

Subject: **Law**

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Paper : **Judicial Process and Administration**  
Module : **Access to Justice: International and Constitutional Dimensions**

## Module Details

<b>Subject:</b>	<b>Law</b>
<b>Paper Title:</b>	<b>Judicial Process and Administration</b>
<b>Module Name:</b>	<b>Access to Justice: International and Constitutional Dimensions</b>
<b>Module ID:</b>	<b>JP/LAW/11/Q-I</b>
<b>PRE-REQUISITES:</b>	A general awareness of the Structure and nature of the Constitution of India, concept of Human Rights, nature and processes of the courts in the Indian legal system.
<b>Objectives:</b>	To understand the concept of access to justice and to know various dimensions of access to justice under Indian Constitution
<b>Key Words:</b>	Access to Justice, Universal Declaration of Human Rights, European Convention on Human Rights, Constitution of India, Fundamental Rights, Right to move the Supreme Court, Writs, <i>Locus Standi</i> , Public Interest Litigation, Supreme Court, Judiciary, Legislature, Executive, <i>Res Judicata</i> , <i>Laches</i> or Delay, Alternative Remedy

## ACCESS TO JUSTICE: INTERNATIONAL AND CONSTITUTIONAL DIMENSIONS

### 1. INTRODUCTION

‘Access to Justice’ in simplistic terms, means to provide an effective mechanism to the aggrieved person for enforcement of her rights. This relationship between justice and rights has its foundation on the principle of equality. It is well articulated by legal philosophers like John Rawls<sup>1</sup> and Ronald Dworkin.<sup>2</sup> Societies across the world discuss about denial of justice. Access to justice and rule of law became part of United Nations (UN) deliberations while dealing with transitional societies like Iraq.

Access to justice in the broader sense refers to the realization of an egalitarian society. Therefore, the Preamble of the Constitution of India emphasizes on social, economic and political justice which is further reiterated as an obligation of the State in article 38. Under article 39, the Constitution casts an obligation on the State to direct its policy justice-oriented.

A rule of law based society ensuring a set of core rights to the people is the fundamental requirement for access to justice. This unit, therefore, focuses on the rights incorporated in the international legal instruments and in the Constitution of India. It analyses in detail, the constitutional means for realizing fundamental rights in India, as specified in articles 32 and 226 of the Constitution.

Article 32 confers power on the Supreme Court to enforce fundamental rights of the individuals, if they are violated, tampered or interfered with by an oppressive Government. In *Prem Chand Garg v Excise Commissioner, Uttar Pradesh*, the Supreme Court underlining the significance of article 32 said:

The Fundamental Right to move [the Supreme Court] can 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 infringement 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.<sup>3</sup>

The Supreme Court, while exercising its jurisdiction under article 32, has given new dimensions, meaning and scope to fundamental rights. The emergence of Public Interest

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<sup>1</sup> John Rawls, *A Theory of Justice* (Universal 1972).

<sup>2</sup> Ronald Dworkin, *Taking Rights Seriously* (Universal 1978).

<sup>3</sup> AIR 1963 SC 996, 999.

Litigation (PIL) has led to other landmark innovations. In the matter of enforcement of fundamental right, the High Courts under article 226 enjoy concurrent jurisdiction to that of the Supreme Court under article 32.

### **Learning Outcomes:**

- **Knowledge of the concept of access to justice,**
- **Understanding the significance of right to access to the Court under Article 32,**
- **Understanding the meaning, scope and various dimensions of right to move the Court, and**
- **Appreciating the approach of the judiciary in the matter of enforcement of fundamental rights**

## **2. CONCEPT OF FUNDAMENTAL RIGHTS**

Part III of the Constitution of India 1950 titled as “Fundamental Rights”, secures to the people of India, certain basic, natural and inalienable rights. It is the duty of the State to recognize and protect these rights, in order that, ‘human liberty may be preserved, human personality developed, and an effective and social democratic life promoted’.<sup>4</sup> The aim behind having a declaration of fundamental rights is to make inviolable certain elementary rights appertaining to the individual and to keep them unaffected by the shifting majorities in the Legislatures.<sup>5</sup> Idea is to protect individuals against excesses of the State.

In modern times, the concept of peoples’ basic rights has been given a more concrete and universal texture by the Universal Declaration of Human Rights (UDHR)<sup>6</sup> and European Convention on Human Rights (ECHR).<sup>7</sup> The Preamble to the UDHR inter alia declares, ‘whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’. Article 8 of the UDHR provides that, ‘everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the Constitution or by law’.

The ECHR, formally the European Convention for the Protection of Human Rights and Fundamental Freedoms, is a regional treaty to protect Human Rights and Fundamental Freedoms, open to the members of the European Union. In the subsequent years, a number of human rights treaties addressing civil and political rights, economic, social and cultural rights,

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<sup>4</sup> MP Jain, *Indian Constitutional Law* (5th edn, Wadhwa and Co 2003) 967.

<sup>5</sup> *AK Gopalan v State of Madras* AIR 1950 SC 27.

<sup>6</sup> The Universal Declaration of Human Rights, adopted on 10 December 1948  
< <http://www.un.org/en/documents/udhr/> accessed 22 November 2014.

<sup>7</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950 and entered into force 3 September 1953  
<[www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)> accessed 22 November 2014.

women, torture, rights of the child and disability rights were concluded under the auspices of UN.

In India, the inclusion of “Fundamental Rights” in the constitutional document is in accord with the trend of modern democratic thought.

A right without a remedy does not have much substance. A mere declaration of fundamental rights in the Constitution is meaningless unless there is effective machinery for their enforcement. To ensure that fundamental rights are properly protected, the Indian Constitution-makers have conferred on the Supreme Court under article 32, the power to grant most effective remedies, whenever such rights are infringed. Article 32 is last of seven groups of Fundamental Rights. Unlike other fundamental rights, it is remedial and not substantive in nature.

### 3. RIGHT TO MOVE THE SUPREME COURT

Article 32(1) guarantees the right to move the Supreme Court, by appropriate proceedings, for the enforcement of the Fundamental Rights enumerated in the Constitution. Article 32(2) empowers the Supreme Court to issue directions or orders or writs including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *certiorari* and *quo warranto*, whichever may be appropriate for enforcement of the fundamental rights.

The right to move the Supreme Court for the enforcement of the fundamental rights is one of the ‘highly cherished rights’.<sup>8</sup> It has been held to be an important and integral part of the basic structure of the Constitution that cannot be taken away even by amending the Constitution under article 368.<sup>9</sup> Explaining the significance of incorporation of article 32 in the Constitution, Dr BR Ambedkar observed, ‘If I was asked to name any particular article in the 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 soul of the Constitution and very heart of it’.<sup>10</sup>

In *Daryao v State of Uttar Pradesh*,<sup>11</sup> while commenting on the solemn role entrusted to itself by article 32, the Supreme Court observed, ‘the Fundamental Rights are the very essence of the democratic way of life adopted by the Constitution, and it is the privilege and duty of this Court to uphold those rights’. It cannot consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringement of such rights.<sup>12</sup>

#### 3.1 APPROPRIATE PROCEEDINGS

The expression “appropriate proceedings” in article 32(1) denotes that only those proceedings can be taken under this article, which are considered appropriate. The requirement of appropriateness must be judged in the light of the purpose for which the proceeding is to be taken namely, the enforcement of a fundamental right. The Court is not bound to follow the ordinary adversary procedure and may adopt such procedure as may be effective for the

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<sup>8</sup> *Fertilizer Corporation Kamgar Union v Union of India* AIR 1981 SC 344, 347.

<sup>9</sup> *Indira Nehru Gandhi v Raj Narain* AIR 1975 SC 2299; *Minerva Mills v Union of India* AIR 1980 SC 1789; *Kihoto Hollohan v Zachilhu and others* AIR 1993 SC 412; *L Chandra Kumar v Union of India and others* AIR 1997 SC 1125.

<sup>10</sup> Constituent Assembly Debates (vol. VII, 9 December 1948) 953.

<sup>11</sup> AIR 1961 SC 1457, 1461.

<sup>12</sup> *Romesh Thappar v State of Madras* AIR 1950 SC 124.

enforcement of the Fundamental Rights. In *Bandhua Mukti Morcha v Union of India*, the Supreme Court observed:

The Constitution-makers deliberately did not lay down any particular form of proceeding for enforcement of a Fundamental Right nor did they stipulate that such proceeding should conform to any rigid pattern or straight jacket formula ... because they knew that in a country like India, where there was so much of poverty, illiteracy, deprivation and exploitation, any insistence on a rigid formula of proceeding for enforcement of a Fundamental Right, would become self-defeating because it would place enforcement of Fundamental Rights beyond the reach of the common man... .<sup>13</sup>

For enforcement of a fundamental right of poor, disabled or ignorant, by a public spirited person, even a letter addressed to the court can legitimately be regarded as an appropriate proceeding.<sup>14</sup>

### 3.2 WHO CAN MOVE THE COURT?

The traditional rule of *locus standi* is that the right to move the court for judicial redressal is available only to those, whose legal rights or legally protected interests have been infringed. This rule results in denial of equal access to justice to those who, because of their poverty, ignorance and socially or economically disadvantageous position, are unable to approach the court for relief.

The rule of *locus standi* has now been considerably relaxed by the Supreme Court by permitting Public Interest Litigation [PIL]. Explaining the concept of PIL in *SP Gupta v Union of India*,<sup>15</sup> the Supreme Court ruled that 'any member of the public or social group acting *bona fide*' could invoke the writ jurisdiction of the High Courts or the Supreme Court, seeking redressal against violation of legal or constitutional rights of persons, who, owing to their poverty or social or economic or other disability, could not approach the court for relief. According to the Supreme Court in *ABSK Sangh (Rly) v Union of India*,<sup>16</sup> the access to justice through "class action", "public interest litigation" or "representative proceedings", is the present constitutional jurisprudence.

The landmark innovation of PIL is the most important contribution of the Supreme Court in 1980s and 1990s in ensuring that the rights and liberties of the people are protected. The Court entertained a number of PILs in this period with regard to-

- the protection of bonded, contract and child labour<sup>17</sup>
- widening the scope of right to life<sup>18</sup> and personal liberty<sup>19</sup>

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<sup>13</sup> AIR 1984 SC 802, 814.

<sup>14</sup> *Bandhua Mukti Morcha v Union of India* AIR 1984 SC 802; *Veena Sethi v State of Bihar* AIR 1983 SC 339; *Sunil Batra II v Delhi Administration* AIR 1980 SC 1579; *DK Basu v State of WB* AIR 1997 SC 610.

<sup>15</sup> AIR 1982 SC 149.

<sup>16</sup> AIR 1981 SC 298.

<sup>17</sup> *Bandhua Mukti Morcha* (n 14); *Neeraja Chaudhari v State of MP* AIR 1984 SC 1099.

<sup>18</sup> *Olga Tellis v Bombay Municipal Corporation* AIR SC 180; *People's Union for Civil liberties v Union of India* AIR 1997 SC 1203.

<sup>19</sup> *Hussainara Khatoon v Home Secretary, Bihar* (1995) 5 SCC. 326; *Sheela Barse v State of Maharashtra* A.I.R 1983 SC 378.

- the protection of environment<sup>20</sup>
- the prisoner's right and prison administration<sup>21</sup>
- activating the investigative process<sup>22</sup>

The PIL has thus become a powerful weapon for enforcement of public duties by the executive.

### 3.3 WRITS

The writs have been among the great safeguards provided by the British judicial system for upholding the rights and liberties of the people.<sup>23</sup>



**Habeas Corpus:** *Habeas Corpus* is a Latin word which means “you may have the body”. The main objective of this writ is to release a person from illegal detention. This writ is in the form of an order, issued by the Court to a person by whom another person is detained, to bring that person before the Court and to let the Court know, by what authority, he has detained that person. If the detention is found to be without legal justification, the person is ordered to be released.

**Mandamus:** *Mandamus* means “the order”. The writ is in the nature of a command issued by the Court to any government, corporation, inferior court or public authority to do some specific act which that body is obliged under law to do or refrain it from doing an act which it should not do. The applicant praying for this writ must show that he has a legal right to compel the opponent to do or refrain from something and the authority should be under a legal duty. A duty may be created by the provisions of the Constitution or a statute or common law principles. The duty must be imperative and not discretionary one.<sup>24</sup>

<sup>20</sup> *MC Mehta v Union of India* AIR 1987 SC 1086.

<sup>21</sup> *DK Basu* (n 14).

<sup>22</sup> *Vineet Narain v Union of India* AIR 1998 SC 889.

<sup>23</sup> *Jain* (n 4) 461.

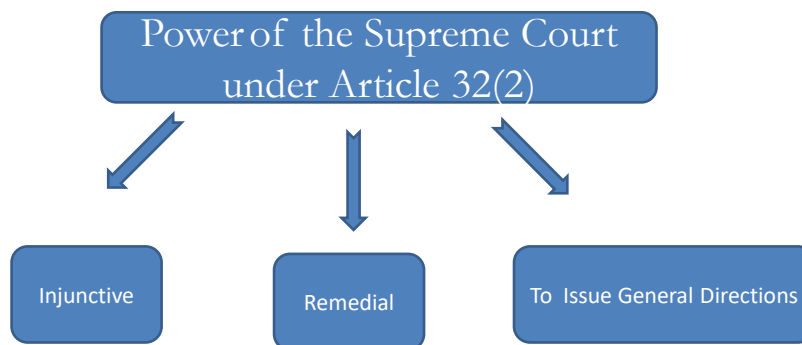
<sup>24</sup> *See Common Cause v Union of India* AIR 2003 SC 4493.

**Prohibition:** The writ of *prohibition* is issued primarily to prevent an inferior court or tribunal from exceeding its jurisdiction. The writ is issued against judicial or quasi-judicial authorities on the ground of acting without jurisdiction, excess of jurisdiction, error of law apparent on the face of the record or acting in violation of principles of natural justice. It is a prohibitive writ and forbids the authority from continuing the proceedings beyond its jurisdiction.

**Certiorari:** *Certiorari* means “to certify”. The grounds for awarding writs of *certiorari* and *prohibition* are the same. The difference between the two remedies is that *prohibition* is issued, while administrative process is in motion, to prevent the authority from continuing an illegal act. *Certiorari* is a remedial writ and is issued to quash the proceedings when administrative process has resulted in a decision. *Prohibition* does not lie against an authority discharging purely administrative functions. However, after *AK Kraipak v Union of India*,<sup>25</sup> *certiorari* can be issued not only to quash judicial or quasi-judicial proceedings but also administrative one.

**Quo Warranto:** *Quo Warranto* means “what is your authority”. The writ is issued to the holder of a public office to show to the Court, under what authority he is holding that office. The purpose of this writ is to prevent a person from holding an office, which he is not legally entitled to hold.

#### 4. POWER OF THE SUPREME COURT UNDER ARTICLE 32(2)



Clause (2) of article 32 is of wide amplitude. It does not confine the power of the Supreme Court to the issuance of the named writs, but the Court may issue any direction or order, whichever may be appropriate for the enforcement of the Fundamental Rights. The power of the Supreme Court is not only injunctive in ambit, that is, preventing the infringement of a

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<sup>25</sup> AIR 1970 SC 150.



Fundamental Right, but it is also remedial in scope and empowers the Court to grant relief against a breach of a Fundamental Right already committed.

#### 4.1 RELIEF

Under article 32(2), the Supreme Court has the power to award damages to compensate the loss caused to a person on account of violation of his Fundamental Rights. In *Rudul Shah v State of Bihar*,<sup>26</sup> in a writ of *habeas corpus*, the Court awarded damages to the petitioner against the State for breach of his right to personal liberty guaranteed by article 21 as he was kept in jail for 14 years even after his acquittal by a criminal court. Since *Rudul Shah*, compensation has been awarded in a number of cases to the victims or their kith or kin, for police brutality or atrocities or harassment. In *Saheli v Commissioner of Police, Delhi*,<sup>27</sup> death of 9 year old boy was caused by beating and assault by a police officer. In a writ petition filed by the Women's Civil Rights Organization, known as SAHELI, the Supreme Court awarded damages to his mother. In *Nilabati Behera v State of Orissa*,<sup>28</sup> compensation of Rs 1.5 lakh was given to the petitioner for death of her son in police custody.

In *Bhim Singh v State of Jammu & Kashmir*,<sup>29</sup> the petitioner was an MLA of Jammu and Kashmir. When he was going to attend an Assembly Session, he was wrongfully detained by the police and was prevented from attending the Assembly Session. He was not produced before the Magistrate within requisite period. Thereby, he was denied his constitutional right to attend Assembly Session and also there was violation of his right to personal liberty under article 21 of the Constitution. He was released at the time of decision, but by way of consequential relief exemplary damages amounting to Rs 50,000 was given to him.

In the exercise of power under article 32(2), the Supreme Court has directed the State to rehabilitate under-trial prisoners;<sup>30</sup> to provide free legal aid to an accused, who cannot afford legal services;<sup>31</sup> to provide better facilities to inmates of protective homes<sup>32</sup> and mental hospitals<sup>33</sup>; to ensure minimum wages to contract labourers;<sup>34</sup> ordered the closure of tanneries near Kanpur, polluting the Ganga;<sup>35</sup> etc..

#### 4.2 POWER TO ISSUE GENERAL DIRECTIONS

While the basic purpose of article 32 is to give relief to an aggrieved person whose Fundamental Right has been infringed, the Court has used this article, read with articles 141 and 142, for a much wider purpose than that, viz, to lay down general guidelines having the effect of law to fill the vacuum till such time the legislature steps in to fill in the gap by making the necessary law.<sup>36</sup>

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<sup>26</sup> AIR 1983 SC 1086.

<sup>27</sup> AIR 1990 SC 513.

<sup>28</sup> AIR 1993 SC 1960.

<sup>29</sup> AIR 1986 SC 494.

<sup>30</sup> *Khatri v State of Bihar* (1983) 2 SCC. 266.

<sup>31</sup> *MH Hoskot v State of Maharashtra* AIR 1978 SC 1548.

<sup>32</sup> *Upendra Baxi (II) v State of UP* (1986) 4 SCC. 106.

<sup>33</sup> *RC Narayan v State of Bihar* AIR 1989 SC 348.

<sup>34</sup> *People's Union for Democratic Rights v Union of India* AIR 1982 SC 1473.

<sup>35</sup> *MC Mehta v Union of India* AIR 1988 SC 1115.

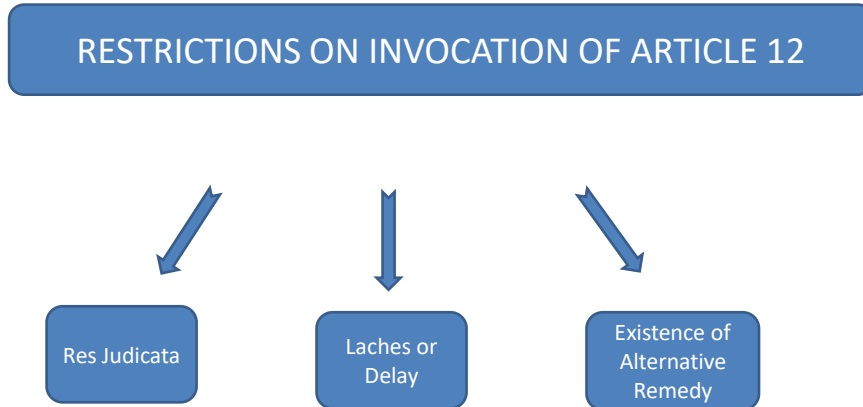
<sup>36</sup> *Jain* (n 4) 1549.

In *Vishaka v State of Rajasthan*,<sup>37</sup> elaborate guidelines have been laid down to discourage sexual harassment of women at work place. In *Vineet Narain v Union of India*,<sup>38</sup> the Court has laid down directions to ensure the independence of the Vigilance Commission and to reduce corruption among government servants.

## 5 AGAINST WHOM CAN A WRIT UNDER ARTICLE 32 BE ISSUED?

Most of the fundamental rights are available against the State and its instrumentalities and not against private bodies. The term 'State' is defined in article 12 of the Constitution. Article 12 provides that the State includes the Government and Parliament of Indian and the Government and the Legislatures of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. But there are a few fundamental rights which are available even against private individuals. These fundamental rights are article 17 (Abolition of Untouchability), article 21 (Protection of Life and Personal Liberty), article 23 (Prohibition of Traffic in Human Beings and Forced Labour) and article 24 (Prohibition of Employment of Children in Factories etc). In case of violation of any of these rights, the Court can make appropriate orders against violation of such rights by private persons.<sup>39</sup>

## 6. RESTRICTIONS ON INVOCATION OF ARTICLE 32



### 6.1 RES JUDICATA

The Supreme Court has imposed a significant restriction on the invocation of its jurisdiction under article 32 by applying the doctrine of *res judicata*. *Res judicata* is a rule of public policy

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<sup>37</sup> AIR 1997 SC 3011.

<sup>38</sup> *Olga Tellis* (n 18).

<sup>39</sup> *People's Union for Democratic Rights v Union of India* AIR 1982 SC 1473; *Vishaka v State of Rajasthan* AIR 1997 SC 3011.

that there should be finality to binding decisions of courts of competent jurisdiction. The principle is embodied in section 11 of the Code of Civil Procedure 1908. The principle of *res judicata* envisages that if a judgment has been pronounced by a court of competent jurisdiction, it is binding between the parties unless it is reversed or modified in appeal or other procedure prescribed by law. In *Daryao v State of Uttar Pradesh*,<sup>40</sup> it was held that when a writ under article 226 has been dismissed by the High Court, another writ under article 32 cannot be moved in the Supreme Court, to seek redress in the same matter. The reason being, the writ jurisdiction of the High Court under article 226 is substantially the same as that of the Supreme Court under article 32. The decision of the High Court can be challenged before the Supreme Court in an appeal but not through a writ petition.

However, the principle of *res judicata* is applicable only when the High court has disposed of the writ petition on merits. If a writ petition has been dismissed by the High Court not on merits, but on a technical ground, such as, delay in filing the petition, or availability of alternative remedy, or when the petition has been dismissed *in limine* without passing a speaking order, then *res judicata* is not applicable and the Supreme court can entertain a petition under article 32.<sup>41</sup>

Moreover, *res judicata* is not applicable to a petition for a writ of *habeas corpus*. If such a petition is dismissed by the High Court on merits, a similar writ may be entertained by the Supreme Court under article 32.<sup>42</sup>

## 6.2 LACHES OR DELAY

One of the fundamental principles of administration of justice is that the courts will help those who are vigilant about their rights and do not sleep on their rights. *Laches* or inordinate delay on the part of the petitioner may disentitle him to move a writ petition under article 32 to enforce his fundamental rights. There is no prescribed period of limitation for filing any petition under article 32. The only principle is that court should not entertain stale claims. It is a rule of judicial circumspection and has to be applied with great care and caution by the courts. It is not an absolute rule but a rule of practice based on sound and proper exercise of discretion. There is no inviolable rule that whenever there is delay the court must necessarily refuse to entertain the petition. Each case is to be decided on its own facts and circumstances.<sup>43</sup>

## 6.3 EXISTANCE OF ALTERNATIVE REMEDY

Article 32 is in itself a fundamental right and, therefore, the existence of an alternative remedy is no bar to the Supreme Court entertaining a petition under article 32 for the enforcement of a fundamental right. However, the Supreme Court ordinarily insists that the alternative remedy should be availed of, unless it is of no avail to the petitioner.<sup>44</sup>

## 7. SUSPENSION OF RIGHTS CONFERRED BY ARTICLE 32

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<sup>40</sup> AIR 1961 SC 1457.

<sup>41</sup> *Joseph Pothen v General Manager, Central Railway* AIR 1965 SC 1514; *Hoshnak Singh v Union of India* AIR 1979 SC 1328.

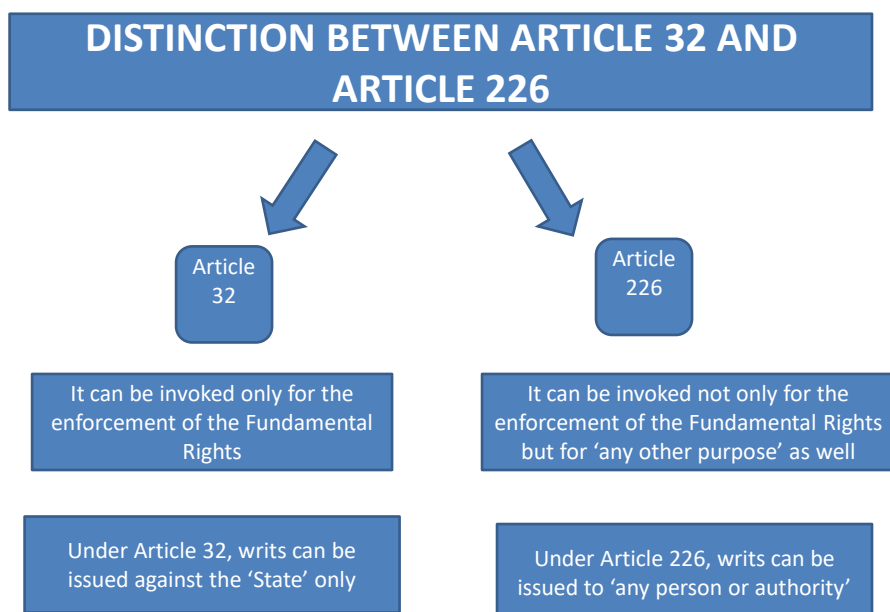
<sup>42</sup> *Gulam Sarwar v Union of India* AIR 1967 SC 1335.

<sup>43</sup> *Trilokchand Motichand v HB Munshi* AIR 1970 SC 898; *Pratap Singh v State of Haryana* AIR 2002 SC 3383.

<sup>44</sup> *See SA Khan v State of Haryana* AIR 1993 SC 1152.

Clause (4) of article 32 provides that the rights guaranteed by article 32 shall not be suspended except as otherwise provided for by the Constitution. Article 359 refers to a situation when the rights guaranteed by article 32 can be suspended. It is when a proclamation of emergency made under article 352 is in operation. Under such a situation, article 359 empowers the President to suspend by order the enforcement of the fundamental rights. But to curtail the vast power vested in the executive, the 44th Amendment to the Constitution made in 1978 restricted the scope of article 359. Article 359 has been amended so as to provide that the power of the President to suspend the right to move the court for enforcement of a fundamental right cannot be exercised for enforcement of the fundamental rights contained in articles 20 and 21. Thus, it is no longer possible to suspend the right to life and personal liberty guaranteed by article 21, and the right to protection in respect of conviction for offences guaranteed by article 20 even during proclamation of emergency under article 352.

## 8. DISTINCTION BETWEEN ARTICLE 32 AND ARTICLE 226



It is to be noted that under article 226, the High Court has also given power to issue writs. However, article 32 differs from article 226 in that whereas article 32 can be invoked only for the enforcement of the fundamental rights, article 226 can be invoked not only for the enforcement of the fundamental rights but for 'any other purpose' as well. The words 'any other purpose' refers to enforcement of a legal right or a legal duty. By and large the fundamental rights are available only against the 'State', which is defined in article 12 of the Constitution. Article 12 is relevant only for the enforcement of the fundamental rights under article 32. Under article 226, writs can be issued to 'any person or authority'. It may cover any person or body performing public duty. The duty must be judged in the light of 'positive obligation' owned by

the person or authority to the affected party. The positive obligation may be imposed by statute, common law, custom or even contract.<sup>45</sup>

## 9. SUMMARY

In the light of above discussion, it becomes clear that the power of the Supreme Court under article 32 is very wide and the Court has exercised it in a creative manner. The Court has played a pro-active role to in the matter of enforcement of fundamental rights of the people. With the relaxation of the rule of *locus standi* in the form of PIL, more and more cases related to public injuries because of executive inaction or misdeed came to be filed in the courts. With a view to making themselves accessible to disadvantageous section of the society, the Supreme Court has introduced procedural innovations. Mere letters addressed to the Court have been treated as writ petitions in cases of gross violation of fundamental rights. Time and again, the courts have directed the executive to comply with the objectives sought to be achieved by the Preamble of the Constitution. To ensure that the rights and liberties of the people are protected, the Court has moved beyond its normal role of a mere adjudicator of disputes and has become a player in the system of the country laying down principles and guidelines that the executive must carry out.

By widening the ambit and scope of the constitutional provisions to enforce fundamental rights, the Supreme Court has sought to bring the Indian law in conformity with the global trends in human rights Jurisprudence and justice standards.

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<sup>45</sup> See *Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v VR Rudani* AIR 1989 SC 1607.