

# Right to Constitutional Remedies

[UPSC Notes]

## What is the Right to Constitutional Remedies?

Article 32 is the most important article as it implies the right to implement fundamental rights in case of violation is also a fundamental right.

- Article 32 which is Right to constitutional remedies gives a citizen the right to move the Supreme Court directly in case of violation of any fundamental right.
- The Supreme Court will issue [writs](#) to implement fundamental rights.

The Parliament has the right to empower any court with writ jurisdiction without hampering or being prejudiced against the powers of the Supreme Court.

There are a few exception, which are

- The [fundamental right](#) under article 19 gets suspended if there is a declaration of National Emergency in case of external aggression (under article 358).
- Under article 359 the President of India may suspend the right to move the Supreme Court or High Court to implement fundamental rights only of the right mentioned in the presidential order of the national emergency.

The Supreme Court has ruled that if there is a violation of fundamental rights the petitioner should move to the High Court first. The writ jurisdiction of the Supreme Court is narrower than the High Court.

## History of Right to Constitutional Remedies

Right to Constitutional Remedies is one of the greatest safeguards that can be provided to individuals' safety and security; as in December 1948 during the Constituent Assembly debates Dr. Bhimrao Ambedkar stated that the rights conferred on the Supreme Court by this article could not be taken away unless the Constitution was amended.

It is also said by the others in the drafting committee that it is a right that is fundamental to all the fundamental rights guaranteed under the Constitution of India as it provides a citizen the right to approach the Supreme Court as a remedy in case of violation of fundamental right(FRs).

## Objectives of Right to Constitutional Remedies

- Providing a guaranteed, effective, and cost-effective remedy against the violation of fundamental rights is the main objective of article 32 in the third part of the Constitution.
- Over the implementation of fundamental rights(FRs) the Supreme Court has original but not exclusive jurisdiction but to issue directions, orders, and writs of all kinds for the enforcement of the fundamental rights, the original power vested in the High Court.
- Article 32 of part 3 of the Indian Constitution made the Supreme Court as the protector and insurer of fundamental rights. Furthermore, over the power to issue the writs, the apex court has original jurisdiction means a person can go to the Supreme Court directly for a remedy for the protection of fundamental rights rather than appealing.

## What Does Right to Constitutional Remedies Provide For?

The Rights to Constitutional Remedies provided for the following purposes-

- The supreme law for every Indian citizen is the Indian Constitution. Thus Articles 12 to 35 of the third part of the Constitution focus on the important fundamental rights and the most important fundamental right is the Right to the Constitutional Remedies, which is explained under Article 32.
- If the fundamental rights of the citizens are violated then they don't need to apply to the lower court; they can directly go to the Supreme Court by Article 32.
- Article 32 empowers Supreme Court to write, order, and issue directions, and High Court is also empowered by Article 226 to issue writs. Thus, Article 32 helps to provide a simple, guaranteed, and faster remedy for the enforcement of Constitutional Rights.
- The Indian Supreme Court acts as a protector of fundamental rights(FRs) after the inclusion of Article 32 (Right to Constitutional Remedies).

## What is a Writ?

To provide the Constitutional Remedies to protect the violation of fundamental rights of citizens, the Supreme Court of India issued a written order known as Writs.

- Parliament empowers to authorize any other court to issue these Writs by Article 32.
- The power to issue the writs is vested only to the High Courts of Calcutta, Bombay, and Madras before 1950.
- All High Courts of India are empowered by Article 226 to issue the writs.
- Writs are taken from English Law which they are known as prerogative writs.

## Types of Writs

The constitution of India empowers the Supreme Court by Article 32 and High Courts by Article 226 to issue orders or writs.

The five types of the writs are-

- Habeas Corpus
- Mandamus
- Prohibition
- Certiorari
- Quo-Warranto

## Habeas Corpus

Habeas Corpus means to bring the body of.

The supreme court or the High Court can issue this writ jurisdiction to trace an individual who has been illegally confined. This writ can also be issued if a person is non-traceable. This writ cannot be issued if the detention is lawful.

## Certiorari

Certiorari means to be certified.

This Writ jurisdiction is to provide justice when a lower court exercises power in excess of its jurisdiction or lack of jurisdiction.

Prohibition promotes prevention while Certiorari is curative in nature. This Writ also allows the court to transfer a case from the lower court.

The Supreme Court in 1991 ruled that this Writ can be issued against public authority and also private authorities if rights are violated (in certain cases). This Writ cannot be issued against a legislative body, individual, etc.

## Prohibition

It is a Writ that is issued from a higher Court to a lower court to prohibit itself from exercising its jurisdiction beyond limits.

It can be issued against a judicial or quasi-judicial body only. This Writ cannot be issued against an administrative, legislative or private body.

## Mandamus

Mandamus means we command. Mandamus commands activity and Prohibition commands inactivity.

This Writ is issued against public officials if he fails to perform their duties. (Public corporation, Public body, Tribunal, Inferior Court, etc.

This Writ cannot be issued against-

- A private individual or private body.
- Department instruction that is not statutory.
- Cannot be issued if the job is discretionary.
- President and Governor.
- Chief justice in a judicial capacity.

## Quo-Warranto

Quo-Warranto means by what authority.

This Writ jurisdiction has no locus-standi.

It can be issued against the public authorities, the legality of holding public office. It includes both the Statutory and Constitutional offices but it cannot be issued against the Ministerial office.

## Important Judgement Related to the Article 32

- **Romesh Thapar Vs State of Madras 1950-** In this case Supreme Court observed that article 32 guarantees a remedy for enforcing fundamental rights under the constitution of India.
- **In L. Chandra Kumar V/S Union of India and others case-** According to the supreme court Article 32 is the fundamental structure of the constitution and serves as an important function being the inseparable part.
- **In the S.P. Sampath Kumar V/S Union of India case-** It was held by the Supreme Court of India that Article 32 powers are part of the constitution of India framework.

## Recent Observations in Article 32

- As part of its inquiry regarding the petitioner's inability to seek justice in the High Court relating to the journalist Siddique Kappan, the court has requested answers from both the state and Federal governments.
- A woman's petition filed under article 32 was recently dismissed by the CJI.
- Considering the article 226svprovisions the supreme court feels that the high courts are well equipped to resolve matters of such nature.
- When someone is aggrieved, then his first remedy is to file an appeal in the trial courts, then to the high court, and finally to the supreme court if the appeal is denied from the former.