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Writ Jurisdiction under Article 32 and It's Restrictions

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Introduction:

The origin of writs took place in the English judicial system, with the development of English law from folk courts. The law of writs originated from orders passed by the King's Bench in England. Writ was precisely a royal order, which was issued under the Royal Seal. It was used to be issued on a petition presented to the King in council for exercise of the extraordinary judicial powers in a particular matter. At the initial stage, the King's court consisted of barons and high ecclesiastical and with legislative, judicial and administrative functions. However, with various phases of history it took different names and forms but the spirit of this extraordinary power remained almost the same.

Writs under Indian Constitution

Under the above status of the law of writs, our country got independence and the Constitution of free India came into force. The law of writs as inherited from the English colonial regime was having a limited scope but its effectiveness was time-tested. Therefore, the constitutional forefathers decided to retain the concept as such in its 'nature' as a broad parameter, but its scope was enlarged by adding some new words to it and it was left open ended also. This was essential also, keeping in view the hopes and aspirations of the people. The people had suffered the peril of the foreign yoke for centuries and their faith and confidence in the new set-up was bubbling with spontaneous feelings of freedom wherein they dreamt of endless liberties. However, it was not to be allowed to go as a dream only and to fulfill these hopes a vast scope of liberty, justice and equality was provided in the Constitution. The fundamental rights were incorporated in the Constitution, which fully ensured the basic human liberties. To fructify these rights into actual liberties, a detailed legal provision was incorporated in the Constitution itself to safeguard these rights. Under Article 32, the enforceability of these rights was included as a fundamental right and an almost parallel provision was provided under Article 226 as a constitutional right. To understand these two provisions in their true spirit and context, it would be desirable to first see them in their literal context.

From the earliest stages in the constituent Assembly, the founding fathers seemed to be agreed on the need for constitutional remedies for the enforcement of fundamental rights.

NATURE AND SCOPE OF ARTICLE 32

The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed. 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. Without prejudice to the powers conferred on the Supreme Court by clauses (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). The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

This article describes the last of the Fundamental Rights, it is remedial and not substantive in nature. But it is in no way less important than the other rights. Just as the remedy of habeas corpus is called the bulwark of liberties in England, this Article has been called the heart and soul of the Constitution. In the words of Dr. Ambedkar;[1]

RESTRICTIONS UNDER ARTICLE 32

The Supreme Court has imposed a significant restriction on the invocation of its jurisdiction under Article 32 by applying the doctrine of res judicata. The rule of res judicata is based on considerations of public policy. It is in the larger interest of the society that finality should attach to binding decisions of courts of competent jurisdiction and that individuals should not be made to face the same kind of litigation twice.

If the doctrine of res-judicata is not applied to writ proceedings, then a party could take one proceeding after another and urge new grounds every time in respect of one and the same cause of action. This would be inconsistent with considerations of public policy. Accordingly a person cannot move successive petitions under Art 32 for the same cause of action.

An order assessing the tax having been challenged once through a writ petition, it can't be challenged again through another writ petition even if the petitioner seeks to urge new grounds against the order.[2] When once the Supreme Court has decided a question between two parties under Art 32, the same question can't be reopened between the same parties under Art. 32.[3] The petitioner challenged the detention in a writ petition, but it was dismissed. Subsequently, after renewal of the detention order, he sought to file another petition repeating some of the contentions which he has advanced earlier. The Court rejected the petition as no new grounds had arisen to challenge detention again. [4]

The Supreme Court has ruled in **Lallubhai v. Union of India**[5] that the doctrine of constructive res judicata is applied only to civil actions and civil proceedings. This principle of public policy is entirely inapplicable to illegal detention and does not bar a subsequent petition for a writ of habeas corpus under Art. 32 on fresh grounds not taken in the earlier petition for the same relief, Thus, when a writ petition challenging an order of detention is dismissed by the Court, a second petition can be filed on fresh, additional grounds to challenge the legality of the continued detention of the detenu, and the subsequent petition is not barred by res judicata.

RELIEF UNDER ARTICLE 32

[1] Constitutent Assembly Debtaes, Vol. VII, page 953.

[2] Devilal Modi v. STO AIR 1965 SC 1150

[3] Raja Jagannath Baksh Singh v. State of U.P. AIR 1962. SC 1563. MSM Sharma v. Shree Krishna Sinha AIR. 1960 SC 1186

[4] P.L. Lakhanpal v. Union of India AIR 1967 SC 908.

[5] Air 1981 SC 728

The phraseology of Art 32(2) is very broad. There under the Supreme Court is authorized to issue orders, directions, or writs, "including" writs, "in the nature of" mandamus, certiorari, prohibition, quo-warranto and habeas corpus. .

Under Art 32, the Supreme Court may issue not only the specified writs but also make any order, or give any directions as it may consider appropriate in the circumstance of the case, to give proper relief to the petitioner. The Court can grant declaration or injunction as well if that be the proper relief.

The Court can mould relief to meet the exigencies of the specific circumstances.[6]

What is the appropriate remedy to be given to the petitioner for the enforcement of his Fundamental Right is a matter for the Court to decide. In the words of the Court[7]: "The jurisdiction enjoyed by this Court under Art. 32 is very wide as this Court, while conceding a petition for the enforcement of any of the Fundamental Right…, and declare an Act to be ultra vires or beyond the competence of the legislature…." The Court has discretion in the matter of ramming writs to suit the exigencies of particular cases. The petition cannot be thrown out merely because he has not prayed for a proper writ or direction. While issuing writs, the Court is not bound to follow all the technicalities which surround these writs in Britain.

Conclusion:

Rights in order to be meaningful must be enforceable and backed by remedies in case of violation. The Constitution not only guarantees certain Fundamental Rights but under article 32 it also guarantees the right to move the highest Court in the land directly by appropriate proceedings for the enforcement of the Fundamental Rights. The Supreme Court may issue writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. Parliament may empower any other courts also to exercise these powers. The right guaranteed by article 32 cannot be suspended except as provided by the Constitution. For example, during a proclamation of Emergency (a) the right to move Court for enforcement of any of the Fundamental Rights except articles 20 and 21 can be suspended under article 359 and (b) executive and legislative power of the State shall not stand restricted under article 358 by the rights to freedom enshrined in article 19. Where the suspension of Fundamental Right is protected by the Constitution, article 32 will not apply. It has been held by the Supreme Court that this right cannot be taken away even by amending the Constitution as it is a basic feature of the Constitution. Even at the time of framing the Constitution, Dr. Ambedkar had described this provision as the very soul and heart of the Constitution.

References:

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[6] Golaknath v. State of Punjab, AIR 1967 SC 1643.
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