

FAQs ON WRITS IN INDIA



Writs are public law remedies and are an essential part of the judicial review powers of the superior courts in India. Writs play an important role in governing the relationship between an individual / body corporate and public bodies as well as between multiple public bodies. Given that public authorities interact with individuals / body corporates in a commercial capacity, it is necessary to understand the remedies available under writ jurisdiction in India. In this primer, we discuss the concept of writs and the different types of writs that a court can issue in India.

1. What is a writ?

A writ is a court order that directs or mandates a person to do or refrain from doing something.

2. What are the provisions of law that empower courts to grant writ remedies?

In India, the Supreme Court and the High Courts have the power to issue writs. The Supreme Court draws its power to issue a writ from Article 32 of the Constitution of India, 1949 (“**Constitution**”), while the High Courts derive their power from Article 226 of the Constitution.

3. What are the different types of writs in India?

In India, the various writs are as follows:

- a. Writ of *habeas corpus*,
- b. Writ of *certiorari*,
- c. Writ of *mandamus*,
- d. Writ of *quo warranto*, and
- e. Writ of *prohibition*.

4. What is a writ of habeas corpus?

A writ of *habeas corpus* is used by the court to bring a person before a court. The literal interpretation of '*habeas corpus*' is "you have the body". This writ is mainly employed by a court to ensure that a person is not detained or imprisoned without the authority of law, and thus, in violation of his/her rights.

5. What is a writ of certiorari?

The literal meaning of the term '*certiorari*' is "to be more and fully informed". The writ of *certiorari* empowers a superior court to direct the lower courts or judicial and quasi-judicial tribunals and bodies to deliver the records in a case to a superior court.

6. What is a writ of mandamus?

Mandamus is a writ issued by courts to compel the performance of a particular act by lower courts, quasi-judicial bodies or bodies that discharge public functions. The writ of *mandamus* is also employed to correct an abuse of discretion.

7. What is a writ of quo warranto?

The literal translation of the term '*quo warranto*' is "by what authority". The superior courts have the power to issue the writ of *quo warranto* against a person requiring the person to show what authority they have for exercising some right or power they claim to hold.

8. What is a writ of prohibition?

The writ of *prohibition* is the power of the superior court to command lower courts or quasi-judicial body to not exercise powers beyond their jurisdiction. This writ prevents the lower courts or quasi-judicial bodies from abusing or exceeding their judicial powers or acting in violation to principles of natural justice.

9. Against whom can writs be issued?

Writs can generally be issued against the government, a body exercising judicial or quasi-judicial functions, public authorities and institutions discharging public function.





10. Can a writ be issued against a private person?

Issuing a writ is a public law remedy and is generally available only against public bodies and bodies that are discharging public duties. However, a writ of habeas corpus can be issued against a private body also. Indian Courts have also entertained writ petitions against private persons, when such a private person is imposed by a public duty.

11. What are the major differences between writs issued under Article 32 and Article 226 of the Constitution?

Article 32 is invoked for the enforcement of fundamental rights under the Constitution, whereas Article 226 is invoked for enforcement of fundamental right as well as other legal rights, where no alternative statutory remedy is available or is efficacious. However, under Article 32, the Supreme Court has the authority to issue writs across India and therefore its territorial jurisdiction is broader. On the other hand, Article 226 allows a High Court to issue a writ exclusively in its own local jurisdiction. As a result, the territorial authority of High Court is narrower and limited.

12. What is a writ petition?

A petition that is filed before a court of law, requesting the court to issue a writ is known as a writ petition. You can file a criminal writ petition or a civil writ petition. A criminal writ petition can be filed to enforce the rights of an accused, or any other matter related to the criminal law, including arrest, release on bail, custodial violence etc. A civil writ petition can be filed in cases related to revenue (such as Income Tax, Customs & Excise, Sales Tax), environment laws, Intellectual Property Rights, patent law, etc.

13. What is the time limit to file a writ petition?

Under the Indian legal system, there is no time limit prescribed to file a writ petition before the relevant courts. However, it must be noted that in various judgements, the courts have observed that the aggrieved party should move the courts within a reasonable time. The courts in various judgements have also noted that, if there is a delay in filing a writ petition, then the party filing the petition should have a satisfactory explanation for such delay.

14. Who can file a writ petition?

In India, an individual whose rights have been violated by the action or the inaction of a public body or a body carrying out state functions can file a writ petition. Apart from the aggrieved individual, writ petitions can also be filed by public spirited citizens. This expansion regarding who has the power to file a writ petition is to ensure that the ends of justice are not overlooked or ignored due to technicalities.

15. Can courts entertain writ petitions in contractual disputes, despite existence of arbitration clause?

Indian Courts have laid down that they will entertain writ petitions in exceptional circumstances despite the parties having an alternative remedy such as invoking arbitration proceedings. Some of these circumstances are:

- a. Where the writ petition seeks enforcement of a fundamental right;
- b. Where there is a violation of principles of natural justice;
- c. Where the act complained of is in fact in excess of the power of the party committing such act.

16. Can a writ petition be filed against an award of an arbitrator or an arbitral tribunal?

Arbitration is governed by a private contract between the parties. Since writs can be issued by the courts only against public bodies, a writ cannot be issued against an arbitral award. Indian Courts have held that writs can be issued against arbitral awards in case of exceptional rarity, where a party is either rendered remediless or there is an element of bad faith involved.



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