

RIGHT TO CONSTITUTIONAL REMEDIES: TIME TO REFORM?

Vedant M. Maske*

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 (Article 32). It is the very soul of the Constitution and the very heart of it.”¹

- Dr. B. R. Ambedkar

ARTICLE 32

Article 32 i.e., right to constitutional remedy is one of the most essential articles in the Indian constitution as it not only affirms the basic rights of citizens but also ensures enforceability of fundamental rights by providing the right to move the Supreme Court if a fundamental right is violated. Exercise of power of Supreme Court under Art. 32 itself a fundamental right. With its 4 clauses, writs, PILs it also gives scope of interpretation to the highest court to do complete justice hence Article 32 is also referred to as the savior of fundamental rights. The ambit of Article 32 was further broadened when individuals not having any *locus standi* in cases were allowed to file PILs before the Supreme Court. The public interest was regarded by Justice Bhagwati as ‘a strategic arm of the legal aid movement. The greatest contribution of PIL has been in enhancing the accountability of the governments towards the human rights of the marginalized strata on socio-economic grounds.

MISUSE OF CONSTITUTIONAL REMEDIES

It can be said that Article 32 with its 4 clauses has necessarily done the job as the first four sections were taken together make fundamental rights in the Indian constitution real and act as a savior of rights ensuring the enforceability of fundamental rights in the highest court of

*SECOND YEAR, BA LLB, MAHARASHTRA NATIONAL LAW UNIVERSITY, MUMBAI.

¹ Skand Bajpai, DISCOURAGING THE HEART AND SOUL OF THE CONSTITUTION BAR AND BENCH - INDIAN LEGAL NEWS, <https://www.barandbench.com/apprentice-lawyer/discouraging-the-heart-and-soul-of-the-constitution/> (last visited Jan 5, 2022).

² *Locus Standi* - The legal capacity to sue or approach courts

the country. However, the 4th clause of Art 32(iv), provides that the right guaranteed under Article 32 can be suspended like in a state of national emergency. Some also consider this clause as a grey spot in a fair provision involving a fight between the stand of freedom and democracy. This lacuna can be exploited by governments to curb the fundamental rights of the citizens as already experienced in the era of emergency.

There are many incidents of misappropriation of provisions in Article 32 but misuse of art 32 during the national emergency of 1975 by government functionary will always have special mention in history. During the 1975 Emergency, a five-judge bench of the Supreme Court, in the *ADM Jabalpur Vs Shivakant Shukla*³ case, had ruled that citizens are unable to seek recourse to enforcement of their fundamental rights during a national emergency under clause 4 of Article 32. Government ruling at that time took the support of the court's interpretation of article 32{iv} to detain its opponents and innocent citizens without any legal remedy for infringed fundamental rights in the supreme court. The scope of Article 32 of the Constitution has widened tremendously since the 'Emergency Era' of 1975, as a forum of voicing the fundamental rights of citizens.⁴ However, misappropriation is still prevalent, PIL petitioners, who erroneously invoke this jurisdiction under Article 32 and thus, add to the pile of pending matters.

The case of *Subhash Kumar vs. State of Bihar*⁵ could be considered as an example of misuse of article 32 at the hands of petitioners to settle a personal grudge. In this case, the petitioner has filed a PIL case against a company to settle his grudge with the concerned company. While giving the judgment court further added that "Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32 are entertained it would amount to an abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court.

A recent example of misuse of article 32 is the case '*Umedsinh P Chavda vs. Union of India and Ors*'⁶. In this case, Petitioner claiming himself to be a social worker, moved to Supreme

³ ADM Jabalpur Vs Shivakant Shukla, AIR 1976 SC 1207

⁴ Priya Adlakha & Isha Tiwari, ERRONEOUS USE OF ARTICLE 32-SC SLAMS PIL SEEKING BAN ON COCA-COLA AND THUMBS UP LEXOLOGY (2020), <https://www.lexology.com/library/detail.aspx?g=ccb6fbca-9636-4f0d-b63b-03711aa2f34c> (last visited Jan 6, 2022).

⁵ Subhash Kumar vs. State of Bihar, (1991) AIR 420, 1991 SCR (1) 5

⁶ Writ Petition(s)(Civil) No(s).346/2020; https://main.sci.gov.in/supremecourt/2020/3850/3850_2020_34_21_22517_Order_11-Jun-2020.pdf; accessed on June 23, 2020.

Court under Article 32 of the Indian Constitution, seeking issuance of a Writ of Mandamus, against the Union of India and to pass necessary orders to prohibit the sale and consumption of soft drinks. Although Court came down heavily on the Petitioner for erroneously invoking such jurisdiction in this case and imposed a fine on the petitioner, there are many steps required to impede frivolous petitions. In *Chhetriya Pardushan Mukti Sangharash Samiti v. State of U.P.*⁷, the apex court said that "While it is the duty of this Court to enforce fundamental rights, it is also supposed to ensure that this weapon under Article 32 should not be misused or permitted to be misused, preventing other genuine violation of fundamental rights being considered by the court".

We must see the current scenario of fake PILs and frivolous petitions adding to a mounting pile of cases before the Supreme Court. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the legal remedy for infringed fundamental rights of affected persons and not for the vindication of his grudge or enmity. The court is supposed to discourage such petitions and to ensure that the course of justice is not obstructed by unscrupulous litigants. To curb misuse of the right to constitutional remedy court will have to court must vigilantly take some measures before entertaining petitions.

CONCLUSION

Constitutional remedies encompass a broad range of authority and have long been viewed as a weapon to be handled with great care and discretion. Though this Article is considered the savior of fundamental rights, there is a fine line that prevents it from encroaching upon the constitutional duties of the State. The provision of the right to constitutional remedy offers a lot of room for interpretation as to what constitutes a legitimate invocation of Article 32, which might lead to the filing of frivolous cases. Above all, the great strength of the judiciary must be utilized for the public good and always in the public interest in the service of the people.

⁷ Chhetriya Pardushan Mukti Sangharash Samiti v. State of U.P., (1990) 4 SCC 449.

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