

Polity Class 22

6th October, 2023 at 9:00 AM

Revision

Revision of the previous lecture done

Art 30 (9:06 AM)

- **The Constitution classifies minorities on the basis of religion and language**
- **As per the court to be classified as a minority community**
- **The community should form less than 50% of the population at the state level.**
- **Article 30 is a tool provided to minorities to protect their culture and language as per the provisions of Art 29 without which it will not be possible for them to do so.**
- **Privileges enjoyed by minority educational institutions-**
 - **1. No quota reservations for SC, ST, OBC, and EWS.**
 - **2. They may provide reservations to students of that particular minority community.**
 - **3. While acquiring the property of such an institution for a public purpose, the state should ensure that it meets the safeguards under ART 31(a)**
 - **4. State while providing aid to EIs should not discriminate specialty against minority EIs.**
- **Observations in different cases-**
- **St Stephen vs. DU-**
 - **The court noted that the right to establish and administer EI also includes the right to regulate admission including fixing criteria for admission and providing reservations to students of the minority community**
 - **In another case, the court held that MEIs are not restricted to impart religious education alone and they may provide secular education as well.**
 - **The court also stated that up to 50% reservations may be provided to the students of the minority community in such institutions and the cap on reservations may vary according to the nature of the education.**
- **For example-**
 - **In primary and secondary education more reservations may be provided minty community,**
 - **In the TMA Pai case -**
 - **The court held that the right to administer a minority educational institution does not include the right to maladminister.**
 - **in case the court finds some mismanagement it may regulate administration so as to ensure that the institution can meet its desired objectives.**

- MEIs are free to admit nonminority students as well but, such a number should be limited to an extent that it doesn't compromise the minority status of the institution.

Article 32: Remedies for enforcement of rights conferred by this Part (9:50 AM)

- According to Dr. B R Ambedkar Article 32 is the Heart and soul of the Indian constitution.
- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have the 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
- (3) 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)
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

Difference between Writ powers of SC and HC-

SC	HC
1. Article 32	Article 226
2. Enforceable throughout the country	Applicable under the territory of their jurisdiction
3. It can issue writs only for the enforcement of FRs	Can issue writs for the enforcement of rights including FRs, statutory rights, etc.
4. This right itself is an FR and the court can not deny an individual a remedy in case of violation of FRs.	It is not an FR, and it is the prerogative of the court to provide a remedy.

Meaning of appropriate proceedings

- The court has held that any procedure would be considered appropriate as long its objective is the enforcement of FRs
- Therefore a writ petition related to writ petition may be submitted to the court even on a postcard.

- the court has tried to ensure that FRs should be available to all citizens irrespective of their socio-economic status.

Various types of writs in the Indian constitution

Habeas Corpus-

- It literally means "To have the body of"
- It is issued in those cases where an individual has been illegally detained by an individual or a public authority
- If the person has been detained illegally then he or she should be physically presented in front of the court and the court would examine the reasons for detention.
- If no legal justification is provided for the same then the person will be set free
- The principle of Locus Standi is not applicable in the case of this writ.

Mandamus-

- It literally means 'We command'
- It is issued when due to non-performance of statutory duty a person's FR is getting violated.
- The duty must be vested in public authority
- Principle of Locus standi-
- This means that only the aggrieved party can reach out to the court.
- It can't be issued to
 - i)The private individual
 - ii)The legislature
 - iii)The president and the court
 - iv)it can't be issued to the lower court as well
- Essential conditions for issuing a writ of mandamus-
 - i)There should be a violation of an FR
 - ii)There should be non-performance of a statutory duty, must result in violation of an FR
 - iii)There has to be a demand and refusal of duty

Certiorari (11:10 AM)

- It means to certify
- It is issued by a superior court to quash the order of the lower court or a tribunal for effective enforcement of the fundamental rights.

- It is issued when an inferior court has exceeded its jurisdiction or usurped a jurisdiction with which it is not legally vested or if the court has acted contrary to the principles of natural justice.
- This writ can only be issued to inferior court or a quasi-judicial body. Therefore it may be issued to administrative authorities that possess the power to decide the dispute.
- Once this writ is issued it quashes the order and the case is put in front of the concerned court.

Prohibition

- It literally means to stop or forbid.
- It is issued by a superior court to an inferior court or a tribunal forbidding the latter to continue the proceedings any further.
- The difference between certiorari is that the first one is made when the final order has been issued whereas the prohibition is to stop the court from proceeding any further and making an illegal order.
- The principle of locus standi is applicable to both certiorari and prohibition.

Quo-Warranto

- It literally means where is warrant of appointment.
- It is issued by the court to examine the legality of claim of a person to a public office.
- If the person is not able to show the legal right to occupy the office, the court may order the person to be removed from the office.
- For this writ to be issued the office in question must be a public office and creation of a law.
- The principle of locus standi is not applicable in case of quo-warranto.

PIL (11:30 AM)

- According to the concept of PIL a public spirited individual may approach on behalf of those who cannot afford to do so.
- It was innovated by the Supreme Court who ensure effective enforcement of fundamental rights and maintains the trust and faith of the citizens in the Rule of Law.
- If the petitioner can prove sufficient public interest, the court can set aside the principle of locus standi.
- In Hussian Ara Khatoon vs State of Bihar the plight to undertrial prisoners brought to the notice of apex court.
- Justice PN Bhagwati set aside the principle of locus standi and ordered the release of more than 30,000 prisoners across the country. This case set a precedent for

several other cases where public spirited individuals or social action groups have approached the court for the enforcement of fundamental rights.

- As per Justice V Krishna Iyer it is the tool to allow the common man to approach irrespective of their socio-economic status.
- In SP Gupta Vs Union of India the Court stated that any members of public or civil society organizations can invoke the writ powers of the Supreme Court and the High courts seeking redressal against violation of the right of the persons who due to social and economic disability was not able to approach the court.

Advantages/Significance of PIL

- 1. It has democratized justice for the common man.
- 2. It has made justice more affordable
- 3. It has helped in the effective enforcement of fundamental rights.
- 4. The court has been able to keep a check on the exercise of powers by the other organs of the state.
- PIL is an example of judicial activism. Judicial Activism is when the judiciary encroaches on the sphere of legislature and executive the upholding the Constitutional provisions
- Disadvantage of Judicial Activism is that legislature and executive can, in the future, encroach on the domain of the judiciary.

Topics for the next lecture – Article 33, 34, 35, Judicial activism and DPSPs