

UPSC Civil Services Examination

Political Science & International Relations

Topic: Types of Writs – Indian Polity Notes

A. Types of Writs in India

Supreme Court of India is the defender of the fundamental rights of the citizens. For that, it has original and wide powers. It issues five kinds of writs for enforcing the fundamental rights of the citizens. The five types of writs are:

1. Habeas Corpus
2. Mandamus
3. Prohibition
4. Certiorari
5. Quo-Warranto

✓ Habeas Corpus

The Latin meaning of the word 'Habeas Corpus' is 'To have the body of.' This writ is used to enforce the fundamental right of individual liberty against unlawful detention. Through Habeas Corpus, Supreme Court/ High Court orders one person who has arrested other person to bring the body of the latter before the court.

Facts about Habeas Corpus in India:

- Supreme Court or High Court can issue this writ against both private and public authorities.
- Habeas Corpus cannot be issued in the following cases:
 - When detention is lawful
 - When the proceeding is for contempt of a legislature or a court
 - Detention is by a competent court
 - Detention is outside the jurisdiction of the court

✓ Mandamus

The literal meaning of this writ is 'We command.' This writ is used by the court to order the public official who has failed to perform his duty or refused to do his duty, to resume his work. Besides public official, Mandamus can be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

Facts about Mandamus in India:

- Unlike Habeas Corpus, Mandamus cannot be issued against a private individual
- Mandamus cannot be issued in the following cases:
 - To enforce departmental instruction that does not possess statutory force
 - To order someone to work when the kind of work is discretionary and not mandatory
 - To enforce a contractual obligation

- Mandamus can't be issued against Indian President or State Governors
- Against the chief justice of a high court acting in a judicial capacity

✓ **Prohibition**

The literal meaning of 'Prohibition' is 'To forbid.' A court which is higher in position issues Prohibition writ against a court which is lower in position to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. It directs inactivity.

Facts about Prohibition in India:

- Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.
- It can't be issued against administrative authorities, legislative bodies, and private individuals or bodies.

✓ **Certiorari**

The literal meaning of the writ of 'Certiorari' is 'To be certified' or 'To be informed.' This writ is against issued by a court higher in authority to a lower court or tribunal ordering them either to transfer a case pending with them to itself or to squash their order in a case. It is issued on the grounds of an excess of jurisdiction or lack of jurisdiction or error of law. It not only prevents but also cures for the mistakes in the judiciary.

Facts about Certiorari in India:

- Pre-1991: The writ of Certiorari used to be issued only against judicial and quasi-judicial authorities and not against administrative authorities
- Post-1991: Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting the rights of individuals
- It cannot be issued against legislative bodies and private individuals or bodies.

✓ **Quo-Warranto**

The literal meaning of the writ of 'Quo-Warranto' is 'By what authority or warrant.' Supreme Court or High Court issue this writ to prevent illegal usurpation of a public office by a person. Through this writ, the court enquires into the legality of a claim of a person to a public office

Facts about Quo-Warranto in India:

- Quo-Warranto can be issued only when the substantive public office of a permanent character created by a statute or by the Constitution is involved
 - It can't be issued against private or ministerial office
- Note: Unlike the other four writs, this is the only writ that gives the right to seek redressal to any individual other than the aggrieved person.

General Facts about Writs in India:

- Article 32 also empowers Parliament to authorize any other court to issue these writs

- Before 1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs
- Article 226 empowers all the high courts of India to issue the writs
- Writs of India are borrowed from English law where they are known as 'Prerogative writs'

B. How Writ Jurisdiction of Supreme Court Differs from that of High Court?

Where Article 32 of Indian Constitution empowers the Supreme Court to issue writs; Article 226 empowers High Courts of India. However, there are a few differences between the writ jurisdictions of both the courts which are given in the table below:

Difference	Supreme Court	High Court
Purpose	To only enforce fundamental rights	To enforce fundamental rights but also for other purposes. (The expression ' for any other purpose ' refers to the enforcement of an ordinary legal right.
Territorial Jurisdiction	Against a person or government throughout the territory of India	<ul style="list-style-type: none"> • Against a person residing, government or authority located within its territorial jurisdiction only Or <ul style="list-style-type: none"> • Outside its territorial jurisdiction only if the cause of action arises within its territorial jurisdiction
Power	Article 32 is a fundamental right- Supreme Court may not refuse to exercise its power to issue the writs (Read more on Fundamental Rights in the linked article.)	Discretionary -May refuse to exercise its power to issue writs