIFE IMPRISONMENT³⁶

A) CASE: HARBANS SINGH V STATE OF U. P AIR 1982 SC 849³⁷

FACT: It was held that under Article 32 very wide power has been conferred on the supreme for due and proper administration of justice. This inherent power is to be exercised in extraordinary situation in the large interest of administration and for prevention of manifest injustice. Accordingly, the court commuted the death sentence of the petitioner into the imprisonment for life on the ground that one of his co- accused's sentence was commuted by the court. The court

³⁴ AIR 1991 SC 420

³⁵ 1991) 4 SCC 547

³⁶ Power to commute death sentence into life imprisonment

³⁷ AIR 1982 SC 849

recommended that the president should normally exercise his power under Article 72 to commute the death sentence because he has considered petitioner's mercy petition and rejected it. But if he fails to exercise his power the court will interfere to do justice in a particular case. Under Article 32 the Supreme Court has power to commute death sentence into life imprisonment if there is undue delay in execution of sentence of death. The court will examine the nature of delay in the light of all circumstances of the case and then decide whether death sentence should be carried out or altered into life imprisonment.

6) PROTECTION OF DIGINITY AND HONOUR OF COURTS ³⁸

CASE: DELHI JUDICIAL SERVICE ASSOCIATION .V. STATE OF GUJARAT³⁹

(1991) 4 SCC 406

FACT : The court for the first time sent five police officers including I.P.S to jail as they were found guilty for committing criminal contempt of judicial Magistrate court for harassing and handcuffing the chief judicial Magistrate of Nadiad , district Kheda , in the state of Gujarat. On September 25, 1989 a horrible incident took place in town of Nadiad in the state of Gujarat. The police inspector of Nadiad arrested, assaulted and handcuffed the chief judicial Magistrate and tied him with thick rope like an animal and took him openly to the hospital for medical examination on the alleged charge of having consumed liquor in breach of the state prohibition law. The incident undermined the incident undermined the dignity of courts in the country. A member of bar Associations and the Indian judges Associations approached to the Supreme Court by petitions under Article 32 for saving the dignity and honour of the judiciary. The court issued notices for contempt to seven police officers. Since there was dispute between the parties with regard to the entire incident the court appointed Justice R.M. Sahai of the Allahabad High court to inquire into the incident and submit

³⁸ Protection of dignity and honour of courts.

³⁹ (1991) 4 scc 406

report to the court. On the basis of this report the seven police officers were found guilty of committing criminal contempt and sent to jail.

7) RAPE ON WORKING WOMEN⁴⁰ - Rehabilitation & compensation.

CASE : SIGNIFICANT JUDGMENT

VISHAKA . V. STATE OF RAJASTHAN AIR 1997 SC 3011⁴¹

FACT : The Supreme Court has laid down exhaustive guidelines for preventing sexual harassment of working women in place of their work until legislation is enacted for this purpose. The court held that it is the duty of the employer or other responsible person in work place and other institutions, whether public or private, to prevent sexual harassment of working women. The judgment of the court was delivered by J.S. Verma, C.J on behalf of Sujata .V. Manohar and B.N. Kripal, JJ .on a writ petition filed by Vishaka a non – governmental organisation working for gender equality “by way of P.I.L seeking enforcement of fundamental right of working women under Articles 14, 19, and 21 of the constitution.

The immediate cause for the filing of this writ petition was the alleged brutal gang rape of a social worker of Rajasthan. The court directed the employers to set up procedure through which working women can make their complaints heard.

The court held that the court has the power under Article 32 to lay down such guidelines for affective enforcement of fundamental rights of working women at their work places and declared that this would be treated as the law declared by the Supreme Court under Article 141 of the constitution

⁴⁰ Rape on working women.

⁴¹ AIR 1997 SC 3011

◆THE SUPREME COURT AS PROTECTOR AND GUARANTOR OF FUNDAMENTAL RIGHTS ⁴²

Under clause (2) of Article 32 the supreme court is empowered to issue appropriate directions, orders or writs, including writs in the nature of **Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari** for the enforcement of any fundamental rights guaranteed by part III of the constitution.

By this Article the Supreme Court has been constituted as a protector and guarantor of fundamental rights conferred by part III. Once a citizen has shown that there is infringement of his fundamental right the court cannot refuse to entertain petitions seeking enforcement of fundamental rights.

◆CASE LAW: DARYAO V STATE OF U.P - AIR 1961 SC 1457 P.1461⁴³

FACT : The Supreme Court took it as its solemn duty to protect the fundamental right zealously and vigilantly.

SCOPE OF CLAUSE (2) OF ARTICLE 32 ⁴⁴ : The language used in Article . 32 (2) is very wide. The power of the supreme court is not confined to issuing only writs in the nature of Habeas Corpus , Mandamus , Prohibition , Quo- Warranto and Certiorari but any direction or order or writ whichever is appropriate to enforce the fundamental rights, nor it is bound to follow all the procedural technicalities, attached to it in English law.

The supreme court of India may not only issue the above writs but also directions, order or writs, similar to the above so far as to fits in with any circumstances peculiar to India.

The Supreme Court is not bound to follow the procedural technicalities of English law.

⁴² The Supreme Court as protector and guarantor of Fundamental rights.

⁴³ AIR 1961 SC 1457 P.1461.

⁴⁴ Scope of Clause (2) of Article 32.

CASE: T. C. BASAPPA .V. T. NAGAPPA AIR 1954 SC 440⁴⁵

FACT : “In view of the express provision in our constitution we need not now look back to the early history of the procedural technicalities of these writs in English law, not feel oppressed in particular cases of judges, we can make an order or issue a writ in the nature of Certiorari, in all appropriate cases and in appropriate manner. So long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.”

+Thus, the wording of Article 32 (2) is so elastic that it permits all necessary adaptation without legislative sanction from time to time so as to enable effective enforcement of the fundamental rights.

Even if a proper writ has not been prayed for by the petitioner in a case his application cannot be thrown out. Article 32 permits large discretion to the Supreme Court to give the appropriate relief. The court can frame such writs as the exigencies of a particular case, demand.

CASE LAW: K.K KOCHUNI V STATE OF MADRAS ⁴⁶ AIR 1960 SC 1080

FACT : The court held that Article 32 itself being a fundamental right the court will give relief notwithstanding the existence of an alternative remedy. The court’s power under Article 32 (2) is wide enough to order the taking of evidence, if necessary on disputed questions of fact and to give appropriate relief to the petitioner by issuing the writ or order or as to suit the exigencies of the case.

⁴⁵ AIR 1954 SC 440

⁴⁶ AIR 1960 SC 1080.

◆THE SUPREME COURT HAS DESCRIBED THE SIGNIFICANCE OF ARTICLE 32 IN THE FOLLOWING WORDS IN⁴⁷

CASE LAW : PREM CHAND GARG V EXCISE COMMISSIONER, U.P⁴⁸

AIR 1963 SC 996

FACT: The fundamental right to move this court can therefore be appropriately described as the cornerstone of the democratic edifice raised by the constitution. That is why? It is natural that this court should 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 infringements of such rights. In discharging the duties assigned to it this court has to play the role of a sentinel on the qui vive and it must always regard it as its solemn duty to protect the said fundamental rights zealously and vigilantly.

⁴⁷ The Supreme court has described the significance of Article 32 in the following words in case,

⁴⁸ AIR 1963 SC 996

DISTINCTION BETWEEN ARTICLE 32 & 226⁴⁹

ARTICLE 32

ARTICLES 226

1) Article 32 empowers the supreme court To issue the writs for whole of India	Article 226 empowers the High court only to issue the writs within its territorial jurisdiction.
2) Article 32 is itself a Fundamental Right	Article 226 is not a Fundamental Right , but it is a constitutional Right.
3) Right guaranteed by Article 32 can be exercised for the enforcement of Fundamental rights only.	Right conferred by Article 226 can be exercised not only for the enforcement of Fundamental rights but for “ any other purpose ”
4) It is one of the Basic Features of the constitution.	It is not a Basic Features of the constitution.
5) The petitioner can approach the supreme court directly as of a right , Being it is a Fundamental right.	There is no need to resort to Article 226 before approaching the supreme court.
6) Article 32 empowers the Supreme court to issue the writs only when the Fundamental rights are violated or threatened.	Article 226 enables the High court to issue orders or writs to protect the fundamental rights and also several other purposes .
7) The sphere of Article 32 is limited and narrower.	The sphere of Article 226 is wider than Article 32

⁴⁹ Distinction Between Article 32 & 226

CASE LAWS: DISTINCTION BETWEEN ARTICLE 32&226 AS UNDER⁵⁰

CASE LAW ROMESH THAPPAR V STATE OF MADRAS⁵¹ AIR 1950 SC 124:

FACT: As early as 1950 in Romesh Thappar the Supreme Court ruled that such a petitioner can come straight to the Supreme Court without going to the High court first.

WHERE AS IN

CASE LAW

FACT: KANUBHAI BRAHMBHATT V STATE OF GUJRAT AIR 1987 SC 1159⁵²

FACT : In 1987 in Kanubhai's case when a two bench of the supreme court ruled that a petitioner complaining of infraction of his fundamental right should approach the High court first rather than supreme court in the first instance . The reason given for this view was that there was a huge backlog of cases pending before the Supreme Court.

But in practice, it seems that the Kanubhai's pronouncement has had no effect on the existing practice and the writ petition continue to be filed in the supreme court under Article 32 without first going to the High court under Article 226.

⁵⁰ Case laws on Distinction between Article 32 &226 As under.

⁵¹ AIR 1950 SC 124.

⁵² AIR 1987 SC 1159.

CRITICISM ON PUBLIC INTEREST LITIGATION⁵³

In spite of its beneficial effect, the use of this new strategy by the court for enforcement of various fundamental rights and other legal right is criticised by many.

- 1) It is said that by entertaining violation of fundamental rights through a letter, the court will be flooded with litigation resulting delay in deciding many other important cases.
- 2) Secondly, It is pointed out that interference by the courts through the PIL in the sphere of Executive and legislature is not justified as it is likely to cause conflict between the three organs of Government

Bhagwati justice⁵⁴ has already answered to these criticisms. As regards the enforcement of the orders and direction of the court Article 144 is very clear.

Article 144 say's that "All authorities civil and judicial in the territory of India shall act in aid of the supreme court

If any of these authorities fail to carry out the orders of the court, the court can punish them for the contempt of the court.

CASE LAW : MOHANLAL SHARMA V STATE OF U.P (1989) 2 SCC 609⁵⁵

FACT: A telegram was sent to the court from the petitioner alleging that his son was murdered by the police in the police pock-up. The telegram was treated a writ- petition by the court and the case was directed to be referred to C.B.I for a thorough and detailed investigation

⁵³ Criticism on Public interest litigation .

⁵⁴ Bhagwati Justice's Wordings

⁵⁵ (1989) 2 scc 609

CONCLUSION⁵⁶

Article 32 of the constitution itself is the fundamental right under which aggrieved person can directly approach to the supreme court against the state for the enforcement of his fundamental right and without a delay supreme court passes writs, orders or directions to the authority with which aggrieved person is getting immediate relief whose fundamental right has been infringed by this authorities without a further delay. It is the most valuable right guaranteed to the citizen against state. It is one of the basic features of the constitution. It safeguards the people's dignity, honour and sovereignty. THAT IS WHY? Article 32 is called as a very heart of the Indian Constitution.

⁵⁶ Conclusion

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