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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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A COMPARATIVE STUDY OF WRIT JURISDICTION IN THE UK AND INDIA VIS-À-VIS PROTECTION OF THE ENVIRONMENT

AUTHORED BY - AVANISH KUMAR SONKAR & SAKSHI SINGH

INTRODUCTION

The concept of writ jurisdiction holds a significant place, serving as a guardian of individual rights and public interests. Originating from the English legal system, the incorporation of writ provisions in the Constitution of India reflects the nation's forward-looking aspirations¹, albeit with notable distinctions from its colonial predecessor, the United Kingdom. The word “writ” has been used in the sense of a document under the seal of the Court issued to a person or authority, including the government in appropriate cases, commanding them or any of them to do or forbear from doing some act.² In England, these writs were known as prerogative writs and were issued under common law by the Court of King’s Bench.³ However, the fact that the Constituent Assembly adopted the power of the writ from England, but they are adopted in the Indian context and vary significantly from England.⁴ The powers given to the Supreme Court of India (High Courts also) are much wider and are not confined to issuing prerogative writs only.⁵ Supreme Court exercising the power of writ under Article 32 has played a pivotal role in redressing environmental grievances. The Court’s greatest judicial innovation—and the most important vehicle for the expansion of its powers—has been its institution of Public Interest Litigation (PIL).⁶

¹ Choudhry S., Khosla M., & Mehta P.B., ‘Locating Indian Constitutionalism’, in Sujit Choudhry et al, (eds), *The Oxford Handbook of the Indian Constitution* (Oxford: 2016), pp. 1-13.: With regards to the inclusion of writ jurisdiction in a constitution, it anticipates the need to address violations of fundamental rights that may arise in the future. It acknowledges that societal circumstances can change, and the legal system must have mechanisms in place to respond effectively to new challenges and evolving values.

² Manohar Sujata V., ‘Right to Constitutional Remedy’, in T.K. Tope’s *Constitutional Law of India* (Eastern Book Company: 2010) pp. 376-378.

³ Ibid.: this power is now vested in the High Court of Justice, under the Supreme Court of Judicature (Consolidation) Act, 1925.

⁴ Ibid.: Sir Alladi Krishnaswamy Aiyar remarked: Our Constitution has gone further than any known Constitution in the direction of securing the effective and speedy enforcement of the rights guaranteed under it.

⁵ Ibid.: Supreme Court exercises power of writs under Article 32 and High Courts exercise under Article 226 of Constitution of India.

⁶ Mehta Bhanu, ‘The Rise of Judicial Sovereignty’ (2007) 18 *Journal of Democracy* pp. 70-83: In PIL cases, the Court relaxes the normal legal requirements of “standing” and “pleading,” which require that litigation be pressed by a directly affected party or parties, and instead allows anyone to approach it seeking correction of an alleged evil or injustice.

PIL, which the Supreme Court entertains under Article 32, is efficiently protecting the environment. This essay will trace the pathway of further development of writs and the use of writ jurisdiction in protecting the environment in the UK and India. Given the possible broad scope of this analysis, the examination will primarily orient around the illustrative context of environmental protection through writs in the UK and India. Therefore, this essay will not be providing an exhaustive view of every aspect of writ in India and the UK. This essay will look into the power of writ exercised by the Apex Courts of the UK and India in the protection of the environment. Therefore, this essay will focus only on the narrow aspect of writ jurisdiction. The countries chosen for comparative analysis are the UK and India because of several facts. Firstly, the UK was once a colonial master of India. India and the UK share a historical connection since the colonial era. Thus, a comparative study of both these nations will help in understanding how writ jurisdiction has evolved in their different legal systems. Secondly, in the UK, the court relies on statutes, common law, and convention, unlike in India, where there is a written constitution that provides the power of the writ. Lastly, both the UK and India strive to protect the environment. So, this comparative study will help understand how they both use writ jurisdiction to protect the environment. This paper aims at doing a comparative analysis of writ jurisdiction. The historical study method⁷ is used in the present study as there is a connection between the UK and India. Based on the influence of the writ jurisdiction of the UK, writ jurisdiction in India was adopted. Through historical method, this essay will not only examine how writ jurisdiction originates in the UK and influences India but also examine how it develops differently in India. The contextual study method⁸ is also used in the essay as writ jurisdiction is incorporated in the Constitution of India in its context and particularity. The essay posits that while the concept of writs originated in the UK, India's adoption of writ jurisdiction in its Constitution reflects an aversion⁹ taken by the constitution makers while adopting the provisions of writs. This departure underscores a deliberate approach taken by

⁷ Jackson Vicki C., 'Comparative Constitutional Law: Methodologies, in Michel Rosenfeld & Andras Sajó, *The Oxford Handbook of Comparative Constitutional Law* (2012), pp. 67-83.: There may be both 'genetic' forms of connections between systems, based on the influence one has on the development of another and 'genealogical' forms of connection, where one or more constitutional system(s) grew out of another, typically in countries emerging out of colonial relationships.

⁸ Ibid.: Contextual Method seeks more elicited understanding of how particular paradigmatic social and political concerns shape or are reflected in the constitutional law.

⁹ Scheppele K.L., 'Aspirational and Aversive Constitutionalism: The Case for Studying Cross-Constitutional Influence Through Negative Models', (2003) 1 (2) *I•CON* pp. 296-324: Aversive constitutionalism calls attention to the negative models that are prominent in constitution builders' minds. Constitution builders may have only the vaguest sense of where they are going and how they should get there; more often, they have a clearer sense of what it is that they want to avoid. In this regard, the constitution makers of India had in their mind that they have to protect and enforce the fundamental rights effectively so for that they have to provide a wider ambit of writ jurisdiction unlike in the UK.

India's constitution makers. In the Indian Constitution, the inclusion of writ provisions represents expressivism¹⁰ of the aspiration of the founding fathers. This paper will emphasize how the idea of expressivism works while being influenced by other legal systems.

This essay will talk about how the idea of writ influenced India, but India adopted the idea in its context, and the idea of transplant may exist (if at all) only in theory. I would focus on how the Indian constitution makers used the idea of contextualism while incorporating the writ provisions.

Prachi Oza's¹¹ work emphasises that the framers of the Constitution have a clear vision and purpose in including this provision to protect the fundamental rights of Indian citizens. While acknowledging that the concept of writs and writ jurisdiction in India is borrowed from the UK, the work emphasises that the Indian framers deserve credit for modifying and using these mechanisms in a way that suits the country's needs and diversity. Forsyth and Upadhyay¹² in their work, argue that "Indian law has borrowed the structure of prerogative writs from common law, but the Indian Constitution has permitted a far greater development of the remedy of prerogative writs. BL Hansaria's¹³ book exhaustively deals with the Writ Jurisdiction, and in that, he talks about who can and against whom writs can be applied. He also writes about PIL for environmental protection. It discusses the locus standi in the case of the UK and India regarding PIL.

Regarding the UK, the evolution of prerogative writs from royal commands to mechanisms of judicial oversight is depicted in the writings of Edward Jenks¹⁴ as a response to the growing need for checks and balances as the concept of the rule of law gained prominence. This paper argues that even though India adopted the nomenclature of the writ of English writs and English law, it has much wider writ jurisdiction than the UK. The argument is developed over five sections. In the section following this introductory part, i.e., Section 2, laid down the

¹⁰ Tushnet Mark, 'Some reflections on method in comparative constitutional law', in Sujit Choudhry, *The Migration of Constitutional Ideas* (Cambridge University Press; 2012) pp 67-83: Expressivism is a different, perhaps even more comprehensive, version of contextualism. For an expressivist scholar, constitutional law – doctrines and institutional arrangements – are ways in which a nation goes about defining itself.

¹¹ Oza Prachi, 'Comparative Study on Writ Jurisdiction in India and the UK', (2022) 5 *International Journal of Law Management & Humanities* 839-850.

¹² Forsyth Christopher & Upadhyay Nitish, 'The development of the Prerogative Remedies in England and India: The Student becomes the Master?' (2011) 23 *National Review School of India Review* 77-85.

¹³ Hansaria, B.L., 'Public Interest Litigation' in Justice B L Hansaria's *Writ Jurisdiction* (3rd) (Universal Law Publishing Co.: 2004).

¹⁴ Jenks Edward, 'The Prerogative Writs in English Law' (1923) 32 *Yale Law Journal* 523-534.

development of the writ jurisdiction in the UK and India. Section 3 talks about the protection of the environment using the power of writs in both the UK and India, and through the example of the environment, attempts to show the wider ambit of writ jurisdiction in India. Section 4 talks about India's expressivism and how India's writ develops differently from the UK. The last section, Section 5, contains the concluding remarks.

DEVELOPMENT OF WRIT

In the historical evolution of legal systems, the emergence of writs as written commands of authority marked a pivotal moment. The Court of King's Bench had the jurisdiction to issue several writs, all of which were issued in the name of the King.¹⁵ The development of prerogative writs provided the mechanism to challenge actions by both authorities and private individuals, ensuring a balance between governmental power and individual rights. Edward Jenks¹⁶ mentions that prerogative writs transformed from being instruments of the crown's prerogative into tools of judicial control. In the article, it talks about the role of writs in upholding the rule of law. Writs allowed individuals to challenge abuses of power, seek justice, and rectify grievances. Edward Jenks writes that writs were initially short written commands that held greater authenticity than spoken orders. The King's writ emerged as the dominant form of written command after the Norman conquest, as the monarchy established itself as a central authority.

In various phases of history, this power of writ took different names and forms, but the spirit of this extraordinary power remained more or less the same. The writs are useful in reminding the government of its duties. These remedies, which, if not always designed from the beginning for the control of governmental duties and powers, have long been in use.¹⁷ These writs were called 'prerogative writs' and were granted by the suit of the Crown.¹⁸

Earlier, these writs were prerogative of the Crown¹⁹, and it was by the end of the 16th century

¹⁵ Aggarwal, Adish, 'Right to Constitutional Remedies', in Dr. Adish C. Aggarwala's Constitution of India (4th) (Amish Publications: 2014) pp. 129-146.

¹⁶ Supra note 13

¹⁷ Wade H.W.R. & Forsyth C.F., 'Prerogative Remedies', in Administrative Law (Oxford Clarendon Press: 1994) pp. 591-615.

¹⁸ Ibid.: They are 'prerogative' because they were originally available only to the Crown and to the subject. These writs were granted to ensure whether public authorities carried out their duties or not and whether the lower tribunals were functioning within their jurisdiction or not. These were essentially remedies for ensuring efficiency and maintaining order in the hierarchy of courts, commissions and authorities of all kinds.

¹⁹ Smith S.A. de., 'The Prerogative Writs: Historical Origins', in de Smith's Judicial Review of Administrative Action (4th) (London Steven & Sons Limited: 1980) pp. 584- 595.: SA de Smith writes, that writs cannot be

that ordinary litigants could begin proceedings in the name of the Crown without seeking permission from the authority. Through the evolution of the characteristics of legal history, the Crown's prerogative powers have been converted into machinery for the protection of the subject.²⁰ In the UK, all remedies are issued from the High Court, and they still are sought by a special form of procedure as Wade and Forsyth write, and they further write that these all are discretionary remedies²¹ except habeas corpus.²²

When coming to the development of writs in India, it inherited the power of writ from its colonial master, the UK. During the British period, the power to issue these writs had been conferred on the Supreme Courts of Calcutta, Madras and Bombay by their respective charters, which conferred on them "such jurisdiction and authority as the justices of our King's Bench permit."²³ The Indian High Courts Act, 1861 was permissive legislation and it authorised reorganisation and establishment of High Courts by fusion of Supreme Courts and Sadar Adalats in three Presidencies.²⁴ These High Courts were given the same jurisdiction as was given to the Supreme Courts. Then came the Government of India Act, 1915, section 106 which preserved all such jurisdiction, powers, and authority as were vested in the High Courts.²⁵ Section 223 of the Government of India Act, 1935 did the same thing and retained the powers of the High Court.²⁶ The history of the freedom struggle had made it inevitable that fundamental rights would be written into the Constitution itself.²⁷ The framers of the Constitution of India

simply understood as they were originally issued only at the suit of the king, but which were later made available to the subject. He said this view cannot be accepted without a number of reservations. Prohibition and habeas corpus appear to have been issued on the application of subjects from the very first; and although writs of certiorari and mandamus were initially royal mandates issued for diverse purposes of government, the result of applications made by subjects. It is nevertheless true to say that when, 'prerogative' it was because they were conceived as being intimately connected with rights of the Crown.

²⁰ Ibid

²¹ This shows the origin of writs as a tool of royal authority, used by the monarch to exercise discretionary powers and issue commands. It was the tool through which the king's will was manifested.

²² They further write that after 1938 their name was changed to prerogative orders again except for habeas corpus. The modern use of writ is yet another instance of conversion of the Crown's legal armoury into remedies beneficial to the subject.

²³ Seervai H.M., 'Right to Judicial Remedies' in Constitutional Law of India (4th) Volume 2 (Universal Law Publishing Company: 1993) pp. 1449-1467.: Later on, this power of writs had been inherited by their successor High Courts. Continuing with these remedial mechanisms to provide remedy in case of violation of fundamental rights, the Constituent Assembly adopted the writ provision in the Constitution.

²⁴ Hansaria, B.L., 'Historical Background: Article 226 and 227' in Justice B L Hansaria's Writ Jurisdiction (3rd) (Universal Law Publishing Co.: 2004) pp. 1-12.: as they were established by issue of Charter they were called as "Chartered High Courts".

²⁵ Ibid see page 2

²⁶ Ibid see page 3

²⁷ Ibid.: Since "general declarations had not much unless there existed the will and means to enforce them, the Constituent Assembly showed the will, and provided the means, to enforce the fundamental rights conferred by the part III.

were well aware that a declaration of fundamental rights is meaningless unless there are effective judicial remedies for the enforcement of these rights. In line with this Article 32 and Article 226 has been incorporated by the Constituent Assembly.²⁸

WRIT JURISDICTION VIS-À-VIS PROTECTION OF ENVIRONMENT

In environmental matters in the UK environmental enforcement authorities are public bodies exercising public powers. The administrative courts oversee the exercise of these powers using judicial review on the grounds of illegality, irrationality and procedural impropriety.²⁹ Along with several other remedies the High Court has writs power to provide a remedy.³⁰

Sinha³¹ writes that English law does not have a provision enabling citizens to bring suits in the public interest, but it has received some judicial support. To support his argument writer quotes Lord Diplock in the case of *R v Inland Revenue Com.*³²

Sinha provides two cases³³ in which the attitude to give public standing was apparent. It is important to note that section 7 of HRA³⁴ limits the ‘sufficient interest’ provision to a victim of an unlawful act. But there is a cloud of uncertainty in granting the standing. Sinha further

²⁸ So, it was not merely the imposition and intervention of British rule and their law that was the reason why India has these writs and writ jurisdiction today. The crucial and strong reason was the protection and enforcement of fundamental rights. It was the ideology and aim of the drafters of the Indian Constitution that made them include the concept of writs and give special powers to the Supreme Court and High Courts of India.

²⁹ Sinha, Govind Narayan, ‘Judiciary and Environment’ in A comparative study of the environmental laws of India and the UK with special reference to their enforcement (University of Birmingham Research Archive: 2003) pp 160-203.

³⁰ *Ibid.*: The High Court has several remedies available to it to overturn a decision made unlawfully. These include quashing order (to quash the public authority’s decision), mandatory order (or a mandatory injunction, requiring the public authority to carry out its duties), prohibiting order (or a prohibitory injunction, restraining a public authority from. Continuing to act unlawfully) and a declaration (stating what the law is).

³¹ *Ibid*

³² *R v Inland Revenue Commissioners ex parte National Federation of Self-Employed and Small Business Limited* [1982] AC 617 as mentioned in Sinha, Govind Narayan, ‘Judiciary and Environment’ in A comparative study of the environmental laws of India and the UK with special reference to their enforcement (the University of Birmingham Research Archive: 2003) pp 160-203.: in which Lord Diplock said: “It would, in view be a grave lacuna in. our system of public law if a pressure group, like the federation, or even a single public spirited taxpayer, were prevented by the outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law get the unlawful stopped.”

³³ *R v Inspectorate of Pollution, ex parte Greenpeace Limited* [1994] 4 All ER 329 and *R v Secretary OF State for Foreign and Commonwealth Affairs, ex parte World Development. Movement Limited* [1995] 1 WLR 386 as mentioned in Sinha, Govind Narayan, ‘Judiciary and Environment’ in A comparative study of the environmental laws of India and the UK with special reference to their enforcement (University of Birmingham Research Archive: 2003) pp. 160-203.

³⁴ Human Rights Act, 1998: The Bill of Rights was introduced in the UK Parliament in 2022 to replace the Human Rights Act, 1998 but it was scrapped in 2023 (see: <https://bills.parliament.uk/bills/3227>). It would have changed or removed provisions of the HRA and introduced a large number of new measures including new permission stage. Requiring claimants to prove they have suffered significant disadvantage as a result of a breach of their rights before they can take their claim to court.

writes that in two other cases³⁵ in the Garnett case, the court required a special interest in the matter of challenge, but in the Dixon case, the decision of the Pergau Dam case was reaffirmed, and the law on the standing was liberalised, in spite in both the cases facts are same but verdicts came to be different. The trend is now that standing to an environmental group is granted unless the applicant is a busybody or troublemaker.³⁶ Most concern in the environmental field in the public interest has focussed on the decision in the Rose Theatre Trust Case³⁷, which put a restrictive approach in the litigation of public interest. Thus, the general trend in the UK is that applicants with a sound point of view are normally granted standing in public interest matters as they pass a test of sufficient interest. English judges have made significant contributions in locus standi matters when environmental organisations are involved. While local interest groups have been granted standing in environmental matters, the position of general environmental groups is more complex. English public law does not inherently recognise standing for environmental pressure groups, but the judiciary has sometimes allowed it when groups act in the public interest. There has been some uncertainty in the granting of standing, with different decisions in cases with similar facts. However, the trend seems to be more favourable towards granting standing to environmental groups, unless the applicant is seen as a busybody or troublemaker.

Now, coming to India, where the Courts seem to play a proactive role in protecting the environment in recent times. Environmental matters are generally public as they affect the public at large, and it is also a general rule that only the affected person can seek remedy from the court of law. The concept is based on the proposition that remedies are always associated with rights³⁸. However, there is a concept called public interest litigation (PIL), according to which any public-spirited person can file a case in a court of law for the enforcement of public rights, and it is not mandatory to prove his claims. PIL can be filed under Article 32 and Article 226 for the enforcement of fundamental rights. Indian courts welcome several PILs when it comes to the protection of the environment and provide remedies under writ jurisdiction.

³⁵ R v N Somerset District Council, ex parte Garnett and R v Somerset County Council, ex parte Dixon as mentioned in Sinha, Govind Narayan, 'Judiciary and Environment' in A comparative study of the environmental laws of India and the UK with special reference to their enforcement (University of Birmingham Research Archive: 2003) pp 160-203

³⁶ Supra note 29.

³⁷ R v Secretary of State for the Environment, ex parte Rose Theatre Co [1990] 1QB 504 (as mentioned in the work) as mentioned in Sinha, Govind Narayan, 'Judiciary and Environment' in A comparative study of the environmental laws of India and the UK with special reference to their enforcement (University of Birmingham Research Archive: 2003) pp 160-203.

³⁸ Singh, Sukhwinder, 'Sentry Approach of Judiciary for the protection of Environmental Pollution in India: A Bird's Eye View' (2019) 11 Dehradun Law Review 13-21.

The competing interest of industrialisation and preservation of ecology was reconciled by the Supreme Court by accepting the principle of ‘Sustainable Development,’ which as a concept came to be known in the international sphere for the first time in the Stockholm Declaration of 1972.³⁹ Thereafter, ‘the Precautionary Principle’ and ‘the Polluters Pay Principle’ were developed as essential ‘Sustainable Development’ features.⁴⁰ In *M.C. Mehta v. Kamal Nath*⁴¹, the court invoked the polluters’ payers principle in the exercise of its power under Article 32. The court elucidated the precautionary principle in *Vellore Citizens Welfare Forum v. Union of India*⁴². In the *Rural Litigation case*⁴³, the Supreme Court ordered the closure of several limestone quarries in Mussoorie hills and to allow others to continue operating under detailed conditions.

The Supreme Court continued with displaying its role in controlling environmental pollution by using its writ jurisdiction to entertain the petition in the case of *M.C. Mehta v. Union of India*⁴⁴, and the Supreme Court was called to evolve norms and principles for determining the liability of large enterprises engaged in the manufacture and sale of hazardous products and the basis on which damages, in the case of such liability, should be quantified. The court, however, allowed the defendant industry (*Shriram Food and Fertilisers Industries*) to restart temporarily after balancing out the welfare of the people and unemployment in case of closure, but the permission was granted quite reluctantly subject to the strict observance of the conditions laid down by the court.

In *M.C. Mehta (Ganga River) case*⁴⁵, the locus standi question was not disputed in the case as

³⁹ Hansaria, B.L., ‘Public Interest Litigation’ in Justice B L Hansaria’s *Writ Jurisdiction (3rd)* (Universal Law Publishing Co.: 2004) pp 528-556.

⁴⁰ Ibid

⁴¹ (2000) 6 SCC 213 as referred in Rao Mamta, ‘Dynamics and Trend of PIL in India’, in *Public Interest Litigation Legal Aid and Lok Adalats (5th)* (Eastern Book Company: 2018) pp163-191.: A person, therefore guilty of causing pollution has to pay damages for the restoration of the environment and ecology

⁴² (1996) 5 SCC 647 as referred in Rao Mamta, ‘Dynamics and Trend of PIL in India’, in *Public Interest Litigation Legal Aid and Lok Adalats (5th)* (Eastern Book Company: 2018) pp163-191.

⁴³ *Rural Litigation and Entitlement Kendra v. State of U.P* (1985) 2 SCC 431: “There was mining operation going in certain limestone quarries which causing environmental and ecological imbalance to the detriment of the welfare of the people Mussoorie hill ranges. SC considered balanced and resolved competing policies, priorities and issues of resources including the need for development, environmental conservation, preserving hills and protecting substantial business investments.

⁴⁴ (1986) 2 SCC 176 as referred in Rao Mamta, ‘Dynamics and Trend of PIL in India’, in *Public Interest Litigation Legal Aid and Lok Adalats (5th)* (Eastern Book Company: 2018) pp163-191.

⁴⁵ *M.C. Mehta v. Union of India* (1988) 1 SCC 471 as referred in Rao Mamta, ‘Dynamics and Trend of PIL in India’, in *Public Interest Litigation Legal Aid and Lok Adalats (5th)* (Eastern Book Company: 2018) pp163-191: related to water pollution in the Ganga River, a writ petition was filed to draw the attention of the court towards the nuisance caused to the people by the pollution of the river Ganga. Even though there was government legislation imposing a duty on Central and State Boards under the *Water (Prevention and Control) of Pollution*

the petitioner was a person interested in protecting the lives of the people who make use of water flowing in the river. The court, in this case, while protecting the river from pollution, held that the dairies should be shifted outside the city so that the accumulated waste does not reach the river.⁴⁶

In the case of the Indian Council case⁴⁷, SC, weighing the protection of the environment on the larger size, held that though the party is a private corporate body and the government authorities concerned have not taken action required to be taken by them as per law and their inaction is jeopardising the right of life of citizens of this country or any section of the thereof, the Supreme Court must intervene.

The legal landscape in India has witnessed a remarkable evolution in the context of environmental protection and the enforcement of fundamental rights. Public Interest Litigation (PIL) has emerged as a powerful tool, allowing public-spirited individuals and organisations to seek remedies in courts for the enforcement of public rights, particularly in matters concerning the environment. This progressive approach is firmly rooted in the Constitution of India. The use of Article 32 in environmental cases demonstrates that the enforcement of fundamental rights and environmental protection are intertwined. This holistic perspective aligns with the fundamental principle that fundamental rights must come with effective remedies for their enforcement, even in cases where the threat to these rights is imminent rather than realised.

INDIA'S EXPRESSIVISM IN ITS OWN CONTEXT

Though India has adopted the writ jurisdiction from its colonial master, the UK still differs in their application. The true strength of the remedies in India is that they take their foundations from English law but are not constrained by any historical issues that arise in their development.⁴⁸ Power under the Article is wide and not confined to issuing prerogative writs

Act, 1974, they were unable to take proper measures.

⁴⁶ Immediate action is to be taken by the Municipality to construct sufficient latrines and urinals for the poor. Directed that High Courts should grant stay under section 482 CrPC only in extraordinary circumstances as it stalled the proceeding taken to prosecute industrialists or other persons who pollute rivers. To take measures so that dead or half-burnt bodies are not thrown into the river

⁴⁷Indian Council for Enviro-Legal Action v. Union of India (1996) 3 SCC 212: "The untreated industrial waste through chemical waste posing threat to the environment. The untreated water was allowed to flow out freely causing supply of water turning streams dark and dirty rendering it unfit for human consumption." As referred in Rao Mamta, 'Dynamics and Trend of PIL in India', in Public Interest Litigation Legal Aid and Lok Adalats (5th) (Eastern Book Company: 2018) pp163-191.

⁴⁸ Supra note 12

only.⁴⁹ HM Seervai⁵⁰ mentions in his book, “Although the English prerogative writs have been mentioned by the name in articles 32 and 226, in certain situations, they operate differently in England and India”. The strength of the prerogative remedies lies in the fact that in India, the jurisdiction provided by the Constitution cannot be taken away or modified in any manner short of amendment of the Constitution.⁵¹ The Indian drafters appreciated the inherent problems with the prerogative remedies when drafting and so allowed the application of the Articles to be flexible in nature.⁵²

Prachi Oza⁵³ writes that the way this concept as a legal concept has evolved in both these countries, the UK supposedly being very rich, powerful, and developed and India still developing, is quite shocking in the way that despite originating in the UK, writs and writ jurisdiction have not been able to have a stronghold in the state as of today, but in India, are effective, widely used and timely updated – India, a colony of UK, now outdoing UK in the very same field, that it originated and gave birth. She further the reasons for it. Firstly, India, because it has taken the somewhat quite developed form of writs and writ jurisdiction from the UK, did not have to deal with the vast changes that the UK faced since the inception of writs. Secondly, because India is not rigid in the way it lets its laws develop, it allows them space to evolve and ensures timely checks on such mechanisms to make sure that systems (justice delivery) are revised as per the need of the hour. Lastly, the judges of the courts of India are constantly making efforts to make the Indian judiciary, and especially the judicial review system, more effective and efficient with all their judgments.

Despite India's adoption of this legal concept from its colonial ruler, the UK, several key distinctions are there. Firstly, in India, the power under Articles 32 and 226 is broader in scope, extending beyond issuing only prerogative writs. This allows Indian courts to review a wider range of issues, including legislation and executive actions, which is not the case in the UK, which has a unitary constitution where Parliament holds supremacy. Secondly, India has

⁴⁹ Pal Samaraditya, ‘Article 32’ in India’s Constitution Origins and Evolution Volume 3 (Lexis Nexis: 2015) 459-498.

⁵⁰ Supra note 23

⁵¹ Ibid.: With the doctrine of Parliamentary Sovereignty in England, in general no executive action sanctioned by an Act of Parliament can be void by a Court. In addition, Parliament may also be able to jurisdiction of the Courts over certain matters. In India, however, it itself enshrines in Articles 32 and 226 the jurisdiction to issue writ of the prerogative remedies in the Supreme Court and the High Courts.

⁵² Supra note 12: In England, this had not been the case, until the reforms of Order 53 were introduced, highlighting the ability of the drafters to take the English idea and mould it to the India constitution.

⁵³ Supra note 13.

demonstrated greater flexibility and adaptability in allowing its legal concepts, including writs and writ jurisdiction, to evolve. This adaptability has ensured the continued relevance and effectiveness of the Indian system, while the UK's legal framework remains relatively rigid. Furthermore, Indian judges have played an active role in enhancing the country's judiciary and the judicial review system through their judgments. This proactive approach to improving the legal system may not be as prominent in the UK.

CONCLUSION

Comparative constitutional law is often used for purposes of self-reflection through analogy, distinction, and contrast⁵⁴. Alan Watson's⁵⁵ core claims centred around the transfer of rules between legal systems, which is a primary driver of legal change and potentially divorcing law from its societal context. Pierre Legrand⁵⁶, in response, presents a compelling critique of Watson's ideas, emphasizing that legal rules are not mere "bare propositional statements." Instead, they encompass a rich cultural context, influenced by historical and ideological factors, and are embedded in the intangible frameworks that guide interpretive communities. In conclusion, we can observe this, as India inherited the concept of writ jurisdiction from the UK through its historical connection, but their approaches diverge significantly. The UK's legal system emphasises the need for individual or specific group standing in environmental matters, while India employs a more expansive and inclusive approach through PILs, ensuring that the protection of the environment is accessible to all citizens. This comparative study establishes how legal mechanisms, even when sharing a common origin, can evolve differently to address contemporary challenges, emphasizing each nation's unique role in environmental protection through their respective writ jurisdictions.

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⁵⁵ Watson, Alan, 'Comparative Law and Legal Change', (1978) 37 The Cambridge Law Journal pp. 33-336.

⁵⁶ Legrand P., 'The Impossibility of Legal Transplants', (1997) 4 Maastricht J. Euro. & Comp. L. pp. 111-124.

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