

The Erosion of Article 32 by the Indian Supreme Court

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Abstract

The pillar of the Indian Constitution, Article 32, has been weakened by the Supreme Court. Convenience has supplanted the fundamental right providing the right to petition the Court for enforcement of one's fundamental rights. Despite the obvious legislative purpose, as indicated by the Constituent Assembly Debates, that no constraints should be placed on this privilege, the Court has used the notion of exhaustion of other remedies to support dismissal of petitions under Article 32.

While the concept is founded on the reasoning of conserving court resources and time, its application to Article 32 lacks a solid legal foundation. In addition to the legislative purpose of the Constitution's framers, the historical evolution of the doctrine also demonstrates this. This paper examines this trend in the United States and the United Kingdom in order to demonstrate that the factors used by courts in these nations are distinct from those utilized by our Supreme Court. In addition, this paper emphasizes that the Supreme Court's own admission that the concept is not founded on the rule of law but rather on public policy and convenience. Consequently, this paper investigates the Court's various methods and their discrepancies.

I- Introduction

The importance of Article 32 is difficult to emphasize. It has been renowned as the spirit and heart of the Indian Constitution.¹ However, as a result of judicial innovation, this fundamental tenet of the Constitution has yielded to judicial expediency. This is owing to the Supreme Court of India's overzealous and uneven use of the doctrine of exhaustion of alternate remedies while hearing petitions under Article 32. Despite the apparent logic of this concept in light of the expanding caseload, it will be shown that it is, in effect, a self-imposed constraint by the Court.

1. 2 Lok Sabha Secretariat, Constituent Assembly Debates: Official Report 7.70.172 (photo. reprint 1999).

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