

# Types of Writs In Indian Constitution (PDF)


## What are Writs?

"Writs are the formal written order or legal document issued by the courts to an individual or the authority". According to Articles 32 and 226 of the Indian Constitution, there are 5 types of writs that are provided below.

### Types of Writs in India

Different Writs of the Constitution of India			
Name of the Writ	Meaning of the Writ	Use of the Writ	Issued Against
<b>Habeas Corpus</b>	You may have the body	To release a person who has been detained unlawfully whether in prison or in private custody	Public officials as well as private persons
<b>Mandamus</b> (also called 'Writ of Justice')	We command	To secure the performance of public duties by the lower court, tribunal or public authority	Public authority, judicial bodies, quasi-public authority to perform the legal duty
<b>Certiorari</b>	To be certified or to be fully informed of	To quash the order already passed by an inferior court, tribunal or quasi-judicial authority	Inferior court, tribunal
<b>Prohibition</b>	To prohibit	To prohibit an inferior court from continuing the proceedings in a particular case where it has no jurisdiction to try	Judicial authorities, administrative authorities, quasi-judicial authorities
<b>Quo Warranto</b>	What is your authority?	To restrain a person from holding a public office which is not entitled	Substantive public authority only

Here is a further explanation of the type of writs:



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## 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 another person to bring the body of the latter before the court.

### Facts about Habeas Corpus in India:

- The 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 officials, 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 the 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 that is higher in position issues a Prohibition writ against a court that 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.



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## Certiorari

The literal meaning of the writ of 'Certiorari' is 'To be certified' or 'To be informed.' This writ is 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 quash 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:** The 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:** *This writ gives the right to seek redressal to any individual other than the aggrieved person*

### Some Important Facts About Writs in India

- Article 32 empowers Parliament to authorize any court to issue the above writs
- Before 1950, only the High Court of Calcutta, Bombay, and Madras had the power to issue the writs
- Article 226 empowers all the High Court of India to issue the writs
- Writs of India are borrowed British law where they are known as 'Prerogative Writs'

## Trick to Remember Writs of Indian Constitution in English

### CPM HQ (Head Quarter)


'C' stands for Certiorari

'P' stands for Prohibition

'M' stands for Mandamus

'H' stands for Habeus Corpus

'Q' stands for Quo Warranto



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## Trick to Remember Writs of Indian Constitution in Hindi

हाँ मैंने पढ़ाई से प्यार किया!

हाँ (ha) – Habeas Corpus

मैंने (man) – Mandamus

सै (ce) – Certiorari

प्यार (pr) – Prohibition

कियो (quo) – Quo-Warranto

## How Writ of Jurisdiction of the High Court is different from that of the Supreme Court?

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

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



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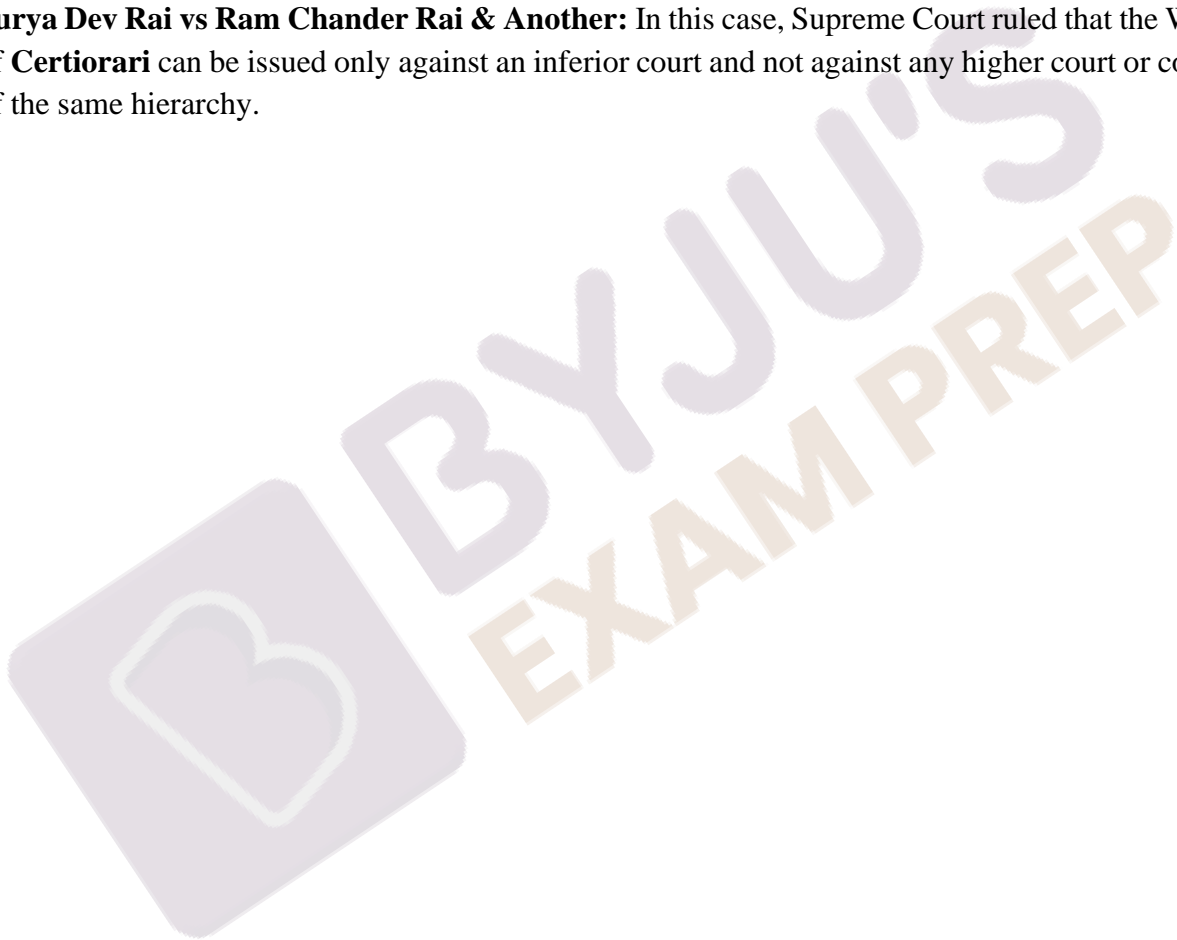
## Important Judgments related to Writs


There are a few landmark judgements related to Writs. Some of the Judgements for your reference are provided below:

**ADM Jabalpur vs Shivakant Shukla:** In this case also known as the **Habeas Corpus** case, the Supreme Court of India ruled that the writ of Habeas Corpus cannot be suspended at the time of emergency.

**Barada Kanta vs State of West Bengal:** In this case, it is held that the writ of **Mandamus** cannot be issued against private individuals and officials.

**Surya Dev Rai vs Ram Chander Rai & Another:** In this case, Supreme Court ruled that the Writ of **Certiorari** can be issued only against an inferior court and not against any higher court or court of the same hierarchy.





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