

## CONSTITUTION

**Introduction:-** The Indian constitution is unique in its content and spirit. The salient features of the constitution are as follows:-

- Lengthiest written Constitution
- Blend of Rigidity and Flexibility
- Federal system with unitary features
- Parliamentary form of Government
- Independent judiciary
- Single citizenship
- Emergency provision

**Structure:-** The Indian Constitution originally consisted of 395 Art, 22 parts, 8 Schedules. But after the Constitution 104<sup>th</sup> Amendment Act, 2003, the Indian Constitution Consists of 448 Art, 25 parts, 12 Schedules.

**Preamble:-** The preamble to the constitution is based on the “ objective resolution” drafted and moved by Pandit Nehru and adopted by constituent assembly. It runs as follows:-

“We THE PEOPLE OF INDIA, having solemnly resolved to constitute India in to a SOVERIGN **SOCIALIST SECULAR** DEMOCRATIC REPUBLIC and to secure to all its citizen:-

- JUSTICE, social, Economic, and Political;
- LIBERTY of thought, expression, belief, faith and worship;
- EQUALITY of status and of opportunity;;
- FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation; In our Constituent Assembly, this **26th November, 1949**, do hereby adopt, enact and give to ourselves this constitution.”

**Purpose of the Preamble:-** The preamble to the constitution is a key to open the minds of the makers and shows the general purpose for which they made the several provisions in the constitution. Preamble serves the following purposes:-

1. It discloses the source of the constitution.
2. It lays down the date of the commencement of the constitution.
3. It set out the rights and freedoms which the people of India wished to secure for themselves.
4. It declares the nature of the government.

Q1:- Whether Preamble is the part of the constitution?

Ans.:- In the case of **Kesvanand Bharti vs. State of Kerala**, the supreme has held that preamble is part of the constitution. Preamble is of extreme importance and the constitution should be read and interpreted in the light of grand and noble vision expressed in the preamble. However, two things should be noted:-

- The preamble is neither a source of power to legislature nor prohibition upon the powers of legislature.
- It is not justiciable i.e. not enforceable in courts of law.

Q2:- Whether preamble can be amended?

Ans:- Supreme Court has held that preamble **can be amended** subject to the condition that no amendment is done to the 'Basic structure' of the constitution. The Preamble has been amended only once by the 42<sup>nd</sup> Constitutional Amendment act, which has added three new words- Socialistic, Secular and Integrity- to the preamble.

**Nature of Indian Constitution:-**The Constitution is of two kinds:-

1. **Unitary:-** In a Unitary Constitutions the powers of the Government are centralized in one Government v.z. the States or Provinces are Subordinates to the Centre.
2. **Federal:-** In Federal Constitution, there is a division of Powers between the federal and the State Government and both are independent in their own spheres. The American Constitution is universally regarded as an example of the Federal Constitution.

**Characteristics of a federal Constitution:-**

1. **A Written Constitution :-** For a federal Constitution it is Mandatory that there should be a written Constitution.
2. **Dual Government:-** In case of federal constitution, there is system of dual government one at centre and another at state.
3. **Supremacy of Constitutions:-** For a federal Constitution there should be supremacy of the Constitution. At the time of the exercise of power by three organs of the Govt. i.e. legislative, executive and Judiciary, all functions are Subordinated and Controlled by the Constitution.
4. **Distribution of Powers:-** Federalism means the distribution of powers of the State among a Number of Co-ordinate bodies each originating in and controlled by the Constitution
5. **Rigidity:-** Rigidity is one of the Basic essential of a federal Constitution. It highly depends on the Process of amendment.
6. **Independent Judiciary:-** There should be an independent judiciary having authority on other organs. In a federal Constitution the courts (judiciary) has the final power to interpret the Constitution. Finally it should say that the judiciary is the Guardian of the Constitution.

**Conclusion :** Finally it can be said that the Indian Constitution is neither Purely federal nor purely unitary but a Unique Combination of Both aspects.

**Peculiar feature of Indian Constitution:-**

- Mode of formation
- Position of the state
- Citizenship
- Residuary power
- The lengthiest Constitution in the world.

**Meaning of State:- ( Art.12)** The state includes:-

- The Government and parliament of India
- The Government and legislature of each of the states.
- All local and other authorities:
  - Within the territory of India
  - Under the control of the Government of India

All the fundamental rights are available against the state with a few exception.

**Some case law:-**

- Electricity is a board within the meaning of Article 12.
- University
- **Income- Tax department**
- **Corporation when deemed to be state?( Ajay hasia vs. Khalid Mujib)**
  - If the entire share capital is held by government.
  - Financial assistance is provided by the government to meet the entire expenditure.
  - When corporation enjoys a monopoly status.
  - When the state is having deep and pervasive control over the affairs of the corporation.
  - If the corporation is discharging public function.
- Corporation acting as an agency instrumentality of the government. ( RD Shetty vs. IAA).
- **Stock Exchange is not a state** because it is independent from the government control. (Satish nayak vs. Cochin Stock Exchange Ltd.)
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## Fundamental Right

**Introduction:-** The aim of Fundamental Rights is that certain elementary rights such as right to life, liberty, freedom of speech and freedom of faith and so on should be regarded as inviolable under all circumstances and that the shifting majority in legislatures of the country should not have a free hand in interfering with fundamental rights. Fundamental right is called the Magna Carta of India.

### Rights to Equality

- a. Equality before law-Art 14.
- b. Prohibition of discrimination on the grounds of religion race, caste, sex or place of Birth Art 15.
- c. Equality of opportunity in matters of public employment, Art 16.
- d. Abolition of untouchability Art 17
- e. Abolition of titles, Art 18.

### Right to Equality

**Equality before Law:-**

Art.14 – says that “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Analysis:- Art 14 uses two expressions:-

- (1) “Equality before the law; and
- (2) Equal Protection of the laws

**(1) Equality before law** – This concept is taken from British Constitution. The concept of equality does not mean absolute equality among human beings which is physically no possible to achieve. It is a concept implying absence of any special privilege by reason of birth, Creed or the like in favour of any individual, and also the equal subject of all individuals and classes to the ordinary law of the land.

**In the words of Dr.Jennings-** “Equality before the law” means that among equals the law should be equal and should be equally administered, that like should be treated alike.

**Rule of law** – The guarantee of „equality before the law“ is an aspect of what Dicey Calls the “rule of law” in England. It means that no man is above the law and that every person, whatever be his rank or conditions, is subject to the jurisdiction of ordinary courts. “Dicey the Rule of Law has three distinct meaning “

- (1) Supremacy of the law
- (2) Equality before the law
- (3) The Constitution is the result of the ordinary law of the land.

**(2) Equal Protection of the Laws –**

This concept is taken from American constitution. This has been interpreted to mean subjection to equal law, applying to all in the same circumstances. It only means that all persons similarly circumstance shall be treated alike both in the privileges conferred and liabilities imposed by the law equal law should be applied to all in the same situation and there should be no discrimination between one person and another. The words “any person” in Art 14 of the constitution denotes that the guarantee of the equal protection of laws is available to any person which includes any company or association or body of individuals. The protection of Art 14 extends to both citizens and non-citizens and to natural persons as well as legal persons. The equality before the law is guaranteed to all without regard to race, colour or nationality. Corporations being juristic persons are also entitled to the benefit of Art 14.

**Test of Reasonable classification** – While Art 14 forbids class legislation; it permits reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving specific ends. But classification must not be arbitrary, artificial or evasive”. It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature, classification to be reasonable must fulfill the following two conditions –

1. the classification must be founded on an “**intelligible differentia**” which distinguishes persons or things that are grouped together from others left out of the group.
2. the differentia must have a rational relation to the object sought to be achieved by the Act. **K.Thimmappa v. Chairman Central Board of Directors SBI** and **Ram Krishna Dalmia vs. J. Tandulkar**

**New Concept of Equality:** Protection against arbitrariness:- In **E.P.Royappa v. State of Tamil Nadu** the new concept of equality in the following words – “Equality is a dynamic concept with many aspects and dimensions and it cannot be described, Cabined and confined” within traditional limits from a positivistic point of view, equality is antithesis to arbitrariness. In fact equality and arbitrariness are sworn enemies, one belong to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art.14.

**Exceptions to the equality before law-** Art 361 of the Constitution permits the following exceptions to this rule –

- The President or the Governor of a State shall not be answerable to any court.
- No criminal proceeding whatsoever shall be instituted or continued against the President or a Governor in any court during his term of office.
- No Civil Proceeding in which relief is claimed against the President or the Governor of a state shall be instituted during his term of office in any Court in respect of any act done or purporting to be done by him in his personal capacity.

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**Prohibition of discrimination on certain grounds:-**

Art 15(1) provides that the state shall not **discriminate** against any citizen on grounds **only of**:-

- Religion
- Race
- Caste
- Sex
- Place of birth or
- Any of them

**Art 15 (2) provides that:-** No citizen shall be on above grounds, subject to any disability, liability, restriction or condition with regard to—

- a. access to shops, public restaurants, hotels and places of public entertainment; or
- b. the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

**Exceptions:-**

**Art 15 (3), (4) and (5) contains exceptions to the general principal laid down under Art 15 (1) and (2):-**

- Nothing in this article shall prevent the State from making any special provision for women and children.
- Nothing in this article shall prevent the State from making any special provision for the advancement of any **socially and educationally backward classes** of citizens or for the Scheduled Castes.
- Nothing in this article shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their **admission to educational institutions** including private educational institutions, whether aided or unaided by the State, other than the minority educational institution.

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**Equality of opportunity in matters of public employment :- ( Art-16)**

- There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- No citizen shall, on grounds **only of**:-
  - religion,
  - race,
  - caste,
  - sex,
  - descent,
  - place of birth,
  - residence, or
  - any of them.

be ineligible for, or discriminated against in respect of, any employment or office under the State.

**Exceptions:-**

- Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
- Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any **backward class** of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
- Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

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#### **Abolition of Untouchability**

“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

The term “Untouchability” is not defined under the Constitution. However, it refers to the social disabilities imposed on certain class of person by reason of their birth in certain caste. However, it does not cover social boycott of a few individuals.

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#### **Abolition of Titles**

- No title, not being a military or academic distinction, shall be conferred by the State.
- No citizen of India shall accept any title from any foreign State.
- No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
- No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

#### **Right to Freedom**

Article 19(i) defines six freedoms:-

- a. Freedom of speech and expression
- b. Freedom of Assembly
- c. Freedom to form Association
- d. Freedom of Movement
- e. Freedom to reside and to settle

f. Freedom of Profession, occupation, trade or business.

**These six freedom are however not absolute**, and subject to reasonable restriction which are as follows:-

- i. Security of the State
- ii. Friendly relation with foreign states
- iii. Public order
- iv. Decency and Morality
- v. Contempt of Court
- vi. Defamation
- vii. Incitement to an offence
- viii. Sovereignty and Integrity of India

**Judicial pronouncement on Right to speech and expression:-**

- **Meaning:-** 19(1) (a) Meaning of freedom of speech and expression The freedom of speech and expression, means the right to speak and to express one's opinions by words of mouth. Writing, printing, pictures or in any other manner. It includes publication also, which includes inherent freedom of press. The liberty of circulation is vested in liberty of publication.
- **Right to know :-** the fundamental right principally Principal involved here is the people's right to know.
- In **Prabhu Datt Vs. Union of India** – Supreme Court held that right to know news and information about the functioning of the Govt., is included in the freedom of Press.
- In **Union of India Vs. Association for Democratic Reforms**– Supreme Court held that people have right to know about the candidate before voting. Thus, the law preventing the Election Commission from asking for a candidate's wealth, Assets, liabilities education and other such information is invalid.
- In **Tata Press Ltd. Vs. M.T.N.L.** the Supreme Court held that commercial speech (**Advertisement**) is a part of freedom of speech and expression U/A 19(1) (a).
- In **Union of India V. Naveen Jindal**, The Court held that **"Flying National Flag"** is fundamental Right U/A 19(1) (a)
- Freedom of Silence – Right not to speak, In **Bijoy emmanuel Vs. State of Kerala**.
- Freedom of the Press - the freedom of press defined in the Indian Constitution U/A 19(1) (a) In **Indian Express newspaper Vs. Union of India**, the Court observed the expression "freedom of the Press" has not been used in Art 19.
- Pre-censorship Invalid – In **Ramesh Thapper Vs. State of Madras**.

**Protection in respect of conviction for offences**

**Ex-post facto law:-**

No person shall be convicted of any **offence** except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater

than that which might have been inflicted under the law in force at the time of the commission of the offence.

**Double jeopardy:-**

No person shall be prosecuted and punished for the same offence more than once. The protection under this clause is available only in proceedings before a court of law or a judicial tribunal. In other words, it is not available in proceedings before departmental or administrative authorities.

**Self -Incrimination:-** No person accused of any offence shall be compelled to be a witness against himself. It extends to both oral and documentary evidence. It extends to only criminal proceedings and not to civil proceedings. The benefit is available only when all the following conditions are satisfied:-

- Person must be accused of an offence
- There must be compulsion to be witness
- Such compulsion should result in his giving evidence against himself.

**Right to Life & Personal Liberty**

“No person shall be deprived of his life or personal liberty except according to Procedure established by law.”

**In Maneka Gandhi v. Union of India.** The Court has given the widest possible interpretation of Personal liberty. Thus **Art 21** requires the following Conditions to be fulfilled before a Person is deprived of Personal liberty.

- There must be a valid law.
- The law must provide a Procedure.
- The Procedure must be (just, fair and Reasonable) ensuring Natural Justice.

**Right to life includes within its ambit the right to live with Human dignity. The S.C. held that the right to life defines not only physical existence but the “quality of life.”**

**Judicial Pronouncement on right to Life & personal liberty:-**

- Right to Travel abroad. (Satwant Singh v. Assistant Passport officer)
- Right to livelihood. (D.K.Yadav v. J.M.A Industries)
- Right to Shelter. (Chameli Singh v. State of U.P.)
- Right to Privacy. (R.Raja Gopal v. State of T.N.)
- **In PUCL Vs. Union of India**, the S.C. held that telephone tapping is a serious invasion of an individual's right to Privacy which is part of the right to life and personal liberty.
- Right to Health & Medical Assistance.
- Right to die **NOT A RIGHT TO LIFE**
- Protection of Ecology and Environmental Pollution
- Right to education under Art. 21A
- Prisoner's Right. The Court held that if the Prisoner died due to beating by Police Officer, his family is entitled to compensation.
- Right to free Legal Aid
- Right to speedy Trial
- Right Against Handcuffing
- Right against Delayed Execution.



- Right to food
- Right to Marriage. (Lata Singh v. State of U.P.)
- Right to Reputation.
- Right to Die. In case of **Gian Kaur v. State of Punjab** “The Constitutional Bench of Supreme Court held that “right to life” Under Article 21 **does not include “right to die.”**

### **Right to Education-21A**

**Article 21A** declares that state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may decide. Thus, this provision makes only elementary education a fundamental right and not higher or professional education. This provision becomes effective from the date of 01.04.2012.

### **Protection against arrest and detention**

**Article 22** grants protection to persons who are arrested or detained. Detention is of two types:-

- **Punitive detention**- is to punish a person for an offence committed by him after trial and conviction in court.
- **Preventive detention**- means detention of a person without a trial and conviction of court. The objective of the preventive detention is not to punish a person for a past offence but to prevent him from committing an offence in near future.

**Article 22** has two parts:-

- First part deals with the ordinary law
- Second part deals with the preventive detention

**First part:-** it deals with the detention under the ordinary law and provides for the following:-

- Right to be informed of the grounds of arrest.
- Right to consult and be defended by a legal practitioner.
- Right to be produced before magistrate within 24 hours, excluding the journey time.
- Right to be released after 24 hours unless the Magistrate authorises further detention.
- These safeguards are not available to an alien or a person arrested or detained under preventive detention.
- Supreme Court has held that first part is not applicable in case of civil arrest, failure to pay income tax.

**Second Part:-** It deals with the detention under the preventive detention law. The protection is available to both citizen as well as alien and includes the following:-

- ❖ The detention of person cannot exceed three months unless an advisory board reports sufficient cause for extended detention.
- ❖ The grounds of detention should be communicated to the detainee.
- ❖ The detainee should be afforded an opportunity to make representation against the detention order.

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### Right against exploitation

- ❖ **Prohibition of traffic in human beings and forced labour:- Article 23** prohibits traffic in human beings and other similar forms of forced labour. This right is available to both citizens and non-citizens. It protects the individual not only against state but also against the private person. However, state may impose compulsory service for public purpose i.e military service or social service.
- ❖ **Prohibition of employment of children in factories etc.:- Article 24** prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities. But it does not prohibit their employment in any harmless innocent work.

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### Right to freedom of Religion

- ❖ **Freedom of conscience etc.:-** Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. The implications of these are as follows:-
    - Freedom of conscience
    - Right to profess
    - Right to propagate
    - Right to practice
- Article 25 covers not only religious belief but also religious practices. This right is available to all person citizen as well as noncitizen.
- ❖ **Freedom to manage religious affairs:-** As per article 26, every religious **denomination** or any of its section shall have the following right:-
    - to establish and maintain institutions for religious and charitable purposes;
    - to manage its own affairs in matters of religion.
    - to own and acquire movable and immovable property; and
    - to administer such property in accordance with law.

**Denomination:-** Religious denomination should satisfy the following condition:-

- It should be body of individuals who have been system of beliefs which they regards as conductive to their spiritual well being.
- It should have common organisation; and
- It should be designated by a distinctive name.
- **For example:** - 'Ramakrishna mission' and 'Anand Marg' and Arvindo

- ❖ **Freedom from taxation for promotion of Religion:-** Article 27 lays down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination. In other words, the state should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion.

**This provision** prohibits only levy of tax and not a fees. This is because the purpose of fee is to control secular administration of religious institutions not to promote or maintain religion.

- ❖ **Freedom from attending religious instruction (RI):-** Article 28 provides that no religious instruction shall be provided in any educational institution **wholly** maintained out of state funds. However, this provision shall not apply to an educational institution administered by the state but established under any endowment or trust requiring imparting of religious instruction in such institution.

**Article 28** distinguishes between four types of educational institutions:-

- Institutions wholly maintained by the state- RI totally prohibited
- Institutions administered by the state but established under any endowment or trust-RI permitted
- Institutions recognised by the state- RI is permitted on voluntary basis
- Institutions receiving aid from the state- RI is permitted on voluntary basis.

### **Cultural and Educational Rights**

**Protection of interest of minority:-** ( Article- 29):-

- Any **section of the citizens** residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- Further, **No citizen** shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

- ❖ **Right of minorities to establish and administer educational institutions:-**( 30):-

- All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed.
- The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Minority educational institutions are of three types:-

- Institutions that seek recognition as well as aid from the state.
- Institutions that seek only recognition from the state not aid.
- Institutions that neither seek recognition nor aid from the state.

Only first two types of institutions are subject to state control.

### **Right to constitutional Remedies-32**

**Meaning:-** A mere declaration of fundamental rights in the constitution is meaningless, useless and worthless without providing effective machinery for their enforcement. In other words right of enforcement is itself a fundamental right. That is why Dr. Ambedkar called Article 32 as the soul of the constitution.

Article 32 empowers the Supreme Court to act as defender and guarantor of the fundamental rights of the citizen. It has been vested with 'original and 'wide' powers for that purpose. The purpose of Art. 32 is to provide a guaranteed, effective, expeditious, inexpensive and summary remedy for the protection of the fundamental rights. Only the fundamental right can be enforced and not any other right like statutory right, customary rights etc. The violation of fundamental right is sine qua non for the applicability of article 32. However, the jurisdiction of the Supreme Court in case of violation fundamental right is concurrent with the jurisdiction of the High Court as per Article 226 of the constitution. It means when the fundamental right of a citizen is violated, the aggrieved party has the option of moving either the High Court or Supreme Court directly. Supreme Court and **High Court ( in case of any other right also)** provides the remedy in form of writ which are as follows:-

- ❖ **Habeas Corpus:** - it is Latin term which literally means **'to have the body of'**. It is an **order** issued by the court to a person who has detained another person to produce the body of latter before it. The court then examines the cause and legality of the detention. It would set the detained person free, if the detention is found to be illegal. Thus writ is a bulwark of individual liberty against arbitrary detention.

**The writ of Habeas Corpus** can issued against both public and private person. However it cannot be issued in following cases:-

- Detention is lawful.
- Proceeding is for contempt of legislation or a court.
- Detention is by a competent court.
- Detention is outside the jurisdiction of the court.

- ❖ **Mandamus:** - It literally means 'we command'. It is command issued by the court to a **public official** asking him to perform his official duties that he has failed or refused to perform. It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

**It cannot be issued in the following cases:-**

- Against a private individual or body
- To enforce departmental instruction
- When the duty is discretionary not mandatory
- Against the president or Governor.

- ❖ **Prohibition:-** Literally means 'to forbid'. It is issued by higher court to a lower court or tribunal to prevent the latter from exceeding the jurisdiction. Thus unlike, mandamus that directs activity, the prohibition directs inactivity. It is **not** issued against:-
  - Administrative authorities
  - Legislative authorities
  - Private individuals.
- ❖ **Certiorari:-** In the literal sense, it means 'to be certified' or 'to be informed'. It is issued by higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or squash the order of the latter in a case. It is issued on the grounds of:-
  - **Excess of jurisdiction**
  - **Lack of jurisdiction**
  - **Error of law.**

Thus, unlike prohibition, which is only preventive, certiorari is both preventive as well as curative. Certiorari can be issued against even the administrative authorities affecting the rights of individual as per the ruling of the supreme since 1991.
- ❖ **Quo-Warranto:-** In the literal sense, 'it means by what authority or warrant'. It is issued by the court to enquire in to the legality of claim of a person to a public office.

### **Directive Principles of State Policy**

**Introduction:-** The D.P.S.P. contained in Part IV of the Constitution set out aims and objective to be taken up by the States in the governance of the country. **This feature of the Constitution is borrowed from the Constitution of Ireland. The idea of a welfare State established by our constitution can only be achieved if the States try to implement them with a high sense of moral duty.** The main object in **enacting the directive principles appears is to set standard of achievement before the legislature and the executive, the local and other authorities, by which their success or failure can be judge.** The Constitution of India contains the following directive principals:-

- i. Directive for social order based on justice – Art 38(1) requires the State to try and promote the welfare of the people by securing a social order in which every one is assured social, economic and political justice.
- ii. Directives in the nature of non-justifiable right of every citizen –
  - right to adequate means of livelihood Art 39 (a),
  - right of both sexes to equal pay for equal work Art 39 (b)
  - Right against economic exploitation. Art 39 (e)
  - Equitable justice and free legal aid, Art 39 (A).
- iii. To organize village Panchayats as units of self-government (Art. 40)
- iv. Right of work within the economic capacity of the state. Art 41
- v. The State shall make provision for securing just and humane conditions of work and for maternity relief. Art. 42.

- vi. To develop cottage industries. (Art 43)
- vii. Participation of workers in management of industries, (Art 43A)
- viii. To secure a uniform civil code for the Citizen (Art 44).
- ix. The State shall endeavour to provide, free and compulsory education for all children until they complete the age of fourteen years. Art. 45
- x. To promote with special care the educational and economic interests of the weaker section of the People and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
- xi. To prohibit consumption of liquors and intoxicating drug except for medical purposes. (Art 47).
- xii. To organize agriculture and animal husbandry on modern lines.
- xiii. Protection and improvement of environment and safeguarding of forests and wild life, (art 48A)
- xiv. To protect and maintain places of historic, and artistic interest. (Art 49).
- xv. To separate judiciary from executive (Art 50).
- xvi. The State shall endeavour to—
  - a. promote international peace and security;
  - b. maintain just and honourable relations between nations;

#### **Relation between fundamental rights & D.P.S.P:-**

D.P.S.P contained in **Part IV** of the Constitution. **These are defined in Art 36 to 51 set out the aims and objectives to be taken up by the State in the Governance of the country.** The D.P.S.P. is borrowed from the Constitution of Ireland. The D.P.S.P. are not justifiable.

Fundamental Rights are contained in **Part III** of the Constitution. These are defined in **Art 12 to 35**. These rights are provided for to every person of India and it can be enforced by the Court.

In **Kesvanand Bharti v. State of Kerala**, **The Supreme Court held that the fundamental right & D.P.S.P. aim is the same goal of bringing about a social revolution and establishment of a welfare state and they can be interpreted and applied together.**

#### **Fundamental duties**

- a. To abide by the Constitution and respect its ideals and institutions, the National Flag and the national Anthem
- b. To Cherish and follow the noble ideals which inspired our National Struggle for freedom.
- c. To uphold and protect the Sovereignty – Unity and integrity of India.
- d. To defend the Country and render National Service when called upon to do so.
- e. To Promote harmony and the spirit of common brotherhood amongst all the people of India, Transcending, religious, linguistic and regional or Sectional diversities, to renounce Practices derogatory to the dignity of woman.
- f. To value and preserve the rich heritage of our composite culture.
- g. To protect and improve the Natural, environment, Including forests, lakes, rivers and wild life, to have compassion for living creatures.

- h. To develop the Scientific temper, humanism and the spirit of inquiry and reform.
- i. To safeguard public property and to abjure violence.
- j. To strive towards excellence in all sphere of individual and collective activity. So that the nation constantly rises to higher levels of Endeavour and achievement.
- k. Who is Parent or Guardian to Provide opportunities for education to his child or as the case be ward between the age of six and fourteen years.

**Ordinance Making Power (Art 123):-** If any time when both house of Parliament are not in session, President may issue ordinance having same force of as an Act of Parliament. Such ordinance must be laid before both houses of Parliament and shall have effect up to six weeks of unless Parliament by disapproved by resolution.

An ordinance Promulgated under Art 123 is a law having same force and effect as an Act at Parliament. The ordinance passed by the President cannot be inquired into challenged in Courts. It can not violate fundamental rights.

#### **TRADE, COMMERCE AND INTERCOURSE –**

**Meaning:-** The word “**trade**” means “buying” or “selling” of goods while the term “**Commerce**” includes all forms of transportation such as by land, air or water. The term “**intercourse**” means movement of goods from one place to another place. The words trade commerce and intercourse covers all kinds of activities which are likely to come under the nature of commerce. It is to be noted that Art.19 (1) (g) also guarantees to citizens the right to practice any profession or carry on any trade, business, etc. But while Art, 19 (1) (g) confers a fundamental right on citizens to carry on trade, business etc. Art.301 confers only a statutory right. The right under Art. 19 (1) (g) can only be claimed by citizens, but the right under Art.301 can be claimed by any one.

The word “free” in Art.301 – does not mean freedom from Laws or regulations. There is a clear distinction between laws interfering with freedom to carry out the activities constituting trade and law imposing rules of proper conduct or other restraints for the due and orderly manner of carrying out the activities. The distinction is known as regulations.

The word “**regulation**” has no fixed connotation. Its meaning differs according to the nature of the thing which it is applied. A purely regulatory and compensatory law cannot be regarded as violative of the freedom of trade and commerce. Such laws are intended merely to regulate trade and commerce they tend, to facilitate, and not restrict or restrain freedom or trade. Thus, such measures as traffic regulations, licensing of vehicles, charging for the maintenance of roads, marketing and health regulations, price control, economic and social planning prescribing minimum wages are purely regulatory measures., than a law which levies a tax or toll for the use of a road or bridge is not a barrier or burden on a trade but in reality helps the free-flow of trade by enabling the provision of a more convenient and less expensive route. Such compensatory taxes are no hindrance to any such freedom of trade so long as they are within reasonable limits, if the amount of such taxes are unduly high it certainly would hamper trade.

In this connection the Court has pointed out that the distinction between “freedom” in Art 301 and “restriction” in Art. 302 and 304 must be kept in mind, and that which, in reality facilitates trade cannot be a restriction. While that which actually hampers trade will be a restriction.

“The Majority judgement in the Atiabari Tea Co’s Case read with a majority judgement in the Automobile’s case lead to the following principles relating of Art.301

1. Art.301 assures freedom of inter-State as well as intra-State trade, Commerce and intercourse.
  2. Trade, Commerce and intercourse have the widest connotation and take in movement of goods and persons.
  3. The freedom is not only from laws enacted in the exercise of the powers conferred by the legislative entries relating to trade and commerce or production, supply and distribution of goods, but also to all laws including tax laws. only those laws whose direct and immediate effect to inhibit or restrict freedom of trade or commerce will come with the mischief of Art.301. Laws which are merely regulatory or which impose purely compensatory taxes, and hence intended to facilitate freedom of trade, are outside the scope Art. 301.
  4. Restrictions on Trade and Commerce – Art 301 is subject to the restrictions imposed under Art. 302 to 305.
- Parliament’s Power to regulate trade and commerce in the Public interest – Art 302 authorizes Parliament to impose such restrictions on the freedom of trade, commerce or inter course between one State and another or within any part of the territory of India as may be required in the public interest.
  - State’s power to regulate trade and commerce – Art 304 (a) empowers the State to impose any tax on goods imported from other State if similar goods in the State are subject to similar tax so as not to discriminate between goods so imported and goods manufactured or produced in the State.
  - Saving of existing laws – Art 305 saves existing laws and laws providing for State monopolies in so far as the President may by order otherwise direct. In **Saghir Ahmad v. State of U.P.** The Supreme Court raised the question whether an Act providing for State monopoly in a particular trade or business conflicts with the freedom of trade and commerce, guaranteed by Art. 301, but left the question undecided. Art 19 was amended by the Constitution (first Amendment) Act in order to take out such State monopolies out of the purview of Art. 19 (1)(g). But no corresponding provision was added to Art 305.
  - It appears from the judgement of the Supreme Court that in spite of such an amendment a law introducing such State monopoly might have to be justified before the courts as being “in the public interest” or as amounting to a “reasonable” under Art.306 (b) of the Constitution.