



ARTICLE 32 of the Indian Constitution-An Overview

KEYWORDS

Medical practitioner, Occupational stress

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ABSTRACT

The Constitution of India has always focussed upon the concept of Fundamental Rights. Thus, it has provided the remedies for enforcement of such rights. So the author intends to give a proper evaluation of the Article 32 and its further validation down the years. The author deals with the conceptual overview and also the related cases. There is substantive interpretation in this paper by the author. Insight into concepts such as 'Right to move the Supreme Court and Writs has been given primary importance. In-depth analysis and validity of the provisions in Indian scenario would closely dealt in this paper.

Article 32. Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part (3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution' Mere declaration of the fundamental right is meaningless until and unless there is an effective mechanism for enforcement of the fundamental rights. So, a right without a remedy is a worthless declaration. The framers of our constitution adopted the special provisions in the article 32 which provide remedies to the violated fundamental rights of a citizen.

Article 32(1): Guarantee to remedy

Article 32(2): Power of Supreme Court (and high courts) to issue writs

Article 32(3): Power of parliament to confer the power to issue writs to other courts (so far this power is not exercised).

Article 32(4): Suspension of Fundamental Rights.

Supreme Court which is guardian of the fundamental rights in India has three kinds of jurisdiction: original, appellate & advisory. Article 32 uses the power of original jurisdiction of the Supreme Court by which any person who has a complaint that his / her fundamental right has been violated within the territory of India may move directly to the Supreme Court. He / She may move to the High Court does not imply that he/ she cannot move directly to the Supreme Court. Original jurisdiction of the Supreme Court extends to any dispute between Government of India and one or more States between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends. In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari to enforce them.

The Supreme Court is made the protector and guarantor of the Fundamental Rights. It is not obligatory for the court to follow adversary system on cases related to this Article and 'appropriate proceedings' are sufficient. The remedy sought must be correlated to one of the fundamental rights sought to be enforced.

Locus standi: Open for those whose fundamental rights are

infringed. This was later relaxed to allow Public Interest Litigation cases thus allowing any 'public spirited citizen' to file the case.

Besides the Supreme Court, the High Courts also have been given a role in the protection of fundamental rights. Under Art. 226 of the constitution, High Courts also can issue writs for the enforcement of fundamental rights.

But the jurisdictions of the Supreme Court and the High Courts in the matter of issue of writs are slightly different. The Supreme Court can issue writs only in case of infringement of a fundamental right in part III of the constitution. The High Courts on the other can issue writs against infringement of fundamental rights, as well as against infringement of ordinary law. Thus the area of High Courts, with respect to the power to issue writs is wider than that of the Supreme Court. However, competence of the High Courts to issue writs is limited within its territorial jurisdiction. The Supreme Court's area of competence is co-terminus with the territory of India as a whole.

In case of transgression of fundamental rights the Supreme Court or the High Courts may issue five kinds of writs. These are writs of Habeas Corpus, Mandamus, Prohibition, Criterion, and Quo warranto.

Habeas Corpus—Habeas Corpus literally means—that human person is sacred. Hence no man may be detained illegally. Whenever a man is detained, he must be produced before a court. This writ is a powerful safeguard against arbitrary arrest and detention.

Mandamus—meaning 'command', mandamus calls upon public servants to perform some duties. Thus mandamus is issued against dereliction of duty.

Prohibition—as the very term prohibition—suggests, this writ is issued by the Supreme Court or the High Courts, to prohibit inferior courts under them to overstep their jurisdiction.

Criterion—it enables a superior court of compels inferior courts to submit records of proceedings to the higher court.

Quo warranto—literally means by what right. This writ is issued to determine the legality of a person's claim to public office. The purpose of this writ is to prevent usurpation of a public office by an undesirable or, unqualified person.

Related Case Laws and their observation

MC Mehta v Union of India, AIR 1987 SC 1087

- The case widened the scope of public interest litigation to social interest litigation
- SC's power to grant remedial relief includes power to award compensation in appropriate cases

L Chandra Kumar vs Union of India, AIR 1997 SC 1125

- In regard to tribunals, the Supreme Court of India held that the clause of Article 323A that excludes the jurisdiction of High Courts and Supreme Court under Articles 226 / 227 and 32 of the Constitution is unconstitutional.

Coffee Board vs CTO, AIR 1971 SC 870; Star Mills vs State of UP, AIR 1984 SC 373

- No question other than relating to fundamental rights can be determined in a proceeding under Article 32.

Darya vs State of Uttar Pradesh, AIR 1961 SC 1457

- It is the duty of the Supreme Court to enforce fundamental rights guaranteed by the Constitution.

Kochunni vs State of Madras, AIR 1959 SC 725

- The right to move to Supreme Court for the enforcement of Fundamental rights is itself a fundamental right

Rupa Ashok Hurra v Ashok Hurra, AIR 2002 SC 1771

- In order to prevent gross miscarriage of justice, courts can allow curative petition by the victim of miscarriage of justice to seek a second review of the final order of the Court.

Shreya Singhal v Union of India

- Criminal / Civil Original Jurisdiction, Writ Petition (Civil) No 167 OF 2012.
- Supreme Court of India judgement dated March 24, 2015 that struck down Section 66A of the Information Technology Act, 2000

Beenu Rawat and Others v Union of India and Others

- Civil Original Jurisdiction, Writ Petition (Civil) No 446 OF 2013, Supreme Court of India judgement dated November 19, 2013

Life Convict Bengal, Khoka & Prasanta Sen Vs B K Srivastava and Others

- Criminal Appeal Jurisdiction, Criminal Appeal No. 1334 OF 2013, Supreme Court of India judgement dated February 13, 2013

Common Cause v Union of India

- Case on malpractices, malfunctioning and inadequacies of blood banks in the country.

CONCLUSION

During certain circumstances, the privileges that citizens ought to get under Article 32 are negated. The right to constitutional remedies is denied when the President of India proclaims emergency. According to Article 352, the fundamental rights to the citizens remain suspended. Similarly, the Article 358 gives Parliament the authority to curtail the rights guaranteed by the Constitution.

There had been instances wherein the petitions under Article 32 were not entertained by the Supreme Court. Leading news dailies have pointed out the fact that grievances under this Article are listened to only when they come from celebrities or when incidents are reported in public. What's even more alarming is the substantial decline in Article 32 petitions, which can be attributed to the court's reluctance to entertain such petitions. The author strongly believes in encouragement when it comes to entertaining petitions arising from Article 32.

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