

## Writ of Mandamus [Writs in Indian Constitution]

Writs and their types are very important topics for the UPSC exam. Not only are they static topics of polity from which questions can be asked in the UPSC prelims and mains, but they are also relevant for the current affairs segment of the [IAS exam](#). In this article, you can read all about the writ of mandamus for the civil services exam.

### Writ of Mandamus

The literal meaning of the word *mandamus* is command. This prerogative remedy of mandamus is used for enforcing the performance of public duties by public authorities of all kinds.

- Writ of mandamus demands some activity on part of the person or body to whom it is addressed.
- The demand is to perform a public or quasi-public duty which the body or person has refused to perform and the performance of which cannot be enforced by any other legal remedy.
- Therefore, it is that no mandamus will lie except when the applicant has a legal right to seek the performance of a legal duty and the authority against which the writ is sought is bound to perform that duty.

### Writ of Mandamus Origins

The origin of the writ of mandamus can be traced back to England where the King as the authoritarian autocrat of the administrative setup, used to issue a mandamus to his subjects commanding them to fulfil the public duty asked of them, many times during the course of the day. Since its origin, the writ has been used to compel the performance of a wide range of public and quasi-public duties that have been refused in an unlawful manner. The kind of public duties that have been compelled as a result of invoking mandamus include, among others, restoration of offices; holding of elections; and prevention of dissolution of local municipal bodies and authorities.

### Supreme Court of India on Mandamus

In the case of *Union of India v. S.B. Vohra*, the Supreme Court of India held as follows:

“A writ of mandamus may be issued in favour of a person who establishes a legal right in himself. It may be issued against a person who has a legal duty to perform but has failed or has neglected to do so. Such a legal duty emanates by operation of law. The writ of mandamus is most extensive in regards to its remedial nature. The object of mandamus is to prevent disorder emanating from failure of justice and is required to be granted in all cases where law has established no specific remedy”.

For other [important Supreme Court judgements](#), click on the linked article.

The writ of mandamus is also available against inferior courts and other judicial bodies when they have refused to exercise their jurisdiction and thus resulting in the non-performing of legal duty. There are different purposes for which the writ jurisdiction through mandamus can be exercised. It can be issued for the violation of [fundamental rights](#).

- Whenever a public officer or government has done some act which violates the fundamental right of a person, the Court would issue a writ of mandamus, restraining the public officer or government from enforcing that order or doing that act against the person whose fundamental right has been violated. Thus, in *Venkataramana v. State of Madras*, where the petitioner who was otherwise eligible for appointment in the Subordinate Civil Judicial Service, was not selected owing to the

operation of Communal Rotation Order, he contended that his fundamental right under Article 16(1) was infringed upon. The Court ordered the State of Madras to dispose of the petitioner's application on merits and without applying the rule of communal rotation.

The High Court can invoke mandamus for purposes other than enforcement of fundamental rights, some of which are:

- To enforce the performance of a statutory duty where the public officer has got a power conferred by the Constitution or a statute. The Court may issue a mandamus directing him to exercise the power in case he refuses to do it.
- To compel a court or judicial tribunal to exercise its jurisdiction when it has refused to exercise it.
- To direct a public official or the government not to enforce a law that is unconstitutional.

Mandamus will however not be granted against the following persons:

1. The President or the Governor of a state, for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.
2. Mandamus also does not lie against a private person or body, whether incorporated or not except where the state is in collusion with such private party.

#### **Instances where mandamus will be issued:**

- Against the State to refund the tax it collected illegally.
- Against a University if they change the regulations after the candidate has appeared in the exam, to his disadvantage.
- Where the Government neither records, nor communicates to the parties the reasons for not making a reference under Section 12(5) of the Industrial Disputes Act, 1947, the aggrieved party can seek the legal recourse of mandamus.
- When an Income Tax Tribunal passes an order and the Income Tax Officer refuses to carry out the instructions passed by the Tribunal.
- Where the land acquisition officer erroneously refuses to pay the interest on the compensation amount.
- Where an order of detention is passed against the petitioner but he is not under detention.

The writ of mandamus has been issued by the Supreme Court under Article 32 for enforcement of fundamental rights and High Courts under Article 226 for enforcement of fundamental as well as statutory rights. The apt example of the issuance of the writ of mandamus by the High Court of Madras is the Case of Shankaracharya, where the Special Investigation Officer had frozen the bank accounts of Shree Sankara Mutt, using the provisions of Section 102 of the [CRPC](#). The Shankaracharya was accused in a murder case, and it was contended by the representative of the Mutt that the police, just to harass the officials of the Mutt, trespassed into the premises without caring about the sanctity of the place, and have also frozen the bank accounts. It was also contended that the endowments received from the devotees are being kept in bank accounts and the amount is used for running the day-to-day affairs of the Mutt and also for performing religious rituals. The mala-fides were attributed to the police. The Madras High Court issued the writ of mandamus and negated the action of the police and held that the action of the police is ultra-vires of Section 102 of the CRPC, and therefore, declared illegal and set aside.

#### **Instances where mandamus will not be issued**

- It cannot be invoked to enforce contractual rights and obligations.
- Private institutes receiving grants do not become public, thus no duty is enjoined by law and thus no mandamus will lie.

- It does not lie against a private arbitrator directing him to file an award.
- An order of the Governor, commuting death sentence which had been confirmed by the High Court cannot be interfered with by mandamus.
- Grant of licence by an authority (duly vested under the law with such power) cannot be interfered with, by the issuance of a mandamus.

Judicial activism with regard to this writ in recent times have given rise to new terms like continuing mandamus, anticipatory mandamus and certiorarified mandamus. The activism undertaken by the Courts in this respect comes down to the inaction on the part of the state machinery which is more often than not laced with apathy.

This writ makes sure that the power or the duties are not misused by the executive or administration and are duly fulfilled. It safeguards the public from the misuse of authority by the administrative bodies.

