Article 32

Why in the news?

Supreme Court discourages the use of Article 32.

What is Article 32?

· It deals with the 'Right to Constitutional Remedies', i.e. the right to move the Supreme Court for the enforcement of the rights conferred in Part III (Fundamental Rights) of constitution.

· It states that the Supreme Court "shall have power to issue directions or orders or writs, for the enforcement of any of the rights conferred by this Part".

· It includes writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate.

· The right guaranteed by this Article "shall not be suspended except as otherwise provided for by this Constitution (during the period of Emergency)".

· An individual can approach the High Court under Article 226 or the Supreme Court directly under Article 32.

Why the court discourages the use of Article 32?

· There are large numbers of Petitions under Article 32 coming to Supreme Court.

· SC feels that high courts, under Artilce 226, are well-equipped to deal with such matters.

· In civil or criminal matters, the first remedy available to an aggrieved person is that of trial courts, followed by an appeal in the High Court and then the Supreme Court.

· When it comes to violation of fundamental rights, an individual can approach the High Court under Article 226 or the Supreme Court directly under Article 32. Article 226, however, is not a fundamental right like Article

32.

How has the SC interpreted Article 32?

- The Supreme Court has been inconsistent with its position regarding Article 32.
- **Journalist Siddique Kappan Case -** The court asked why the petitioners could not go to the High Court and waits responses from the Centre and the UP government.
- **Nagpur-based man defamatory case -** The same Bench directed him to approach the High Court first.
- **Poet Varavara Rao Case -** In a relief petition under Article 32, the Supreme Court directed the Bombay High Court to expedite the hearing on a bail plea filed on medical grounds.
- Here, it also observed that once a competent court had taken cognisance, it was under the authority of that court to decide on the matter.
- **Arnab Goswami Case** - The court had then said that the right to approach the Supreme Court under Article 32 is itself a fundamental right.
- It also observed that "there is no doubt that if a citizen of India is deterred in any case from approaching this Court in exercise of his right under Article 32, it would amount to a serious and direct interference in the administration of justice in the country".
- **RomeshThappar vs State Of Madras Case(1950) -** Supreme Court observed that it is the protector and guarantor of fundamental rights, and it cannot refuse to entertain applications seeking protection against infringements of such rights.
- **Jabalpur vs S S Shukla (1976) -** Supreme Court had said that the citizen loses his right to approach the court under Article 32.
- Constitutional experts say that it is eventually at the discretion of the Supreme Court and each individual judge to decide whether an intervention is warranted in a case, which could also be heard by the High Court first.

Source: The Indian Express

Quick Facts

· **Habeas corpus -** (related to personal liberty in cases of illegal detentions and wrongful arrests)

· **Mandamus -** directing public officials, governments, courts to perform a statutory duty;

· **Quo warranto -** to show by what warrant is a person holding public office;

· **Prohibition -** directing judicial or quasi-judicial authorities to stop proceedings which it has no jurisdiction for; and

· **Certiorari -**re-examination of an order given by judicial, quasi-judicial or administrative authorities.

Similarities & differences Article 32 and Article 226

· Both Article 32 and 226 is invoked for the enforcement of Fundamental Rights

· Both the Supreme court and High court has the power to issue writs under Article 32 and Article 226 respectively.

- Article 32 is invoked for the enforcement of fundamental Rights whereas Article 226 is invoked for enforcement of fundamental right as well as other legal rights too.

· The power to High court under Article 226 is wide than the power of the Supreme court under Article 32

· Power to issue writs under Article 32 is mandatory for the Supreme court whereas High court has discretionary power to issue writs under Article 226

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