



Article 32 of the Constitution

Why in News

Recently, the [Chief Justice of India \(CJI\)](#), during a hearing of a plea, said that the court is trying to discourage petitions filed under Article 32.

Key Points

- **CJI's View:** CJI noted that there is a **spate of Article 32 petitions** and reiterated that the **High Court can also uphold fundamental rights (under article 226)**.
- **Article 32 of the Constitution (Right to Constitutional Remedies):** It is a **fundamental right**, which states that individuals have the right to approach the [Supreme Court \(SC\)](#) seeking enforcement of other fundamental rights recognised by the Constitution.
 - The SC has **power to issue directions or orders or writs** for the enforcement of any of the fundamental rights. The writs issued may include **habeas corpus, mandamus, prohibition, certiorari** and **quo-warranto**.
 - The right to move the SC **shall not be suspended except** as otherwise provided for by the Constitution. Thus, the Constitution provides that the President can suspend the right to move any court for the enforcement of the fundamental rights during a **national emergency (Article 359)**.
 - In case of the enforcement of Fundamental Rights, the **jurisdiction of the SC is original but not exclusive**. It is **concurrent with the jurisdiction of the high court under Article 226**.
 - **Original**, because an aggrieved citizen can **directly go to the SC, not necessarily by way of appeal**.
 - **Concurrent** means when the Fundamental Rights of a citizen are violated, the aggrieved party **has the option of moving either the high court or the Supreme Court** directly.
 - Since the **right guaranteed by Article 32** (ie, the right to move the SC where a fundamental right is infringed) is in itself a **fundamental right**, the **availability of alternate remedy is no bar to relief under Article 32**.
 - However, the SC has ruled that **where relief through the high court is available under Article 226**, the aggrieved party should **first move the high court**.
 - In the **Chandra Kumar case (1997)**, the SC ruled that the **writ jurisdiction of both the high court and the Supreme Court** constitute a part of the [basic structure](#) of the Constitution.
- **Counter-Argument:**
 - Even as the **SC underlines the powers of the high courts**, it has in the past **transferred cases to itself from the high courts**.
 - Most recently, the SC transferred the case involving land use for the national capital's [Central Vista project](#) to itself from the Delhi High Court. Incidentally, the petitioners had not sought such a transfer.
 - When such transfers are made, the petitioners **lose a stage of appeal** that would

- otherwise have been available had the high courts heard and decided the case.
- Recently, the SC also conveyed its concerns that in many matters involving personal liberty, the **High Courts are not exercising their jurisdiction as constitutional courts**.

Article 226 of the Constitution

- Article 226 of the Constitution **empowers a high court to issue writs** including habeas corpus, mandamus, certiorari, prohibition and quo warranto **for the enforcement of the fundamental rights of the citizens and for any other purpose**.
 - The phrase 'for any other purpose' refers to the **enforcement of an ordinary legal right**. This implies that the **writ jurisdiction of the high court is wider than that of the SC**.
 - This is because the **SC can issue writs only for the enforcement of fundamental rights and not for any other purpose**, that is, it does not extend to a case where the breach of an ordinary legal right is alleged.
- The high court can issue writs to any person, authority and government **not only within its territorial jurisdiction but also outside its territorial jurisdiction** if the cause of action arises within its territorial jurisdiction.

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