BLOGS

Learn in a Minute: Writ of Mandamus for CLAT PG

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Writ of Mandamus in India

Introduction

A writ of mandamus is an order of a constitutional court commanding a public authority, official, lower court or tribunal to perform a public legal duty it has failed or refused to perform. In India, the Supreme Court issues it under Article 32 and the High Courts under Article 226 of the Constitution.

Mandamus is Latin for "we command". The writ began in England as a prerogative order of the Court of King's Bench, issued in the Crown's name to compel public officers and inferior bodies to do their duty. It passed into American common law and, through the Constitution of 1950, into Indian public law, where it is now a constitutional remedy rather than a royal prerogative.

A simple example: if a police station refuses to register an FIR for a cognisable offence, a court can issue mandamus directing it to do so. The Supreme Court held in Lalita Kumari v. Government of Uttar Pradesh (2014) that registering an FIR in such cases is mandatory, which is exactly the kind of duty mandamus enforces.

Writ of Mandamus is one of the five writs under the Indian Constitution, alongside habeas corpus, prohibition, certiorari and quo warranto. It is the writ people turn to when the problem is inaction: a file not processed, a licence not decided, a statutory duty ignored.

In Union of India v. S.B. Vohra (2004), the Supreme Court explained that writ of mandamus may issue in favour of a person who establishes a legal right, against a person who has a legal duty and has failed or neglected to perform it. The Court added that the writ exists to prevent disorder arising from a failure of justice, and should be granted where the law gives no specific remedy.

Constitutional Basis: Article 32 and Article 226

Writ of Mandamus in India rests on two provisions: Article 32 for the Supreme Court and Article 226 for the High Courts. The difference between them decides where a petition can be filed.

Article 32 : Article 32 lets a person move the Supreme Court directly to enforce a Fundamental Right, and empowers the Court to issue directions, orders or writs, including mandamus. Article 32 is itself a Fundamental Right; Dr B.R. Ambedkar called it the "heart and soul" of the Constitution. Read more on the writ jurisdiction of the Supreme Court.

Article 226: Article 226 lets a High Court issue writs to enforce Fundamental Rights "and for any other purpose". That phrase means a High Court can issue mandamus to enforce an ordinary legal or statutory right too, not only a Fundamental Right. Its writ can run to any authority within its territorial jurisdiction, or where the cause of action arises.

Point	Article 32	Article 226
Court	Supreme Court	High Courts
Rights enforced	Fundamental Rights only	Fundamental Rights and other legal rights
Nature	Itself a Fundamental Right	Constitutional, but not a Fundamental Right
Discretion	Court cannot refuse merely because another remedy exists, when a Fundamental Right is shown	Wider discretion; alternative remedy is a stronger ground to refuse
Territorial reach	Throughout India	Within the High Court's territory, or where the cause of action arises
Suspension	Can be suspended during an Emergency (Article 359)	Writs for non-Fundamental Rights continue during an Emergency

In practice, most mandamus petitions are filed under Article 226, because the High Court's power is wider and the petitioner usually needs to enforce a statutory duty, not a Fundamental Right.

Conditions for Issuing Writ of Mandamus

A court issues mandamus only when four conditions are met: the petitioner has a legal right, the respondent owes a public legal duty, the petitioner demanded performance and was refused, and no adequate alternative remedy exists. Mandamus is a discretionary remedy, so meeting the conditions makes the writ available, not automatic.

Legal right of the petitioner

The petitioner must show a legal right to have the duty performed, not merely an interest or a hope. In Mani Subrat Jain v. State of Haryana (1977), the Supreme Court refused mandamus because the petitioners had no legal right to the appointments they sought. This is the maxim ubi jus ibi remedium in reverse: without a right, there is no remedy.

Public duty of the respondent

The respondent must owe a duty that is public in nature and imposed by the Constitution, a statute, statutory rules or common law. The duty must be mandatory, not discretionary. Mandamus can direct an authority to decide a matter, but not to decide it in a particular way.

Demand and refusal

The petitioner should ordinarily have asked the authority to perform the duty and been refused, before going to court. Refusal can be express, or inferred from conduct such as long silence. Courts relax this condition where a demand would plainly be futile.

No adequate alternative remedy

If the law provides an equally effective remedy, such as a statutory appeal, the court will usually send the petitioner there. This is a rule of discretion, not a bar. In Whirlpool Corporation v. Registrar of Trade Marks (1998), the Supreme Court held that a writ can still issue despite an alternative remedy where a Fundamental Right is to be enforced, natural justice has been violated, or the order is wholly without jurisdiction or the vires of an Act is challenged.

Conditions checklist for writ of mandamus

- Petitioner has a legal right, not just an interest
- Respondent is a public authority, or a body performing a public duty

- The duty is public, legal and mandatory
- Performance was demanded and refused (expressly or by conduct)
- No equally effective alternative remedy, or a Whirlpool exception applies
- Petition filed without unreasonable delay
- Petitioner comes with clean hands and the writ will serve a useful purpose

Types of Writ of Mandamus

Beyond the ordinary writ, Indian courts use three variants of mandamus: continuing, certiorarified and anticipatory.

Continuing mandamus

A continuing mandamus keeps the case open after the first order, so the court can monitor the authority and issue further directions until the duty is fully performed. It suits long, institutional tasks where a single order would be ignored. The leading example is Vineet Narain v. Union of India (1998), where the Supreme Court used it to supervise the CBI's investigation in the Jain Hawala case and to lay down safeguards for the agency's independence. Courts have used it in environmental matters too, such as the M.C. Mehta cases on pollution.

Certiorarified mandamus

A certiorarified mandamus combines two writs in one order. The court first quashes a decision, as a writ of certiorari would, and then directs the authority to act in a specific way, as mandamus would. It is used where quashing alone would leave the petitioner without relief, for example where the authority has only one lawful course open once its wrong decision is set aside.

Anticipatory mandamus

An anticipatory mandamus is sought before a duty is breached, where there is a real and imminent threat that the authority will not perform it. Courts are cautious with this variant and issue it only when the threat is concrete, not speculative.

Against Whom Mandamus Does Not Lie

Mandamus does not lie against the President or a Governor personally, against private persons for private duties, against a legislature to make law, or to control how a discretion is exercised. Each limit has its own reason.

President and Governors (Article 361)

Article 361 provides that the President and the Governor of a State are not answerable to any court for the exercise of their powers and duties. So no mandamus can be issued against them personally; in S.P. Gupta v. Union of India (1981), the Supreme Court reaffirmed this immunity. The immunity is personal, not total: the acts of the Government done in their name can still be challenged, with the Union or State Government as respondent.

Private bodies

Mandamus does not lie against a private individual or company to enforce a private duty. In *Praga Tools Corporation v. C.A. Imanual* (1969), the Supreme Court refused mandamus against a company even though the government held shares in it, because the duty in question was not public. The rule turns on the duty, not the label. In Andi Mukta Sadguru Trust v. V.R. Rudani (1989), mandamus issued against a private trust running an aided college, because it was performing a public function.

Legislature

Courts will not direct Parliament or a State Legislature to enact a law, since law-making is the legislature's own function under the separation of powers. In *Narinder Chand Hem Raj v. Lt. Governor, Himachal Pradesh (1971)*, the Supreme Court refused to direct the government not to levy a sales tax on the petitioners, holding that imposing or remitting a tax is a legislative function. In *A.K. Roy v. Union of India (1981)*, it declined to direct the Union to bring into force Section 3 of the Constitution (Forty-fourth Amendment) Act, 1978, since Parliament had left that date to the executive.

Discretionary duties

Where a statute gives an authority a choice, mandamus can compel it to exercise the discretion and consider the matter, but cannot dictate the outcome. Courts also do not issue mandamus

against a court or judge acting in a judicial capacity; certiorari and prohibition are the remedies there.

When mandamus lies and when it does not

Mandamus lies when-	**Mandamus does not lie-**
The petitioner has a legal right	Against the President or a Governor personally (Art 361)
The respondent owes a public legal duty	Against a private person or body for a private duty
A demand was made and refused	To enforce a purely contractual obligation
No adequate alternative remedy exists	To direct a legislature to make a law
The duty is mandatory, not discretionary	To compel a discretionary power to be exercised in a particular way

When mandamus will be refused

Even where it could lie, a court may refuse mandamus when:

- The petitioner has no legal right, only an interest or expectation
- The duty is discretionary, or has already been performed
- An equally effective alternative remedy is available and none of the Whirlpool exceptions applies
- There has been unexplained delay (laches) in approaching the court
- The petitioner suppressed material facts or does not come with clean hands
- The writ would be futile, such as where the duty can no longer be performed
- The claim arises purely from a contract with no public law element

Writ of Mandamus vs Other Writs

Mandamus is the only one of the five writs that compels action; the others release a person, stop a proceeding, quash a decision or remove an office-holder. The table below compares all five; the

writs hub covers each in detail.

Writ	Literal meaning	Purpose	Issued against
Habeas corpus	"You may have the body"	Release a person from unlawful detention	State and private persons
Mandamus	"We command"	Compel performance of a public legal duty	Public authorities and bodies performing public duties
Prohibition	"To forbid"	Stop a lower court or tribunal from exceeding jurisdiction in pending proceedings	Judicial and quasi-judicial bodies
Certiorari	"To be certified"	Quash a decision made without jurisdiction or with an error apparent on the record	Judicial, quasi-judicial and administrative bodies affecting rights
Quo warranto	"By what authority"	Remove a person from a public office held without legal authority	Holder of a substantive public office

Mandamus vs certiorari

The two are confused most often. Mandamus deals with inaction and says "do your duty"; certiorari deals with a wrong action already taken and says "this decision is quashed". Writ of Mandamus can be issue against administrative, executive and quasi-judicial authorities, but not against a court in its judicial capacity; certiorari is aimed mainly at judicial, quasi-judicial and administrative decisions that affect rights. When a court uses both together, the result is a certiorarified mandamus.

Landmark Cases on Mandamus

These are the cases on writ of mandamus most likely to appear in CLAT, AILET and CLAT PG, in date order.

Case	Year	Held

Marbury v. Madison (US)	1803	Mandamus refused because the statute granting jurisdiction was unconstitutional; established judicial review
Rashid Ahmed v. Municipal Board, Kairana	1950	An alternative remedy is a factor in granting a writ, but not an absolute bar where it is not adequate
Sohan Lal v. Union of India	1957	Mandamus does not lie against a private individual unless they act with, or as, a public authority
Praga Tools Corp v. C.A. Imanual	1969	Mandamus does not lie against a company to enforce a private duty, even if the government holds shares
Narinder Chand Hem Raj v. Lt. Governor, H.P.	1971	No mandamus to compel a legislative act such as imposing or remitting a tax
Mani Subrat Jain v. State of Haryana	1977	No mandamus without a legal right in the petitioner
A.K. Roy v. Union of India	1981	No mandamus to compel the executive to notify the 44th Amendment's Section 3, where Parliament left that to it
S.P. Gupta v. Union of India	1981	The President is personally immune from mandamus under Article 361
Andi Mukta Sadguru Trust v. V.R. Rudani	1989	Mandamus lies against a private body that performs a public duty
Whirlpool Corp v. Registrar of Trade Marks	1998	Alternative remedy is no bar where a Fundamental Right, natural justice or jurisdiction is in issue
Vineet Narain v. Union of India	1998	Continuing mandamus used to supervise the CBI's investigation and secure its independence
Union of India v. S.B. Vohra	2004	Mandamus issues to a person with a legal right, against one who has neglected a legal duty
Lalita Kumari v. Govt of U.P.	2014	Registering an FIR for a cognisable offence is mandatory, so it can be enforced by mandamus

FAQs

Can mandamus be issued against a private company?

Ordinarily no. Mandamus does not lie against a private company to enforce a private or contractual duty (Praga Tools, 1969). It can lie if the company or body performs a public duty, such as running an aided educational institution (Andi Mukta Sadguru Trust, 1989). The test is the nature of the duty, not who owns the body.

What is continuing mandamus?

Continuing mandamus is an order under which the court keeps the case pending and monitors the authority, issuing fresh directions until the duty is fully carried out. The Supreme Court used it in Vineet Narain v. Union of India (1998) to supervise the CBI's investigation in the Jain Hawala case.

Mandamus vs certiorari: what is the difference?

Writ of Mandamus compels an authority to perform a duty it has failed to perform. Certiorari quashes a decision already made without jurisdiction or with an error apparent on the record. One cures inaction, the other cures wrong action. See the writ of certiorari for more.

Can a High Court issue mandamus for a non-fundamental right?

Yes. Article 226 empowers High Courts to issue writs for enforcing Fundamental Rights "and for any other purpose", which covers statutory and other legal rights. The Supreme Court's power under Article 32 is limited to Fundamental Rights.

What is certiorarified mandamus?

Certiorarified mandamus is a combined order: the court quashes an unlawful decision (the certiorari part) and directs the authority to take a specific action (the mandamus part). Courts use it when quashing alone would not give the petitioner effective relief.

Conclusion

The writ of mandamus is the Constitution's answer to official inaction: where a public authority has a legal duty and a citizen has a matching legal right, the court can command performance. Its

limits matter as much as its reach. It does not run against the President or Governors personally, private parties performing private duties, or a legislature asked to make law, and it cannot tell an authority how to use its discretion.

For exams, remember the four conditions, the three variants, and the cases in the table above for writ of mandamus. Test yourself with this practice paper on writs, and read the writs hub for the other four writs.