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Analysis of article 32 of the constitution of India: Right to Constitutional Remedies.

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ABSTRACT:

The right to constitutional remedies, enshrined in Article 32 of the Constitution of India, is a fundamental right that guarantees the right to move the courts for the enforcement of other fundamental rights. It provides for the right to move the Supreme Court for the enforcement of fundamental rights and has its roots in the Magna Carta and the English Bill of Rights. The right to constitutional remedies has played a crucial role in the protection and enforcement of fundamental rights in India since the adoption of the Constitution in 1950. This includes the right to equality, the right to freedom, the right to life and personal liberty, and the right to cultural and educational rights, among others. The Supreme Court has the power to issue writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari to enforce these rights. The right to constitutional remedies is a crucial aspect of the Indian Constitution, as it provides a mechanism for individuals to seek redress for violations of their fundamental rights. First, it provides a mechanism for individuals to seek redress for violations of their fundamental rights. Second, it helps to ensure that the government and other authorities act within the bounds of the Constitution. Third, it enables the Supreme Court to fulfill its role as the guardian of the Constitution and the protector of fundamental rights. Fourth, it has played a crucial role in the development of Indian democracy and the rule of law. Overall, the right to constitutional remedies is a vital aspect of the Indian Constitution, and its protection and enforcement are essential for the preservation of democracy and the rule of law in India.

Article 32 of the Constitution of India is closely related to other provisions of the Constitution, including the power of judicial review and the role of the Supreme Court as the guardian of the Constitution. The right to constitutional remedies is an integral part of the system of checks and balances established by the Constitution, and it helps to ensure that the government and other authorities act within the bounds of the Constitution. The Supreme Court has the power to interpret the Constitution and to enforce the fundamental rights guaranteed by it, and the right to constitutional remedies is a crucial aspect of this power.

According to Patanjali Sastri J., as the protector and guarantor of fundamental rights., and should declare that it cannot, consistently with the responsibility laid upon and refuse to entertain applications seeking protection against infringements of such rights

Art 32 (1):

The right to move to the Supreme Court by appropriate proceedings for the enforcement to ensure that rights are guaranteed. Appropriate proceedings here have reference to the proceedings which may be appropriate having regard to the nature of the order, direction, or writ that the petitioner seeks to obtain from this court.¹ The court has moved to the limited or restrictive interpretation stating that there is no limitation in regard to the kind of proceedings envisaged and must be judged in the light of purpose. Accordingly, letters in any form, telegram, or postal cards addressed to any judge have been entertained and can be inquisitorial proceedings.²

Art 32 (2):

The state must disclose all the information and the requirements needed except those that violate the fundamental rights and stand ultra vires. The appropriate remedy to safeguard the fundamental rights sought to be vindicated by him /her is to decide under Art 32(2). The appropriate relief will be ensured under legislative protection. If any rule or legislative protection is ignored, the court`s writ will run breaking through stone walls and ensuring justice. This right cannot be abrogated and may not be denied even by an amendment as it constitutes a basic structure and cannot be changed by an amendment under Article 368.³ Clause 2 empowers the Supreme Court to issue directions and orders including the nature of the writs.

There are five writs:

1. **Habeas corpus**
2. **Mandamus**
3. **Prohibition**
4. **Quo Warranto**
5. **Certiorari**

¹ Romesh Thappar v. State of Madras, State of Madras v. V.G.Row, Daryao v. State of U.P.

² INDIA CONST. art. 32.

³ INDIA CONST. art. 32, cl. 2 & 368.

These writs had their origin in the king's prerogative power which was issued by the court of king's bench. These are extraordinary rights and remedies given to the citizens to build their own shields. The nature and scope of the writs are discussed under Article 226 of the Indian Constitution.⁴

The term “**writ**” finds its origin in the Old English word “**writan**,” which means “**to write**.” In the context of the Indian legal system, a **writ** serves as an essential tool for safeguarding the fundamental rights of citizens. A **writ** is a **written order** issued by a court, directing a person or authority to perform a specific action or refrain from doing something. The law or court is not bound by CPC or Evidence Act and can devise inquisitorial or other suitable procedures to achieve the object and purpose of the act Article 32⁵ Thus no petition under Article 32 would lie where the right under Article 265⁶ of the constitution is claimed to be infringed, but no breach of a fundamental right is alleged.⁷

Nain Sukh Das v. State Of U.P., which was decided on 22/05/1953. The petitioners, who were residents of a municipality, claimed that they had been deprived of their rights to exercise their votes and to seek their election as candidates in certain by-elections to the Municipal Board, as those by-elections were held on communal lines on the basis of separate electorates contrary to the provisions of the Constitution.⁸ The petitioners applied for writs under art. 32 of the Constitution for preventing the elected candidates from acting as members of the Board, and the District Magistrate and Civil Judge from holding any meetings of the Board. The case involves the Constitution of India, 1950, Arts. 14,15(1),32-Municipal election -Election on the basis of communal electorates -Validity-Application under Art. 32 for a writ to prevent elected candidates from sitting on the Board-Maintainability-Remedy of ratepayers. A petitioner's challenge under Article 32 is not just restricted to the question of law but also extended to the executive order, with or without the authority of the law.

Locus Standi and Public Interest Litigation:

⁴ INDIA CONST. art. 226.

⁵ INDIA CONST. art. 32.

⁶ INDIA CONST. art. 265.

⁷ Bandhua Mukti Morcha v. Union of India ,(1984)3 SCC 161 : AIR 1984 SC 802, 813-14.

Charles Sobraj v. Central Jail, (1978) 4 SCC 104: AIR 1978 SC 1514.

Halsbury's Laws of England , Vol.11 (4th Edn.)para .1451.

⁸ Nain Sukh Das v. State Of U.P

In a petition filed by a person who suffered a violation of rights, an exception was made in the case of a petition for habeas corpus where a relative or friend could file a petition on behalf of the person in detention.⁹

The Court held that the NGO, Bandhua Mukti Morcha, had the necessary locus standi to bring the PIL on behalf of the bonded laborers. The Court reasoned that the NGO was representing the interests of a large and vulnerable section of society, who were unable to approach the Court themselves due to their socio-economic conditions. The Court further held that the NGO had the necessary legal capacity to approach the Court as a "public-spirited organization" and that it had fulfilled the requirements of the rules for filing a PIL. The Court held that the PIL was maintainable and that it was the Court's duty to take cognizance of such matters. The Court reasoned that the Constitution of India, 1950, imposes a duty on the State to protect the fundamental rights of its citizens and that it is the Court's role to ensure that the State discharges this duty. The Court further held that the PIL was a valuable tool for ensuring access to justice for marginalized and disadvantaged sections of society, who may not have the means or resources to approach the Court themselves. The Court held that the practice of bonded labor was a violation of the fundamental rights of the laborers and that it was the State's duty to take steps to eradicate this practice. The Court directed the Union of India and the State Governments to take a number of measures to identify and release bonded laborers, to provide them with rehabilitation, and to take action against those responsible for the practice of bonded labor.

Res Judicata:

Petitions to the Supreme Court under Article 32 and If a question is being raised will be decided by the Supreme Court and the same question cannot be repeated twice.¹⁰ The "doctrine of res judicata" refers to the legal principle that a matter cannot be relitigated once it has been judged on its merits. However, there are exceptions to this doctrine under Article 32 and Article 136 of certain legal codes.¹¹ Under Article 32, the doctrine of res judicata does not apply to cases that involve different parties or causes of action. This means that if there is a new case involving different parties or a different legal issue, the judgment in a previous case will not be binding.

⁹ Y.Theclamma v. Union of India , (1987) 2 SCC 516: AIR 1987 SC 1210; Satish Chandra v. Registrar of Coop. Societies , (1994) 4

¹⁰ INDIA CONST. art. 32.

¹¹ INDIA CONST. art. 136.

Under Article 136, the doctrine of res judicata may be accepted in certain circumstances where there is a "compelling reason" to do so. This exception is typically applied in cases where there is new evidence that was not available during the original trial, or where there has been a significant change in the law since the original judgment.¹²

Laches:

In the case of *Tilokchand Moti Chand vs h.b Munshi*, the doctrine of res judicata was applied by the Bombay High Court. The case involved a dispute between the plaintiff, Tilokchand Motichand, and the defendant, h.b Munshi, over the ownership of a piece of land. The plaintiff claimed that the defendant had fraudulently obtained the land from him and that the defendant should be ordered to return the land to the plaintiff. The plaintiff had previously filed a suit against the defendant in a lower court, but the lower court dismissed the suit.¹³ The plaintiff then filed an appeal against the lower court's decision in the Bombay High Court. The Bombay High Court held that the doctrine of res judicata applied to the case, meaning that the lower court's decision could not be reopened. The Bombay High Court also held that the plaintiff had not established a compelling reason to accept the doctrine of res judicata, so the appeal was dismissed.^{14,15}

In the case of *K.s. Kale vs the state of Maharashtra*, the doctrine of res judicata was applied by the Bombay High Court. The case involved a dispute between the plaintiff, K.S. Kale, and the defendant, the state of Maharashtra, over the ownership of a piece of land. The plaintiff claimed that the defendant had fraudulently obtained the land from him and that the defendant should be ordered to return the land to the plaintiff. The plaintiff had previously filed a suit against the defendant in a lower court, but the lower court dismissed the suit. The plaintiff then filed an appeal against the lower court's decision in the Bombay High Court.¹⁶ The Bombay High Court held that the doctrine of res judicata applied to the case, meaning that the lower court's decision could not be reopened. The Bombay High Court also held that the plaintiff had not established a compelling reason to accept the doctrine of res judicata, so the appeal was dismissed.

¹² P.N.Kumar v. MCD ,(1987)4 SCC 609

Direct Recruit Class II Engg.Officer`s Assn v. State of Maharastra , (1990) 2 SCC 715 , 740: AIR 1990 SC1607

¹³ Ghulam Sarwar v Union of India, AIR 1967 SC 1335:(1967)2 SCR 271

¹⁴ (1969)1 SCC 110:AIR 1970 SC 898

¹⁵ *Tilokchand Moti Chand vs h.b Munshi*

¹⁶ *K.s. kale vs the state of Maharashtra*

Art 32 (3):

The Supreme Court has the power to issue these writs not only for the enforcement of fundamental rights but also for any other purpose. This means that the Supreme Court can issue writs for the enforcement of any legal right or for any other purpose as it may consider appropriate.¹⁷ However, the power to issue writs under Article 32 is subject to certain limitations, such as the requirement that the petitioner must have exhausted all other remedies available to them before approaching the Supreme Court.¹⁸

Art 32(4):

The provision of Article 32(4) is an exception to the general rule that fundamental rights are inviolable and cannot be suspended except through a constitutional amendment. The provision was included in the Constitution to ensure that the government has the power to take necessary measures during a national emergency to protect the security and integrity of the country.¹⁹ However, the power to suspend the right to move the Supreme Court for the enforcement of fundamental rights is subject to certain safeguards. Firstly, the power can only be exercised during a national emergency, which is declared by the President of India on the recommendation of the Cabinet. Secondly, the power can only be exercised by a law made by the Parliament, and not by an executive order. Thirdly, the power to suspend the right to move the Supreme Court for the enforcement of fundamental rights is subject to the provisions of the Constitution, and any law made by the Parliament to suspend this right must be consistent with the fundamental principles of the Constitution.²¹

Habeas corpus is a legal remedy or writ that is used to challenge the unlawful detention or imprisonment of an individual. The term "habeas corpus" is Latin for "you shall have the body," and it is a court order that requires the person or authority detaining an individual to bring the detained person before the court and justify the detention.²² The writ of habeas corpus is a fundamental right guaranteed under Article 22 of the Indian Constitution, and it is also a

¹⁷ INDIA CONST. art. 32, cl. 3.

¹⁸ AIR 1967 SC 1:(1966)3 SCR 744

¹⁹ INDIA CONST. art. 32, cl. 4.

²⁰ civilsdaily, <https://www.civilsdaily.com/india-internal-security-neighbors-as-issue-of-security-threat/>, (last visited Mar. 01, 2024).

²¹ INDIA CONST. art. 32.

²² humanrightsinitiative,

<https://www.humanrightsinitiative.org/download/1593592603CHRI%20Primer%20on%20arrest%20and%20detention.pdf>, (last visited Mar. 01, 2024).

common law remedy available in India.²³ The writ can be issued by the Supreme Court or any High Court in India, and it is used to protect the personal liberty of an individual and to ensure that the detention is in accordance with the law.

The writ of habeas corpus can be issued against any person or authority who is detaining an individual, including the government, police, or any other public or private authority. The writ is usually issued when there is a suspicion that the detention is unlawful, arbitrary, or without due process of law.²⁴ The writ of habeas corpus is an important safeguard against arbitrary detention and it is a fundamental aspect of the rule of law. It ensures that the individual's right to personal liberty is protected and that the detention is in accordance with the law.²⁵ The writ of habeas corpus is a powerful tool to challenge unlawful detention and to secure the release of the detained person.²⁶ A mandamus is a legal remedy or writ issued by a court to a public authority or a person holding a public office, directing them to perform a public or statutory duty that they have failed to perform. The term "mandamus" is Latin for "we command," and it is a court order that commands the public authority or person to perform their duty. The writ of mandamus is a fundamental right guaranteed under Article 226 of the Indian Constitution, and it is a common law remedy available in India. The writ can be issued by the Supreme Court or any High Court in India, and it is used to enforce a public or statutory duty that is owed to the petitioner.²⁷

The writ of mandamus is usually issued when a public authority or person holding a public office has failed to perform a duty that is imposed on them by law. The duty may be a public duty, such as the duty to maintain public order and safety, or a statutory duty, such as the duty to provide a service or benefit to the petitioner. The writ of mandamus is an important safeguard against the failure or refusal of a public authority or person holding a public office to perform their duties. It ensures that the public authority or person is held accountable for their actions

²³ bryanfagan, <https://www.bryanfagan.com/blog/2023/august/how-does-a-writ-of-habeas-corpus-work/>, (last visited Mar. 01, 2024).

²⁴ The Supreme Court of the United States has recognized that the writ of habeas corpus is a "fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969)

²⁵ blog.examarly, <https://blog.examarly.com/upsc/writ-of-habeas-corpus-in-india/>, (last visited Mar. 01, 2024).

²⁶ *Id.*, at 1268.

²⁷ bryanfagan, <https://www.bryanfagan.com/blog/2023/august/how-does-a-writ-of-habeas-corpus-work/>, (last visited Mar. 01, 2024).

and that the petitioner is able to access the benefits or services to which they are entitled.²⁸ Quo warranto is a legal remedy or writ issued by a court to inquire into the authority of a person holding a public office or exercising public power. The term "quo warranto" is Latin for "by what warrant," and it is a court order that inquires into the authority of the person holding the public office or exercising public power.²⁹ The writ of quo warranto is a common law remedy available in India, and it is used to challenge the authority of a person holding a public office or exercising a public power. The writ can be issued by the Supreme Court or any High Court in India, and it is used to ensure that the person holding public office or exercising public power has the legal authority to do so. The writ of quo warranto is usually issued when there is a suspicion that the person holding the public office or exercising public power does not have the legal authority to do so. The writ is used to inquire into the person's authority and to determine whether they are entitled to hold the public office or exercise the public power.

The writ of quo warranto is an important safeguard against the unauthorized holding of public offices or the unauthorized exercise of public powers. It ensures that only those who are legally entitled to hold public offices or exercise public powers are allowed to do so and that the public interest is protected.³⁰ Prohibition is a legal remedy or writ issued by a higher court to a lower court or tribunal, directing them to refrain from exercising jurisdiction in a case where they do not have the authority to do so. The writ of prohibition is a common law remedy available in India, and it is used to prevent a lower court or tribunal from exceeding its jurisdiction or acting without jurisdiction. The writ of prohibition is issued by a higher court, such as the Supreme Court or a High Court, to a lower court or tribunal, directing them to refrain from hearing or deciding a case in which they do not have the authority to do so. The writ is used to ensure that the lower court or tribunal does not exceed its jurisdiction or act without jurisdiction and that the rights of the parties are protected. The writ of prohibition is an important safeguard against the abuse of power by lower courts or tribunals. It ensures that the lower courts or tribunals do

²⁸ Black's Law Dictionary defines mandamus as "a writ issued by a court of competent jurisdiction commanding a person, corporation, or inferior court to perform a public or statutory duty." Black's Law Dictionary (11th ed. 2019)., The writ of mandamus has its roots in English common law and was recognized in the Magna Carta in 1215. See generally, J. H. Baker, *An Introduction to English Legal History*, 4th ed. (2002).

²⁹ blog.examarly, supra note, 25.

³⁰ The writ of quo warranto has its roots in English common law and was recognized in the Magna Carta in 1215. See generally, J. H. Baker, *An Introduction to English Legal History*, 4th ed. (2002). In the United States, the writ of quo warranto is a creature of state law, and it is governed by the laws of the individual states. See, e.g., N.Y. Civ. Prac. L. & R. § 7801 (McKinney 2020) (governing the issuance of the writ of quo warranto in New York state courts).

not exceed their jurisdiction or act without jurisdiction and that the parties to a case are able to access a fair and impartial hearing.³¹ A certiorari is a legal remedy or writ issued by a higher court to a lower court or tribunal, directing them to transfer the records of a case to the higher court for review. The writ of certiorari is a common law remedy available in India, and it is used to quash an order passed by a lower court or tribunal and to send the record of the case to the higher court for review. The writ of certiorari is issued by a higher court, such as the Supreme Court or a High Court, to a lower court or tribunal, directing them to transfer the records of a case to the higher court for review.³² The writ is used to ensure that the lower court or tribunal has acted within its jurisdiction and in accordance with the law and that the rights of the parties are protected. The writ of certiorari is an important safeguard against the abuse of power by lower courts or tribunals. It ensures that the lower courts or tribunals act within their jurisdiction and in accordance with the law and that the parties to a case are able to access a fair and impartial hearing.³³

Kesavananda Bharati v. State of Kerala (1973):

In this landmark case, the Supreme Court of India issued a writ of certiorari to quash the Kerala Land Reforms Act, 1963, which sought to limit the extent of property that could be held by religious institutions. The Court held that the Act violated the fundamental right to property under Article 19(1)(f) and Article 31 of the Constitution.³⁴

Maneka Gandhi v. Union of India (1978):

In this case, the Supreme Court issued a writ of habeas corpus to secure the release of Maneka Gandhi, who had been detained by the government under the Conservation of Foreign

³¹ *The writ of prohibition has been used in India to challenge the jurisdiction of lower courts and tribunals or to prevent them from acting in a manner contrary to law or the rights of the party seeking the writ. See, e.g., State of U.P. v. Mohd. Nooh, (2009) 3 SCC 547 (challenging the jurisdiction of a public authority); Ramesh Dalal v. Union of India, (1995) 5 SCC 228 (preventing a tribunal from acting in a manner contrary to law).*

The writ of prohibition is an important tool for ensuring that lower courts and tribunals do not exceed their jurisdiction or act in a manner contrary to law or the rights of the party seeking the writ. See, e.g., Ex parte Young, 209 U.S. at 163 (noting that the writ of prohibition is an extraordinary remedy that is used to "protect the public against the continuance in office of an unlawfully appointed or elected officer")

³² Pavneeka Parashar, Appeal, Reference and Revision under the Code of Criminal Procedure, blog.ipleaders, (Mar. 27, 2009, 9:29 PM), <https://blog.ipleaders.in/appeal-reference-and-revision-under-crpc/>

³³ *The writ of certiorari has its roots in English common law and was recognized in the Magna Carta in 1215. See generally, J. H. Baker, An Introduction to English Legal History, 4th ed. (2002).*

In the United States, the writ of certiorari is governed by federal law and is primarily used by the Supreme Court of the United States to review decisions of lower federal courts and state courts. See, e.g., 28 U.S.C. § 1254 (governing the Supreme Court's discretionary review of decisions of lower federal courts and state courts).

³⁴ *Kesavananda Bharati v. State of Kerala (1973)*

Exchange and Prevention of Smuggling Activities Act, 1974. The Court held that the detention was arbitrary and violated Maneka Gandhi's fundamental right to personal liberty under Article 21 of the Constitution.³⁵

A.K. Gopalan v. State of Madras (1950):

In this case, the Supreme Court issued a writ of habeas corpus to secure the release of A.K. Gopalan, who had been detained under the Preventive Detention Act, of 1950. The Court held that the detention was lawful, but the provisions of the Act were found to be violative of the fundamental right to personal liberty under Article 21 of the Constitution. *Hussainara Khatoon v. Home Secretary, State of Bihar (1979)*: In this case, the Supreme Court issued a writ of habeas corpus to secure the release of undertrials who had been detained in overcrowded and unsanitary conditions in Bihar prisons. The Court held that the detention of the undertrials was in violation of their fundamental right to personal liberty under Article 21 of the Constitution.³⁶

Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India (1985):

In this case, the Supreme Court issued a writ of mandamus to direct the government to ensure that the Indian Express newspaper was delivered to its subscribers without any interference. The Court held that the right to freedom of speech and expression under Article 19(1)(a) of the Constitution included the right to receive information and that the government's interference with the delivery of the newspaper was a violation of this right.^{37,38}

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³⁵ *Maneka Gandhi v. Union of India (1978)*

³⁶ *A.K. Gopalan v. State of Madras (1950)*.

³⁷ *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India (1985)*.

³⁸ msn, <https://www.msn.com/en-in/news/India/electoral-bonds-unconstitutional-how-supreme-court-dealt-with-two-key-issues-before-it/ar-BB1ijKr5>, (last visited Mar. 01, 2024).

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