

COMPARATIVE ANALYSIS OF WRIT JURISDICTION IN PAKISTAN, INDIA, AND THE UK: BALANCING CONSTITUTIONAL SUPREMACY AND PROCEDURAL LIMITATIONS ON THE RULE OF LAW

FAROOQ HAMEED

Advocate High Court (LLB Examiner, University of the Punjab)

haiderfajar1@gmail.com

DOI: <https://doi.org/10.5281/zenodo.21102259>

Keywords

Writ Jurisdiction, Judicial Review, Fundamental Rights, Article 199, Alternate Remedies, Quashment of FIR, Comparative Constitutional Law.

Article History

Received: 24 April 2026

Accepted: 06 June 2026

Published: 21 June 2026

Copyright @Author

Corresponding Author: *

Farooq Hameed

Abstract:

Writ jurisdiction serves as the ultimate constitutional safeguard against the arbitrary exercise of state power and the violation of fundamental rights. This article provides a critical comparative analysis of the writ jurisdictions in Pakistan, India, and the United Kingdom. *While the UK serves as the historical progenitor of prerogative writs operating under an unwritten constitution, Pakistan and India have constitutionally entrenched these powers under Articles 199 & 184(3) and Articles 32 & 226, respectively.* By analyzing the interplay between writ jurisdiction and procedural laws such as the Civil and Criminal Procedure Codes, and by examining landmark jurisprudence on the exhaustion of alternative remedies and the quashing of First Information Reports (FIRs), this study highlights the evolving nature of judicial review. It further explores the constitutional principles governing judicial intervention in administrative and executive actions, emphasizing the balance between judicial restraint and judicial activism. The article also evaluates the role of superior courts in ensuring governmental accountability, protecting the rule of law, and maintaining constitutional supremacy in democratic governance. A comparative examination of judicial approaches in the three jurisdictions reveals both convergences and divergences in the interpretation and application of extraordinary constitutional remedies. The findings contribute to the growing body of comparative constitutional scholarship by identifying best practices and proposing a coherent framework for enhancing the efficiency, accessibility, and consistency of writ jurisdiction in contemporary legal systems. The article concludes with novel, *researcher-driven recommendations* to address contemporary jurisprudential bottlenecks, aiming to streamline extraordinary constitutional remedies.

INTRODUCTION

The law on the writ system offers citizens an instant remedy and defence against the violation of their core rights by the unpredictable behavior of public officials and bureaucracy. Superior courts are bound to grant relief where a person complains of a violation of his fundamental rights

on the sole ground of an alternative remedy. Unlike the 19th-century *laissez-faire* tradition, the framers of modern constitutions, especially in South Asia, had a holistic perspective on the activities of the State and laid the groundwork for a welfare State. In countries with written constitutions like Pakistan and India, the

interpretation of the constitutional law has a significant role for **judicial decision making**. This article deconstructs the conceptual framework of writs and assesses their comparative operation within three different legal systems, as Justice Holmes rightly stated about the meaning of the Constitution: "The provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions... Their significance is vital, not formal."

Conceptual Framework: Definition of Writ Jurisdiction

From its formal origins, the definition of a writ has changed to its constitutional use. In Anglo-Saxon law (Latin: *breve*), a writ was a formal written order of anybody which had administrative or judicial authority. Its original meaning was a formal notice sent by the British monarch to a designated individual to perform a designated action, like a military call in the medieval era [2]. In contemporary law, the definition is of constitutional significance:

A Writ is a compulsory letter from the King in Parliament signed with his great seal and sent to the Sheriff of the county in which the injury is suffered, requiring him to either do justice to the complainant or be present at Court. [3]

As in modern law, writs are not just a way to get a remedy in court, they are a constitutional imperative to ensure the rule of law. It is a "constitutional safety valve" to prevent the infringement of fundamental rights or the over-extension of jurisdiction by quasi-judicial bodies. The classical **common law recognized five specific writs**:

1. **Habeas Corpus** (to produce the body of an unlawfully detained person);
2. **Mandamus** (to command a public authority to perform a lawful public duty);
3. **Prohibition** (to prevent a lower court from exceeding its jurisdiction);
4. **Certiorari** (to quash an order passed without jurisdiction or in violation of natural justice);
5. **Quo Warranto** (to inquire into the legality of a person's claim to a public office).

Unlike ordinary civil suits, which focus on private rights, writ petitions focus on public law remedies, emphasizing the legality of state action rather than the mere adjudication of private disputes.

More importantly, from a constitutional standpoint, the superior courts have clarified that **"A Writ is a constitutional jurisdiction and is not a 'proceeding' stricto sensu. Writ jurisdiction vis-à-vis supervisory appellate and revisional jurisdiction makes all the difference, and one should not confuse these powers and functions."**

[4] Anything issued under an authority is a writ, serving as a command from a court or legal authority to act or abstain from acting in some way.

The Constitutional Framework: A Tripartite Comparison:

The United Kingdom: Prerogative Writs and the Unwritten Constitution

Britain has an unwritten constitution of Acts of Parliament, court decisions and conventions, unlike Pakistan and India which have a written constitution. Lord Bingham says the constitution is an instrument that tries to "lay down and define the main offices in which authority is vested and the power which may be exercised. According to Prof Dicey, it is "all Rules which direct or indirectly affect the distribution and exercise of the sovereign power in the State.

The Rule of Law and the Bill of Human Rights is so strong in the UK that the procedure of prerogative writs (Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto) is included. This is the jurisdiction of the UK High Court of Justice, which is the point from which South Asian jurisdictions copied their own system of constitutional writs.

India: The "Heart and Soul" of the Constitution

Articles 32, 139 and 226 of the Indian Constitution (1949) explicitly give the judiciary its power, particularly in its role to protect the fundamental rights of citizens. High Court has jurisdiction to issue writ of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto in enforcement of fundamental rights or for any other purpose. Its chief architect B.R

Ambedkar called Article 32 as “heart and soul” of the Constitution. India's jurisprudence has been broad that Public Interest Litigations (PILs) can be brought by public wrongers, in essence transforming writs from a private remedy to a mass remedy.

Pakistan: Constitutional Entrenchment and Extraordinary Jurisdiction:

The writ system has been endorsed in Pakistan in articles 184 and 199 of the Constitution of the Islamic Republic of Pakistan 1973. The Constitution has two parts: Part II is about fundamental rights.

High Courts (Article 199): Have the power to intervene when there is no other effective remedy available under the law. In Pakistan, a writ petition can be filed even if there is violation of "legal rights" instead of fundamental rights unlike India. In addition, a foreigner may also file a writ for enforcement of right to life and equality.

Supreme Court (Article 184(3)): Has *Suo Motu* jurisdiction when it is a question of 'public importance' in relation to the enforcement of fundamental rights [7].

Relationship between Writ Jurisdiction, Substantive and Procedural laws:

The real meaning of writ jurisdiction is evident when it is juxtaposed with the normal laws of the proceeding, in this case, the Civil Procedure Code (CPC) and the Criminal Procedure Code (CrPC). According to the precedent set in Aftab Sherpao's case, a proceeding under the Constitution relating to a civil matter will be considered a civil proceeding, and the High Court in the case of Aftab Sherpao will have the power to review the order passed in a civil proceeding under Sec 114 CPC.

Doctrine of Alternate Remedies:

The principle under Article 199 is that before a petitioner can have recourse to the constitutional jurisdiction, he has to exhaust the alternate statutory remedies [9]. This jurisdiction can be invoked only after it is shown that an adequate remedy is not available, as in Abdul Rehman case [10]. There are some major exceptions, however. If

an order is impugned and it is patently illegal or without jurisdiction, then an alternate remedy is inconsequential. It had been concluded in the case of Government of Punjab Vs Crescent Textile Mills that by refusing interference on the basis of the availability of an alternative remedy, **this Court would be indulging in injustice as the illegality would be "floating on the surface"** [11].

Res Judicata:

The law of limitation does not strictly apply to constitutional petitions, but courts take into account delay based on the doctrine of laches [12] and earlier decisions. On the other hand, the provisions of the Res Judicata of Section 11 CPC are strictly adhered to in writ proceedings and a second petition on the same issue is not admissible [13].

Criminal Applications: Quashment of FIR'S:

One interesting aspect of Pakistani writ jurisdiction is its connection to the criminal law. Police is bound to file FIR in case of any cognizable offence brought to their knowledge [14]. On the other hand, the High Court has unlimited powers to set aside an FIR to protect from the misuse of the law.

According to law, if a case can be considered as one that has no evidence, the registration of the case is mala fide, the case is civil in nature, there is serious lack of jurisdiction, or there is an exceptional delay in the case causing torture of the accused [15]. For example, in a case under the Zina Ordinance, if an accused girl reaches puberty and marries legally without any compulsion, the High Court has set aside the FIRs that were filed in this scenario to eliminate misuse of the process [16].

Conclusion:

The parallel development of writ jurisdiction is a fascinating legal history. In the UK traditional prerogative writs are the basis of unwritten constitutionalism to secure the Rule of Law. India has been pushing the envelope with PILs and has laid stress on social justice as opposed to the procedural issues. Pakistan, however, finds itself on a middle path: statutorily implementing writs for fundamental rights, as well as those for

Pakistan's legal rights, but also having a contentious history with such statutory remedies as the CPC and CrPC. The judiciary's frequent use of the Article 199 against the filing of FIRs and/or against appealing cases to the superior courts is a systemic reliance on the superior courts that sometimes approach judicial overreach. The effectiveness of a writ of assistance, however, lies in finding a balance between extraordinary constitutional relief and the respect afforded to ordinary legislative remedies.

Proposals to the Legal Community and Policymakers

The following suggestions have been made on the basis of the comparative analysis and the procedural bottlenecks in the use of writ jurisdiction, especially in Pakistan:

- **The US "Ripeness and Mootness" Doctrines in South Asia:** In South Asia, superior courts routinely consider hypothetical harms or political issues in granting writs. Borrowing the strict "ripeness" (is the harm real?) and "mootness" (has the harm already happened?) reasoning from the United States will help to keep courts from being instruments of political grandstanding and will direct them toward actual infringements of rights.
- **The superior courts should set up 'PIL Vetting Committees'** (as in India and Pakistan) of distinguished judges, legal scholars, and experts to stop the misuse of expanded locus standi. All PILs and suo motu writs arising out of a letter or newspaper report have to go through this committee to weed out frivolous and politically-motivated litigations from wasting judicial time.
- **Research reveals a gross incongruity in the rule and exceptions of "exhaustion of alternate remedies" under the patent.** One way to limit forum shopping and unevenly applied treatment of patents would be for parliament to define exactly what constitutes "patent illegality" or "floating on the surface" illegality. By

imposing a strict statutory test, litigants would not be able to avoid statutory appellate forums such as the Board of Revenue or Labor Appellate Tribunals under the cover of constitutional jurisdiction.

- **Registration and Quashment of FIRs** under Sec 22-A of CrPC & Art 199 of the Constitution under indiscriminate writ petitions is a strain on High Courts. The High Courts are recommended to have separate "Criminal Writ Benches. Such benches should impose a severe prima facie test at the point of admission to ensure that civil disputes 'masked as criminal complaints' (which currently swamp the writ registry) are sent home with heavy costs, while leaving constitutional jurisdiction for actual human rights violations.
- **AI-Assisted Writ Triage:** Judiciaries should introduce AI-based systems to assist in legal triage for huge pendency of writ petitions. In a digital filing, the AI can compare the petition with past cases and note the constitutionality violation and identify repeat litigants. This technological intervention will help speed up the disposal of urgent writs such as Habeas Corpus, and classify the less urgent administrative writs for fast-track tribunals especially created for them.
- **Environmental Writs and Constitutional Mandates:** As stated in the intersection of Article 199 and the Pakistan Environment Protection Act (1997), environmental writs need to be appraised in a specialized scientific manner. Superior courts should require the establishment of separate "Environmental Impact Commissions" of legal and scientific professionals, according to the recommendations. The courts should be guided by their own findings of facts and not try to be a forum

for exhaustive research into technical information about the environment.

- **The "proportionality" Test in South Asian Jurisprudence:** India and Pakistan readily grant writs of Mandamus, but they do not have the UK's stringent "proportionality test" to consider whether the administrative action was appropriate, necessary and balanced. It is argued that if this test was made a part of the writ procedure of Pakistan and India, courts would not have to give too broad a direction that would invade the executive domain and be within the executive's purview.
- **The doctrine of constitutional remedies is subjective like time-limitation,** though the law of limitation does not apply to constitutional remedies. A time limit (e.g., 3-5 years) may be prescribed in statute to ensure legal certainty of filing constitutional petitions on civil issues. This would help to obviate the resurrection of stale claims and save public authorities from the endless prospect of prospective writs.

REFERENCES

Case Laws:

- [1] Gompers v. United States, 233 U.S. 604, 610 (1914).
- [4] Muhammad Hashim Khan vs. Government of Baluchistan, PLD 1984 Quetta 153.
- [7] Noor Jahan Vs. President of Pakistan, PLJ 1997 S.C 728.
- [8] Aftab Sherpao Case, PLD 1992 S.C 723.
- [9] Muhammad Azhar Vs. Assistant Commissioner Toba Tek Singh, 2006 SCMR 778.
- [10] Abdul Rehman, PLD 1987 Supreme Court 21.
- [11] Government of Punjab Vs. Crescent Textile Mills, PLD 2004 S.C 108.
- [12] Syed Sikander Ali Shah Vs. Omaira Anwar, 2010 YLR 295.
- [13] Muhammad Riaz Toor Vs. Water and Power Development Authority, 2002 YLR 4022.
- [14] Muhammad Anwar Barrister at Law Vs. Station House Officer, PLD 1972 Lahore 493.
- [15] Pervaiz Illahi Vs. Federation of Pakistan, 1995 MLD 615 (DB).
- [16] Mst. Shamim Vs. District Police Officer, District Khanewal, 2004 P.Cr.LJ 606.
- *Dabur India Limited Vs. Hilal Confectionary Private Limited, PLD 2002 Karachi 139.*
 - *Miss Shakeela Vs. University of Peshawar, PLD 2003 Peshawar 69.*
 - *Mrs. Anjum Irfan Vs. Lahore Development Authority, PLD 2002 Lahore 555.*
 - *Razia Begum Vs. Cantonment Board Clifton, 2000 YLR 2114.*
- Journal Articles, Books & Constitutional Documents:**
- [2] *Parliamentary Writs and Writs of Military Summons (2 volumes, 1827 and 1834); A New Dictionary of British History (London 1963), p. 402.*
- [3] *The New Oxford University Dictionary (Definition of Writ).*
- [5] Dicey, A. V. (1915). *Introduction to the Study of the Law of the Constitution.*
- [6] Lord Bingham in *R Vs Secretary of the State for Foreign and Commonwealth Affairs, Ex Parte Quark Fishing Ltd (2006).*
- *Ambedkar, B. R. (1949). Constitution of India, 1949 (Bhārtīya Samvidhāna).*
 - *Halsbury's Laws of England, 3rd Edition, Volume 2, p. 108.*
 - *Marshall, G. (2003). Constitutional Theory. Oxford University Press.*
 - *The Constitution of the Islamic Republic of Pakistan, 1973 (Part II, Chapter 1).*