

B.Com LL.B

Constituional writs

WHAT IS WRIT?

A writ is a directive issued by the Supreme Court and High Courts in India to carry out their directives for the enforcement of the fundamental right and/or legal right of the affected person.

The Supreme Court can issue writs under Article 32 of the Constitution while the High Courts can issue writs under Article 226 of the Constitution.

These writs have been borrowed in India from England where they had a long history of development and consequently have gathered a number of technicalities. Power to issue writs is primarily a provision made to make available the Right to Constitutional Remedies to every citizen .

TYPES OF WRITS :

The supreme court, and High courts have power to issue writs in the nature of habeas corpus , quo warranto , mandamus , certiorari ,prohibition etc., under Arts. 32 and 226 respectively.

The right to constitutional remedies as we know is a guarantor of all other fundamental rights available to the people of India. In addition to the above , the constitution also provides for the parliament to confer on the supreme court power to issue writs , for the purpose of protection of Fundamental rights .

Similarly High courts in India are also empowered to issue writs for the enforcement of any of the rights conferred by Part III and for any other purpose

1. Writ of Habeas Corpus

It literally means 'to have the body of'. It is issued against both private and public persons to produce the body of a person who has been illegally detained by the public or private person. Thus it is a bulwark against illegal detention.

✓ By this writ the court directs the person or authority who has detained another person to bring the body of the prisoner before the court so as to enable the court to decide the validity, jurisdiction or justification for such detention.

✓ The principal aim of the writ is to ensure swift judicial review of alleged unlawful detention on liberty or freedom of the prisoner or detention .

✓ Writ of habeas corpus can be invoked not only against the state but also against any individual who is holding any person in unlawful custody or detention .

✓ Because of this writ, Under Art. 22 , a person arrested is required to be produced before a magistrate within 24 hours of his arrest , and failure to do so would entitle the arrested person to be released .

Habeas corpus cannot be granted


✓ where a person has been committed to custody under an order from a competent court when prima facie the order does not appear to be without jurisdiction or wholly illegal .

2. Writ of Mandamus

It literally means 'we command'. The writ of mandamus is a command issued by the court to a public official asking him or her to perform his or her official duties that he or she has failed or refused to perform.

The writ of mandamus can be issued against-

- ✓ any public body, a corporation, an inferior court, a tribunal or government for the same purpose.
- ✓ Mandamus can be issued when the Government denies to itself a jurisdiction which it undoubtedly has under the law, or where an authority vested with a power improperly refuses to exercise it.



✓The function of mandamus is to keep the public authorities within the limits of their jurisdiction while exercising public functions .

✓Mandamus can be issued to any kind of authority in respect of any type of function – administrative , legislative , quasi-judicial , judicial Mandamus is used to enforce the performance of public duties by public authorities .

The writ of mandamus **cannot issued against** –

- ✓ a private individual or body.
- ✓ Mandamus is not issued when Government is under no duty under the law .
- ✓ When an authority fails in its legal duty to implement an order of a tribunal, mandamus can be issued directing the authority to do so .
- ✓ Mandamus is issued to enforce a mandatory duty which may not necessarily be a statutory duty.

3. Writ of Quo-Warranto-

Quo-warranto literally means 'by what authority or warrant'. In this sense it is asking a asking to a public authority. It is issued by the court to enquire into the legality of claim of a person to a public office to prevent illegal occupation of the office by the person.

The writ of quo-warranto 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.

The writ of quo warranto is issued to

✓ control executive action in the matter of making appointments to public offices under relevant statutory provisions .

✓ to protect a citizen from the holder of a public office to which he has no right .

✓ To call upon the holder of a public office to show to the court under what authority he is holding the office in question . If he is not entitled to the office , the court may restrain him from acting in the office and may also declare the office to be vacant .

Necessary Ingredients To Be Satisfied for issuance of Quo warranto

- 1) office in question must be public
- 2) created by the constitution or a law
- 3) and the person holding the office is not legally qualified to hold the office in clear infringements of provisions of the constitution or the law .
- 4) It is the person against whom writ of quo warranto is directed , who is required to show by what authority the person is entitled to hold the office .
- 5) While issuing such a writ , the High court merely makes a public declaration of the illegality of the appointment and will not consider other factors , which may be relevant for issuance of a writ of certiorari.