

Article 32 & Article 226 of Indian Constitution: Comparative Study

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ABSTRACT

The Fundamental Rights are rights having Nobel Pedigree. Fundamental rights may also be called natural rights which have their origin from natural law theories. It is said that a right without a remedy is nothing but a worthless declaration. Any right becomes effective or valuable when there are effective means to implement it. Therefore Art.32 of the constitution was said to be the “Heart and Soul” of our Indian Constitution because it provides an adequate safeguard against any violations by the executive or legislative. No one can be deprived of his fundamental rights and depriving a person would amount to infringement of his right which he can reinforce by challenging the same before the Supreme Court under Art.32 of the constitution. The right to move to the Supreme Court where a fundamental right has been infringed is itself a fundamental right. The constitution has guaranteed it as a constitutional remedy. Art.32 of the constitution talks about writ jurisdiction of the apex court. The concept of issuing writs is taken from the UK constitution. These five forms of writs empower the Supreme Court under Art.32 of the constitution to issue them when anyone is deprived of his right. Under Art.226 of the constitution, the High Courts are empowered to issue writs. There is a difference between the jurisdiction of the Supreme Court and the High court’s regarding issue writs which will be dealt with. Because of such a wide scope, Dr B. R. Ambedkar called this Article.32 “the fundamental of the fundamental rights”.

KEYWORDS: *Writ Jurisdiction, Locus Standi, Public Interest Litigation,*

I: INTRODUCTION

It is said that a right without a remedy is but a worthless declaration. Unless there is an effective means of implementation of a right it doesn’t become valuable. The existence of a right is felt only through the pronouncement of a court. Article 32 provides for adequate safeguards against violation of any fundamental right by the executive or the legislature. The Fundamental Right are of the highest importance to individuals. Fundamental Rights are of the highest importance because they are the basic conditions for the fullest development of personality. Dr Ambedkar

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regarded Art.32 as the most important article of the constitution without which this constitution would be a nullity. Article 32 is the very soul of the constitution and the very heart of it.²

According to Article 13 of our constitution, Fundamental Rights are enforceable and any law which is inconsistent with a Fundamental right is void. Article 13 is the key provision as it makes Fundamental Right justifiable. Article 13 of the constitution, confers power and imposes a duty and an obligation on the courts to declare a law void if it is inconsistent with a Fundamental Right. Article 32 of the Constitution confers power on the Supreme Court to enforce the fundamental right which is guaranteed under Part 3 of the constitution of India by issuing writs for enforcement of Fundamental Right and in cases of judicial review of administrative actions. The same power is vested on the High Court's also which is provided under Article 226 of the constitution.

Both the articles deal with the enforcement of the rights of the citizens against the government or governmental authorities. The power vested with the Supreme Court under Article 32 of the constitution makes it competent to provide relief against any authority which is within the territory of our country. Article 32 of the constitution has made the Supreme Court the protector and guarantor of these rights.

Article 32 gives power to the Supreme Court to issue Directions, any Order, or Writs which includes writs like Habeus Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari, whichever is appropriate for the enforcement of any rights conferred under Part 3 of the constitution.

The constitution-makers incorporated the Right to Constitutional Remedy as a Fundamental Right itself. Right to Constitutional Remedy is a Fundamental Right that is given to the citizens of this country to approach the apex court if any authority infringes their fundamental right. The same can be issued by the High Court under Article 226 of the constitution.

II: ARTICLE.32 OF THE CONSTITUTION

Article 32 of the constitution states:

Remedies for enforcement of rights conferred by this part-

² C.A.D, Vol.3, p.953

- 1) The right to move the Supreme Court by appropriate proceeding for the enforcement of the rights conferred by this Part is guaranteed.
- 2) The Supreme Court shall have the power to issue direction or order 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 power 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.

Article 32(1) guarantees the right to move the Supreme Court, for the enforcement of the Fundamental Right.

Article 32(2) empowers the court to issue writs whichever may be appropriate, for the enforcement of the petitioner's Fundamental Right. A writ does not lie to create or establish a legal right but, to enforce a fundamental right that has already been established.³

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Article 32(3) empowers the parliament to confer the powers exercisable by the Supreme Court under Article 32(2) by law to any other court and empower it to exercise the powers given under Article 32(2). This can be done by the parliament without being prejudice against the Supreme Court powers under Article 32(1) and (2).

Article 32(4) provides that the rights guaranteed under Article 32 shall not be suspended except as provided by the constitution. It can be suspended only during an emergency, as provided under Article 359(1), where suspension of the rights to move any court for the enforcement of the Fundamental Right can be done by presidential order.

Article 32 of the constitution has made the Right to access the Supreme Court a Fundamental Right. Article 32(1) provides a very important safeguard for the protection of the Fundamental Right of the citizens of our country. It provides a guaranteed, quick and summary remedy for enforcing the Fundamental Right because it gives citizens the right to approach directly to the

³ *R.S.I.D.I. Corp. Vs. S.S. Co-op. Hsg. Society, Jaipur*, AIR 2013 SC 1226

Supreme Court without undergoing any process of proceeding from the lower to the higher courts as the person has to do in other ordinary litigations.

Article 32 of the constitution not only confers the power on the apex court to issue writs but it can make any order including even a declaratory order, or give any direction, as may appear to it to be necessary to give proper relief to the petitioner. The Supreme Court has even characterised the jurisdiction conferred on it by Article 32 as “an important and integral part of the basic structure of the constitution”.

In many decisions concerning Fundamental Right under Article 32, the Supreme Court has given new dimensions, meaning and purpose to many Fundamental Rights. Thus it is said to be the protector and guarantor of the Fundamental Right.

Supreme Court in, *Daryao v. State of Uttar Pradesh*,⁴ stated that:

“The Fundamental Right is intended not only to protect individual’s right but they are based on high public policy. Liberty of the individual and the protection of the Fundamental Rights are the very essence of the democratic way of life adopted by the constitution and it is the privilege and the duty of this court to uphold those rights. This court would naturally refuse to circumscribe them or to curtail them except as provided by the constitution itself.”

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III: ARTICLE 32 v. ARTICLE 226 OF THE CONSTITUTION

The sole objective of Article 32 of our constitution is to enforce Fundamental Rights guaranteed under Part 3 of the constitution. Article 32 deals with the writ jurisdiction of the Supreme Court whereas; Article 226 deals with the writ jurisdiction of the High Courts.

Article 32 states it clearly that no action lies in the Supreme Court unless there is an infringement of a fundamental right of any individual. But Article 226 can be invoked not only in the cases for enforcement of any Fundamental Right but also for ‘any other purpose’ as well. It signifies that the Supreme Court’s power under Article 32 is restricted as compared with the power of the High Court under Article 226 which is much wider.

In cases of administrative action where it does not affect the Fundamental Right then it can only be challenged in the high court under Article 226 and not in the Supreme Court under Article 32. The High Court, under Article 226 of the constitution, can grant relief in case of

⁴ AIR 1961 SC 1457 AT 1461: (1962) 1 SCR 574

quasi-judicial tribunals and authorities, as well as any other act carries out by such lower authorities, even if such act do not infringe on fundamental rights which the supreme court cannot do under Article 32.

Article 32 can be invoked where any infringement of fundamental right takes place, but in the case of Article 226, it can be invoked not only when there is a violation of any Fundamental Right but also for redressal of any other injury or illegality. The word “for any other purpose” used in Article 226 of the constitution which is not there in Article 32, enables a High Court to take cognizance of any matter even if there is no question of Fundamental Right being involved.

In certain exceptional cases, Supreme Court to have entertained writ petitions under Article 32 although there was no question relating to violation of any Fundamental Right. Supreme Court while judging these matters specified that these cases involved questions of great constitutional significance and therefore apex court is where these questions could be authoritatively decided, and there was no mechanism except Article 32 to bring such matters within the jurisdiction of the Supreme Court. The matters were:

- Misuse of an ordinance making power by the State of Bihar,⁵
- Appointment of the Judges of the High Court & the Supreme Court,
- Issues related to the procedure to remove Judge of the Supreme Court.

Article 32 cannot be diluted or whittled down by any law. It can be invoked even when a law declares a particular administrative action as final. If while exercising the power vested under Article 32, the court commits a mistake it has the plenary jurisdiction to correct the mistake.

In *Khatri v. State of Bihar*,⁶ the number of petitioners filed a writ petition under Article 32 for enforcement of their Fundamental Rights under Article 21 on the allegation that they were blinded by the police officials when they were in police custody. The question arose whether the court could order production of certain reports submitted by C.I.D to the State Government and some correspondence between the Government and certain officials.

Contention but forward by the Government was that the material was protected by Section 162 and 172 of the Criminal Procedure Code. The Court rejected the government contention stated that the proceedings under Article 32 are neither an ‘inquiry’ nor a ‘trial’ for an offence. Neither

⁵ D.C. Wadhwa v. State of Bihar, (1987) 1 SCC 378

⁶ AIR 1981 SC 1068: (1981) 2 SCC 161

the Supreme Court is a criminal court while hearing a writ petition nor the petitioner is an accused person and so these sections of the Cr. P.C do not apply to the court's writ jurisdiction under Article 32 of the constitution.

IV: WRIT JURISDICTION OF SUPREME COURT

Article 32(2) empowers the Supreme Court to issue directions, order, or writs whichever may be appropriate. Basically, there are five different types of writs: writs like Habeas Corpus, Mandamus, Prohibition, Quo Warranto, & Certiorari.

A: Writ of Habeas Corpus: It means “have his body”. By issuing this writ the court can cause any person who has been detained or imprisoned to be physically brought before the court. The court then will examine the reason behind his detention. If the court makes out that there is no legal justification behind detaining the individual the court will set him free? Supreme Court in many cases has laid down that production of the body of the prisoners before the court is one of the essential features of this writ. Habeas Corpus may be issued by the court when it thinks that any detention of a person is violation of the rules prescribed in the procedure or in cases where the order of arrest violates of any law. This writ is the most essential and valuable writ for personal liberty.

In *Rubul Shah v. State of Bihar*:⁷ A writ petition for Habeas Corpus was filed by the petitioner. The fact of the case was that Rubul Shah was kept in jail for 14 years even after being acquitted by a criminal court. The fact situation revealed a sordid and disturbing state of affairs for which the responsibility lay squarely on the administration. The court felt that not awarding damages, in this case, would amount to “doing merely lip service to the Fundamental Right to liberty which the state government has so grossly violated”.

Supreme Court in this case awarded damages to the petitioner against the state for breach of his rights of personal liberty guaranteed by Article 21 of the constitution.

In *Icchu Devi v. Union of India*⁸, the question raised before the court was whether a postcard can be considered as a writ petition or not. In this case, a postcard was sent by this person to the Supreme Court regarding the issue of detention.

⁷ AIR 1983 SC 1086

⁸ AIR 1980 SC 1983

The Supreme Court stated that a postcard can be considered as a writ petition for habeas corpus cases.

B: Writ of Mandamus: It means command or an order. It is a command directing a person, corporation, inferior court or government or any public authority to do the thing or perform the act specified in the writ. The thing or act must be like public duty. This writ can be called awakening call for the sleeping authorities and to make them awake and let them perform their public duty.

There is certain essentials condition which needs to be fulfilled before the issuing of a writ of Mandamus:

- The petitioner must show that he has a legal right and the person against whom the mandamus is sought has a legal duty.
- The duty must be imposed by law (constitution, Act, or any subordinate legislation).
- The petitioner must have moved the authority for performing the legal duty but the authority has either not acted or refused to act.
- The public authority must be acting under an unconstitutional law.

In *Sharif Ahmad v. R.T.A. Meerut*⁹, the Respondent (Public Authority) did not oblige the orders of the Tribunal. Aggrieved by this the Petitioner approached the Supreme Court for the enforcement of the orders of the Tribunal.

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Supreme Court issued the writ of Mandamus ordering the Respondent to obey the orders of the Tribunal and further stated that Mandamus can be issued directing the executive to do its legal duty by implementing the orders of a Tribunal.

In *U.P Pollution Control Board v. Kanoria Industrial Ltd.*¹⁰ Cess was collected from the sugar mills under an unconstitutional law. The mills paid the cess under protest and did not pass on the cess to any third party but bore the brunt themselves. The court issued mandamus to the taxing authorities to refund the money illegally collected as cess.

In *Sales Tax Officer v. Kanhaiyalal*¹¹, the Sales tax officer collected tax from the petitioner in an illegal way. The petitioner approached the Supreme Court. Supreme Court issued the writ

⁹ AIR 1987 SC 209

¹⁰ AIR 2001 SC 787

¹¹ AIR 1959 SC 135

of Mandamus to the Sales Tax Officer directing it to refund the tax which was illegally collected from the petitioner.

In *State of Madhya Pradesh v. Mandawarao*¹², it was regarding the D.A allowances which were given by the government to the government servants. Writ Petition for Mandamus was brought up before the court.

Supreme Court issued a direction to the government where they are under an obligation to grant the D.A allowances or not is a government matter and the court has no power to issue the writ of Mandamus in this case.

C: Writ of Quo Warranto: It means a question “Where is your warrant of appointment”. The court by this writ examines the legality of the claim of a person to a public office. The writ calls upon the holder of a public office to show to the court under what authority he is holding that office. The court may oust a person from an office to which he is not entitled. This writ is always issued against the person holding the office and not the appointing authority can be made a party to these cases. Writ of Quo Warranto can be issued if the following conditions are satisfied:

- The office must be a public office, an office of public nature. The office must be for the public service. The treasurer of a society or a charitable trust is not a public office.
- The office must be substantive. It means an office independently entitled.
- Quo warranto pleading is an exception to the rule that only an aggrieved person may apply for a writ. Any individual of this country can move the court to obtain this writ.

It is an exception to all other types of writs as to file a writ for Quo Warranto, it is not necessary that the petitioner should have suffered a personal injury himself, or should seek to redress a personal grievance. Petition for Quo Warranto has been moved to test the validity of the election of a person to a university, or a mayor of a municipal corporation, nomination of members to a legislative council by the Governor, appointment of the Chief Minister of a State, or the Chief Justice of India, or appointment of a public prosecutor, University teachers any many more appointments to a public office.

¹² AIR 1954 SC 497

In *Purshottam Lal v. State of Rajasthan*¹³, where a petition for quo warranto was filed against the Chief Minister of Rajasthan because he was not validly elected to the house.

The Rajasthan High Court rejecting the petition ruled that quo warranto may be issued on the petition of a member of the public if a Chief Minister holds office without lawful authority, and in breach of any constitutional provision. The office of the Chief Minister is one of a substantive character created by the constitution. But membership of an Assembly is not an office for Quo Warranto and it is not a proper remedy to raise question relating to the election of the Chief Minister to the house. Such question needs to be raised properly and only through an election petition.

In *B.R. Kapur v. State of Tamil Nadu*¹⁴, where a question raised before the court was whether the appointing authority can be made a party to the petition filed for Quo Warranto. The Governor of a state appoints the Chief Minister under Article 164 of the constitution. If the Chief Minister is not qualified or is disqualified to be a member of the state legislature then in such case the discretion of the Governor is not challengeable because of Article 361 of the constitution.

In such cases the appointment of the Chief Minister can be quashed by the High Court by issuing Quo Warranto to him.

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D: Writ of Prohibition: It means ‘to forbid’ or ‘uphold’ and is popularly known as “stay order”. This writ is issued by a superior court to an inferior court or tribunals to prevent it from usurping jurisdiction which is vested in it. The main aim behind this writ is that it compels the inferior court or tribunals not to violate the rules of natural justice.

Writ of Prohibition lies only against the judicial or quasi-judicial authorities functions. It does not lie against the legislative or executive functions. It cannot be issued against any private person or association.

E: Writ of Certiorari: It means to be certified. The writs of Certiorari and Prohibition are issued practically on similar grounds. The only difference between the two is that Certiorari is issued to quash a decision after the decision is taken by a lower tribunal while Prohibition is

¹³ AIR 1979 Raj 23

¹⁴ AIR 2001 SC 3435

issuable before the proceedings are completed. There are certain conditions that need to be satisfied for issuing Certiorari by the court:

- It is always issued against a body vested with legal authority and therefore it does not lie against any private individual or a domestic tribunal having no statutory power.
- The determination of the authority must affect the rights of the people. Rights may be personal, pecuniary, proprietary, or of any other type.
- The aim behind issuing of Certiorari is that the principles of natural justice should be observed. Any court must pass any order fairly and reasonably and must not have any bias or prejudice.

This writ is to be issued only by a superior court. Certiorari is directed against the orders of an inferior court or tribunal. A court cannot issue certiorari to itself or any court not inferior or subordinate to it. High Court can issue a writ against itself in its administrative capacity and not against itself in a judicial capacity.

1: Issue of Certiorari in cases of violation of Natural Justice: This writ is usually issued to a body that is bound to act fairly or according to natural justice and it fails to do so. It can be issued against an authority that is acting within its jurisdiction but has violated the principles of natural justice.

Principles of Natural Justice grew out of two Latin maxims:

- *Audi Alteram Partem*: It means “Hear the Other Party”.
- *Nemo Judex in Causa Sua*: It means “No one can be a judge in his cause”.

The concept of natural justice is very important in modern Administrative Law as it provides a basis for judicial control of the procedure followed by adjudicatory bodies. Principle of natural justice requires that the person whose interest is to be affected by the decision, adjudicative, and administrative, receives a fair and unbiased hearing before the decision is made.

The first principle of natural justice means that the adjudicator must be disinterested and unbiased. The judge should be a neutral and a disinterested person which means that a person cannot be a judge in his own cause. Many times it has been said that justice should not only be done but it should appear to have been done. Bias or prejudice vitiates all legal proceedings. The person who decides a matter should not have any type of interest in the matter. The interest may be of three kinds:

- Direct interest: Where the judge is a party or a witness or has personal knowledge of the facts. Such a person should not hear the matter because a person must not be a judge in his cause.
- Pecuniary interest: Where the judge is financially interested in the matter.
- Personal interest or bias: It occurs where the judge is related to a party or maybe hostile to a party due to some personal reasons.

Therefore Supreme Court has lay down that every judicial or quasi-judicial authority must record reasons for its decision. If any of these principles are violated by any of the courts or tribunal certiorari can be issued against it by the higher authority.

In *Syed Yakoob v. K.S. Radhakrishnan*¹⁵, the Supreme Court gave certain grounds on which writ of Certiorari can be issued:

- When the body concerned proceeds to act without, or more than jurisdiction,
- Fails to exercise its jurisdiction,
- If there is an error of law apparent on the face of the record in the decision of the body,
- If the finding of facts reached by inferior tribunals are based on no evidence,
- If it proceeds to act in violation of the principles of natural justice,
- If it proceeds to act under a law which itself is invalid or is unconstitutional,
- If it proceeds to act in contravention of the Fundamental Rights.

Under all these circumstances writ of Certiorari can be issued by the superior authority to the inferior one.

In Lack of Jurisdiction cases:

In *Ammal v. Rana*¹⁶, a body to decide a matter consisted of three members but in this case, it was not decided by the three-member body but was decided by two-member body. This was challenged before the court.

The court stated that where there is a provision that the matter should be decided by a three-member body it would be a grave injustice if it did not happen. As a result, the court determined that the case meets the criteria for lack of jurisdiction.

¹⁵ AIR 1964 SAC 477

¹⁶ Mad. (HC) 1953

In Error of Law cases:

In *Ambica Mills v. Bhatt*¹⁷, the construction placed by the tribunal on two clauses of an agreement between the Ahmedabad Mill Owner, Association & the Textile Labour Association was held to be patently and manifestly erroneous. It was a case where two alternatives were possible.

The question involved was one of the interpreting statutory provisions which are reasonably open to two interpretations. Of which the authority concerned adopts one interpretation, Certiorari would be issued because the view taken by the authority appears to be less reasonable than the alternative construction.

Mere formal or technical error of law is not sufficient to attract the writ. The court differentiated between an error of law pure and simple, and one of jurisdictional nature. The former can be cured only when a patent, but the latter can be cured even if a patent for no authority can be allowed to assume jurisdiction by taking a view of the law.

A writ of Certiorari or Prohibition does not lie when a tribunal disregard executive direction as having no statutory force. When a person obtains an order from a tribunal by fraud, the High Court is bound to exercise its jurisdiction under Article 226 and quash such orders.

In cases of Incompetency of courts to decide the matter:

In *Newspaper Ltd v. Industrial Tribunal*¹⁸, as per Industrial Dispute Act, the case was to be decided as per the I.D Act by the Labour Court or Tribunal who was the competent body to decide the matter.

But the matter in this case, was decided by the civil court which was challenged by a writ petition before the Supreme Court.

The court stated that the civil court was an incompetent court to decide the matter as it should have been decided by the competent authority and hence, the order of the civil court was quashed.

V: LOCUS STANDI & PUBLIC INTEREST LITIGATION

¹⁷ AIR 1961 SC 970

¹⁸ AIR 1957 SC 532

The rule of locus standi was not allowed by the courts in our country during the earlier days. The traditional rule is that the right to move to the Supreme Court was made available to those people whose fundamental rights were infringed. And no other person should come to the court on behalf of any other aggrieved party. The power vested in the Supreme Court can only be exercised for the enforcement of the fundamental right. The traditional rule of locus standi that a petition under Article 32 can only be filed by a person whose fundamental right is infringed was considerably relaxed by the Supreme Court in its recent judgements.¹⁹

The court in their recent decision has transformed a new doctrine of Public Interest Litigation in which any third party can file a petition on behalf of the aggrieved person whose fundamental rights gets infringed.²⁰ Because the aggrieved party was unable to appear in court for a variety of reasons, public interest litigation was allowed.

Locus standi means the right to bring an action, to be heard in court, or to address the Court on a matter before it. Locus standi is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. For example, a person cannot bring a suit challenging the constitutionality of a law unless the plaintiff can prove that the plaintiff is harmed by the law. Otherwise, the court will rule that the plaintiff "lacks standing" to bring the suit, and will dismiss the case without considering the merits of the claim of unconstitutionality. There must be valid reason for whoever is suing to be present in order for a court to declare a law unconstitutional.

Public interest litigation can be filed in the Supreme Court under Article 32 of the constitution only if a question concerning the enforcement of a fundamental right is involved. Under Article 32, a writ can be filed in a Supreme Court whether or not a fundamental right is involved.

Supreme Court in many cases has entertained a number of petitions under Article 32 of the constitution regarding complaint of infraction of the fundamental right of individuals, or of weak or oppressed groups who are unable themselves to take the initiative to vindicate their rights.

In many cases, the courts have entertained public interest litigations.

¹⁹ Akhil Bhartiya Soshit Karamchari Sangh v. Union of India, AIR 1982 SC 298

²⁰ S.P. Gupta v. President of India, AIR 1982 SC 149

In *BALCO Employee's Union v. Union of India*²¹, the court had reminded that the only ground on which a person can maintain a PIL is where there has been an element of violation of Article 21 on human rights or where the litigants have been initiated for the benefit of poor and the underprivileged who are unable to come to the court due to some disadvantage.

In *Hussainara Khatoon v. State of Bihar*,²² there was an article published in the Indian Express by K.F. Rustamji which depicted how the under trials prisoners were languishing in jails in Bihar for years without any trial.

An advocate Kapil Hongorani then filed a petition under Article 32 of the constitution in the Supreme Court to protect the personal liberty of the undertrials.

In *Bihar Legal Support Society v. Chief Justice of India*,²³ the Supreme Court made it clear that the strategy of the PIL has been evolved by the Supreme Court for bringing justice within the easy reach of the poor and the disadvantaged section of the community.

In *People's Union for Democratic Rights v. Union of India*²⁴, otherwise known as Asiad case:

Fact of the case:

Numbers of working-class people from all over the country were called upon by the government so that they can render certain service to the government. These workers were paid a very less amount for the service they used as render. The amount paid to them was much below the minimum wage which was fixed by the government.

This was challenged before the court in the form of PIL as it was violative of Article 23 of the constitution as payment of such a low amount would amount to forced labour.

The court by its decision upheld the right of a poor worker to directly approach the Supreme Court under Article 32 of the Constitution of India for the enforcement of rights created under various labour laws and particularly under the provisions of Contract Labour (Regulation and Abolition) Act, 1970, Minimum Wages Act, 1948.

*Bandhu Mukti Morcha v. Union of India*²⁵:

²¹ (2002) 2 SCC 333

²² 1979 AIR 1369

²³ 1987 AIR 38

²⁴ AIR 1982 SC 1473

²⁵ AIR 1984 SC 802: (1984) 3 SCC 161

Fact of the case:

A large number of labourers were working in stone quarries in the State of Haryana under pathetic condition as there was no medical aid, no safety rules were observed and they lived in sketchy torn huts without any roofs. It was due to negligence on part of the state government as they failed to enforce the relevant laws.

In this case, an action was brought in the Supreme Court by an NGO as they filled a Public Interest Litigation. This organization was dedicated to the cause of the release of bonded labourers. Many labour welfare legislation was violative and were raised before the court. The Bonded Labour (Abolition) Act and the Minimum Wages Act were breached in this case.

The court has characterized the system of bonded labour as where the person is bonded to provide labour to another for years and years until an alleged debt is supposed to be wiped out which never seems to happen during the lifetime of the bonded labourer as it constituted in gross and reviving violation of constitutional values.

The court ordered for the release of these people from bondage. The court also emphasized the importance of rehabilitation of the released bonded labourers. The court directed the state government to draw up a scheme or programme for better and more meaningful rehabilitation of the freed labourers.

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*M. C. Mehta v. State of Tamil Nadu*²⁶:

Fact of the case:

Children were working in sivakasi match industries in the state of Tamil Nadu. This was challenged before the court in the form of PIL as it is against the constitutional provision.

The court in the case had issued detailed direction to eradicate child labour from the country. The court stated that there should be an end to the practise of employing children below the age of 14 years in hazardous industries. The court gave the direction that the employers should comply with the provision of the Child Labour (Protection and Regulation) Act.

In *D.C Wadhwa v. State of Bihar*²⁷, the misuse of ordinance power by the Governor under Article 213 of the constitution was challenged.

²⁶ AIR (1996) 6 SCC 756

²⁷ AIR (1987) 2 SCC 378

This PIL was filed by a political science teacher who conducted research into how the ordinance power was being misused by passing ordinances without making any law. The court ruled that the action of the Governor was unconstitutional & awarded the petitioner Rs 10,000 for his research work and effort.

In *Laxmi Kant Pandey v. Union of India*²⁸, the case was instituted on the basis of a letter by an advocate who complained regarding the malpractices indulged in by social organization in the matters of offering Indian children in adoption to foreign parents. He based his letter on a press report on this issue.

The court formulated a series of guidelines to be applied in such matters. It was therefore accepted that under Article 226, a High Court can entertain grievance received later and treat the same as a writ petition.

VI: CONCLUSION

The prerogative powers of writ jurisdiction conferred by Article 32 of the constitution is undoubtedly discretionary and yet unbounded in their limits. The discretion provided by Article 32 of the constitution should be exercised on sound legal principles.

The Supreme Court started entertaining matters in which the interest of the public at large is involved and the Court can be moved by any individual or group of persons either by filing a Writ Petition at the Filing Counter of the Court or by addressing a letter to the Supreme Court highlighting the question of public importance for invoking this jurisdiction. Such a concept is popularly known as “Public Interest Litigation” and several matters of public importance have become landmark cases. This concept is unique to the Supreme Court of India only and perhaps no other Court in the world has been exercising this extraordinary jurisdiction. A Writ Petition filed at the Filing Counter is dealt with like any other Writ Petition and processed as such. In case of a letter addressed to Hon’ble the Chief Justice of India the same is dealt following the guidelines framed for the purpose.²⁹

Every fundamental right has a certain limitation as no right is absolute. The right to constitutional remedies have certain limitations which are provided under Article 33 and 34 of the constitution.

²⁸ AIR 1984 SC 469

²⁹ Available at, <https://main.sci.gov.in/pdf/Guidelines/pilguidelines.pdf> (last visited on June 9, 2021)

The review of the decisions of the Indian Judiciary regarding the protection of Human Rights indicates that the judiciary has been playing the role of saviour in situations where the executive and legislature have failed to address the problems of the people. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature.

