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Article 32 of the Indian Constitution: Unraveling the Right to Access Justice and Its Contemporary Interpretation

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Article 32 of the Constitution of India is contained as the heart and soul of the Constitution by the makers themselves. The Article prima facie enables the citizens of the state to move to Apex Court in case of infringement of any right conferred under Part-III of the Constitution. And since Article 32 which also falls under Part III is also a fundamental right for the citizens. Hence with the literal interpretation of the Constitution, the citizens have the right to move to the Apex Court when there is any violation. In the Constitution, it is nowhere mentioned that one should first always approach the High Court upon the infringement of rights under Article 226 which gives the right to the citizen to move to the High Court of State Judicature. Hence a sudden interpretation of the judiciary that first one should approach the High Court and then the Supreme Court. The author here in this paper discusses the scope, differences and instances of Article 32 and Article 226 in addition to the relevant case laws.

Keywords: *fundamental rights, article 32, article 226.*

INTRODUCTION

‘If I was asked to name any particular article in this 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 the very heart of it and I am glad that the House has realized its importance.¹

These are the words of Dr. B. R. Ambedkar when one asked him which is the most article in the Constitution of India. But recently the saviour of the heart and soul of the Constitution²- the Judiciary, has interpreted that they are not particularly entertaining petitions under Article 32³ as there are many petitions and it is overburdening for the Apex Court to entertain all of them. Also, the provision of the Constitution under Article 226⁴ serves a similar yet broader scope than the former. The reason why Article 226 is claimed to be broader than Article 32 is the literal interpretation of the provision. Article 226 (i) mentions the jurisdiction of the High Court about violation of fundamental rights enshrined in Part III⁵ and 'for any other purpose whereas in Article 32 the provision for any other purpose is not given rather it only mentions the violation of fundamental rights conferred under Part III of the Constitution.

This further gives a reason to understand why the apex court is more or less trying to divert the scope of Article 32 towards Article 226 and in case of requirement of rendering justice even after that then anyone can approach the Supreme Court through appeal.

ARTICLE 32: AN OVERVIEW

Article 32 gives rights to an individual to pursue justice in a court whenever the individual thinks that his right has been encroached on or 'unduly deprived'. The Supreme Court has the power to restore the rights which an individual is derived from and the right is protected by the Constitution of India. The article contains other constitutional rights in Part III of the Constitution, including democracy, freedom of speech and expression, life and personal liberty and freedom of religion. Only if any of these fundamental rights are being violated then an individual, under Article 32, directly approach the Apex Court.

¹ Constituent Assembly Debates, December 9, 1948, Vol. VII, p. 953

² Constitution of India 1950

³ Constitution of India 1950, art 32

⁴ Constitution of India 1950, art 226

⁵ Constitution of India 1950, pt 3

Writs under Article 32: According to Article 32, the High Court and the Supreme Court can be approached in case of infringement of fundamental rights. There are indicatively five types of writs which means that whenever the court feels deemed fit it can introduce a writ. The writs that can be issued by the Supreme Court for the restoration of the rights guaranteed under Part III of the Constitution are as follows:

1. Habeas Corpus: This means that 'produce the body'. The main use of this writ is to claim against the unlawful detention of an individual. This can be filed by the individual or any other person related to that individual who is unlawfully detained.

2. Quo Warranto: It refers to 'By what means. Under this writ, the court asks public officers to answer by what authority the person has assumed the office. And if the person's authority is defective then the person has to leave the public office

3. Mandamus: It means 'We Command. The writ is issued to command government organization's laws, or statutes for performance of public duty.

4. Certiorari: It refers to be certified. The writ is issued by the Supreme Court and High Court for the lower courts asking for a review of judgements to check whether the judgement given by the court is illegal or not.

5. Prohibition: The word means 'to prevent or to prevent. This is issued before the lower court which has announced the judgement and forbids the particular judgement to be illegal. This writ can only be issued against judicial orders and authorities.

HISTORY OF ARTICLE 32

In *L. Chandra Kumar v Union of India and Ors*,⁶ it was observed that Article 32 was a basic and necessary function of the Constitution and constituted its basic structure. In *S P Sampath Kumar v Union of India*,⁷ it was held that the powers of the Supreme Court under Article 32 form a part of the basic structure doctrine of the Indian Constitution. The five-judge bench of the Apex Court

⁶ *L Chandra Kumar v Union of India and Ors* (1997) 3 SCC 261

⁷ *S P Sampath Kumar v Union of India* (1987) 1 SCC 124

in the case *ADM Jabalpur v Shivakant Shukla*⁸ ruled that during the national emergency period, the right to constitutional remedy remains suspended. Citizens are powerless to obtain reform or remedy to their fundamental as well as human rights compliance.

Overall the 42nd Amendment took power for entertaining the right to constitutional redress during an emergency but this was again taken back in the 43rd Amendment which repealed Article 32A immediately after the emergency was revoked. After this amendment, the Supreme Court once again got the power to quash the state laws and the High Courts in return gained the power to question the constitutional validity of central laws.

After the expansion of Public Interest Litigation (PIL), Article 32 became the basis for petitions of welfare and interest for the public where the petitioner himself has not necessarily personally suffered an infringement of his fundamental rights. This means that Writs and PILs can be filed by anyone who has a societal concern and the party filing it doesn't need to always be an aggrieved party.

Until this, we can easily get to know the importance of Article 32. But recently our former Chief Justice of India S.A. Bobde said that the Apex Court is 'trying to curb' citizens from filing petitions under Article 32 of the Indian Constitution. Now the former CJI says that the Supreme Court is trying to discourage petitions under Article 32 and is planning to give more powers to the high courts in matters related to the exercising individual's power to protect the rights of individuals. If this is supposed to be the situation, then what is the reason behind the admission of *Arnab Manoranjan Goswami v State of Maharashtra*⁹ directly under Article 32?

Goswami's case under Article 32 was the rarest of the rare for the Apex Court to have entertained it as it included a high-profile journalist. On November 11, the petitioner was granted interim bail by the SC. Even though the Apex Court has asked High Courts to exercise its jurisdiction to protect equality, justice and good conscience, liberty, the final reason for the existence of such courts as constitutional courts, the Supreme Court held that the Bombay High

⁸ *ADM Jabalpur v Shivakant Shukla* (1976) 2 SCC 521

⁹ *Arnab Manoranjan Goswami v State of Maharashtra* (2021) 1 SCC 802

Court had stumbled in rejecting the petitioner's bail application. But when it came to Kerala Union of Working Journalists v Union of India¹⁰ and others, all three were arrested when they were heading towards Hathras in UP, to collect the report of an incident of claimed gang rape and murder. The UP police alleged that Journalist Kappan Siddiquie was there for a conspiracy to inflame the sentiments of the Hathras group. For the same case, a writ petition was filed under Article 32. The Apex Court did not accept the petition and hence the matter was transferred to the UP High Court.

HAVE DISCRIMINATION AGAINST HAVING A FUNDAMENTAL RIGHT?

Taking into consideration, the Goswami case which issued a notice to the Assistant Secretary of the Maharashtra Legislative Assembly, the notice observed that the right of a citizen to seek justice from the apex court upon the infringement of the fundamental right guaranteed under Article 32 of Indian Constitution. It was also reported that

'There is no doubt that if a citizen of India is deterred in any way from moving the court in exercise of his right under Article 32, it would amount to a serious interference in the administration of justice in the country.'

BUT CAN THE COURT DISCOURAGE PETITIONS FILED UNDER ARTICLE 32?

In 1950 the Advocate-General of Madras objected to the petition filed by Romesh Thappar¹¹ by saying the petitioner should have first filed a petition under Article 226 in the Madras High Court and if he wasn't satisfied there he could have further gone to the Supreme Court and filed writ under Article 32. In addition to the statement, further says that the general procedure is first to go to the lower court and if not satisfied with the justice rendered then can appeal to the Supreme Court. The court held that 'Article 32 guarantees a remedy for the rights infringed and guaranteed remedy itself is a right embedded under Part III of the Constitution.'¹² Thus, this

¹⁰ *Kerala Union of Working Journalists v Union of India* (2021) 5 SCC 311

¹¹ *Romesh Thappar v State of Madras* AIR 1950 SC 124

¹² *Ibid*

Court can be tagged as the protector and guarantor of fundamental rights and also is responsible for the refusal of applications that contravene the fundamental rights.

By this statement, it was made clear that any individual can move to the Apex Court to get protection from the breach of their fundamental rights under Article 32 and get the guaranteed remedy for the same. Also, why should precedent be taken from the 1950 case when the latest one given in 2021 by the Hon'ble Chief Justice of India has himself interpreted the scope of Article 32? But what made this an issue is the contradictory statement of the same proponent of law in different situations. As for the Goswami case, it was said that people should come to court when there is an infringement of fundamental rights and on the other side, he says that the court is trying to discourage the petitions filed under Article 32 for the Kappan case. But in between these two cases, there is another case in 2003, *Union of India v Paul Manickam*,¹³ the apex court held that Article 32 can be invoked directly when the petitioner shows why he approached the apex directly rather than first approaching the high court under Article 226. And if the CJI said the statement on this ground then we can't this justification because it only says that the petitioner needs to give a reason regarding why he didn't approach the High Court rather than directing the Apex Court not to take the case itself. Also, what is important is that following the Constitution is more important than following a judgment. The reason is that the Constitution does not mandate that a person has to first move to the high court under Article 226 and then advance toward the Supreme Court. If the court is asking to do so then there must be a specified legally valid reason.

CONCLUSION

If there is an argument that Article 32 petitions are to be discouraged when there is a chance of invoking Article 226, then it should be uniform for every petitioner and there should be a set of guidelines on what will be considered valid reasons to come to the top court directly, these should also be lucid and harmoniously applied in all cases. This is not the only comparison of getting and not getting the justice. In cases like Varavara Rao where the journalist was kept in

¹³ *Union of India v Paul Manickam* (2003) 8 SCC 342

custody for a long time, allegations are not proven to be right. During the whole period he was kept in jail, he got Covid positive and was having a lot of medical issues but no bail has been granted even after appealing to the Supreme Court. While a high-profile journalist was given the right to apply under Article 32, Varavara Rao, aged 81 years and suffering from multiple medical issues, has been in jail since 2018 November places no consideration and leads to a petition. Surely, we can say that this is not what exactly the maker of our constitution would have predicted would be the fate of the common man struggling to get the rights guaranteed by the Constitution while filling writs under Article 32, which upholds the right for all and not for a favoured few like Goswami's case. Article 32 according to the founders of the Constitution was the heart and soul that not only dealt with individual infringement of rights but also considered PILs like the one filed by Laxmi Agarwal for the acid survivors and liquor shops away from the highways. When Article 32 has this much potential to do and change society and how can it sometimes fail in not doing the work assigned to it by the judiciary whose duty is to fulfill the same? Thus, now it is the work of the Apex Court to make a just and fair decision regarding this issue and give a concrete idea so that the essence of Article 32 remains the same and citizens will have the faith in judiciary that they will safeguard the rights of every citizen irrespective of their occupational status and their position in the society.