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ALTERNATIVE REMEDY RULE VS ARTICLE 226 OF THE CONSTITUTION OF INDIA: A JUDICIAL BALANCING ACT

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Abstract

Article 226 of the Constitution of India occupies a central position in the framework of judicial review by empowering High Courts to issue writs for the enforcement of both fundamental rights and other legal rights. This wide jurisdiction ensures that individuals have access to an effective constitutional remedy against arbitrary state action. However, the exercise of this power is not absolute and is often regulated by the judicially evolved doctrine of alternative remedy, which requires litigants to exhaust statutory remedies before invoking writ jurisdiction.

The doctrine of alternative remedy reflects a principle of judicial self-restraint aimed at maintaining procedural discipline, respecting legislative intent, and preventing unnecessary burden on constitutional courts. At the same time, a rigid application of this rule may hinder access to justice and undermine the constitutional promise of effective remedies.

This research paper examines the tension between Article 226 and the alternative remedy rule as a judicial balancing act between constitutional supremacy and institutional efficiency. It traces the historical development of the doctrine, analyzes key judicial pronouncements, and identifies well-recognized exceptions that permit High Courts to exercise jurisdiction despite the existence of alternative remedies.

The paper argues that the Indian judiciary has adopted a flexible and pragmatic approach by treating the rule as discretionary rather than mandatory. Such an approach ensures that procedural technicalities do not override substantive justice. The study concludes that while the alternative remedy rule is essential for maintaining judicial order, it must be applied cautiously to preserve the fundamental objective of Article 226—ensuring access to justice and protection of rights.

Keywords: Article 226, Judicial Review, Writ Jurisdiction, Doctrine of Alternative Remedy, Access to Justice, Judicial Self-Restraint

I. Introduction

The Indian Constitution has laid down a detailed provision for the protection of rights through judicial remedies, thereby casting a heavy burden on the judiciary to maintain the rule of law. Among the various provisions made in this regard, Article 226[1969] holds a place of utmost significance. This provision empowers the High Courts to issue writs for the enforcement of fundamental rights as well as other legal rights,

[1969] SHARMA, AKSHITA. "ARTICLE 226 OF THE CONSTITUTION."

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thereby providing a broad and flexible remedy against the unlawful actions of the state.

Unlike Article 32[1970], which is restricted to the enforcement of fundamental rights, Article 226 has a broader scope. This broader scope is in line with the intentions of the framers of the Indian Constitution to ensure that persons are not left remediless in situations where their legal rights are violated. As such, the High Courts play a crucial role as vital guardians of both constitutional and legal rights.

However, the broad scope of Article 226 has also raised concerns about the possibility of abuse of the writ jurisdiction. If persons were allowed to approach the High Courts in all cases, it would cast an undue burden on the judiciary and also affect the working of the statutory dispute resolution systems. To overcome this difficulty, the judiciary has evolved the doctrine of alternative remedy.

The doctrine of alternative remedy is based on the notion that if a statute provides a specific remedy for a particular situation, that remedy must be exhausted before approaching the High Courts for relief through writ jurisdiction. Although not explicitly mentioned in the Indian Constitution, this doctrine has been developed by the judiciary through various judicial pronouncements as a matter of policy and convenience. This is the judiciary's effort[1971] to maintain a balance between access to justice and the need to maintain procedural propriety.

The relationship between Article 226 and the alternative remedy rule is a complex one. On the one hand, Article 226 represents the constitutional guarantee of justice and the direct remedy against arbitrary action. On the other hand, the alternative remedy rule is a principle of efficiency, ensuring that disputes are first resolved by specialized bodies.

This creates a number of important questions: Must High Courts always require exhaustion of alternative remedies? Does the alternative remedy rule in any way reduce the constitutional importance of Article 226? How is the point of exercising discretion to be determined?

The judiciary has over the years attempted to find a middle ground in this conflict. It has recognized that the alternative remedy rule is an important principle, but one that cannot be followed in all cases. As a result, the judiciary has established exceptions in which writ jurisdiction may be exercised despite the availability of alternative remedies.

The current research paper will explore this complex relationship as a "judicial balancing act."[1972] It will explore the development of the doctrine, the rationale for its application, and its implications for access to justice. The paper will also assess the efficacy of statutory remedies and the role of tribunals in the modern legal system.

Through a critical analysis of the relationship between Article 226 and the alternative remedy rule, this paper hopes to shed light on the complex interaction between constitutional values and judicial processes in the Indian legal system.

II. ARTICLE 226 – SCOPE AND CONSTITUTIONAL SIGNIFICANCE

Article 226 of the Constitution of India is a provision of great strength for the safeguarding of rights and the enforcement of the rule of law. It empowers the High Courts to issue directions, orders, or writs, including the conventional writs, for the enforcement of the fundamental rights as well as other rights. The dual role of Article 226 sets it apart from Article 32 and thus gives it greater importance in the constitutional scheme. The power conferred by Article 226 is both extensive and discretionary. The High Courts are not bound by the writs merely because the legal right has been established; they act on the basis of principles of equity,

[1970] Sheoran, Vaibhav. "Analysis of article 32 of the constitution of India: Right to constitutional remedies." Law Essentials J. 2 (2021): 137.

[1971] Feess, Eberhard, and Roee Sarel. "Judicial effort and the appeals system: Theory and experiment." The Journal of Legal Studies 47.2 (2018): 269-294.

[1972] Cotilla, Stephanie, and Amanda Suzanne Veal. "Judicial Balancing Act: The Appearance of Impartiality and the First Amendment." Geo. J. Legal Ethics 15 (2001): 741.

justice, and good conscience. The discretionary power given to the courts allows them to address the issue in accordance with the specific facts and circumstances of the case.

The writs[1973] issued under Article 226 have specific roles to play. The writ of habeas corpus[1974] safeguards the personal liberty of a person by ensuring that no one is detained illegally. Mandamus[1975] forces public authorities to act in accordance with their statutory obligations. Certiorari and prohibition[1976] are aimed at controlling judicial and quasi-judicial authorities by ensuring that they act within their jurisdiction. Quo warranto[1977] is a writ that challenges the legality of a person holding a public office. These writs together form a complete mechanism for judicial review of administrative action.

Another important feature of Article 226 is its territorial jurisdiction. The High Court shall have the power to act in a case if the cause of action arises, either wholly or in part, within the territorial jurisdiction of the High Court. This provision makes the mechanism more accessible to the litigants, who can approach the High Court that is most closely connected with their case.

The constitutional importance of Article 226 lies in its role as a judicial review tool. Judicial review ensures that legislative and executive measures are in conformity with the Constitution. The Supreme Court has reiterated that judicial review is a part of the basic structure of the Constitution, thus upholding the integrity of Article 226.

Furthermore, Article 226 is a safeguard against the arbitrary and unconstitutional exercise of power by public authorities. In a democratic state ruled by law, such provisions are crucial to ensure that power is not abused and that individual rights are protected. However, the wide scope of Article 226 requires some checks to prevent its abuse. This is ensured by the doctrine of alternative remedy. By requiring litigants to exhaust statutory remedies, the judiciary seeks to ensure that the High Courts are not burdened with too many cases and that disputes are referred to appropriate forums where they can be resolved.

Despite these checks, the significance of Article 226 remains unimpaired. It is a crucial tool for ensuring justice, especially in situations where statutory remedies are inadequate or ineffective. The challenge lies in finding a balance between the need for judicial intervention and procedural propriety. Therefore, Article 226 symbolizes both the power and the duty of the judiciary. Its proper application demands a delicate balancing of competing interests, thus playing a pivotal role in the larger debate on the rule of alternative remedies.

III. DOCTRINE OF ALTERNATIVE REMEDY

The doctrine of alternative remedy is an principle developed by the courts to regulate the exercise of writ jurisdiction under Article 226 of the Constitution. In essence, if a remedy is provided in a statute that is clear and adequate to address a grievance, the aggrieved party should normally exhaust those remedies before approaching the High Court. This principle is not enshrined in the Constitution itself. Rather, it has evolved over time through judicial construction as a prudent, policy-driven, and convenient measure. It reflects the judicial commitment to strike a proper balance between the expansive powers of Article 226 and the need for efficient administration of justice[1978].

The general principle is that High Courts should not be the first port of call in matters where other specialized forums or authorities exist. Often, statutes provide elaborate frameworks –

[1973] Kyle, John W. "Nature and Origin of Writs under the Common Law." Miss. LJ 24 (1952): 1.
[1974] Lay, Donald P. "The Writ of Habeas Corpus: A Complex Procedure for a Simple Process." Minn. L. Rev. 77 (1992): 1015.
[1975] Anderson, J. Jonas, Paul R. Gugliuzza, and Jason A. Rantanen. "Extraordinary Writ or Ordinary Remedy? Mandamus at the Federal Circuit." Wash. UL Rev. 100 (2022): 327.
[1976] Yardley, David Charles Miller. "The Grounds for Certiorari and Prohibition." Can. B. Rev. 37 (1959): 294.
[1977] Fitzgerald, Jason Taylor. "THE WRIT OF QUO WARRANTO IN MINNESOTA'S LEGAL AND POLITICAL HISTORY: AStudy OF ITS ORIGINS, DEVELOPMENT AND USE TO ACHIEVE."

[1978] Pound, Roscoe. "The administration of justice in the modern city." Harvard Law Review 26.4 (1913): 302-328.

involving appellate and revisional authorities – to deal with specific disputes. To allow persons to circumvent such forums and approach the High Courts directly would be to render these frameworks nugatory and defeat the legislative intent.

The doctrine also promotes judicial efficiency. As it is, the High Courts are already burdened with too many cases. To direct all disputes to the High Courts would result in delays and reduce the efficiency of the administration of justice. It is necessary to require persons to first approach the relevant forums to ensure that only those disputes that are fit for constitutional relief are brought before the High Courts.

Another important rationale is the expertise of the specialized forums and authorities. Many disputes involve technical or specialized issues that are best left to the judgment of persons with the requisite expertise. Tax disputes, service disputes, and company law matters, for example, are often best left to tribunals who are better equipped to adjudicate them. However, this doctrine is not a hard and fast rule. It does not abrogate the jurisdiction of the High Courts. Rather, it is a guiding principle for the exercise of discretion. The High Courts are free to entertain writ petitions even if other remedies are available, especially in matters where justice requires immediate action.

Over time, the judiciary has clarified that the doctrine should not be applied mechanically. Instead, it must be applied in a manner that promotes justice and fairness. The courts have repeatedly emphasized that procedural rules should not override substantive rights. Thus, the doctrine of alternative remedy serves as an important tool for maintaining judicial discipline and efficiency. At the same time, its flexible application ensures that it does not undermine the fundamental purpose of Article 226, which is to provide effective remedies against injustice.

IV. JUDICIAL EVOLUTION OF THE DOCTRINE

The doctrine of alternative remedy has seen a lot of development through judicial pronouncements. The judicial attitude has changed from a liberal to a more organized and balanced approach. During the initial years, the judicial attitude was liberal regarding the exercise of writ jurisdiction. The focus was on ensuring justice rather than being rigid about procedural formalities. The availability of alternative remedies was not a substantial ground for denying relief.

The most important case during this period is State of U.P. v. Mohammad Nooh (1958), where the Supreme Court held that the writ jurisdiction could be exercised despite the availability of alternative remedies, especially in cases of gross injustice. This judgment made it clear that the doctrine of alternative remedy was not absolute.

However, as the number of cases escalated and the need for procedural rigor became more pressing, the judicial attitude changed to a more restrictive approach. In Titaghur Paper Mills Co. Ltd. v. State of Orissa (1983), the Supreme Court made it clear that if a complete scheme of redressal was provided for by a statute, parties should not resort to evading that scheme by directly approaching the High Court.

This marked a recognition of the need to respect the statutory framework and ensure judicial efficiency. The courts attempted to ensure that specialized tribunals were given a chance to operate effectively.

The doctrine reached full maturity with the landmark case of Whirlpool Corporation v. Registrar of Trademarks in 1998. In this case, the Supreme Court held that the rule of alternative remedy is a discretionary rule and not a mandatory one. The Court also held that there are certain exceptions where the writ jurisdiction can be invoked despite the availability of alternative remedies.

Later cases such as Harbanslal Sahnia v. Indian Oil Corporation Ltd. in 2003 reaffirmed this view and emphasized the need for flexibility in interpretation. The Courts held that the rule of exclusion of writ jurisdiction by availability of

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In recent times, the Courts have continued to develop the doctrine. In the case of Radha Krishan Industries v. State of Himachal Pradesh in 2021, the Supreme Court held that the availability of alternative remedy does not necessarily preclude the invocation of writ jurisdiction. The Court held that the rule was to be applied in such a way that it struck a balance between the interests of justice and procedural regularity.

The development of the doctrine indicates that the Courts are adopting a more nuanced approach to the rule. The Courts are no longer applying the rule in a mechanical fashion. Instead, they are taking into account factors such as the nature of the right, the efficacy of the alternative remedy, and the urgency of the situation.

The development of the doctrine also indicates that the Courts are dynamic institutions that are capable of adapting to changing circumstances. The doctrine of alternative remedy, as it stands today, is a carefully crafted balance between competing interests.

V. EXCEPTIONS TO THE ALTERNATIVE REMEDY RULE

The doctrine of alternative remedy is a matter of great importance in the regulation of writ jurisdiction; but courts have always held that the doctrine of alternative remedy cannot be applied in a rigid manner. In order to avoid denial of justice, the judiciary has carved out certain exceptions where writ jurisdiction can be invoked despite the availability of alternative remedies.

One of the major exceptions to the doctrine of alternative remedy is the violation of fundamental rights. Since the protection of fundamental rights is the prime aim of the Constitution, it has been held that a citizen cannot be required to exhaust alternative remedies before approaching the court under Article 226 in cases involving violation of fundamental rights[1979]. Direct access to the High Courts is justified in order to ensure timely and effective relief for rights.

Another important exception to the doctrine of alternative remedy is the absence of jurisdiction. Where a statutory authority exceeds its jurisdiction, its actions are held to be void. In such cases, it would be unjust to require the aggrieved party to approach the same authority or a related forum. In such cases, the High Courts can directly intervene in order to prevent abuse of power.

Violation of the principles of natural justice is another important exception. Natural justice requires that all decisions be taken in a fair manner, after providing an opportunity for hearing, and without bias. If the principles of natural justice are violated, the entire process would be rendered void. In such cases, it has been held that writ jurisdiction can be invoked without requiring the exhaustion of alternative remedies.

The recognition of these exceptions highlights the commitment of the judiciary to substantive justice. While procedural discipline is of great importance, it cannot take precedence over the protection of rights and the prevention of injustice. The courts have always held that legal rules must not obstruct the cause of justice but must instead promote it. In conclusion, the exceptions to the doctrine of alternative remedies are of great importance in maintaining the delicate balance between judicial restraint and judicial intervention.

VI. CRITICAL ANALYSIS

The concept of alternative remedy has some strong aspects and weaknesses, and there is a lot of debate about it in constitutional law. One of the most important advantages is that it enables the judiciary to function in a more efficient manner. It ensures that people are referred to appropriate forums, and this reduces the burden on High Courts. They can then

[1979] Goodpaster, Gary S. "The Constitution and Fundamental Rights." Ariz. L. Rev. 15 (1973): 479.

concentrate on matters that require constitutional adjudication. This ensures that the judicial system functions in a smooth manner.

It also honors the intentions of the law. When laws provide a particular manner in which disputes are to be resolved, it should be allowed to function in that manner. This ensures that the specialized forums function in the proper manner and that disputes are resolved in an organized fashion. However, there are also some disadvantages. One of the most important is that it may cause delays in the administration of justice. People have to go through a number of processes before they can get any relief, and this is time-consuming and expensive.

Another disadvantage is that the tribunals and statutory bodies may not function in an effective manner. In most instances, these bodies are plagued by delays, a lack of autonomy, and a shortage of resources. This is a matter of concern since it may not be possible for these bodies to provide good remedies. The discretion involved in applying the doctrine can also cause inconsistency. Different courts may apply the doctrine differently. This may cause confusion and a lack of confidence in the legal system.

Despite these problems, the doctrine is still a crucial part of the legal system. The effectiveness of the doctrine depends on how courts apply it. Being too rigid may cause injustice, but being flexible may help the doctrine accomplish its task. The concept of the balancing test has become a helpful approach in this area. Courts consider factors such as the nature of the right at stake, the urgency of the situation, and the availability of an adequate alternative remedy before exercising writ jurisdiction.

This approach allows courts to make decisions based on the specific circumstances of each case. This helps to apply the doctrine of alternative remedy in a manner that facilitates justice, not obstructs it. In conclusion, although the doctrine has some flaws, it can help the legal system work better if applied carefully and judiciously.

VII. ROLE OF TRIBUNALS

The rise of tribunals in India[1980] has had an impact on the application of the alternative remedy rule. Tribunals are special institutions established to address specific types of disputes, such as taxation, services, and corporate disputes.

Tribunals were established due to their expertise and efficiency. They are meant to address disputes in a faster and more specific manner than in courts. Their rise is an affirmation of the concept of the alternative remedy rule. This is because tribunals are capable of addressing specific disputes. As such, courts require litigants to approach tribunals before they can approach courts using the writ jurisdiction.

However, tribunals have also been criticized. This is because they lack independence. Many of these institutions are controlled by the executive. This raises concerns about their ability to be impartial. Another concern is the time it takes for them to complete cases. This is despite the fact that they were established to provide speedy justice. Many of these tribunals have huge pending cases. This makes them less effective as alternative remedies.

The Supreme Court has also addressed some of these concerns, such as in the case of L. Chandra Kumar v. Union of India. The court held that the decisions of tribunals can be challenged before the High Courts. This indicates that tribunals do not operate in isolation. Their decisions can be reviewed to ensure that they are fair and legal.

Therefore, the impact of tribunals on the alternative remedy rule is not straightforward. They are a crucial means of addressing disputes, but their shortcomings must also be taken into consideration. Courts must exercise

[1980] DIVYA, M., and M. GOKULNATH. "THE EVOLUTION OF ADMINISTRATIVE TRIBUNALS: A COMPARATIVE STUDY OF THE UK, USA, AND INDIA."

caution before requiring litigants to seek remedies from tribunals. This ensures that the alternative remedy rule does not become an impediment to justice.

VIII. COMPARATIVE ANALYSIS

The doctrine of alternative remedies is not unique to the Indian legal system. Similar tenets exist in other legal systems, but their application varies. In the United States, the doctrine of exhaustion of remedies is strictly adhered to, and plaintiffs are generally required to exhaust alternative remedies before seeking judicial relief.

This is a reflection of the strong procedural rigor in the United States. In the United Kingdom, the principles of judicial review provide that exhaustion of alternative remedies is also required, and courts can refuse relief if adequate remedies are available by other means.

However, the Indian system is more flexible due to the constitutional structure, which places primacy on the protection of rights. The Indian courts have held that in some situations, it may not be necessary to strictly apply the doctrine of alternative remedies, especially in cases involving fundamental rights or substantial injustice.

This is in keeping with the unique nature of the Indian Constitution, which places primacy on access to justice and the protection of rights. The comparative study highlights that while the doctrine of alternative remedy is a universal principle, its application in the Indian system is uniquely informed by constitutional considerations.

IX. CONTEMPORARY TRENDS

Recently, there has been a pragmatic approach by judicial authorities in matters concerning the doctrine of alternative remedy. There is a growing concern to ensure that procedural law does not come in the way of access to justice. The courts have shown a willingness to interfere in matters concerning breach of natural justice and basic rights, and they have scrutinized the efficacy of alternative remedies. This trend indicates a move towards a rights-based approach, with the aim of preventing denial of justice on account of procedural technicalities. At the same time, the courts have reiterated the need to maintain judicial discipline, and the doctrine of alternative remedy remains a crucial tool in managing writ jurisdiction. The key is to strike a balance between these two considerations.

X. CONCLUSION

The relationship between Article 226 and the doctrine of alternative remedy is a complex balance between constitutional power and judicial restraint. Article 226 is a powerful tool of rights protection and enforcement of the rule of law on the one hand, and the doctrine of alternative remedy ensures that this power is exercised in a disciplined and efficient manner on the other.

The judiciary has played a crucial role in maintaining this balance, and courts have ensured that justice is not compromised by considering the doctrine as a flexible norm and not as an inflexible barrier by continuing to apply the doctrine in a manner that promotes justice.

The development of the doctrine reflects the dynamic nature of constitutional law and the judiciary's efforts to ensure that legal norms keep pace with changing realities. The effectiveness of this delicate balance depends on sound judicial discretion. The judiciary must continue to apply the doctrine in a manner that promotes justice and the integrity of the legal system.

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