

Significance of Right to Constitutional Remedies of Indian Constitution in Redressing Violation of Fundamental Rights

Chetan Kumar

Research Scholar, Department of Political Science, Patna University

Abstract

Fundamental rights are significant for the overall development of the citizens of a country. It enables citizens to develop their best selves and personality. Indian Constitution entrusts its citizens with certain rights and has given it a formal form by enumerating rights under Chapter III (Articles 12 to 35) entitled 'Fundamental rights'. The Constitution has expanded the meaning of these Fundamental Rights by making them subject to justiciability. Expressly, in case of violation of Fundamental Rights, the aggrieved person can move to court. By adding Article 32 (Right to Constitutional Remedies) under Part III of the Constitution, the Drafting Committee has made Fundamental Rights justiciable. Article 32 is essential to the meaning of Fundamental Rights. The Constitution under Articles 32 and 226 has designated the Supreme Court and High Court as the protector and guarantor of the Fundamental Rights. The Right to Constitutional Remedies empowers aggrieved citizens to move to court in case of infringement of their Fundamental Rights. The significance of the Right to Constitutional Remedies has been reflected in Dr. BR Ambedkar's view who regarded the Right to Constitutional Remedies as the "*Heart and Soul of the Indian Constitution*". Due to its significance, this right has been made part of the basic structure of the Constitution.

This research article tries to study the background and provision of the Constitutional Remedies as incorporated in the Indian Constitution. The paper will analyze the significance of the Right to Constitutional Remedies in redressing the violation of Fundamental Rights.

Keywords: Constitutional Remedies, Constitution, Fundamental Rights, Supreme Court.

Introduction

Fundamental Rights can be defined as the Charter of Rights that guarantees civil liberties so that people can live their life in peace and harmony. Fundamental Rights are the basic rights necessary for living a dignified life. It allows the individual to attain intellectual, material, spiritual, and moral well-being. These rights are crucial human rights that every democratic country guarantees to its citizens irrespective of caste, creed, colour, sex, etc. Fundamental Rights are named so as they are guaranteed and protected by the Constitution. Fundamental Rights are the bedrock of a country. It promotes the goal of political democracy. Fundamental Rights prevent the government from violating the rights of its citizens, enacting arbitrary laws, and safeguarding the people's liberty. Nonetheless, the Fundamental Rights are not absolute, the state can impose reasonable restrictions to strike a balance between the Fundamental Rights of the individual and the society. The importance of Fundamental Rights has been expressed in the

judgment of Maneka Gandhi vs. Union of India: “These fundamental rights represent the basic values cherished by the people of this country (India) since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantee on the basic structure of human rights, and impose negative obligations on the state not to infringe on individual liberty in its various dimensions”.¹

The demand for fundamental rights was not new. Since British rule in India, the Indian people have been nagging for their rights. The leaders of the National Movement played a crucial role in advocating individual rights. In this regard, the demand for Fundamental Rights was first made in 1895 in the form of the “Constitution of India Bill” also known as the “Swaraj Bill”. Again in 1917 and 1919, the Indian National Congress put forward their demands to implement Fundamental Rights. The demand for Fundamental Rights gained momentum during the Indian National Congress session in the early 20th century. Freedom fighters like Mahatma Gandhi, Jawaharlal Nehru, B.R. Ambedkar, etc. stressed the importance for securing rights and freedom for their people. During the Lahore session of the Indian National Congress held in 1929 a resolution was passed promising that the independent India would grant fundamental rights to its citizens. The groundwork for the insertion of Fundamental Rights in the Indian Constitution post-independence was established by this resolution.² After the independence of India, the Constituent Assembly was established and entrusted with the task of developing the Constitution for the country. Under the Constituent Assembly, the Drafting Committee was formed with Dr. B.R. Ambedkar as its chairperson. The Fundamental Rights were included in all the Draft Constitution i.e. First Draft Constitution (February 1948), Second Draft (October 1948), and final Draft (November 1949). The provision of Fundamental Rights was finally adopted on 26 January 1950 by the Indian Constitution.

Indian Constitution under Part III inserted the provision of Fundamental Rights. The Fundamental Rights extends from Articles 12-35. India derived the model of Fundamental Rights from the Constitution of the United States of America. It is also known as the Magna Carta of the Indian Constitution. Originally the Constitution mentioned seven Fundamental Rights, however, in 1978 the Right to Property was removed from the list of Fundamental Rights and was designated as a legal right under Article 300A (Part XII) through the 44th Constitutional Amendment Act. Therefore, at present, there are only six Fundamental Rights: the Right to Equality (Articles 14-18), the Right to Freedom (Articles 19-22), the Right against Exploitation (Articles 23-25), the Right to Religious Freedom (Article 26-28), the Cultural and Educational Rights (Article 29-31), and the Right to Constitutional Remedies (Article 32). Conclusively Indian Constitution has elaborately dealt with Fundamental Rights. The Constitution extends the provisions of Fundamental Rights to all citizens irrespective of caste, color, sex, religion, etc. By granting Fundamental Rights it ensured that every individual is treated fairly and without any prejudice. Indian Constitution by incorporating Fundamental Rights aimed to bring progressive change in the society.

Since Fundamental Rights are crucial in protecting citizens from abuse of power by the government and safeguarding their liberties and freedom, hence have been made enforceable. The Indian Constitution has made it enforceable by adding the Right to Constitutional Remedies, allowing the aggrieved persons to approach the court to enforce their violated Fundamental Rights. The Indian liberation movement is the source of Article 32. The necessity of a legal framework to safeguard citizens' rights was stressed by leaders during the independence movement. In the Draft Constitution of 1948, the Right to Constitutional Remedies was inserted under Article 25. After debate, the Draft Article on Constitutional Remedies was adopted on 9th December 1948. In the Draft Constitution, of 1950 the Right to Constitutional Remedies was removed from Article 25 and inserted under Article 32.³ Among all the Fundamental Rights Article

32 is regarded as the most significant right. Without Article 32, the other provisions of Part III are valueless. The Right to Constitutional Remedies enshrined under Article 32 acts as a deterrent against the violation of fundamental rights. The right to Constitutional remedies helps in actualizing the Fundamental Rights.

The present article studies the background of Fundamental Rights in general and Constitutional Remedies in particular. It focuses on the provision of the Right to Constitutional Remedies as mentioned under Article 32 of the Indian Constitution. The research article further emphasizes the significance of the Right to Constitutional Remedies in redressing the violation of the Fundamental Rights of the aggrieved individual. The research article is significant as it delves into the various Constitutional writs as guaranteed under Article 32 of the Indian Constitution that can be filed by the individual in case of violation of their Fundamental Rights.

Right to Constitutional Remedies: Conceptual Framework

Constitutional remedies are the legal tools that a nation's constitution provides to protect and uphold its citizens' fundamental rights. These rights include the freedom of speech and expression, equality before the law, and immunity from discrimination and unjustified detention. When the government or any other institution violates a citizen's constitutional rights, these remedies enable the citizen to petition the court for relief. In a democracy, these remedies are essential for maintaining the rule of law, guaranteeing accountability, and defending the rights and liberties of citizens. The country's rule of law and the inviolability of anyone's rights are guaranteed by the right to constitutional remedies. The British legal system is the source of the Right to Constitutional Remedies. The notion of the judicial review and the writs have been borrowed from British law. "Access to Justice" which is seen as a fundamental element of a democratic society, serves as the model for the right.⁴ Notwithstanding differences in detail, many other democracies have constitutional remedy provisions. For example, the South African Constitution grants the right to petition the courts to have one's rights enforced. In a similar vein, anyone in Canada may request judicial review under the Charter of Rights and Freedoms if they believe their rights have been violated. Constitutional Remedies empower citizens to seek redressal for violation of their rights. It provides a legal framework for the marginalized sections to fight for their rights. It strengthens the judiciary by entrusting them with the power to check the other departments of the government. The judiciary can punish the violators and award compensation to the victim if the complaint is found to be true.

Right to Constitutional Remedies: Heart and Soul of the Indian Constitution

The Right to Constitutional Remedies as mentioned under Article 32 of the Indian Constitution is supreme of all the rights. It helps to protect individual freedoms and provides justice to every citizen. Article 32 of the Indian Constitution is of immense importance. The significance of this right has been expressed by the Chairman of the Drafting Committee Dr B.R. Ambedkar, who designated this right as **"the Heart and Soul of the Constitution"**. He held that "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".⁵ Article 32 contains the following provisions:

1. The aggrieved person has the right to move the Supreme Court for the enforcement of the rights.

2. The Supreme Court has the power to issue directions, orders, or writs for the enforcement of any of the rights conferred by Part III of the Indian Constitution.
3. The parliament may by the statute grant any other court the authority to exercise within its jurisdiction any of the functions that the Supreme Court exercises under clause (2).
4. The rights outlined in this article cannot be suspended unless the Constitution specifies otherwise. The provision explicitly depicts that the Supreme Court has been given the responsibility to interpret the fundamental rights. The Supreme Court can enforce the violated fundamental rights by issuing various kinds of writs. The writ can be defined as a legal written document filed within a Court seeking legal remedies or interventions in particular cases. India has derived the concept of the writ from the Constitution of the United Kingdom where they are called Prerogative Rights. the Supreme Court by issuing such writs attempts to safeguard basic human rights. The Supreme Court grants five types of writs to uphold the individual's fundamental rights.
 - a. **Habeas Corpus:** It means "*to have the body of*". Through this writ, the court verifies the legality of the imprisoned person. This writ can be issued against both public and private authorities or individuals. The Court can order to bring the detainee to the court. If the Court finds that the person has been wrongfully detained in such a case it can order to free the detained person. This writ enforces the Fundamental Rights mentioned under Article 20 (Protection in respect of conviction for offense), Article 21(Right to Life and Personal Liberty), and Article 22 (Protection against arbitrary arrest and detention).
 - b. **Mandamus:** Mandamus translates literally as "*we command*". This writ can be issued against any public officials, government body, lower court, or tribunal who do not carry out their duty responsibly or refuse to perform their work. Through this writ, the Court can order them to perform their duty which they are obligated to complete.
 - c. **Certiorari:** It means "*to be certified*" or "*to be informed*". This writ is issued by a Supreme Court to a lower court either to transfer the case pending in the lower court or to squash the decision of the lower Court.
 - d. **Prohibition:** It stands for "*to forbid*". This writ is issued against judicial and quasi-judicial authorities to forbid them to act beyond their jurisdiction.
 - e. **Quo Warranto:** The literal meaning of quo warranto is "*by what authority*" or "*warrant*". It prohibits unlawful encroachment of public office. The Supreme Court through issuance of this writ checks the legality of the claim of a person to a public office.

Similarly, the Constitution under Article 226 has conferred the High Court with the power to issue writs for the interpretation of the violated rights of the aggrieved person. In a nutshell, it can be said that the Supreme Court and High Court through the authority vested in them under Articles 32 and 226 make sure that the people's fundamental and other constitutional rights are upheld. If these rights are violated, they may pursue the necessary remedies.

Conclusion

Fundamental Rights have been regarded as one of the basic parts of the Indian Constitution. The Constitution has always tried to protect Fundamental Rights from encroachment. Thus, the Constitution incorporated the Right to Constitutional Remedies. The right to constitutional remedies is considered one of the vital pillars of political structure. It is a powerful legal tool for upholding fundamental rights. It ensures the supremacy of the Constitution and upholds the rule of law by enabling people to immediately

reach out to the Supreme Court to seek justice and protection against rights breaches. Article 32 represents the idea that the judiciary is essential to maintaining the nation's democratic fabric. The declaration of fundamental rights is meaningless unless there is effective machinery for enforcing the rights. Conclusively, it can be said that there are no rights without remedy. The Constitutional Remedies have made the realization of fundamental rights possible.

References

1. Ravi, (2022). Constitutional remedies under article 32 and 226: An overview. *International Journal of Law, Policy and Social Review*, 4 (4), p. 1.
2. (2023, May 31). Introduction to Fundamental Rights. Retrieved from <https://testbook.com/static-gk/fundamental-rights>.
3. (2023), Constitution of India. Retrieved from <https://www.constitutionofindia.net/articles/article-32-remedies-for-enforcement-of-rights-conferred-by-this-part/>.
4. (2023, February 17). What is Right to Constitutional Remedies?. Retrieved from <https://www.geeksforgeeks.org/what-is-right-to-constitutional-remedies/>.
5. Constitution Assembly Debate. (1948, December 9). Constitution of India. Volume 7. Retrieved from <https://www.constitutionofindia.net/debates/09-dec-1948/>.