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"Correction of Quasi-Judicial Decisions: Writ of Certiorari"

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Abstract

The Indian Constitution is embedded with such features that provide for complete protection of rights of all subject to it along with the provisions that at the same time provide for the powers of the institutions too. Every authority that has powers to take decision has certain limitations and cannot go beyond that. There is nothing like unfettered power and there are remedies in various forms provided. The issuance of Writs by the High Courts and the Supreme Court is one such remedy that act as a safeguard in various cases of contravention. The writs have a History of origin in the Common Law and have developed along with the development in the same. The Indian Constitution recognizes five kinds of Writs, namely Habeas Corpus, Mandamus, Certiorari, Quo Warranto, and Prohibition.

The Writ of Certiorari is a kind of correctional writ that is issued in the cases where any subordinate authority goes beyond its powers and takes contrary decisions. The decision making authority may exercise powers beyond its limits and hence the said writ acts as a correctional measure. The remedy of the said writ is well established against the judicial decisions, but the same, if similarly available against the quasi-judicial decisions, is the question of research and the same shall be found out in the subsequent progress of this research paper.

Keywords: *quasi-judicial, certiorari, writs*

Introduction

India is a country which has distribution of power as provided by the Constitution of India. The powers and functions are divided into Legislature, Executive and Judiciary. The legislature enacts the law, the executive administers the law and the judiciary interprets the law. But it cannot be said that the executive functions are solely performed by the Executive, the judicial functions by the Judiciary and the legislative functions are solely performed by the legislature, as was observed by the Hon'ble Supreme Court in *Jayantilal Amratlal v F.N. Rana.*[1] The question is that whether the functions that the executive authorities perform are

[1] AIR 1964 SC 648

purely administrative, or quasi-judicial or quasi-legislative in character. Further it is to be pondered upon that the issuance of the writs by the High Courts or the Supreme Court is applicable over what kind of functions. The same is available for primarily judicial functions only or for quasi-judicial functions as well is a question worth pondering. In India, the jurisdiction to issue writs came when the Supreme Courts were established by the Regulating Act of 1773. Further High courts were established which had the original jurisdiction over their respective presidency towns. In *Amir Khan Re*[2], it was held that the Supreme courts can issue writs in the mofussil too and this power was inherited to the High Courts too. Further this power to issue the writ outside the presidency town by the High Courts was taken away from it by the Code of Criminal Procedure, 1872. Some other decisions again brought ambiguity on issue of this by the High Courts but the final position came into the picture after the enactment of the Constitution of India.

Writ of Certiorari: Its Meaning, Scope and Object

The meaning of the word 'Certiorari' can be traced back in the Latin, where it originated and is the passive form of the word, '*certiorare*' which means 'to inform' and occurred in the original Latin words of the writ which translated read as follows: "We, being desirous for certain reasons, that the said records should by you be *certified* to us."[3] This writ requires the judges of any subordinate court of record to certify any matter's record in that court with all things touching the same and to send it to King's Court to be examined.[4] The *Halsbury's Laws of England*[5] state that: "The order of Certiorari is an order issuing out of the High Court and directed to the judge or officer of an inferior tribunal to bring proceedings in a cause or matter pending before the tribunal into the High Court to be dealt in order to ensure that the applicant for the order may have the more sure and speedy justice."[6] It can be described as one of the most proficient and appreciated remedies that have been derived from the Common Law.

Under the Indian law, Certiorari is an order issued by the Supreme Court and the High Court under Article 32 and 226 respectively to the inferior courts, tribunals or authorities to convey

[2] (1870) 6 Beng. LR 459; see also Ryots of Garabandho v. Zamidar of Parlakrimedi, AIR 1943 PC 164
[3] Praboth Verma v. State of U.P., (1984) 4 SCC 251
[4] R. v. Northumberland Compensation Appellate Tribunal, (1952) 1 AIIER 122
[5] 11 HALSBURY'S LAWS OF ENGLAND, (4h ed.), 1521
[6] 2 JUSTICE C. K. THAKKAR & M.C. THAKKAR, V.G. RAMCHANDRAN'S LAW OF WRITS 1203 (6th ed. EBC 2006) (2003)

the records of the pending proceedings in order to certify and scrutinize them and decide upon the legitimacy and validity of the orders passed by the courts during the procedure.

Meaning

Certiorari is defined in *Corpus Juris Scundrum*[7] as follows,
"Certiorari is a writ from a superior court to an inferior court or tribunal commanding the latter to send up the record of a particular case."[8]
Therefore Certiorari can be defined as a writ issued by the Supreme Court or a High Court to a court or tribunal that is inferior to it, while directing it to forward the records of a specific case to the court that is issuing the writ.

In a landmark case *Hari Vishnu Kant v Ahmad Ishaque*[9], Hon'ble Supreme Court has affirmed that,

> "According to the common law of England, 'Certiorari is a high prerogative writ issued by the Court of King's Bench or Chancery to inferior courts or tribunals in the exercise of supervisory jurisdiction with a view to ensure that they acted within the bounds of their jurisdiction. To this end, they were commanded to transmit the records of a cause or matter pending with them to the superior court to deal with there, and if the order was found to be without jurisdiction, it was quashed. The court issuing 'certiorari' to quash, however, could not substitute its own decision on the merits, or give directions to be complied with by the court or the tribunal. Its work was destructive; it simply wiped out the order passed without jurisdiction, and left the matter there."[10]

Nature and Scope

The remedy under the writ of Certiorari is an extra-ordinary remedy that requires a sub-ordinate court or a tribunal that is inferior that exercise judicial or quasi-judicial function to forward it the reports and proceedings of some particular case or matter to a superior court in order for it to examine and certify it. The *Halsbury's Laws of England*[11] state that in cases

[7] 14 CORPUS JURIS SECUNDRUM, 121-22
[8] *supra* note 4
[9] AIR 1955 SC 233, 240
[10] *Id*. at 240 (AIR)
[11] 1 HALSBURY'S LAWS OF ENGLAND, (4h ed.), 102-03

where the jurisdiction of judges is in question or disputed, the certiorari order is the suitable remedy. The same is in cases where conviction or order has been obtained by conspiracy or complicity or in the cases where there is an evident appearance of errors in the proceedings. In the cases where there is non-compliance of certain procedural and statutory requirement such as to ask a defendant to plead guilty or not, the issuance of writ of certiorari is discretionary.

The purpose of writ of certiorari lies to remove with the intent of quashing the petitions of any such inferior body that exercises judicial or quasi-judicial functions. The distinction between a writ of certiorari and a writ that is in the nature of certiorari is not essential for the purpose of this appeal. It is because of the fact that in both the cases the High Court directs a sub-ordinate authority or an inferior tribunal to forward to itself the records of the pending proceedings in order for it to scrutinise them and if essential, quash the same.[12] Hence, the writ of certiorari makes the inferior court, tribunal or any other body exercising judicial or quasi-judicial functions to present before it the records of the pending proceedings for the purpose of validating the proceedings, errors corrected and if excess of jurisdiction occurred, it may be restrained.

Object

The fundamental object of the writ of certiorari is to ensure the working all the subordinate courts and inferior tribunals within their jurisdictions and in cases of deviance, or excess of jurisdiction the same may be corrected or quashed. The writ of certiorari cannot be said to be a proceeding against a court, tribunal or the persons comprising but rather it works on the cause or proceeding in the subordinate court.[13] One of the chief functions of this writ is to decide if any lower court or subordinate tribunal has surpassed its jurisdiction and acted in excess of the powers vested to it. Its paramount function is to provide the aggrieved party with the relief where there has been abuse of powers or an action taken without authority by any sub-ordinate court or any inferior tribunal. The fundamental rule is the fact that all inferior courts and authorities have certain legal bounds and hence limited powers or jurisdiction. The writ is a 'great corrective writ' by which the High Courts and the Supreme Courts, being the superior courts exercise a supervisory jurisdiction over the inferior bodies

[12] Udit Narain Singh v. Board of Revenue, AIR 1963 SC 786, 790
[13] Hari Vishnu Kamath v. Ahmad Ishaque , AIR 1955 SC 233

exercising judicial or quasi-judicial functions taking into account the sole object of correcting the abuse of power and holding the inferior authorities within their jurisdiction and hence preventing them from surpassing the powers deliberated upon them.

The Hon'ble Supreme Court in a leading case of *Basappa v Nagappa*[14], stated that,

> "As is well known, the issue of the prerogative writs, within which 'certiorari' is included, had their origin in England in the King's prerogative power of superintendence over the due observance of law by his officials and Tribunals. The writ of 'certiorari' is so named because in its original form it required that the King should be 'certified' of the proceedings to be investigated and the object was to secure by the authority of a superior court, that the jurisdiction of the inferior tribunal should be properly exercised."[15]

The researcher can thus conclude that the writ of certiorari is a correctional writ that has its jurisdiction over all the inferior bodies or authorities to ensure that they function within the boundaries of their jurisdiction and the powers conferred upon them. It aims at correcting the lacunae that may arise due to such acts of surpassing of the jurisdiction and powers by the inferior bodies.

Writ of Certiorari in India

The Supreme Court at Calcutta established by the Royal Charter 1774, under the Regulating Act 1773, was the first court that had the power to issue prerogative writs in India. The Charter of 1774 was the first legal instrument which empowers the SC in Calcutta to issue a writ of Certiorari. Clause 3 of the Charter of 1800 and Clause 10 of the Charter of 1823 empowered the Supreme Courts of Bombay and Madras respectively. However the jurisdiction of the writ at that point and time was limited to the original jurisdiction of the High Courts. This was recognized in *Ryots of Garabandho v. Zamindar of Parlakimedy*[16]. Nevertheless the High Court of Madras attempted to issue such writs even outside the presidency towns.[17] In one of the earliest cases of Bombay, *Pirbhai Khimji v. Baroda and*

[14] AIR 1954 SC 440
[15] *Id*. at 165 (AIR)
[16] AIR 1943 PC 164
[17] Rathnamala Pattamahadevi v. Ryots of Mandasa Zamindari, AIR 1934 Mad. 231

Central India Rly Corp., a writ was granted to transfer a case from the small court to the High Court.[18]

The limitation to the jurisdiction and the subject matter was removed by the constitution.[19] Now under Article 226 writs could be issued throughout the territories over which the respective High Courts exercise their jurisdiction. The supervision of the Supreme Court and the High Court under Articles 32 and 226 respectively are distinct in two aspects,

a. Area of jurisdiction, qualifications and conditions of its exercise.
b. Observance of law in the course of that exercise.[20]

Judicial review in India, the question of 'jurisdictional' and 'constitutional' plays an important role. It can be inferred that in the place of jurisdictional fact the judicial review is indeed of significant importance. It provides a useful check on administrative excesses and this can be brought about by providing an adequate review through a court of law. Justice Brandeis had said, "The supremacy of law demands that there shall be opportunity to have some court to decide whether an erroneous rule of law was applied, and whether the proceedings in which facts were adjudicated were conducted regularly. To that extent the person excessing a right, whatever its source should be entitled to the independent judgement of a court on the ultimate question of constitutionality.[21] In a case, *R v Minister of Transport,* a minister passed an order of revocation of licence, even though he was not empowered to do so. The order was quashed on the ground of lack of jurisdiction and being *ultra vires.* To raise the question of jurisdiction Certiorari comes out to be an appropriate remedy. Questions may arise where a quasi-judicial body attempts to usurp jurisdiction which it does not possess. The object of the writ of certiorari is to keep the exercise of powers by these quasi-judicial tribunals within the limit of their jurisdiction and not to act in excess of their powers.[22] In *Ibrahim Aboobakar v Custodian General*, *Evaque Property*[23] the SC held that once the court had jurisdiction, it had jurisdiction to decide rightly as well as wrongly. To quash an order on the ground of jurisdiction, it must be shown that the authority had acted without jurisdiction or in excess of it.

[18] Pirbhai Khimji v. Baroda and Central India Rly Corp, 1871 Bom. Cr 59
[19] Penugonda Venkattarathanam v. Secretary of State, AIR 1930 Mad. 896
[20] R v. Nat Bell Liquors Ltd., 1922 2 AC 128
[21] St. Joseph Stockyard Co. v. U.S., 298 US 38
[22] Bharat Bank Ltd. v. Employees, AIR 1915 SC 188
[23] AIR 1952 SC 319

Want of jurisdiction may arise from the nature of the subject matter, or in the absence of some preliminary fact. The court cannot, by a wrong decision on collateral fact, give itself jurisdiction which it does not otherwise possess.[24] In such cases a wrong assumption of jurisdiction may be cured by a writ of certiorari. If the authority itself is given the power to decide the preliminary fact and decides it wrongly, a writ is no remedy. The only solution lies in an appeal.[25]

The writ of certiorari can come into picture at the abuse of discretionary power. Many authorities in India have been bestowed with discretionary powers. When the tribunals are conferred with discretion by the Legislature, it is for the former to exercise such power. A court can only interfere in cases where there is arbitrary exercise of power or the exercise is unreasonable or unlawful. Hence, it can be concluded that the writ of Certiorari is a correctional writ in India and can be issued to the sub-ordinate courts or inferior authorities during the pendency of matters. It acts as a writ that ensures the authorities or courts to work within their prescribed jurisdiction and not to go beyond the same and indulge into abuse of power.

Quasi-Judicial Functions: Meaning and Practice in India

The word 'quasi' means not exactly, an authority becomes quasi-judicial, when it has some of the attributes of judicial functions but not all. In the case of *Province of Bombay v Khushal Das Advani*[26] it was derived that the word 'quasi' when prefixed to a legal term generally means that the thing which is described by the word, has some of the legal attributes denoted and connoted by the legal term, but it has not all of them. If a transaction is described as a quasi-contract, it means that the transaction in question has some but not all the attributes of a contract. Between a judicial and an administrative function, lies a quasi-judicial function, it lies nearer to the administrative decision in terms of its discretionary element and nearer the judicial decision in terms of procedure and objectivity of its end product.[27] It is also not true that in quasi-judicial decisions two characteristics are common, 1) presentation of the case by the patties and 2) Decisions on questions of fact by means of evidence adduced by the parties. In many cases, the first characteristic is absent and the authority may decide a matter between

[24] Ibrahim Aboobakar v. Custodian General, Evaque Property, AIR 1952 SCR 696
[25] Raman and Raman Ltd v. State of Madras, AIR 1956 SC 463
[26] AIR 1950, SC 222
[27] GRIFFITH & STREET , PRINCIPLES OF ADMINISTRATIVE LAW, 1973, p.141

itself and another party. Secondly, there may be cases in which no authority is required to be taken and yet the authority has to determine the questions of the fact after hearing the parties.

The three traditional distinct powers i.e. legislative, administrative and judicial test the quasi-judicial function's points of reference. Some English lawyers believe that these powers are separate, although not very separated in our constitution.[28] Although in practice it is inevitable that they should overlap. In constitutions of France and USA, there have been attempts made to keep them apart, but to prove unsuccessful. The distinction is nevertheless real and important; this has been proved as the classic view. There have been various criticisms that have aimed at rejecting this view, for instance those of Sir Ivor Jannings and Prof. Robson and Mr D.M. Gordon. They all assert that there are three sorts of powers in reality. Mr Gordon follows a more traditional path and establishes that the judicial function is unique and there is no definable border line between the administrative and the legislative.[29] The courts have certain administrative powers and the administration has certain judicial powers. Administration of justice is a specialized branch of administration and involves the use of power, the imposition of legal rights and duties of individuals. The judicial process moreover has a highly specialised character, a traditional independence from political influence and a historical background of its own. Aristotle had given a theory in which he stated that the judicial power in the state is fundamentally different from the executive. Judicial tribunals must treat legal rights and liabilities as pre-existing because they are bound by an objective standard and not by what is dictated by law. The quasi-judicial function does not stand out but is placed in the administrative category only. It is open to misunderstanding since a wrong approach has been attached to it i.e. considering it to be judicial process from which one or more elements are missing. But this is the universal distinction which is just like other distinction of principles, and is concerned with what ought to happen rather than what does happen- and is nonetheless important on that account.

Hence it can be concluded by the researcher that the quasi-judicial functions have colour of judicial function but not all the colours of the same. It can be placed between the administrative and judicial functions. Certain administrative functions that were once considered as administrative functions are now considered at quasi-judicial functions and are subject to judicial review too.

[28] WADE & PHILIPS, CONSTITUTIONAL LAW, Pt. II Chapter 1
[29] HWR Wade, '*Quasi –Judicial' and its background,* 10 CAMBRIDGE LJ, 216-240 (1949)

Distinction of Quasi-Judicial Functions from Judicial Functions

In order to understand the distinction between the Judicial and the quasi-judicial functions, one must first understand the concept of judicial functions. According to the report of the Committee on Ministers' Powers[30], a pure judicial function encompasses four perquisites[31] -

1. The presentation of the case by the parties of the dispute
2. If the dispute happens is a question of fact then the determination of the fact through evidence procured by the parties to the dispute.
3. If the dispute is a question of law, then the submission of legal arguments is required by the parties.
4. A decision that disposes of the whole matter by finding the facts in dispute.

Thus, these perquisites are necessary for every decision to be a judicial decision, and it can be made by any other authority other than a court of law.

Quasi-judicial functions -

According to the Committee, a quasi-judicial decision entails disputes between two or more parties and more often than not involves 1 and 2 above but does not necessarily involve 3 and never involves 4. The place of 4 is in, in fact taken by the administrative action, the character of which is determined by the Minister's choice.[32]

Distinction between quasi-judicial and judicial functions -

A quasi-judicial function differs from a judicial function in the following aspects[33] -

i. A quasi-judicial authority has some authority of a court, but not all of them, there is an obligation to act judicially.
ii. A *lis inter partes* is an essential characteristic of a judicial function, but this may not be true at all times of a quasi-judicial function.
iii. A court is bound by the rules of evidence and procedure while a quasi-judicial authority may not.
iv. While a court is bound by precedents, a quasi-judicial authority may not.

[30] Report of the Committee of Ministers' Powers, 1932, CMD 4060
[31] CK TAKWANI, LECTURES ON ADMINISTRATIVE LAW (3d.ed. EBC 2007) (1980)
[32] *Id*.
[33] *supra* note 4

v. A court is never a judge in its own cause while an administrative authority vested with quasi-judicial powers may be party to the controversy.

Their chief distinction lies in the fact that in deciding cases, courts apply pre-existing laws whereas administrative authorities exercise discretion. This has a fallacy however. "*The most that can be said is that the discretions of the courts may differ in nature and extent from the discretions of the administrator. Nevertheless, the asserted discretion is reduced to one of degree only."*[34]

This chapter makes the researcher distinguish the quasi-judicial functions from judicial functions and understand that the quasi-judicial functions does not possess all the attributes of a judicial function.

Writ of Certiorari over the Quasi-Judicial Functions

The essential requisite for the writ of certiorari to be issues is that the decision must be taken by a judicial or quasi-judicial in contrast to a decision taken by an executive authority. The acts of administrative authority are not subject to certiorari, there is however a million dollar question that poses a difficulty, i.e. "Where does the administrative end and the judicial begin?" Although before trying to answer the question it is noteworthy to incorporate the observation of Atkin, L.J. in *R v Electricity Commissioner*[35], he stated:

"Whenever anybody of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their authority, they are subject to the controlling jurisdiction of King's Bench division exercised in these writs." [36]

For a writ of certiorari the following conditions should be fulfilled[37]

i. Judicial or quasi-judicial body must have legal authority
ii. Such body must have power to determine questions affecting rights of the subjects involved
iii. It must have duty to act judicially
iv. It must have acted in excess of such authority

[34] BENJAFIED AND WHITMORE, PRINCIPLES OF AUSTRALIAN ADMINISTRATIVE LAW, 105, (1966)
[35] 1942 1 KB 171
[36] *Id*. at 204
[37] *supra* note 31

In the case of *A.K. Kraipak* v. *Union of India*,[38] Hegde J., observed: The dividing line between an administrative power and a quasi-judicial power is very thin and is determined by the power used, i.e. the nature of power, the person on whom it is conferred, the framework of the law conferring that power and the manner in which that power is expected to be exercised.[39] The words of the judgement are quoted as,

"*The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitariliy or capriciously. The procedures which are considered inherent in the exercise of judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years, the concept of quasi-judicial has been undergoing a radical change.What was considered as an administrative power some years back is now being considered as a quasi-judicial power."*[40]

Some authors opine that there is no real danger that the doctrine of "fairness" may become "all pervasive replacing natural justice totally and completely". [41] In India "unfair procedure" amounts to "arbitrary" and "unreasonable" exercise of power. Such an act would attract Articles 14, 19 and 21 of the Constitution as interpreted in *State of West Bengal* v. *Anwar Ali Sarkar*,[42] *Maneka Gandhi* v. *Union of India*[43] and other cases.

The researcher thereby understands and concludes by this chapter that the writ of certiorari as a corrective writ applies to all the functions that have a judicial colour and aims to make the authorities work within their jurisdiction and not to surpass the powers bestowed upon them. Hence the writ applies to the quasi-judicial functions as well.

Conclusion

The Constitution of India guarantees the safeguard to the people in the form of writs. These writs can be issued wherever there is some violation of right or an abuse of power. The writ of certiorari is one such writ that has a wide implication and jurisdiction. In the earlier times the writ required the subordinate court to certify the matter pending before it and forwarded to the King's Court for the purpose of examination. In the present day context, check over the

[38] (1969) 2 SCC 262
[39] A.K. Kripak v. Union of India, (1969) 2 SCC 262
[40] *Id.*
[41] WADE, ADMINISTRATIVE LAW, 493-94, (2005)
[42] A.I.R. 1952 SC 75
[43] (1978) 1 SCC 248

power is necessary and there is nothing like unhindered or unfettered power. The subordinate courts and inferior tribunals are supposed to work within their jurisdiction and are constrained by the powers conferred upon them. The Writ of Certiorari, hence proves as a safeguard to those who may become sufferers of abuse of power. The Constitution of India guarantees the safeguard to the people in the form of writs. It is also understood that it is not only for judiciary to work within its ambit of powers or the defined jurisdiction but each authority that has some judicial colour. The quasi-judicial functions are those functions that have a judicial colour and are supposed to be within the boundaries of its jurisdiction and the powers conferred. It is absolutely right to keep a check over every body that exercises some or the other kind of power that is somehow judicial in nature. If such check is not kept and a remedy such as certiorari is not available, there will be abuse of power and this may lead to violation of the fundamental and the legal rights of the individuals. Hence the researcher could conclude that the quasi-judicial functions have a judicial colour and are bound by the powers conferred and the writ of certiorari applies to it similar to the way it applies to the other judicial functions.

The researcher also opines that it is necessary to keep the checks and balances over the authorities conferred with power because unregulated and autonomous power will lead to grave violations and injustice. There will be abuse of power and the subjects to the authorities will become the sole sufferers. The jurisdiction of certiorari over the quasi-judicial decisions and functions is an apt and well established measure of law in order to maintain the sanctity of the powers conferred and keep the individuals exercising those powers within the limits of their jurisdiction.