BLOGS

Learn in a Minute: Writ of Certiorari

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Introduction

The Indian Constitution enshrines a robust mechanism to protect fundamental rights and ensure judicial accountability through writ jurisdiction. Among the five writs-Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto-Certiorari stands as a vital tool to correct jurisdictional errors made by lower courts and tribunals.

Meaning and Nature of Certiorari

The term *certiorari* is derived from the Latin word *certiorari volumus*, meaning “to be made certain”. In essence, it is a writ issued by a superior court to a lower court or quasi-judicial authority, calling for the records of a case to review and, if necessary, quash the order passed. It is corrective in nature, unlike mandamus which is a directive or habeas corpus which is preventive.

Grounds for Issuing Writ of Certiorari

Under Articles 32 and 226 of the Constitution, the Supreme Court and High Courts respectively have the power to issue this writ. While Article 32 is limited to the enforcement of fundamental rights, Article 226 has a wider scope, permitting writs “for any other purpose,” thereby allowing certiorari even in cases involving legal rights.

A writ of certiorari is not a tool for appeal but rather a supervisory mechanism to ensure that judicial or quasi-judicial bodies act within the scope of their authority.

The following are the recognized grounds for issuance:

1. Lack of Jurisdiction

When a lower court or tribunal acts outside the limits of its conferred powers, the superior court can quash its order. This includes:

- Excess of jurisdiction: Acting beyond legal limits.
- Absence of jurisdiction: Acting without any legal authority.

2. Error in Interpretation and Application of Law

This ground involves incorrect application or interpretation of law that is evident without extensive legal reasoning. In Syed Yakoob v. K.S. Radhakrishnan, the Supreme Court held that certiorari can be issued when there is a manifest error of law.

3. Violation of Natural Justice

Orders passed without affording a fair hearing (audi alteram partem) or with bias (nemo judex in causa sua) are invalid. In Ridge v. Baldwin, the House of Lords emphasized the necessity of fair procedure, influencing Indian jurisprudence as seen in A.K. Kraipak v. Union of India

4. Fraud or Malice

If an order is passed with mala fides or is vitiated by fraud, certiorari lies. Such actions undermine the foundation of legal orders and are considered void ab initio.

Scope and Limitations

While certiorari is a potent remedy, its scope is not unlimited. It is not available:

- Against purely administrative or executive orders.
- For re-appreciation of evidence or facts unless there is a jurisdictional error.
- If an alternative efficacious remedy is available, though this is a rule of prudence, not of law.

Furthermore, the court exercises this writ with judicial restraint, respecting the autonomy of subordinate tribunals unless they commit grave legal errors.

Difference Between Writ of Certiorari vs. Writ of Prohibition

The writ of certiorari is often confused with the writ of prohibition, as both deal with jurisdictional errors. The distinction lies in timing.

While the Writ of Prohibition prevents an authority from continuing proceedings, the Writ of Certiorari quashes an order that has already been passed.

While the Writ of Prohibition is preventive in nature, the Writ of Certiorari is actually corrective.

The Writ of Certiorati is used to quash decisions/orders passed without or in excess of jurisdiction and the Writ of Prohibition is used to stop a Court from acting in excess of the powers conferred on them.

Conclusion

The writ of certiorari is a powerful constitutional tool that helps higher courts keep a check on lower courts and tribunals. It is mainly used to quash orders passed without proper authority, in violation of law, or against the principles of natural justice. Unlike an appeal, certiorari does not involve a re-hearing of facts- it only corrects serious legal errors. This writ ensures that justice is not denied due to overreach, error, or unfair procedures, and plays a key role in upholding the rule of law in India.

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