

UPSC Civil Services Examination

UPSC Notes [GS-II]

Topic: Right to Constitutional Remedies [Indian Polity Notes]

Part III of the Constitution provides for legal remedies for the protection of these rights against their violation by the State or other institutions/individuals. It entitles the citizens of India to move the Supreme Court or High Courts for the enforcement of these rights. The State is forbidden from making any law that may be in conflict with the Fundamentals Rights.

Fundamental rights are the rights that grant individuals equality in every aspect irrespective of race, colour, caste, religion, birthplace or gender. These rights are mentioned under Articles 12 to 35 of the Indian Constitution. There are pre-defined punishments in case of violation of these rights upon the discretion of the judiciary.

This is an important topic for the upcoming IAS exam. In this article, aspirants can get to know about the right to constitutional remedies.

What is a Writ?

Writs are written order issued by the Supreme Court of India to provide constitutional remedies in order to protect the fundamental rights of citizens from a violation.

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'

What is a Writ Petition?

A writ petition is essentially a court petition for extraordinary review, asking a court to intervene in a lower court's decision. Under the Indian legal system, jurisdiction to issue 'prerogative writs' is given to the Supreme Court, and to the High Courts of Judicature of all Indian states. Parts of the law relating to writs are set forth in the Constitution of India.

Type of Writs

The Constitution empowers the Supreme Court and High Courts to issue orders or writs.

The types of writs are:

- Habeas Corpus

- Certiorari
- Prohibition
- Mandamus
- Quo Warranto

Habeas Corpus

Habeas Corpus is a writ that is enforced in order to protect the fundamental right to liberty of an individual against unlawful detention. This writ commands a public official to deliver a detained person in front of the court and provide valid reasons for the detention. However, this writ cannot be issued in case the proceeding is for contempt of a legislature or a court.

Certiorari

The writ of certiorari is issued to a lower court directing that the transfer of a case for review, usually with the intention of overruling the judgment of the lower court. The Supreme Court issues the writ of Certiorari in case the decision passed by the lower court is challenged by the party. It is issued in case the higher court finds it a matter of over jurisdiction or lack of jurisdiction.

It is one of the mechanisms by which the fundamental rights of the citizens are upheld.

Prohibition

Prohibition is a writ issued by a higher court to a lower court to enforce inactivity in the jurisdiction. It happens only in case the higher court is of the discretion that the case falls outside the jurisdiction of the lower court. Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.

Mandamus

The writ of mandamus is issued to a subordinate court, an officer of the government, or a corporation or other institution commanding the performance of certain acts or duties.

Unlike Habeas Corpus, Mandamus cannot be issued against a private individual.

The writ of mandamus can be used to order the completion of a task or in other cases, it may require an activity to be ceased.

Quo-Warranto

Quo warranto is issued against a person who claims or usurps a public office. Through this writ, the court inquires 'by what authority' the person supports his or her claim.

Through this writ, the court enquires into the legality of a claim of a person to a public office. This writ prevents the illegal assumption of a public office by an individual.

To know more about the [types of writs in India](#), refer to the linked article.

Suspension of Fundamental Rights

- Fundamental rights can be suspended in the case of National Emergency as mentioned under article 352.
- The six fundamental rights under Article 19 are automatically suspended in case Under National Emergency is imposed on grounds of war or external aggression which is stated under article 358.
- Article 359 has the clause for suspension of other rights. In that case, a separate notification has to be issued by the President.
- The rights mentioned under Article 20 and 21 can never be suspended.
- Constitutional emergency and financial emergency cannot affect the Fundamental Rights.

Status of Writs in Other Countries

1. The writs other than habeas corpus are discretionary remedies and have been known as prerogative orders in England and Wales since 1938.
2. The writs of quo warranto and procedendo are now obsolete. The modified names of certiorari, mandamus and prohibition are mentioned under the new Civil Procedure Rules 1998 known as quashing orders, mandatory orders, and prohibiting orders respectively.
3. Mandamus has been replaced by injunction in the United States district courts.
4. The Supreme Court of the United States grants certiorari while the supreme court of other states grant review.