

# Writ of Mandamus

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**ABSTRACT:** *A writ of mandamus (also referred to as a writ of mandate) is a judicial order issued at the behest of a petitioner by a judge ordering any government, company, or public authority to perform an obligation they are constitutionally obliged to fulfil. When the jurisdiction of a higher court is necessary to compel a lower court or government entity to perform an obligation to enforce the law or to redress an infringement of discretion, a writ of mandamus may also be issued. The mandamus writ may be used to compel a job to be done, or it can cause an action to be stopped in some situations. By a petition to the judge, a writ of mandamus is acquired. When the acts (or inaction) of legislative agencies or corporate authorities are so unacceptable or egregious that the judicial system has to take urgent, emergency measures, a writ of mandamus is considered essential.*

**KEYWORDS:** *Constitution of India; Mandamus; Writ.*

## INTRODUCTION

A writ of mandamus is a judicial order ordering someone to perform an obligation they are constitutionally bound to fulfil. In order to order a lower court or federal department to conduct a duty to enforce the law or to redress a misuse of discretion, a writ of mandamus is sometimes used. A written order in the name of a judge or other judicial body is, in general, a written order to act or to abstain from behaving in any manner. Writs of mandamus are unusual because they can be made without the entire legal review being done or before the end of a lawsuit[1].

When the acts (or inaction) of legislative agencies or corporate authorities are so unacceptable or egregious that the judicial system has to take urgent, emergency measures, a writ of mandamus is considered essential[1].

A written order in the name of a judge or other judicial body is, in general, a written order to act or to abstain from behaving in any manner. There are several types of writs, including an attachment order, an execution warrant, and a seizure and sale warrant[1].

A mandamus writ is unusual because it can be made without the entire court procedure being done or before a lawsuit has been resolved. This style of writing, for this reason, is very strong. Around the same time, they are scarcely used when a plaintiff needs to show that there are no other solutions to the problem and that the refusal to comply with the statute leads others to suffer discrimination. If it is absolutely appropriate because of the inconvenience they cause to the judicial process, judges tend not to grant writs[2].

In general, if, in the context of a pending litigation, a writ of mandamus is ordered from a court of superior jurisdiction to a lower court, the higher courts will not review it until there is a definitive decision in the case. For example, on the state level, judicial appeal of lower courts must be delayed until after a definitive decision has been reached in the lower court[2].

Writs of mandamus were first used in the early seventeenth century by the English courts. Legislation surrounding its use has largely remained the same since migrating to the courts of

the American colonies. A writ of mandamus is a recourse that can be enforced at the federal and state levels by legal decisions, laws, and court rules[3].

It could also be possible to file a writ of mandamus independently of the legal proceedings. This is considered a proceeding of a mandamus. Massachusetts, for instance, has a statute that mandates the attorney general of the state and any district attorney to write a report every year on wiretaps and other oral contact interceptions performed by law enforcement officers. If the study is not made public for a year, every public citizen may file an appeal for mandamus. If successful, an order ordering the attorney general and all district attorneys to present the details will be provided by a judge. During this time, at a trial, the attorney general and district attorneys have a chance to justify their actions. They will be fined or jailed if they refuse to have the paper[3].

As the first step in the written mandamus protocol, an alternate mandamus is given. In order to justify the justification for not doing so, the alternate mandamus orders the criminal to execute the act sought or appear in court. Basically, it requires a person to explain the justification that the act should not be performed[4].

If the defendant fails to demonstrate adequate cause for not executing the act in question to comply with the alternate mandamus, a peremptory mandamus is given. It is a definitive judicial order and an absolute command to the criminal to promptly complete the act in question. When the criminal fails to prove reasonable cause in response to an alternate mandamus, they are given this formal written command[5].

The issue is not disposed of in a writ of mandamus case, even though the court has issued instructions. The court is taking a supervisory position at this stage. The court may make continuous orders to ensure that the government, company, or public body in question remains consistent while the writ remains pending. A continuing mandamus refers to the execution of the instructions of a court during a given time span[5].

## DISCUSSION

A mandamus is an order by a court to any official, subordinate court, company, or public authority to do (or refrain from doing) a particular act that that individual is mandated by statute to do (or refrain from doing). A person or corporation does not apply for a writ of mandamus in the U.S. court system until it is a right that is judicially enforceable and constitutionally secured. In other words, a person that has a moral responsibility to do something and refrains from doing so would grant them a legal right[6].

A mandamus writ is a special treatment that is found only under extraordinary cases. There is also a very high requirement for a mandamus writ to obtain relief. An act under which the claimant is bound by a writ of mandamus must have two qualities: it must be a public obligation, and the duty must be imperative and not voluntary. The primary aim of a mandamus brief is to redress injustices[6].

A mandamus brief is remedial in essence. A writ can be granted only after the petitioner is able to show to the court that the writ will answer either a utilitarian or just question. Furthermore, the petitioner must have a lawful right to the act under which he is petitioning and he must have committed a barrier to that right[7].

Mandamus's prose is legislative. In order to force a person to do (or refrain from doing) any particular act which they are supposed to do by statute, a writ of mandamus is used to (or refrain from doing). However, it is difficult to use a mandamus writ to induce an authority to do something that might break a law or statute[7].

In compliance with the Right to Judicial Redress for the violations of any of the fundamental rights enshrined in Part III or other rights enshrined in the Constitution of India or otherwise, both the Supreme Court and the High Courts have been granted the power to issue written submissions pursuant to Articles 32 and 226, respectively. In India, there are five forms of letters issued: Habeas Corpus, Ban, Certiorari, Mandamus and Quo Warranto. Among these, the mandamus brief, which is a Latin word for 'we order,' is an authoritative brief given by a higher court to oblige a lower court or other government official(s) to compulsorily discharge their penalized duties[8].

According to the Ninth Edition of Black's Law Dictionary, a writ of mandamus is one issued by a superior court against an inferior court, a government agency or officer to redress an action of the past or to omit to act along the lines of the duty of which they are entitled. It is therefore possible to grant Writ of Mandamus against public corporations and tribunals. It is often defined as a 'wakening call,' dictating their conduct and bringing them into motion in service of the discharge of public service, as it is meant to set the indolent authorities to task[8].

In the year 1773, with the foundation of the Supreme Court of Calcutta, the Writ of Mandamus was introduced in India by the British and all the supreme courts based in the Presidency Towns (Calcutta, Madras and Bombay) were entrusted with the powers under the Letters Patent Act to grant this writ. After, in 1877, the Letters Patent Act's writ of mandamus was replaced by an order under the then recently introduced Special Relief Act enabling a competent authorized officer to complete or forbear a particular action within the "local limits of its ordinary civil jurisdiction"[9]

However, with the institutionalization of India's constitutional regime and the implementation in 1963 of the current Special Relief Act, this directive inserted into the law of 1877 was abolished as the clause for the writ of mandamus was already enshrined in the Constitution. The latter clause was much more qualified and had a broader spectrum of applicability whilst the former was pretty narrow in nature when it referred only to a specific nature of situations. In addition, the constitutional amendment also granted the High Courts the authority to issue litigation, including both mandamus and enforcement of cases of violation of fundamental as well as legal rights[10].

It is therefore correct to define the writ of mandamus as a legislative tool to ensure the general public interest and to preserve the privileges guaranteed to them in the Constitution and other laws of the country. It is also an important tool to ensure the state or public authorities' transparency and to mandate them to comply with their legislative and regulatory obligations. Writing mandamus is thus basically a pro-democratic process that empowers the ordinary people to be implemented by the regulatory bodies to uphold their rights[10].

## CONCLUSION & IMPLICATION

A mandamus writ (also known as a mandate writ) is a formal command to perform an executive action or a civic duty. To order an act to be done, a writ of mandamus may be used; in certain cases, it will cause an action to be halted. Via an appeal to a judge, a writ of mandamus is received which must be accompanied by civil rights.

Only one form of writ is a writ of mandamus. A writ of attachment is a judicial order that the property mentioned in the writ may be confiscated. The property is kept in the possession of an authorized officer under judicial control since the arrest. A seizure and selling letter is a judicial order that requires a purchaser to seize possession of a property from the petitioner (usually a creditor). It will be sold at an auction after the land has been confiscated.

Therefore, the mandamus statute is to protect the general interest against the authority granted to them to influence people's rights and liabilities. This brief guarantees that the authority or obligations are not misused and are adequately fulfilled by the executive or administration. It protects the public from regulatory bodies' abuse of power.

While there are some requirements already addressed in the project, all alternative remedies should be exhausted and a contractual obligation should be exhausted and not arbitrary in nature. It then constitutes a fundamental instrument against the administrative bodies in the possession of the common people if they do not execute the duties they are required to perform by statutes.

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