

B.Com LL.B 4Sem

Unit ONE

Constitutional writs

Certiorari and Prohibition

These writs of Certiorari and Prohibition are designed to prevent the excess of power by public authorities . Formerly these writs were issued only to judicial and quasi-judicial bodies. Certiorari and Prohibition are regarded as general remedies for the judicial control of both quasi-judicial and administrative decisions affecting rights.

These are also called judicial writs issued to control the action of lower judiciary

‘Certiorari’ is a Latin word being passive form of word “certiorari” meaning inform .

A writ of certiorari can only be issued by the Supreme court under Art. 32 and a High court under Art. 226 –

- to direct , inferior courts , tribunals or authorities
- to transmit to the court the record of proceedings disposed of or pending therein for scrutiny ,
- and , if necessary , for quashing the same .
- But a writ of certiorari can never be issued to call for the record or papers and proceedings of an Act or Ordinance and for quashing such an Act or Ordinance.



•Certiorari under Art. 226 is issued for correcting gross error of jurisdiction i.e. when a subordinate court is found to have acted

(1) without jurisdiction or by assuming jurisdiction where there exists none , or

(2) in excess of its jurisdiction by over stepping or crossing the limits of jurisdiction or

(3) acting in flagrant disregard of law or rules of procedure or acting in violation of principles of natural justice where there is no procedure specified and thereby occasioning failure of justice.

Writ of Prohibition

Prohibition literally means 'to forbid'. The writ of prohibition is issued by a higher court like the High Court to a lower court like the District Court or Tribunal to prevent the latter from exceeding its jurisdiction or taking over a jurisdiction that it did not possess in the first instance.

Therefore the writ of prohibition is opposite to mandamus in so far as unlike mandamus that directs activity, the writ of prohibition directs inactivity.

A writ of prohibition is issued-

when inferior court or tribunal

- (a) proceeds to act without jurisdiction or in excess of jurisdiction
- (b) proceeds to act in violation of rules of natural justice or
- (c) proceeds to act under a law which is itself ultra virus or unconstitutional or
- (d) proceeds to act in contravention of fundamental rights.

DISTINCTION BETWEEN WRITS OF PROHIBITION AND CERTIORARI.

They are issued at different stages of proceedings .

When an inferior court takes up a hearing for a matter over which it has no jurisdiction , the person against whom hearing is taken can move the superior court for writ of prohibition on which order would be issued forbidding the inferior court from continuing the proceedings .

on the other hand if the court hears the matter and gives the decision , the party would need to move to superior court to quash the decision / order on the ground of want of jurisdiction and the court may issue writ of certiorari.