




Analyzing the Writ Jurisdiction of High Courts: A Case Study from Pakistan

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ABSTRACT

The primary and the most important function of judiciary in a country is to establish the rights of the citizens and to safe guard the same. And thus, to enforce the fundamental rights laid down in the constitution. In Pakistan, the judiciary either higher or the subordinate performing the same functions with true sprite, following the constitution and the statutory laws to ensure that every citizen is guaranteed his fundamental rights in light of Article 9 of the Constitution of Islamic Republic of Pakistan. In this research paper, the role of high courts will be discussed under article 199 of the constitution, and this research paper will unfold the power of high courts to enforce fundamental rights. In this paper, the writ jurisdiction of the high court will be explained related to the establishment of fundamental rights.

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1. Introduction

In the current circumstances, the citizens of Pakistan must know that how the courts protect their fundamental rights. The current instability in the country especially after the event of 9th may 2023, many people were detained under 3MPO, and most of them belong to lower middle class who never had an interaction with the practical laws. Unfortunately, in our country, only the law students study the laws, and rest of the citizens does not even know the definition of fundamental rights. This paper will unfold the ways through which an ordinary citizen can knock the doors of the high court if he is deprived of any of his fundamental right. Since birth, man is striving very hard for his fundamental rights, all the codified constitutions may be ancient or the modern talks about the fundamental rights, Islam, is the religion which uniquely and for the very first time gave the concept of written constitution and included the fundamental rights in the charter of Medina (the pact between Muhajereen and the inhabitant Jews of Madina).

Same were explained in the last sermon of the holy prophet. Magna Carta in 1215, was a document especially drafted to ensure the human rights, American bill of rights and first 10 constitutional amendments were done to achieve the same goal, and that is the establishment of fundamental rights. In Pakistan, the constitution of Islamic republic of Pakistan 1973, provide the fundamental rights, article 6 to article 26, fundamental rights are laid down and courts ensure them accordingly. The primary and the most important responsibility and the function of the judiciary is to ensure the fundamental rights of her inhabitants and the residents, and take actions if the citizens are deprived of the same, even if the likewise act be done by any organ of the state, or by the state functionaries or by the government or may be any law enforcing agency. Courts are custodian of the rights of the

citizen, and they shall act against any authority acting resecrocative and against to the constitution. The judiciary implement the constitution in any circumstances with the slogan that let the justice be served though the heavens fall.

2. Methodology

This research paper is mainly based on literature review, collection and compilation of already available material. By arranging the findings and perspectives from many judges of apex courts in the shape of case law, this research is based on the already existing laws and this paper will provide the readers understanding about that laws and would guide the general public that how they can get help from these laws. This paper can address research questions with a power that no single study has.

3. Writ Jurisdiction of the High Court as Per Article 199 Constitution Of Pakistan

Article 199 speaks as:

(1) According to the Constitution, a High Court has the authority to take action if it determines that there are no other suitable legal remedies available.

An order may be passed at the application of any person or party who is aggrieved.

1. To a person or an authority doing some act against which the application was made to refrain from that act.
2. Declaring any proceeding by any federal, provincial or local authority to be illegal or against the law and may pass appropriate order to stop the same.
3. May order to bring a person before the court who is said to be in the custody of any private person on a law enforcement agency, if the detention appears to be against the law, or in result of using excess of authority or jurisdiction.
4. May order a public office holder to appear before the court and satisfy the court that under which authority he holds that office and using the authority
5. May make orders against any public or private authority or even against a government in case of infringement of fundamental rights of a person or public at large
6. May make appropriate actions for the enforcement of fundamental rights.

3.1. The Type of Writs under Article 199

The Constitution of Pakistan grants authority to the esteemed high courts to issue and handle Writs in order to guarantee the implementation of fundamental rights. There are five primary sorts of Writs: (a) Habeas Corpus, (b) Mandamus, (c) Certiorari, (d) Prohibition, and (e) Quo-Warranto.

3.1.1. Habeas Corpus

The term in question is derived from Latin and translates to "you may have the body." This judicial writ serves the objective of freeing an individual who has been unlawfully detained, either by state authorities or by a private individual, in violation of legal procedures or international law. If the courts determine that such detention is illegal, they promptly issue orders for the immediate release of the individual. This is the most efficacious remedy for an individual who is unlawfully held by the government or state agents without any justifiable basis. A writ specifically crafted to compel an individual's appearance before a court. Section 491 of the Criminal Procedure Code (Cr.P.C) contains identical provisions, wherein the legislation articulates.

That the high court may pass the orders of the nature of habeas corpus whenever it deems necessary, in the following conditions

1. When a person is illegally detained or arrested by any private person or any law enforcement agency without a lawful excuse and the liberty of the same person is required

2. When a prisoner kept in jail is required by the court to be produced as a witness.
3. When the courts need to change the custody, and needs to shift the same
4. The courts of the sessions Judge and the extra sessions judge has identical powers and may exercise them accordingly.

Case Laws and authorities
PLD 2009 (Lah). Page # 344

The writ of Habeas Corpus is a legal document used to present an individual before a court, typically to verify the lawfulness of their incarceration or detention. The writ can be utilized not only to assess the lawfulness of an arrest or commitment, but also to scrutinize (1) the procedural regularity of the extradition process, (2) the entitlement to bail, and (3) the jurisdiction of a court that has pronounced or issued a criminal sentence.

PLD 2009 SC 507

Any type of imprisonment is subject to legal action under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, as well as section 491 of the Criminal Procedure Code. The writ of habeas corpus, which has ancient origins and is distinct from other prerogative writs, is a matter of rights rather than simple discretion.

2009 YLR 2475

The high court has the authority to grant a writ of habeas corpus if it determines that the detention of an individual violates Article 9 and 10 of the constitution.

When the courts may issue Habeas Corpus?

AIR 1964 SC 381

Where the law under which the order of detention has been made by subordinate legislation, which is ultra vires or is otherwise invalid, e.g. owes to excessive delegation.

AIR 1953 SC 10

Where the law under which the order of detention has been made is un constitutional, having contravened a fundamental right.

AIR 1954 SC 179

Where any of the ground upon which the order was made is invalid or irrelevant.

PLD 2009 SC 507

No law authorizes a private individual to keep a person who is sui juris in his private custody and article 199 applies to all forms of public and private custody.

3.1.2.Mandamus

Mandamus is a legal term that signifies a command or order. Mandamus is a legal directive issued by a superior court to a lower court, tribunal, public office, or private institution, commanding them to fulfill a statutory obligation. This order, issued by the esteemed High Court, compels the subordinate court, state, corporation, or other institution to carry out a specific duty. This command of the supreme court ensures the execution of that particular legal obligation (Habib, 2020).

Objectives and scope of the writ of Mandamus
AIR 2004 SC 1402

The primary purpose of the writ of mandamus is to avert chaos that may result from a lack of justice. It is awarded when there is no specific remedy provided by the law and when justice has not been granted notwithstanding a demand by the aggrieved party.

PLD 2004 Kar 728

A writ of mandamus is typically used to compel officials to carry out a clear, definite, precise, and non-discretionary action that is already required by law. This writ is sought when there is no other appropriate legal remedy available and failure to take the action will result in a miscarriage of justice. Mandamus does not establish a new governing body and is not considered a legal statute or a primary legal source.

2001 CLC 820

Writ of mandamus provide safeguard to the rights of the general public and citizens of Pakistan same was explained in the above-mentioned case law in the words as writ of mandamus can only be issued in respect of legal rights and in the absence such rights petition is not competent.

Writ of Prohibition

A writ of prohibition is a directive that instructs a lower court or authority to cease a proceeding in a case, based on the argument that the proceeding lacks jurisdiction or violates the law of the land. Proceedings can be deemed to lack jurisdiction if they violate certain laws or principles of common law. Therefore, the writ of restriction is applicable in such cases when there are ongoing legal processes (Pardesi, 2012).

PLD 2014 Sindh 367

The writ of prohibition safeguards an individual from any act done by an inferior court, judicial or quasi-judicial authority working or acting against that person and exceeding from its jurisdiction or authority. Prohibition is the power or authority provided by the constitution to the honorable high court to prevent the lower courts, judicial or quasi-judicial authorities from acting in an excess to the lawful jurisdiction, and provide safety to an individual or a private person against an act done against him by any court, judicial or quasi-judicial authority which is not in accordance to law.

Prohibition works as a "STAY ORDER"

Prohibition refers to the act of forbidding or stopping something. The writ of prohibition, also known as a "stay order," is issued by a higher court to a lower court. It prohibits the lower court from proceeding with a case beyond its jurisdiction, without proper legal authority, or from assuming a jurisdiction it is not legally entitled to. The purpose of this writ is to enforce the subordinate courts to adhere to the boundaries of their jurisdictions (ARAÚJO, 2020; Javed, Jianxin, & Khan, 2021).

Prohibition When issued?**PLD 2003 Pesh 114**

If it is evident from the lower court procedures that there is a complete lack of jurisdiction, the high court will issue a prohibition. However, the petitioner of the legal document has given consent or passively accepted the jurisdiction exercised by the lower court. A prohibition is granted in cases where the absence of jurisdiction is evident, despite any agreement to the contrary. This is done to prevent the case from setting a precedent if it is allowed to stand without challenge.

3.1.3. The Writ of Certiorari

Certiorari refers to the process of obtaining certification. Certiorari is a legal mechanism used to elevate the decisions made by lower courts or tribunals to the higher court for examination and review. If the decision fails to meet the criteria, it is invalidated. And deemed entirely void. This policy is designed to ensure that the lower courts have restricted jurisdiction and that this jurisdiction must be strictly adhered to within the boundaries of the law (ARAÚJO, 2020; Khan, Iqbal, & Ahmad, 2022).

The writ of certiorari, as provided for in Article 199 of the constitution, is utilized to rectify significant jurisdictional errors. The initiation occurs when the subordinate court is determined to have behaved in the following manners.

1. Acted without any jurisdiction, by assuming jurisdiction in a false manner, where it has not the said jurisdiction in accordance with law.
2. Acted in excess of jurisdiction, by crossing its lawful limits exceeding its authority.
3. Acting against the law, against the procedure given by the law, in violation with the principles of natural justice, and causing failure to justice.
4. High court can issue writ of Certiorari in all cases of jurisdictional errors or illegalities.

3.1.4. The writ of Quo Warranto

Quo Warranto refers to the inquiry into the authority or justification behind a certain action or position. A writ is filed to prevent an individual from assuming a government position for which they lack legal eligibility. The writ mandates the individual in question to provide the court with a clear explanation on the authority by which they now occupy the mentioned position. If an individual has wrongfully seized a public office, the court has the authority to issue an order prohibiting them from assuming or performing any duties associated with the office, and may declare the office to be unoccupied. Therefore, the supreme court has the power to issue a writ of quo warranto if an individual continues to hold a public post without legal permission or after reaching the retirement age (Hussain, Khan, & Chandio, 2023; Sheoran, 2021).

The following events or actions that took place Warranto grants the judiciary the power and authority to oversee executive actions related to the appointment of individuals to public office, ensuring compliance with applicable statutory provisions.

2015 CLC 120

The writ petition of quo warranto empowers the court to investigate the legitimacy of a person's authority or the legal basis under which they hold a public office. This process is primarily investigative rather than adversarial, as the petitioner does not need to be personally affected. The rationale behind this is that when a person holds a government office without legal authority, they burden the general public and infringe upon the rights of those who are eligible for the office according to the law. Therefore, any person, regardless of whether they are directly affected, can file a writ of quo warranto. The challenger simply needs to present the facts to the court regarding the government office holder. It is the court's responsibility to investigate the allegations made by the petitioner against the public office holder. As the custodian of taxpayers' rights, the courts are obligated to protect against the misappropriation of public funds.

PLD 2013 Lah. 343

Article 199 (1)(b)(2) of the constitution grants the high court the power to inquire of a public office holder the basis on which they claim their authority. If the office holder exceeds his authority or lacks jurisdiction, the high court has the authority to issue appropriate orders in response.

2010 PLC (c.s) 1023

A writ of quo warranto is a form of public interest litigation that aims to rectify a wrongdoing or uphold a right on behalf of society or as a matter of principle, rather than for personal gain.

4. Conclusion

The residents of Pakistan are fortunate to possess a distinctive and all-encompassing constitution that ensures and protects the fundamental rights of its citizens in a genuine manner. The constitution explicitly enumerated the essential rights in its initial section. The courts are diligently carrying out their duties with enthusiasm and determination, ensuring that justice is served even if it means facing dire consequences. Like Americans and other nations, Pakistan has also made significant efforts to attain their fundamental rights. The

1973 constitution of the Islamic Republic of Pakistan not only grants these rights, but also ensures their enforcement. In case of any violation, appropriate remedies are available. Article 199 of the constitution is invoked when a private individual, who is a citizen of Pakistan, experiences a violation of their rights at any point. In Pakistan, we are fortunate to have a constitution that includes a set of rights, referred to as "fundamental rights," which are explicitly protected. The fundamental rights outlined in Articles 9 to 28 of the constitution possess significant strength, allowing them to invalidate any action taken by the executive, authority, or even legislation passed by the parliament if they violate these fundamental rights. This authority is granted by Article 8 of the constitution. The teaching of the constitution is absent from the curriculum at both the school and college levels in Pakistan. The general populace lacks awareness regarding the extent to which the legal system safeguards their fundamental rights. Therefore, this article serves as a concise educational resource for anyone seeking knowledge on how to approach the High Court in cases of rights infringement.

Authors Contribution:

Gohar Masood Qureshi: provided assistance throughout the entire article writing process and conducted proofreading.

Anum Shahid: assumed the role of the corresponding author, played a key role in addressing funding gaps, and recommended directions for further research.

Faiza Chaudhary: reviewing the article and making necessary revisions to ensure compliance with the journal's formatting requirements.

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