



An Initiative by **अमरउजाला**

INDIAN POLITY BY- SUJEET BAJPAI SIR



= Art - 32 → Rt. to

Constitutional Remedies.

(B.R. Ambedkar = Heart &
Soul of Const.)

14 - 30

SC.

Writ ⇒ Art-
226
HC

6. Right to Right to move the Supreme Court for the enforcement of constitutional fundamental rights including the writs of (i) *habeas corpus*, remedies (ii) *mandamus*, (iii) prohibition, (iv) *certiorari*, and (v) *quo* (Article 32) *war-rento* (Article 32).

Rt. Pool. mech.

A-226 ← FR
= Legal Rt. HC ++ SC --

FR

Habeas Corpus

↳ Bulwark of ^{24 Hrs.} Individual Liberty

It is a Latin term which literally means 'to have the body of'.

IN
हस्तगत

It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it.

The court then examines the cause and legality of detention. It would set the detained person free, if the detention is found to be illegal.

Thus, this writ is a bulwark of individual liberty against arbitrary detention.

The writ of habeas corpus can be issued against both public authorities as well as private individuals. The writ, on the other hand, is not issued where the (a) detention is lawful, (b) the proceeding is for contempt of a legislature or a court, (c) detention is by a competent court, and (d) detention is outside the jurisdiction of the court.

It literally means 'we command'. It is a 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.

The writ of mandamus cannot be issued:

- (a) against a private individual or body;**
- (b) to enforce departmental instruction that does not possess statutory force;**

- (c) when the duty is discretionary and not mandatory;**
- (d) to enforce a contractual obligation;**
- (e) against the president of India or the state governors; and**
- (f) against the chief justice of a high court acting in judicial capacity.**

Prohibition

Literally, it means 'to forbid'. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.

Thus, unlike mandamus that directs activity, the prohibition directs inactivity.

The writ of prohibition can be issued only against judicial and quasi-judicial authorities.

It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

Certiorari

In the literal sense, it means ‘to be certified’ or ‘to be informed’. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case.

It is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law.

Thus, unlike prohibition, which is only preventive, certiorari is both preventive as well as curative.

Previously, the writ of certiorari could be issued only against judicial and quasi-judicial authorities and not against administrative authorities.

However, in 1991, the Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting rights of individuals.

Like prohibition, certiorari is also not available against legislative bodies and private individuals or bodies.

Quo-Warranto

[]

CAA-2019

Chhab. Corp.

In the literal sense, it means ‘by what authority or warrant’.

It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.

The writ can be issued only in case of a substantive public office of a permanent character created by a statute or by the Constitution.

It cannot be issued in cases of ministerial office or private office. Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.

FR available only to citizens and not to foreigners

1. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
2. Equality of opportunity in matters of public employment (Article 16).
3. Protection of six rights regarding freedom of : (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19).

4. Protection of language, script and culture of minorities (Article 29).

5. Right of minorities to establish and administer educational institutions (Article 30).

***FR available to both
citizens and foreigners
(except enemy aliens)***

1. Equality before law and equal protection of laws (Article 14).
2. Protection in respect of conviction for offences (Article 20).
3. Protection of life and personal liberty (Article 21).

4. Right to elementary education (Article 21A).

5. Protection against arrest and detention in certain cases (Article 22).

6. Prohibition of traffic in human beings and forced labour (Article 23).

7. Prohibition of employment of children in factories etc., (Article 24).

8. Freedom of conscience and free profession, practice and propagation of religion (Article 25).

9. Freedom to manage religious affairs (Article 26).

10. Freedom from payment of taxes for promotion of any religion (Article 27).

11. Freedom from attending religious instruction or worship in certain educational institutions (Article 28).

Martial Law

1. It affects only Fundamental Rights.
2. It suspends the government and ordinary law courts.
3. It is imposed to restore the breakdown of law

National Emergency

1. It affects not only Fundamental Rights but also Centre–state relations, distribution of revenues and legislative powers between centre and states and may extend the tenure of the Parliament.
2. It continues the government and ordinary law courts.
3. It can be imposed only on three grounds—war,

and order due to any external aggression or armed rebellion.
reason.

4. It is imposed in some specific area of the country.

4. It is imposed either in the whole country or in any part of it.

5. It has no specific provision in the Constitution. It is implicit.

5. It has specific and detailed provision in the Constitution. It is explicit.

(B.N. Rau) ←

(Art-38 - 51)

Country ⇒ Ireland

Part-4

Directive Principles of State Policy

(Art-36 - 51)

[Non-Justiciable]

The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51.

The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution.

FR ⇒ Pol. demo. ++
 ——— Social J. demo.
 DPSP { Eco J.

Dr B R Ambedkar described these principles as 'novel features' of the Indian Constitution.



Granville Austin has described the Directive Principles and the Fundamental Rights as the 'Conscience of the Constitution'.



Features of the Directive Principles

1.

The phrase ‘Directive Principles of State Policy’ denotes the ideals that the State should keep in mind while formulating policies and enacting laws.

2.

They embody the concept of a 'welfare state' and not that of a 'police state', which existed during the colonial era.

[Social ⊕
Eco] → Justice

3.

The Directive Principles are **non-justiciable** in nature, that is, they are not legally enforceable by the courts for their violation.

4.

→ Art-13 → Judicial
Review

The Directive Principles, though non-justiciable in nature, help the courts in examining and determining the constitutional validity of a law.]

→ 1951 - champaram dorai Rajas
Case

Classification of the Directive Principles

The Constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz, **SOCIALISTIC, GANDHIAN AND LIBERAL-INTELLECTUAL.**

Socialistic Principles

These principles reflect the ideology of socialism.

They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state.

They direct the state:

1.

To promote the welfare of the people by securing a social order permeated by justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities (Article 38).

Art-16

मन्त्रालय - 2005

2. To secure

- (a) the right to adequate means of livelihood for all citizens;
- (b) the equitable distribution of material resources of the community for the common good;
- (c) prevention of concentration of wealth and means of production;

(X) < m++
Fe ⊖

(d) equal pay for equal work for men and women;

(e) preservation of the health and strength of workers and children against forcible abuse; and

(f) opportunities for healthy development of children (Article 39).

Labour
Reforms

④

3.

To promote equal justice and to provide free
legal aid to the poor (Article 39 A).

↳ NALSA

4.

To secure the right to work, to education and to
public assistance in cases of unemployment,
old age, sickness and disablement (Article 41).

5.

To make provision for just and humane conditions of work and maternity relief (Article 42).

6.

To secure a living wage⁷, a decent standard of life and social and cultural opportunities for all workers (Article 43).

7.

To take steps to secure the participation of workers in the management of industries (Article 43 A).

8.

To raise the level of nutrition and the standard of living of people and to improve public health (Article 47).

Gandhian Principles:

In order to fulfil the dreams of Gandhi, some of his ideas were included as Directive Principles. They require the State:

1. ~~✗~~ ✗

To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (Article 40).

2.

To promote (cottage industries) on an individual or co-operation basis in rural areas (Article 43).

3.

To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).

4.

To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation (Article 46).

5.

To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47).

6.

To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (Article 48).

Liberal–Intellectual Principles

The principles included in this category represent the ideology of liberalism.

They direct the state:

1.

To secure for all citizens a uniform civil code throughout the country (Article 44).

2.

To provide early childhood care and education for all children until they complete the age of six years (Article 45).

3.

To organise agriculture and animal husbandry on modern and scientific lines (Article 48).

4.

To protect and improve the environment and to safeguard forests and wild life¹⁰ (Article 48 A).

5.

To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance (Article 49).

6. ~~Q Q~~

To separate the judiciary from the executive in the public services of the State (Article 50).

7.

To promote international peace and security and maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration (Article 51).

Policy

Base of
India's
Foreign

New Directive Principles

The 42nd Amendment Act of 1976 added four new Directive Principles to the original list.

They require the State:

1.

To secure opportunities for healthy development of children (Article 39).

2.

To promote equal justice and to provide free legal aid to the poor (Article 39 A).

3.

To take steps to secure the participation of workers in the management of industries (Article 43 A).

4.

**To protect and improve the environment and to safeguard forests and wild life (Article 48 A).
The 44th Amendment Act of 1978 added one more Directive Principle, which requires the State to minimise inequalities in income, status, facilities and opportunities (Article 38).**

The 86th Amendment Act of 2002 changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A.

The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.

The 97th Amendment Act of 2011 added a new Directive Principle relating to co-operative societies.

It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).

The framers of the Constitution made the Directive Principles non-justiciable and legally non-enforceable because:

1.

The country did not possess sufficient financial resources to implement them.

2.

The presence of vast diversity and backwardness in the country would stand in the way of their implementation.

3.

The newly born independent Indian State with its many preoccupations might be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them.

Summary

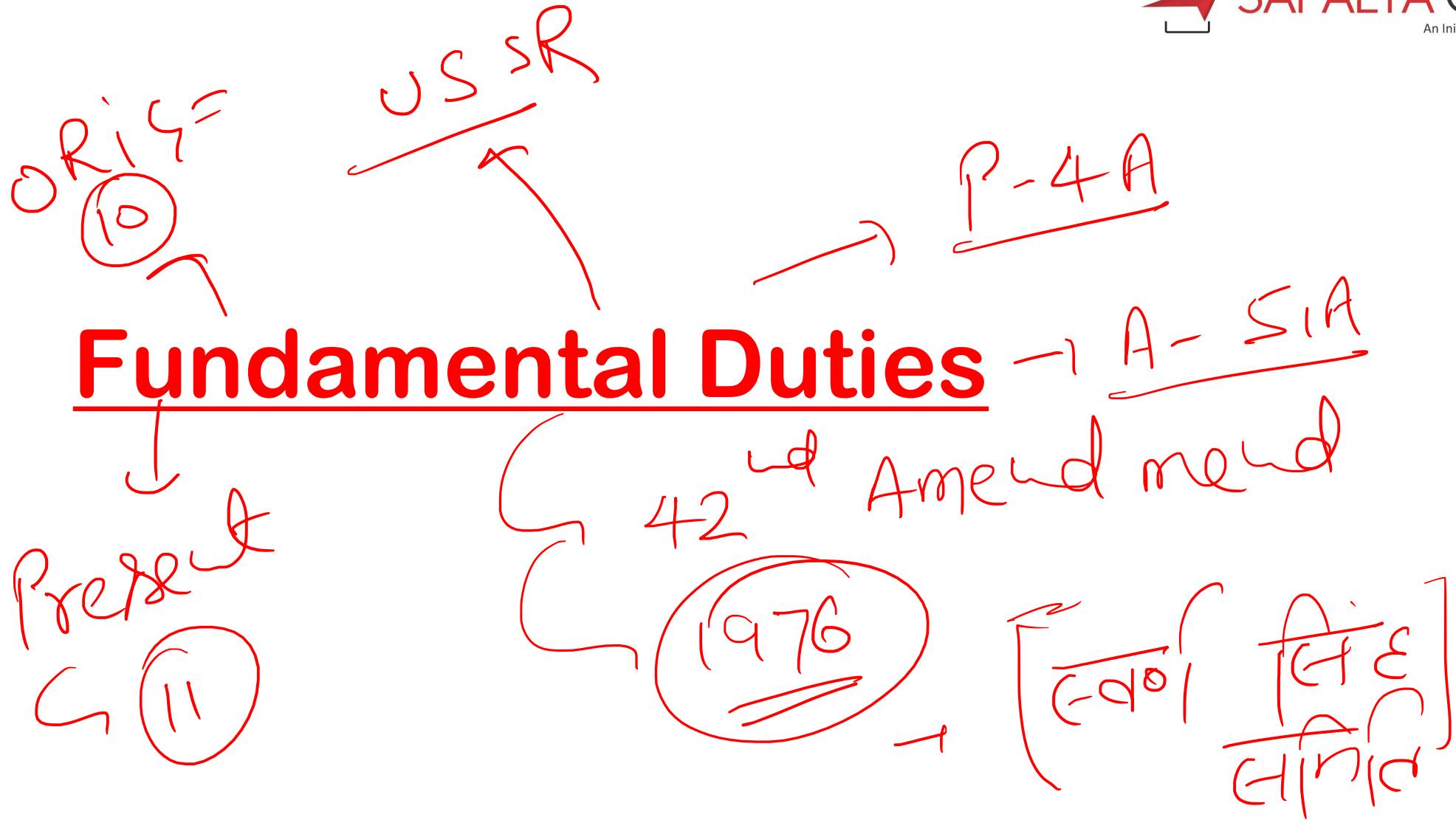
**Article
No.**

Subject Matter

- | Article No. | Subject Matter |
|-------------|---|
| 36. | Definition of State |
| 37. | Application of the principles contained in this part |
| 38. | State to secure a social order for the promotion of welfare of the people |
| 39. | Certain principles of policy to be followed by the State |

- 39A. Equal justice and free legal aid
- 40. Organisation of village panchayats
- 41. Right to work, to education and to public assistance in certain cases
- 42. Provision for just and humane conditions of work and maternity relief
- 43. Living wage, etc., for workers
- 43A. Participation of workers in management of industries
- 43B. Promotion of co-operative societies
- 44. Uniform civil code for the citizens
- 45. Provision for early childhood care and education to children below the age of six years

- 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections
 - 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health
 - 48. Organisation of agriculture and animal husbandry
 - 48A. Protection and improvement of environment and safeguarding of forests and wildlife
 - 49. Protection of monuments and places and objects of national importance
 - 50. Separation of judiciary from executive
 - 51. Promotion of international peace and security
-



Though the rights and duties of the citizens are correlative and inseparable, the original constitution contained only the fundamental rights and not the fundamental duties.

In other words, the framers of the Constitution did not feel it necessary to incorporate the fundamental duties of the citizens in the Constitution.

However, they incorporated the duties of the State in the Constitution in the form of Directive Principles of State Polity.

Later in 1976, the fundamental duties of citizens were added in the Constitution. In 2002, one more Fundamental Duty was added.

Swaran Singh Committee Recommendations

In 1976, the Congress Party set up the Sardar Swaran Singh Committee Committee to make recommendations about fundamental duties, the need and necessity of which was felt during the operation of the internal emergency.

The Congress Government at Centre accepted these recommendations and enacted the 42nd Constitutional Amendment Act in 1976.

This amendment added a new part, namely, Part IVA to the Constitution.

This new part consists of only one Article, that is, Article 51A which for the first time specified a code of ten fundamental duties of the citizens.