



## **FACULTY OF JURIDICAL SCIENCES**

**Course : LLB , 1st Semester**

**Subject : CONSTITUTIONAL LAW I**

**Subject code :LLB 101**

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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 36

In the case of [Bhopal Sugar Industries Ltd. V. income Tax Officer](#), the Income Tax Appellate Tribunal gave the respondent, an income tax officer certain direction for ascertaining the market value of sugarcane grown by the appellant in petitioners farms. However, the respondent did not follow these directions.

The Supreme Court held that refusal to carry out an order given by a superior tribunal in the exercise of its appellate jurisdiction violates the principles of justice and leads to chaos. Thus, the writ of Mandamus was issued directing the income tax officer to perform his duty in accordance with the order given by the Income Tax Appellate Tribunal.

However, when the act for which mandamus is sought has been completed or right of petitioner has lapsed or any other situation where issuing of the writ would be meaningless, the Court can refuse to issue it. It must also be mentioned that there are some situations where the writ is not granted. These include:

- It cannot lie against the following people:
  - President or the governor of a state in their personal capacities.
  - A practising Chief Justice
  - The officials involved in various stages of conducting the elections to the parliament or state legislature.
  - Private person or body
- If the duty to be performed is discretionary, not mandatory.
- For enforcement of a private contract between parties.

### 3. Certiorari

The Latin expression 'Certiorari' means 'to certify'. It is issued in the form of a command by a superior court ordering an inferior court or any other inferior quasi-judicial body to transmit the records of a proceeding pending before it to the superior court. This is usually done in the following circumstances:

1. When a superior court believes that the Inferior Court does not have jurisdiction to decide the matter.
2. When the inferior courts violate the principles of natural justice while deciding the matter.
3. When the inferior court decides on a matter procured by fraud.
4. When the lower court makes a wrong decision because of an error of law which is apparent on the face of the record. This means that if the inferior court makes a decision based on a clear disregard of a statutory provision, the superior court can issue the writ of certiorari. However, if the decision is made because of errors in facts, then the writ is not applicable.

For example, if the High Court believes that the District Court which heads a case did not have monetary jurisdiction to decide upon the matter, and yet the district court has taken up the matter, the High Court can issue this writ and quash the district court's order.

However, the superior court only has advisory jurisdiction (power of the court to give an opinion on an issue) in case the writ of Certiorari is issued. It does not exercise appellate jurisdiction (The power of the court to hear cases on appeal from the lower court) in these cases.

It must also be understood that the petition for Certiorari can only be made by the person who has been aggrieved. Thus, the doctrine of *locus standi* is very stringent in the matters of certiorari. For this reason, it is considered as a proceeding in personam.

The writ of certiorari is very important because it acts as a corrective remedy. For instance, in the case of [Rafiq Khan v. State of U.P.](#), the appellants were convicted under sections [352](#), [447](#) and [426 of the IPC](#) by the Panchayati Adalat. They approached the Sub-Divisional Magistrate for the same and he modified the order given by the Panchayati Adalat. Allahabad high court held that the Sub-divisional Magistrate did not have a legal right to modify the order and quashed the modified order.

Before moving forward to discuss the other types of writs, we must understand the difference between Article 226 and [227 of the Indian Constitution](#). Very often petitions are filed under Article 226/227 as one petition. However, these two Articles are quite different in scope. While Article 226 gives the High Courts the power to issue writs, Article 227 talks about powers of general superintendents of High Courts over the Subordinate Courts.

This power allows them to keep a check on the subordinate courts and ensure that they do not make errors of jurisdiction. Hence, confusion regarding the writ of certiorari under both these Articles arise. While passing a writ of Certiorari under Article 226, the courts can only quash the order given by the subordinate court. Under Article 227 however, besides quashing the order, the High Court can also give appropriate directions to the inferior courts on the basis of the facts of the case and thus guide the courts.

#### 4. Prohibition

The term 'prohibition' literally means 'to forbid'. This writ is also known as 'stay order'. It is issued by a superior court to prevent an inferior court or a quasi-judicial body from continuing its proceedings. It is issued in circumstances such as:

- When the inferior court or quasi-judicial body does not have jurisdiction to hear the case.
- When the inferior court or quasi-judicial body violates the principles of natural justice.
- When the inferior court or quasi-judicial body is not acting according to the provisions of the law.

The writ of prohibition, though similar to the writ of certiorari, is different in its nature. While the writ of certiorari is corrective in nature, the writ of prohibition is preventive in nature. This writ is issued by the superior court while the judicial proceeding is still going on in the inferior court or quasi-judicial body and before the final order is declared.

To understand this writ, one can refer to the case law [East India Company Ltd. v. the Collector of Customs](#). In this case, the Supreme Court of India passed the writ of prohibition disallowing the respondent to proceed with the inquiry in an inferior tribunal on the ground that the proceedings were outside the tribunal's jurisdiction.

#### 5. Quo Warranto

The phrase 'Quo Warranto' means "by what authority". This writ restrains a person from acting in an office when he is not entitled to and has wrongfully usurped the position. The basic fundamental purpose of this writ is to ensure that an unlawful claimant does not take over a public office, as this can harm the public and takes away opportunities from those people who actually deserve to take over that office.

In the matters involving the writ of quo warranto, anybody can file the petition, even if the person who is filing the petition has not been personally aggrieved. When the writ of Quo Warranto is issued, certain essentials need to be fulfilled. These include:

- The office which has been wrongfully assumed is a public office, and not a private one.
- The public office has been created either by a statutory provision or the Constitution.
- The office is of a permanent nature and is not made for a temporary term.
- The person against whom the writ is to be issued is in possession of the office.
- The person against whom the writ is to be issued is one who has been disqualified from a public office, yet continues to possess it.

Thus if A is not qualified and has illegally taken possession of the office of a police officer, the Court can issue the writ of Quo Warranto and challenge this possession.

However, it must be observed that the Court has complete discretion in issuing this writ. Thus, if the court feels that issuing of this writ would not be beneficial, it has the discretion to not issue it. This can be understood with the help of the case.

In the case, of [P.L. Lakhan Pal vs A.N.Ray](#) the appointment of Justice A.N. Ray as Chief Justice of India was challenged because of lack of seniority. However, the court did not grant the writ of quo warranto because it would have been futile since the 3 other judges who were senior to him had resigned after his appointment and consequently, he had gained superiority over all other remaining judges in the Supreme Court.

#### Locus Standi

In Law, *Locus Standi* is the right of a person to bring legal action to the court. As per the strict approach of *Locus Standi*, the person has this right because he has sufficient connection to the case in hand. You can understand this concept better with the help of an illustration. If A's right to equality has been violated, then because of locus standi, A can approach the Court of Law and bring a legal action to get remedy for this violation.

This practice of locus standi is very strict. Before the 1980's only the affected party had the locus standi to file a case in a Court of law. However, this was found to lessen the scope of justice and a need for its change was observed during the post-emergency period.

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**Choose the correct option**

**1. When was the 'Prevention of Insults to National Honour Act' passed?**

- (A) 1976
- (B) 1972
- (C) 1974
- (D) 1971

**2. About which article Supreme Court of India has held that where this article comes in the article 14 goes out?**

- [A] Article 30
- [B] Article 31 A
- [C] Article 31 B
- [D] Article 32

**3. Which of the following fundamental right is also known to have incorporated a “Necessary Evil” of the Constitution of India?**

- [A] Protection of certain rights regarding freedom of speech, etc.
- [B] Protection in respect of conviction for offences. [C] Protection of life and personal liberty.
- [D] Protection against arrest and detention in certain case

**4. which among the following articles of Constitution of India deals with “Prohibition of Traffic in Human beings”, ?**

- [A] Article 21
- [B] Article 22
- [C] Article 23
- [D] Article 24

**5. Which among the following articles of Constitution of India abolishes the untouchability ?**

- [A] Article 15
- [B] Article 16
- [C] Article 17
- [D] Article 18