



## **FACULTY OF JURIDICAL SCIENCES**

**Course : BBALLB , 3<sup>rd</sup> Semester**

**Subject : CONSTITUTIONAL LAW I**

**Subject code : BBL304**

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## **Constitutional law - I**

**OBJECTIVE:** The objective of this paper is to provide understanding of basic concepts of Indian Constitution and various organs created by the constitution including their functions.

### **UNIT – I**

- **Salient features of the Indian Constitution.**
- **Preamble**
- **Definition of State (Art. 12)**
- **Doctrines of Ultra-vires, severability, eclipse, waiver (Art, 13)**

### **UNIT-II**

- **Right to equality (Art. 14)**
- **Prohibition of discrimination, Rights to equality of opportunity (Art. 15-16)**
- **Right to freedom under Article 19: Freedom of association; Freedom of movement;**
- **Freedom of residence; Freedom of assembly; Freedom of association; Freedom of**
- **movement; Freedom of residence; Freedom of occupation, trade and business;**
- **Right to take out processions; Right of the State to impose reasonable restrictions**

### **UNIT – III**

- **Protection in respect of Conviction under Article 20,**
- **Ex-post-facto law; Double jeopardy; Self-incrimination;**
- **Right of Life and Personal Liberty (Art. 21),**
- **Protection in respect of arrest and detention**
- **Right to freedom of religion (Articles 25-28)**

### **UNIT – IV**

- **Cultural and Education Rights (Articles 29-30)**
- **Enforcement of Fundamental Right, Writ Jurisdiction of the Supreme Court and**
- **High Court (Article 32, 226)**
- **Right to property before and after the Constitution 42nd Amendment Act, 1976**
- **Abolition of Untouchability, Titles (Articles 17-18)**
- **Right against exploitation (Articles 23, 24)**

### **Suggested Readings:**

1. **Austin Granville: Constitution of India: Cornerstone of a Nation; and Working A Democratic constitution**
2. **NarenderKumar : Constitutional Law of India.**
3. **Basu D. D : Shorter Constitution of India**
4. **Jain, M.P.: Constitutional Law of India,**
5. **Seervai, H.M. : Constitutional Law of India, Vols. I-III**
6. **Shukla, V.N. : Constitutional of India (ed. M.P.Singh)**
7. **B.R. Sharma : Constitutional Law and judicial Activism**
8. **M.C. Jain Kagzi : The constitution of India**
9. **B. Shiva Rao: The Framing of India's Constitution**

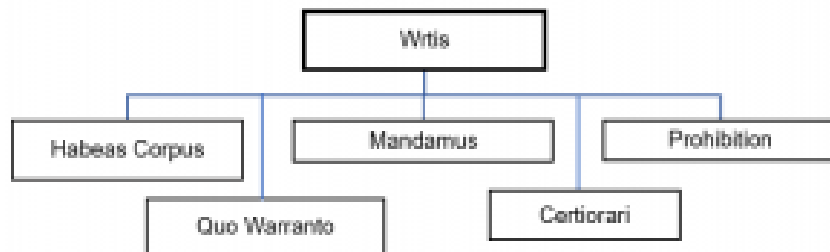
# LECTURE 35

## What is a Writ?

In its earliest form, a writ was simply a written order given by the English monarch ordering a specific person to perform a specified action or task. In common law, it refers to a formal written order issued by a judicial body.

In India, the power to issue a writ is given to the Supreme Court under Article 32(2) and the High Courts under Article 226. However, the high Courts have a broader power in this regards. This is because, the High Courts can issue writs for enforcement of all rights ( including fundamental rights, Constitutional rights and other legal rights) granted to a citizen. But, the Supreme Court can issue writs for enforcement only of fundamental rights granted to the citizens.

For instance, in the case of [Narayan Prasad v. State of Chhattisgarh](#), two brothers approached the Chhattisgarh High Court under Article 226 for enforcement of their right to property granted under Article 300-A of the Constitution. They had been denied a no-objection certificate for transferring their property by a special tribunal. The Court held that they should be granted the certificate as it is their legal and constitutional rights.



## Types of Writ

The Supreme Court and the High Court have the power to issue 5 writs. These are:

### 1. Habeas Corpus

The term 'Habeas Corpus' is a Latin term which literally means 'to have the body'. This writ is issued to relieve a person from unlawful detention. If a person is detained illegally and against his consent, he can file an application in the Supreme Court or High Court.

The scope of this writ was increased by the judiciary which was clarified in various cases like [Sheela Barse v. State of Maharashtra](#) that the doctrine of locus standi (right to approach the Court) is relaxed in habeas corpus cases. This means that if a detained person cannot plead for his release, his family, friends or any other person can file an application and approach either of the two courts for the same. Hence, this writ helps in protecting the liberty and freedom of citizens.

If the Court is satisfied with the application given, it can issue the writ of Habeas Corpus.

Through the writ, the Court orders the presence of the person who had detained another person, ask them to provide a justifiable ground for the detention and orders a release of the

detained person if it finds that the detention is not legally reasonable and justifiable. The detention is illegal if:

- (1) The due procedure established by law was not followed for detaining a person or
- (2) Detention was not in accordance with the law.

The application of this writ can be better understood by looking at the case of [T.V. Eachara Varier vs Secretary To The Ministry Of Home](#), popularly known as the Rajan Case where a young boy, P Rajan was taken into police custody while he was studying in the college campus.

The principle of the college informed the father of the child about his arrest. This was done during the period of national emergency and for months, the whereabouts of the boy was not told to his family. In this case, the Court observed that P Rajan had been detained without any justification and issued the writ of Habeas Corpus for production of Rajan before itself.

There are certain circumstances where the writ of Habeas Corpus cannot be invoked. These include:

- If the person is detained as a result of a sentence or order given in a judicial proceeding.
- If the person is put into physical restraint under the law unless the law is declared unconstitutional.
- If the detained person has already been set free.
- If the person who detained another person does not come under the territorial jurisdiction of the Court in which the application has been filed.
- If the writ is filed during the emergency situation. However, it must be understood that the writ of habeas corpus would be maintainable only for the enforcement of fundamental rights granted in [Articles 20](#) and [21](#) of the Indian Constitution even during the emergency situation.

## 2. Mandamus

The Latin term 'Mandamus' means 'we command'. The writ is issued in the form of a command given by the judiciary which directs a constitutional, statutory or non-statutory body to perform a public duty which has been imposed upon it by the law. It can also be issued by a superior court commanding an inferior court to perform its duties.

This writ is also issued to prevent the authority from doing a particular act, which it is not legally entitled to do. The writ of Mandamus cannot be issued against a private individual who is not legally required to perform the public duty.

Thus if A is a police officer who is not performing his duty of registering a complaint brought to him by B, the Court can issue the writ of Mandamus, compelling him to register it. However, if A is not obligated by law to perform a duty, then the writ cannot be issued against him.

The writ of mandamus is issued on the following grounds:

- The petitioner has a legal right
- The legal right of the petitioner has been infringed
- The legal right has been infringed because of the non-performance of a legally required

duty by a public authority or a private individual who is acting under public authority. The petitioner has demanded the performance of the duty but the public authority has. The Courts have given importance to the rule of *locus standi* in cases involving this writ. However, in certain cases, public-spirited persons are allowed to apply for this writ on behalf of other people whose rights have been infringed. It is issued when there is an error of jurisdiction or error of law or violation of the principles of natural justice.

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**Choose the correct option**

1. A Scheduled Caste is not a 'caste' within the meaning of that word in Article. 15(1) and 16(2) of the Indian Constitution. It has a special meaning, namely, a caste as notified by the \_\_\_\_\_ under Article 366 (25) of the Indian Constitution having regard to their abysmal backwardness.
  - A. Parliament
  - B. Governor
  - C. President
  - D. Supreme Court
2. A discrimination against a man or a woman, only on the ground of \_\_\_\_\_ would be violative of Article 15(1) of the Indian Constitution.
  - A. Sex
  - B. Remuneration
  - C. Place of birth
  - D. Religion
3. In making reservations for the backward classes, the state cannot ignore the \_\_\_\_\_ of the rest of the citizens.
  - A. Civil Rights
  - B. Political Rights
  - C. Economic Rights
  - D. Fundamental Rights
4. 'Equality of opportunity in matter of public employment' is the basic content of which of the following Articles of the Indian Constitution?
  - A. Article 16
  - B. Article 17
  - C. Article 15(2)
  - D. Article 16(4)
5. Clause (1) and (2) of Article 16 of the Indian Constitution guarantees equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the state. However, clauses (3)-(5) lay down the following several exceptions to the rule of equality.
  - I. Though any citizen of India, irrespective of his residence, is eligible for any office or employment under the Government of India [Clause (2)] residence may be laid down as a

condition for particular classes of employment under a state or any local authority therein, by an Act of Parliament in the behalf [Clause (3)].

II. The State (as defined in Article 12) may reserve any post or appointment in favor of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the state [Clause (4)].

Which of the above statements is/are found to be correct?

- A. I and II
- B. Only I
- C. Only II
- D. None of them