
**THE PROCEDURE FOR ENFORCING FUNDAMENTAL RIGHTS: THE ROLE OF
THE SUPREME COURT AND HIGH COURTS**

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ABSTRACT

This paper examines the application and enforcement of fundamental rights under Articles 32 and 226 of the Constitution of India, emphasizing the ever-important role of the Supreme Court and High Courts in safeguarding individual liberty. The paper first outlines the six categories of fundamental rights (Arts. 12-35) as envisaged in the Constitution. The rights' significance in terms of equality, freedom, and dignity for a democratic society is then highlighted. Next, the extensive nature of the Supreme Court's writ jurisdiction and the more widespread geographical writ powers of the High Courts are explained, also laying down the distinctions between Articles 32 and 226. It also presents an in-depth discussion on five constitutional writs- Quo Warranto, Mandamus, Prohibition, Habeas Corpus, and Certiorari-signifying corrective measures in the judicial toolbox.

KEYWORDS: Fundamental Rights, Article 32, Article 226, Writs, Public Interest Litigation.

INTRODUCTION

The basic rights that every Indian citizen is entitled under the Constitution are called fundamental rights. These safeguard the democratic fabric of our country and protection of individual freedom.

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What if there is encroachment of these rights? For the enforcement of rights, the judiciary especially Supreme Court and High Courts come to their rescue.

The Constitution provides a person whose fundamental rights are infringed clear mechanisms to seek redress. High Courts have been vested with similar authority under Article 226 (Article 226 confers upon High Courts power to issue writs not only for enforcement of Fundamental Rights but also for "any other purpose." In this way, persons may approach High Courts for enforcement of both Fundamental Rights and other legal rights. Therefore, Article 226 has a wider scope of application than Article 32 which is confined to Fundamental Rights alone.), while, Article 32 (Article 32 is a fundamental right to move the Supreme Court directly for the enforcement of one's Fundamental Rights) permits a citizen to approach the Supreme Court directly for the enforce of their fundamental rights.² That is to say, if those courts believe that rights are being violated, those individuals can approach them for help in sorting out issues.

Protecting the rights is also a primary responsibility of the Supreme Court of the land. It can issue various writs including Quo-Warranto: challenges the validity of a person's claim to a public office; Mandamus: compels a public official to discharge their duties; Habeas Corpus: directed at securing the release of someone being unlawfully detained; Prohibition: orders are issued to restrain lower courts exceeding their jurisdiction; and Certiorari: to supervise the decision made by a lower court. These writs empower the Court to deal effectively with any institution, ensuring that constitutional liberties are more than just meaningless words.

By virtue of Article 226, the High Courts functioning within their respective states are also empowered by the enforcement of fundamental rights. However, they have larger jurisdiction comparatively than the Supreme Court, since all these can be granted for some reason other than the enforcement of fundamental rights, hence an individual has access to a relatively easier and immediate course of action when it comes to enforcement of rights in case there is its violation.

² *"The Role of the judiciary in protecting Fundamental Right"*, (Jan 10,2025)

The judiciary has protected fundamental rights through major rulings passed throughout the years.

The Supreme Court, in tandem with the striking down of Section 377 of the Indian Penal Code in 2018, decriminalized consensual same-sex relationships, thus upholding other rights such as equality and personal freedom. Similarly, in 2017, the Court declared the practice of immediate triple talaq illegal thereby enhancing gender equality and protecting the rights of women. When any fundamental rights are alleged to have been infringed upon, any person may approach the competent court. To be admitted in accordance with the law, the petitioner must set forth a case that a particular right has been infringed. After admission of the petition, the court will proceed through a hearing where it may give notice to parties affected and will then pronounce a judgment. In the event the court finds there has been a breach, it will readily afford the aggrieved party such remedies or give such directions or pass such orders or injunctions as may be appropriate for putting an end to the violation of rights.³ Judicial review is also one mechanism through which the judiciary determines whether or not executive and legislative actions are constitutional. This means that the courts can serve as a check on the other branches of government and ensure all actions are in accordance with constitutional requirements by holding legislation or government action violating fundamental rights to be unlawful. Besides, the concept of Public Interest Litigation (PIL) has broadened the power of judges to intervene in cases of fundamental rights. For enhancing access to justice and the defense of collective rights, PILs enable individuals or groups to approach the courts on behalf of themselves as well as others who may not be able to approach them.

The enforcement of the fundamental rights in India is really a dynamic process facilitated by the strong roles of the Supreme Court and High Courts. These judicial bodies, vested with the power conferred by the constitution, safeguard the freedoms that underlie India's democratic society by providing modes of redress and ensuring that the rights of people are upheld.

³ Anupam Mishra, *"The Role of a Supreme Court of India as a Protector"* pp.27-31 (June 14,2023)

RESEARCH OBJECTIVES:

- a) To examine the precise provisions of the Indian Constitution, emphasis to Articles 32 and 226 that provide the Supreme Court and High Courts the authority to uphold fundamental rights.
- b) To analyse key Supreme Court and High Court decisions that have significantly influenced the enforcement and interpretation of Fundamental Rights in India.
- c) To identify challenges faced by the judiciary in enforcing Fundamental Rights and propose recommendations to enhance the effectiveness of these enforcement mechanisms.

RESEARCH ANALYSIS:

Significance of Enforcing Fundamental Rights for a Democratic Society

A democratic nation cannot be properly run without the enforcement of fundamental rights. Irrespective of their nationality, sex, ethnic origin, colour, religion, language, or any other status, these rights that include freedoms such as speech, assembly, religion, and a fair trial are innate to every individual. They promise the people the freedom to practice their faith, express themselves, and participate in civic matters without fear of discriminatory interference. This protection fosters free and critical speech, which enables people to hold the government accountable and promote society. Without these rights being protected, citizens would suffer oppression, which would undermine public trust in the government. In addition, upholding basic rights promotes social justice and equality.

Democracies aim to safeguard vulnerable individuals and work against discrimination by upholding these rights, ensuring everyone gets an equal opportunity to participate in society activities.

Individuals are appreciated and recognized in society due to this commitment to equality, which reduces social tensions and conflicts. In addition, enforcing these rights ensures active citizenship because individuals are more likely to contribute positively to their communities when they feel that their rights are enforced and their views embraced. Essentially, democratic states are founded on enforcing basic rights, which ensure the freedom, equality, and justice for all.

Constitutional Provisions Empowering the Judiciary Article 32: Right to Constitutional Remedies

The Article 32 of the Indian Constitution grants individuals the right to go directly to the Supreme Court to enforce their fundamental rights. One of the key drafters of the Constitution, Dr. B.R. Ambedkar, referred to this article as the "heart and soul" of the constitution, highlighting how vital it is to upholding personal liberties.⁴ This Article reinforces the commitment to the rule of law and justice by ensuring that people have an effective redress when their rights are infringed. The Supreme Court is also empowered to issue a range of writs, such as habeas corpus, mandamus, prohibition, quo warranto, and certiorari, to correct abuses of basic rights, according to Article 32. Through the use of these writs, the Court can maintain the integrity of constitutional provisions by making compliance, preventing illegal actions, or correcting judicial errors. Individuals no longer need to pass through lower courts since due to Article 32's access to the Supreme Court directly, there is a timely and trustworthy channel of redress.

Article 226: Enabling High Courts

The Indian Constitution's Article 226 authorizes High Courts to issue writs for the enforcement of legal rights, including fundamental rights.⁵ This provision authorizes High Courts to issue orders,

⁴ Sneha Deepthi Gaddam, "Article 32: Right to Constitutional Remedies"

⁵ Sneha Mahawar, "Article 226 of Constitution", 2023

directions, or writs like those that come under the categories of habeas corpus, mandamus, prohibition, quo warranto, or certiorari to any person or authority that is within their territorial jurisdiction.

Differences between Article 32 and 226:

There are quite important differences between Articles 32 and 226, even though both offer courts the jurisdiction to issue writs. In its role as a direct constitutional remedy for the enforcement of basic rights, Article 32 empowers the Supreme Court to issue writs merely for enforcing such rights. Conversely, Article 226 empowers High Courts to issue writs for any purpose, including the enforcement of rights under law, along with the enforcement of fundamental rights. Further, while High Courts under Article 226 have jurisdiction within their respective geographical areas, the Supreme Court under Article 32 has jurisdiction all over the world. Moreover, the power of Article 32 to approach the Supreme Court is an inherent right itself, underlining how significant it is to the constitutional framework.

In practice, individuals often resort to High Courts under Article 226 due to their close locations and broader jurisdiction, especially while seeking remedies for violations that may not be directly concerning basic rights.

Access to justice is rendered faster and more localized due to this decentralized approach. But when fundamental rights are breached directly, individuals can choose to invoke Article 32 to appeal to the Supreme Court for a more binding and authoritative judgment. Both articles reveal the Constitution's dedication to safeguarding individual liberty and the rule of law, yet taken together, they form a solid platform for the enforcement and defence of rights.

SUPREME COURT AND HIGH COURT JUDGMENTS (LANDMARK CASES ON FUNDAMENTAL RIGHTS ENFORCEMENT)

a) Comparative Analysis: Arnab Goswami and Siddique Kappan Case

Debates regarding the neutrality and uniformity of the judiciary in upholding basic rights, particularly the freedom of the press and right to individual liberty, have been caused by the varied court responses in the Arnab Goswami and Siddique Kappan cases.

The Case of Arnab Goswami:

Television anchor Arnab Goswami was arrested on suspicion of abetting suicide. Even while the nation was on a holiday break, the Supreme Court intervened promptly and released him on interim bail within eight days of arrest. The Court stressed the importance of personal liberty and raised a question about the Bombay High Court's denial of bail, stating that courts cannot shirk their duty and that the Supreme Court must always intervene.⁶

The Case of Siddique Kappan:

Journalist Siddique Kappan was charged under the Unlawful Activities Prevention Act (UAPA) upon his arrest in transit to report on a sensitive event. The Supreme Court suggested approaching the right lower courts in spite of calls for his release, which saw him detained for long before any redress. "Each case is unique," the Chief Justice retorted to parallels drawn between his own case and Goswami's, emphasizing the Court's stand on bespoke judicial review.⁷

Implications:

This inconsistency has raised issues of consistency in judicial decisions, specifically relating to the duration of hearings and bail grants. Opponents argue that such inconsistencies may be an indication of prejudices or misconduct in the judicial process, which would lead to a deterioration in public confidence in the fairness of the judiciary's protection of human rights. The accused preferential treatment in well-publicised cases highlights the need for transparent and even-handed

⁶ Arnab Manoranjan Goswami v. The State of Maharashtra & Ors, (2021) 2 SCC 427

⁷ Siddique Kappan v. Union of India, (2022) 7 SCC 436

legal proceedings to ensure that all are treated equally Before the law, irrespective of their background or connections.

b) A. K. Gopalan. v. State. of. Madras

Facts: Eminent communist leader A.K. Gopalan had already been under detention since December 1947 due to multiple reasons. He was still in detention when he was detained in March 1950 under the Preventive Detention Act of 1950. Gopalan challenged this detention by filing a writ petition in terms of Article 32 of the Indian Constitution. He argued that the Act violated his fundamental rights as enshrined in Articles 13, 19, 21, and 22.⁸

Issues:

- 1) Whether the Preventive Detention Act, 1950, violated the fundamental rights covered by Articles 19 and 21 of the Constitution.
- 2) Whether the provisions of the Act were compliant with Article 22, covering protection against arrest and detention in specific situations.

Ratio:

By a majority judgment, the Supreme Court upheld the validity of the 1950 Preventive Detention Act, minus Section 14. The Court held that:

Construction of Article 21: "procedure established by law" as used in Article 21 applies to any process that has been enacted by a lawfully constituted legislature. Hence, any process that a law establishes is legal as long as it is implemented in a proper manner, though not fair or reasonable.

Article 19 and Preventive Detention: Free citizens are protected by Article 19, which guards some

⁸ A.K. Gopalan v. State of Madras, AIR 1950 SC 27

liberties, but those in preventive custody are not. Hence, the liberties defined under Article 19 do not apply in the cases relating to the issue of preventative custody.

c) Maneka Gandhi v. Union of India

Facts: Journalist Maneka Gandhi got her passport on June 1, 1976. Her passport was taken away on July 2, 1977, by the Regional Passport Officer "in the interest of the general public" under Section 10(3)(c) of the Passports Act, 1967. Gandhi requested the authorities to provide reasons for this action, but they declined, saying that the people were interested.⁹ She subsequently petitioned for a writ challenging the order as a violation of her constitutional rights under Articles 14 (Equality), 19 (Freedom), and 21 (Life and Personal Liberty) under Article 32 of the Constitution in a writ petition.

Issues:

1. Whether the impounding of Maneka Gandhi's passport by the government without providing her an opportunity to be heard constituted a violation of her right to personal liberty as guaranteed under Article 21 of the Constitution.
2. Whether all the rights guaranteed under Articles 14 (Right to Equality), 19 (Protection of Certain Rights in Relation to Freedom of Speech, etc.), and 21 (Protection of Life and Personal Liberty) are interrelated, and if violation of one right would necessarily entitle an infringement of the others.

Judgment:

Interrelation between Basic Rights: The Court laid stress on the fact that Articles 14, 19, and 21 must be interpreted in an organized manner and are not interrelated. It promoted the concept of

⁹ Maneka Gandhi v. Union of India, AIR 1978 SC 597

the "golden triangle", whereby a legislation which cuts across a person's personal freedom has to fulfill the requirements of all three articles.

The Court defined "personal liberty" expansively under Article 21, asserting that it includes a set of rights constituting a person's personal liberties.

Right to Travel Abroad: The Court held the right to travel abroad as a component of the right to personal liberty under Article 21.

d) Girish Suneja vs CBI

Facts: The appellant, Girish Kumar Suneja, was associated with the illegal allotment of coal blocks. In a charge sheet, Suneja and others were charged by the CBI for an offence under Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988, and under Sections 120-B

(criminal conspiracy), 409 (criminal breach of trust), and 420 (cheating) of the Indian Penal Code.¹⁰ The Special Judge before whom these proceedings were held directed framing of the charges against the accused on April 29, 2016.

Issues:

- 1) Whether, in view of the July 25, 2014, order of the Supreme Court, the High Court had jurisdiction to admit petitions questioning interlocutory orders of the Special Judge in the coal block allocation cases.
- 2) Whether the High Court could invoke its revisional jurisdiction under Section 397 of Code of Criminal Procedure (CrPC) or its inherent powers under Section 482 of the CrPC in order to step into the proceedings before the Special Judge.

Judgment: The Supreme Court placed prime importance on the following issues while affirming four orders of the lower courts: The Court placed prime importance on the fact that the aim of its July 25, 2014, order was to ensure the speedy disposal of the trials and investigations related to

¹⁰ Girish Suneja vs CBI, 2017 14 SCC 809

the coal block allocation scams. This order virtually forbade High Courts to hear petitions that would hinder the progress of some cases, leaving it only for the Supreme Court to hear.

The Court reiterated that High Courts' revisional jurisdiction under Section 397 of the CrPC is at their entire discretion. It's a power to be exercised in the interest of justice and not a natural right of plaintiffs. The specific directions by the Supreme Court to speed up the proceedings in some high-profile cases ensured that the power of the High Courts to revise was appropriately restricted.

Recommendations for Enhancing Enforcement Mechanisms

Strengthening the Infrastructure of the Judiciary

Inadequate infrastructure is a serious issue for the Indian judiciary, leading to delays and backlogs in cases. To rectify this:

1. **Add More Judges:** By cutting the docket size in each judge, more judges can speed up the resolution of cases. To boost judicial capacity in an effort to do so, for instance, 769 new High Court judges and 46 Supreme Court justices were appointed between 2014 and 2022.
2. **Improve Court Buildings:** By installing modern amenities, ensuring they are available, and appropriating the necessary funds, court buildings can be made more suitable for proper legal proceedings. The Department of Justice emphasizes the need for better infrastructure, such as computerization and the timely completion of building works for court complexes and judge quarters.

Legal Awareness Programs

Most of the citizens are ignorant about their legal remedies and their basic rights. To bridge this gap:

- 1) **Launch Legal Literacy Campaigns:** Citizens can acquire knowledge of their rights and the judiciary by organizing seminars, workshops, and community meetings. Through state and district legal services authorities, the National Legal Services Authority (NALSA) organizes legal literacy and awareness schemes with a view to educating the public about legal rights.

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- 2) Integrate Legal Education into School curriculum: Incorporating basic legal education into school curriculum assists in bringing awareness at an early stage and fostering a culture of legal consciousness.

ADR, Or Alternative Dispute Resolution: To alleviate court workloads and provide justice in a timely fashion:

Promote mediation and arbitration: These procedures can lead to more favorable and faster solutions to disputes between parties. The Indian government has encouraged ADR procedures, including arbitration and mediation, as being less adversarial and more efficient alternatives to conventional litigation.

Establish ADR Centers: Establishing specialized arbitration and mediation centers throughout the country can provide readily available venues for settling disputes. Besides providing free legal services and encouraging and facilitating the application of different ADR methods, programs like the Sambhav Initiative aim to provide justice and peace.

CONCLUSION

In India, it is of utmost importance to uphold basic rights as it protects democracy and individual liberties. As protectors of fundamental rights, the Supreme Court and High Courts, with their powers under Articles 32 and 226, Act and Clauses respectively, defend the right of the individual to the Constitution. They give citizens avenues of addressing violations through writs such as Habeas Corpus, Mandamus, Prohibition, Quo-Warranto, and Certiorari. Because of the proactive nature of the judiciary with regard to the interpretation and implementation, numerous landmark rulings have given and broadened the scope of fundamental rights. The judges, however, face challenges such as an overwhelming number of pending decisions, inadequate facilities, and lack of public understanding of the basic legal provisions available for legal challenges to government action. These challenges may be addressed by improving the court system, putting in place campaigns for public education about the law, and fostering alternative dispute resolution procedures, thus adding efficiency to the enforcement of fundamental rights. Individual liberties

and the rule of law in India are, in the utmost intent provided for and protected in the steady hands of the Supreme Court and High Courts and their vigilant defense of constitutional requirements.

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