LEGAL ICONS
A-76, LGF, East of Kailash, New Delhi - 110065
T: 011-46780008 E: admin@legalicons.in

Revisiting the Doctrine of Alternate Remedy under Article 226: Judicial Discretion, Exceptions, and Evolving Jurisprudence

Authored by: Lokesh Bhola, Managing Partner and Abhishekh Singh Chauhan, Associate

INTRODUCTION

The writ jurisdiction of High Courts under Article 226 of the Constitution of India is a foundational aspect of India's constitutional architecture. It serves as an instrument of judicial review, offering redressal not only for violations of fundamental rights but also in cases involving public law wrongs. Despite its wide amplitude, the exercise of writ jurisdiction is governed by certain self-imposed limitations developed through judicial precedent, the most notable of which is the 'rule of alternate remedy'.

This rule provides that where a statutory forum exists for redressal of grievances, the High Court would ordinarily decline to entertain a writ petition. However, this rule is not absolute. Courts have repeatedly affirmed that in certain exceptional situations such as when there is a violation of natural justice, the action is wholly without jurisdiction, or a fundamental right is infringed, the existence of an alternate remedy does not preclude writ intervention.

This article evaluates the legal evolution and contemporary application of this doctrine, particularly in view of two recent judgments Radha Krishan Industries v. State of Himachal Pradesh[1] and Kali Charan v. State of U.P.[2] which reiterate and refine the exceptions to the rule, reaffirming the enduring vitality of Article 226 jurisdiction in safeguarding constitutional rights and ensuring legal accountability.

PROVISIONS OF THE LAW UNDER QUESTION

Article 226 of the Constitution confers on every High Court the power to issue directions, orders, or writs for the enforcement of fundamental rights and for "any other purpose." This makes the writ jurisdiction of High Courts one of the broadest remedial jurisdictions available in any common law jurisdiction. However, judicial restraint and the principle of subsidiarity have led courts to circumscribe their intervention where the legislature has provided for a statutory mechanism of redress.

The general rule that writ jurisdiction should not be exercised where alternate remedies exist is not a constitutional limitation but a rule of prudence and policy. Over time, the courts have delineated the exceptions to this rule in a series of landmark decisions. In Whirlpool Corporation v. Registrar of Trademarks[3], the Supreme Court laid down that the bar of alternate remedy does not apply when:

- a fundamental right is violated,
- principles of natural justice are breached,
- the order is passed without jurisdiction, or

[1] *(2021) 6 SCC 771*
[2] *2024 INSC 898*
[3] *(1998) 8 SCC 1*

- the vires of a statute is under challenge.

This doctrinal position was reiterated and elaborated in Harbanslal Sahnia v. Indian Oil Corporation[4] and more recently in Radha Krishan Industries, where the Court categorically stated that the efficacy of an alternate remedy must be real and not illusory.

ISSUES INVOLVED

i. Whether Article 226 jurisdiction can be invoked despite availability of an alternate statutory remedy under the concerned enactment?

ii. Whether the absence of a functional appellate forum e.g., a tribunal not yet constituted renders the statutory remedy ineffective and thereby justifies writ intervention?

iii. Whether breach of natural justice or actions taken without jurisdiction override the procedural bar imposed by the doctrine of alternate remedy?

iv. What is the extent to which writ courts can scrutinize administrative or quasi-judicial discretion when the alternate remedy involves lengthy or uncertain processes?

ANALYSIS AND APPLICATION OF LAW TO FACTS

In Radha Krishan Industries[5], the Supreme Court offered a comprehensive restatement of the exceptions to the alternate remedy rule. The appellant had challenged the provisional attachment of its receivables under Section 83 of the Himachal Pradesh GST Act, 2017. The High Court dismissed the writ petition, directing the petitioner to avail the appellate remedy. However, the Supreme Court overturned the High Court's ruling, holding that the GST Tribunal was not yet constituted and the provisional attachment order was passed without adhering to principles of natural justice.

This ruling aligns with Whirlpool and Harbanslal Sahnia[6] *(supra)*, which affirmed that the High Courts retain their jurisdiction under Article 226, particularly where statutory remedies are either ineffective or illusory. The judgment further emphasizes that provisional attachment being a coercive measure must be backed by valid reasons and credible material else, it would violate the principles of fairness and proportionality, warranting writ intervention.

In Kali Charan v. State of U.P., the Apex Court[7] was confronted with conflicting decisions of the Allahabad High Court on the legality of land acquisition notifications under the urgency clause of the Land Acquisition Act, 1894. While one bench invalidated the acquisition for arbitrary invocation of urgency, another upheld it. The Supreme Court ruled that the arbitrary and mechanical invocation of urgency without demonstrable emergency violates procedural fairness under the Act, thereby justifying writ interference as the acquisition proceedings suffered from a jurisdictional infirmity and violated the principles of natural justice. This case exemplifies how

[4] *(2003) 2 SCC 107*
[5] *supra*
[6] *supra*
[7] *supra*

procedural impropriety and arbitrary exercise of statutory discretion can justify bypassing the bar of alternate remedy under Article 226.

Collectively, these decisions mark a nuanced evolution in the jurisprudence of writ jurisdiction. They underscore that statutory remedies must not only exist but must also be efficacious and timely. Constitutional Courts cannot abdicate their constitutional responsibility in favour of procedural formalism when fundamental rights and procedural integrity are at stake.

CONCLUSION

The doctrine of alternate remedy, though well-established, is not a straitjacket formula. The discretion under Article 226 must be exercised judiciously, guided by the twin considerations of institutional propriety and substantive justice. The key takeaway from Radha Krishan Industries and Kali Charan is that constitutional courts cannot adopt a mechanical approach while dealing with issues of jurisdiction, procedural fairness, or fundamental rights.

While judicial self-restraint ensures respect for statutory forums, the courts have a constitutional obligation to intervene where redressal mechanisms are unavailable, inadequate, or non-functional. The recent jurisprudence reaffirms that writ jurisdiction continues to play an indispensable role in maintaining the rule of law and ensuring that access to justice is not defeated by procedural technicalities.

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