



## Analyzing Practical Application of Writ Jurisdiction and its Legal implications in Pakistan

Farah Amir<sup>1</sup>, Shahzada Aamir Mushtaq<sup>2</sup>, Humera Nawaz<sup>3</sup>, Shabnam Shahab<sup>4</sup>

<sup>1</sup> Assistant Professor, Department of Law, The Islamia University of Bahawalpur, Pakistan.

Email: farah.amir@iub.edu.pk

<sup>2</sup> Assistant Professor, Department of Law, Times Institute Multan, Pakistan. Email: amirqureshi.adv@gmail.com

<sup>3</sup> Lecturer, Department of Law, The Islamia University of Bahawalpur, Pakistan. Email: farah.amir@iub.edu.pk

<sup>4</sup> Assistant Professor, Department of Education, Times Institute, Multan, Pakistan. Email: drshabnam725@gmail.com

### ARTICLE INFO

#### Article History:

Received:	April	23, 2024
Revised:	June	22, 2024
Accepted:	June	24, 2024
Available Online:	June	26, 2024

#### Keywords:

Supreme Court  
High Court  
Writs  
Constitution  
Rule of Law  
Pakistan

#### Funding:

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

### ABSTRACT

This study aims to stipulate the legal experiences of Pakistan, United Kingdom (UK), and India by mainly presenting the modifying patterns in Pakistan's legal system and the relatively easy method to maintain the Law of Writs. Therefore, the theories and doctrines presented by these jurisdictions are considered to analyze the differences and similarities in the identified legal environment. To initiate the investigation, the legal frameworks of Pakistan, the UK, and India are examined through seminal theories constituting the principles of law. In that respect, the paper aims at presenting an account of the various sources and background information associated with the formation of each jurisdiction's law. Moreover, the research also focuses on how the originality of legal theories in the context of Pakistan has been changed or influenced by the condition of this country cultural, socially and politically. It examines how Pakistan has borrowed theories and doctrines from the countries such as UK and India but has tweaked them to fit its needs and dreams. Thus, these deviations give rather helpful information about the progressive legal development in Pakistan as well as its peculiar way of experiencing theory of law. One of the key aspects of this comparison is based on the maintenance of the Law of Writs largely with specific reference to Pakistan's situation in contrast to the other two countries, namely the UK and India. Thus, the study examines the procedural features, scope, and efficacy of the writs in the jurisdictions under study with the focus upon similarities or differences. Specifically, this research measures the Law of Writs in the legal structure of Pakistan concerning the pursuit of justice and protection of human rights. Reading the state of Pakistan's legal system side by side with the UK and India, it considers altering phrasing related to changes in patterns and maintenance of the Law of Writs. The research thus gives valuable understanding of the special characteristics of Pakistani law, how this system has developed and the extent of the country's dedication to personal freedoms. This paper also explores the historical development of prerogative writs in Pakistan and their amalgamation during the British colonial invasion, as well as the formal inclusion of pray writs in the Pakistan's constitution. This will address criticism of restrictions placed on these writs under the 1962 and 1973 Constitutions and the military's non-subjection to these constitutional provisions.



© 2024 The Authors, Published by iRASD. This is an Open Access article under the Creative Common Attribution Non-Commercial 4.0

Corresponding Author's Email: [amirqureshi.adv@gmail.com](mailto:amirqureshi.adv@gmail.com)

Citation: Amir, F., Mushtaq, S. A., Nawaz, H., & Shahab, S. (2024). Analyzing Practical Application of Writ Jurisdiction and its Legal implications in Pakistan. *Current Trends in Law and Society*, 4(1), 174-188. <https://doi.org/10.52131/ctls.2024.0401.0043>

# 1. Introduction

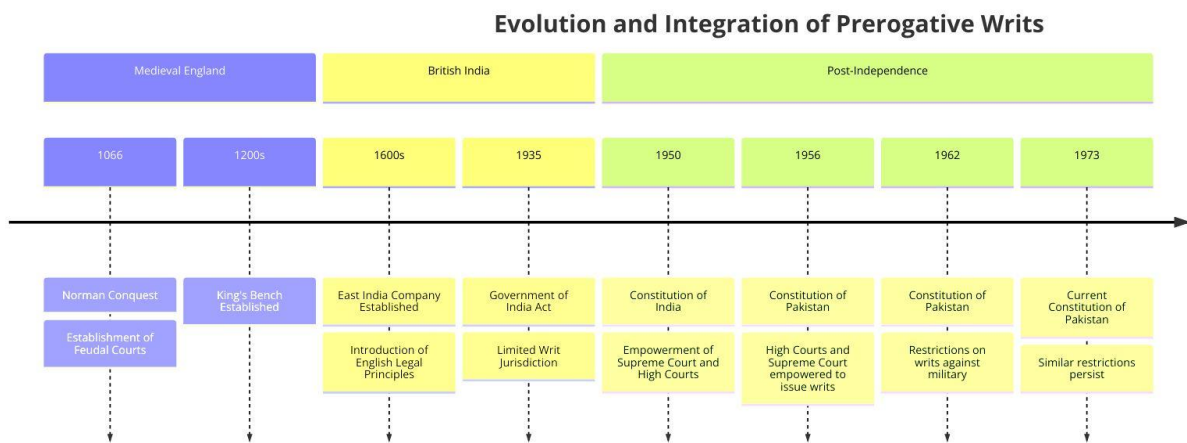
The paper briefly discusses the types of writs and their origin and development of the prerogative writs in early Medieval England; it briefly discusses their respective functions under the Pakistani legal system; this paper discusses the constitutional framework of the prerogative writs under the Pakistani legal system from the time of British India till today and how said constitutional framework developed. It discusses who can file a writ and against whom a writ can be filed (Munir, A. I. (2024).

For the present 1973 Constitution, Article 268(1) of the same provides for the continuance of existing law. The High Court's powers to issue writs were incorporated in the then 1956 Constitution under Article 170, which provided that the High Courts had the power to issue any directions, orders, or writs of certiorari, mandamus, quo-warranto, prohibition, habeas corpus to any person or authority, including the government, in appropriate cases for the enforcement of fundamental rights conferred by Part II of the Constitution.

This paper explores the origin and development of five prerogative writs in Medieval England, focusing on their functions and the British incorporation of them into ordinary legislation. The writs were initially limited under ordinary legislation, but were later incorporated into the old Governing Act, 1956, and 1962 Constitutions. The 1962 Constitution further restricted writs, including no alternate remedy, locus standi for certiorari, prohibition, and mandamus, and the freedom of defence forces from having a writ issued against them.

The origin of writ jurisdiction is traced back to Anglo-Saxon jurisprudence after the Norman Conquest. William, I established a superior version of the Anglo-Saxon judicial system, with feudal courts and local courts intertwined. The original 'writ' was a written directive from the King, addressed to royal officials or individuals. However, it was abused by people misrepresenting facts, leading to alternative solutions such as proper advice or bringing the wrongs before the King.

During Anglo rule in India, the British legislated governing acts, including the Government of India Act, 1935, which did not grant the High Courts powers of writ jurisdiction. The Pakistan (Adaptation of Existing Laws) Order, 1947, was an expected adaptation that included provisions for the continuance of existing law. Article 223A of the Government of India Act, 1935 granted the High Court extra-ordinary and exceptional jurisdiction on a High Court.



This analysis examines the legal principles governing writs in the UK, India, and Pakistan. A writ as an element of the concept derives from the English common law as a tool offering a grievance against unlawful actions by officials. Over time they have become core legal tools and bear immense constitutional relevance after the 1215 Magna Carta. The present Indian legal system owes its writ jurisdiction to the British, stems from article 32 and 226 of constitution of India which vests Supreme Court and High Courts of India with power

to issue writs for the enforcement of the fundamental rights and other legal rights (Munir, A. I. (2024).

Pakistan got its legal system from the British Indian law that formed the foundation for the principles of writ jurisdiction. The Constitution of Pakistan also offers exercise of the writ jurisdiction through articles 199, and 184(3). However, the implementation and efficacy of the writs in Pakistan depend on the political turmoil, judicial autonomy, and socioeconomic issues in the country (Batool, U. (2024).

The UK, India, and Pakistan have established foundational types of writs, including Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo warranto. Habeas corpus is a fundamental principle of the English common law system, while mandamus deals with public officers and requires them to fulfill their obligations. Prohibition prevents inferior courts from encroaching on jurisdiction that is not allocated to it, while certiorari addresses jurisdiction-invading actions by lower courts. Quo warranto is a petition questioning the validity of someone's occupancy of a public office.

The Supreme Court of Pakistan has been criticized for its power to issue writs of quo-warranto and mandamus, which were issued by the Sindh Chief Court. This decision was made in the case of *Dr. Sher Bahadur Khan v. Government of West Pakistan*, PLD 1956 (W.P) Peshawar 77, 88. The power of the Supreme and High Courts to issue the same writs was incorporated within the Laws (Continuance in Force), Order, clause 2, sub-clause (4), promulgated and enforced by a military dictator.

The power of the High Courts to issue writs was incorporated into Article 98(2) of the 1962 Constitution, but it had certain restrictions. Under the current constitutional framework, High Courts can issue writs of mandamus, quo warranto, certiorari, habeas corpus, prohibition, and other writs. Article 184(3) of the 1973 Constitution allows the Supreme Court to exercise orders of the same nature without prejudice to the same Article provided there is a question of public importance with reference to the enforcement of fundamental rights involved. The Pakistani Constitution consists of five types of writs: Habeas Corpus, Quo-Warranto, Prohibition, Certiorari, and Mandamus. The 1973 Constitution allows either a "person" or an "aggrieved person" to apply for a writ. Prerogative writs are a product of the common law development of Medieval England, with five types: habeas corpus, quo warrant, certiorari, prohibition, and mandamus. The Government of India Act, 1935 did not grant any court the power to issue prerogative writs, but the current constitution has incorporated the power to issue writs to the High Court and Supreme Court in Articles 199 and 184(3) of the same respectively.

## **2. Literature Review and Theoretical Framework**

### **2.1. Historical Development of Prerogative Writs:**

The origin of prerogative writs can be traced back to Anglo-Saxon jurisprudence, with significant formalization following the Norman Conquest of 1066. Early writs were royal commands aimed at ensuring swift justice and maintaining order in the feudal system. Over time, these writs evolved into sophisticated judicial tools, administered by the King's Bench and other courts established under the common law tradition (Munir, A. I. (2024).

### **2.2. Prerogative Writs in British India**

During British colonial rule in India, the prerogative writs were selectively integrated into the legal system, initially under ordinary legislation rather than constitutional mandates. The Government of India Act, 1935, did not explicitly empower courts to issue writs, but such powers were recognized through various legal provisions and judicial interpretations (Inagaki, H. (2021).

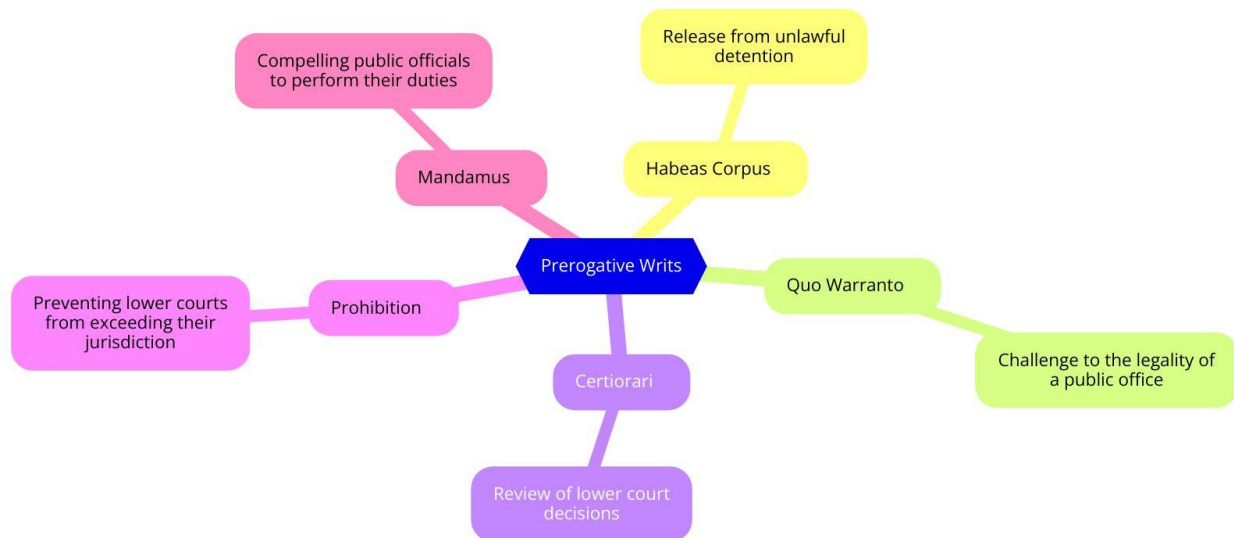
### **2.3. Post-Independence Constitutional Incorporation**

Subsequently to the independence, Pakistan adopted the Government of India Act, 1935 with the suitable modifications until it framed its own Constitution. Originally under the Constitution of 1956 it expressly invested the High Courts and the Supreme Courts original writ jurisdiction under Articles 170 and 22. Yet, the 1962 Constitution placed inexpressible

restraints on the common law, providing that no person may apply to the courts for a writ against military personnel or tribunals. These restrictions have been carried over to the present 1973 Constitution albeit that the writs are not specifically named (Munawar, C. S., & Mushtaq, M. (2022)).

## 2.4. Contemporary Challenges and Critiques

The exclusion of military personnel and related tribunals from the jurisdiction of prerogative writs is an issue of the rule of law and equals protection. Opponents state that such omissions are anti-democratic and erode the non-weaponization of law while carving legal dissimilarities between civilians and the military. Furthermore, though qualified, the concept of locus standi in matters of some of the writs while dismissing in others remains complex and limits the opportunity of justice to every common citizen.

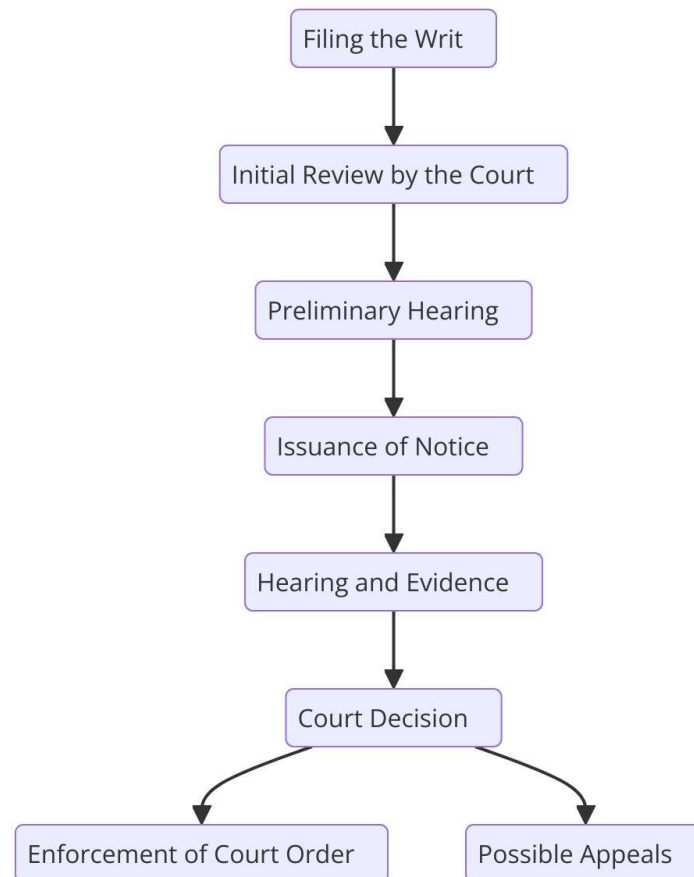


**Figure 1: Flow chart of Writs given under article 199 of the Constitution of Pakistan**

Despite the dire role they play in seeing that justice is served and abuses of authority checked, the prerogative writs present several problems in Pakistan's legal framework. Therefore, history proceeding from medieval England to the contemporary Pakistan reveals the essential interaction between the role of judiciary and the Constitutional restrictions. These aspects can only be solved by insightful understanding of traditions of legal systems and adherence to the principles of the rule of law to all the citizens including the military personnel. The present work aims to revise the dynamics of the law of writs from the aspect of the patterns and the aspect of ease of maintenance and how these changes affected the legal system of the country (Edwards, S. S., & Edwards, S. S. (2021)).

However, the legal evidential research on the law of writs or its maintenance ease developed by the author includes extensive analysis of the legal procedures of Pakistan, the United Kingdom, and India. Thus, being a layman, the author tries to be loyal to the Supreme Court and its responsibility of preserving the purity of the legal system and proper interpretation and application of the law (Riaz, S., & Begum, S. (2021)).

This research compares the legal theories in Pakistani, UK and Indian law frameworks mainly concentrating on the modifying patterns existent in Pakistan's judicial system and the ease of maintenance of the Law of Writs. Firstly, the Sections review the Pakistani and British, as well as the Indian legal system pillars and theoretical fundamentals. Thus, the paper aims at shine the light of various factors and early stages that impacted the formation of the legal system of each jurisdiction. Moreover, the research is also concerned with changes that were made to the imported legal theories when transplanted to the Pakistani context, in light of the country's culture, society, and politics.



**Figure 2: Flow chart of the Procedure to avail the remedy under given Writs**

That key concern of this discussion rests with the Law of Writs and whether it is easy to sustain in Pakistan more so as compared to the UK and India. It examines the various procedural issues, the extent and efficiency of the writ system in the various jurisdictions for comparison of commonalities and differences. In evaluating how easily Pakistan has been able to sustain the Law of Writs, this paper determines the extent of the Pakistanis' ability to seek justice and to protect their constitutional rights. Therefore, this comparative analysis propels the understanding of theories of Pakistan's legal system by comparing the UK and India. Through studying gradual changes in the patterns of the Law of Writs this research unveils the understanding of Pakistan's legal system, its development path, and its adherence to the principles of justice and protection of individual rights and actions (Smith, M. H. (2021).

Superior Courts, the Constitution of Pakistan, and fundamental rights comprise the foundation of the legal system in Pakistan. High court deals with the protection of rights of persons while the Supreme Court deals with protection of rights of the people as enshrined in the constitution. The writ jurisdiction is a tool and or order of the court that enables the Supreme Court to summon an individual or official or an authority to perform or forbear from doing something. All in all, this research fills the existing gap of understanding the legal system of Pakistan and its progress and standard regarding the rights of people and seeking justice. Thus, by analyzing the pattern of modification and the manner of retaining the Law of Writs in Pakistan, the study enables the achievement of the six research objectives that make a unique contribution to the overall understanding of the Pakistani legal systems and the Pakistan's recognition and protection of human rights and justice (Ahmed, N. (2021).

Therefore, the study seeks to determine if writs jurisdiction is sustainable in its concept and practiced in different countries among them being Pakistan. The power of Writ is essential for Pakistan as this is the tool which is twofold, if the judiciary abuse of this power then it is termed as Judicial activism and in case, the judiciary fails to use it where it should then it is termed as Judicial restraint (Hassan, M. (2023).

The investigation aims to assist judges, lawyers, students of law, and the average citizen in examining the action of any body and determining whether writ against such action

is maintainable or not. Maintainability of any writ petition also is discussed in this thesis. However, due to apparent writ limitations, the judiciary is unable to oversee all administrative adjudication.

A writ is a recognized composed order given by a body with administrative or judicial power, most often a court. There are numerous other kinds of writs, such as warrants, prerogative writs, and summons. A judicial writ of section, error, execution, writ of mandamus, return, and summons are examples of written documents issued by the appropriate authority under seal that direct the presentation or non-execution of some demonstration by the person to whom they are coordinated (Bayefsky, R. (2021).

The spread of English ordinary law depended on the courts giving writs that permitted individuals to go on with genuine exercises. In the long haul, courts used writs to organize different courts, sheriffs, and lawyers to do specific errands. In present day regulations, writs are mostly used by courts to allow for further conventional assistance, to award the concession of encouragement, or to give the sheriff authority to hold property.

The writ of habeas corpus is issued by a court with direction to a person who has confined the body of a person to bring him in the court so the court can determine whether his custody with him is legal or otherwise. Habeas writ ensures the basic rights of every person from illegally custody of any person and safes the rights of the citizen and individual person.

The mandamus is a unique writ issued by the superior court with specific directions to do or not to do a particular act. The writ of certiorari is an exceptional writ through which decision of lower court or government authority is reviewed. The writ of prohibition is another exceptional writ, sometimes known as the writ of forswearing, which is given for neglecting to play out a specific activity. The writ of quo warrant to is utilized to determine the authority of a person under what authority he is holding the office (Knopf, J. (2022).

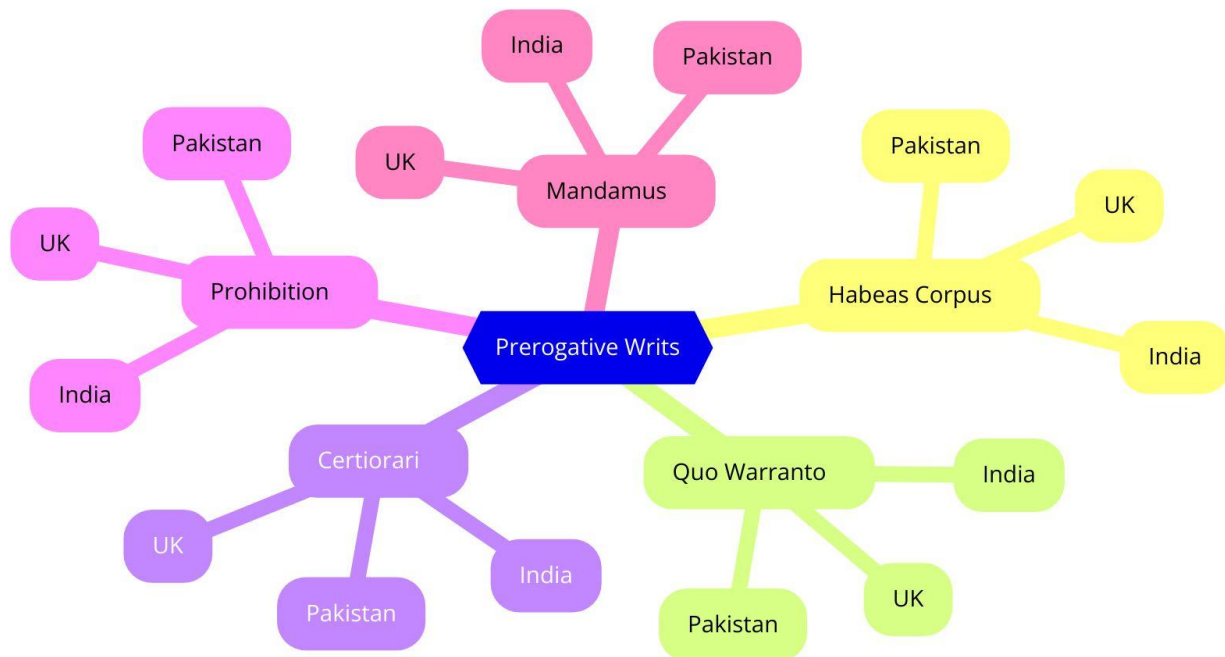
The struggle for independence in Pakistan was a significant event that led to the establishment of the constitution, which aimed to protect fundamental rights and ensure the fundamental common liberties of its citizens. The Supreme Court and the High Court have been instrumental in enforcing these rights, with the Supreme Court authorized to issue writs for the enforcement of basic rights under Article 184(3) of the Constitution.

The writ domain is crucial in enforcing fundamental rights, but it must be used with great care and caution. It is not enough that citizens have fundamental rights; it is more crucial that they have the ability to resort to the highest court (the Supreme Court) if these rights are violated. The 'Right to Constitutional Remedy' is an essential part of this system, as without it, fundamental rights would become simply like any other legal right.

Writs are orders or directions issued by a superior court directing a subordinate court to behave in a specific manner. They are intended to enforce a basic right that has allegedly been violated. This promotes democracy and individual liberty by protecting fundamental rights and enforcing those rights when they are violated. It assures that there is no abuse of process / power any authority, that no arbitrary power is used, and that people's constitutional rights are protected (Munir, A. I. (2024).

The Supreme Court and the High Court under their respective jurisdictions of law give any order or direction for the enforcement of the provided Fundamental Rights under Part 2 of the constitution of Uganda from Article 8 to 28 if any citizen is denied them. The Supreme Court of Bangladesh has the power to enforce the fundamental rights as per a specific provision of the Constitution under Article 184(3) so far as the writ jurisdiction is concerned.





**Figure 3: flow chart of comparative analysis of writs**

The nature and significance of comparative analysis for both academics and legal professionals can be seen from the current conditions in Pakistan concerning the raising numbers of writ petitions. These writs are applied to prevent the violation of rights by the state, in a way to prevent the excess of state authority, and to stop use of arbitrary authority on people’s basic rights as was provided under the constitution.

Law as an area of knowledge is very vast and fixed with different legal systems all over the globe differing from one country to the other. Comparative analysis is also important and essential in offering positive impacts and utilitarian values to the legal scholars as well as the practitioners in comparing as well as analyzing different legal theories, legal principles, and legal practices across the different jurisdictions. This essay aims at discussing the possibility of positive effects comparative analysis can bring to legal scholars and practitioners and its role in legal research, legislation, and education as well as the development of legal systems (Degan, V. D. (2024).

Comparative analysis offers legal scholars an opportunity to tackle a wider range of legal theories concepts and approach to the law so as to have a better perception of the law. A reason that it stimulates him or her to analyze and evaluate the own legal culture in comparison with others needs to be identified; thus it leads to more differentiated, innovative thinking. Due to the recognition of a wider range of approaches, providing policy-makers with new ideas, developing a better understanding of the contemporary tendencies of the legal systems, as well as harmonizing the improvement of the legal education, comparative analysis contributes to the depth and quality of the legal research and practice. It is useful for a number of reasons: it can help discover best practices, stimulate the creation of new legal solutions, and be part of the process of legal systems’ continuous development, which makes it a very valuable tool for academic and practical legal work aimed at enhancing the value of legal frameworks for society.

The origins of writs can be traced back to the English legal framework, which was developed from common courts to veritable courts of precedent-based law. The law of writs was an imperial order given under the Royal Seal, given because of a petition to the King in Council mentioning the utilization of extraordinary judicial authority in a particular case. Common law courts operated within a set framework subject to a few limits, and as a result, a number of instances fell outside the reach of precedent-based law courts. As a result, a request to the ruler in board to utilize extra-customary legal forces became a reason/ground for a request to the ruler in board to utilize extra-customary legal forces.

Writs were initially intended solely for the benefit of the crown but became available to ordinary residents over time. They were charged a regulated fee and used to establish imperial incomparability. William the Conqueror acquired the organization unaltered but extended it in two ways: they were generally written in Latin, rather than Anglo-Saxon, and covered a noteworthy assortment of illustrious positions and choices.

The history of writs in the Indo-Pak Subcontinent is closely connected to the East India Company, which was established by King James I of England in 1618. The British were authorized to rule under their own norms, but the Qazis were incompetent and incapable of administering justice to the Indian people. This led to the establishment of a permanent judicial authority for administering justice to the peoples within the geographical bonds of the East India Company.

In 1726, Mayor's courts were established at three Presidency Towns of Madras, Bombay, and Calcutta under the Charter of 1726. In 1753, these courts were remained as Courts of Requests by altering their nature. In 1773, the Parliament of Great Britain passed the Regulating Act to revamp the administration of the Company, leading to the formation of the Supreme Court of Bengal.

Later, two Supreme Courts were constituted in Madras and Bombay, each with the ability to issue prerogative writs. However, these courts were unable to function efficiently due to disagreements with the Company's directorial authority. The British Parliament intervened and enacted the 1781 constitution, which empowered the Supreme Court to deal with British subjects in Bengal along with jurisdiction of examining petitions and complaints against employees of the East India Company.

The Supreme Court and Sadder Adalat's in the Presidencies were abolished by the Indian High Courts Act, 1861, and powers to issue Letters Patent were given to Crown under the great seal of the United Kingdom to stiff and set up the High Court of Judicature at Calcutta, Madras, and Bombay. The High Court at Calcutta was formed and inaugurated as the High Court of Judicature at Fort William on July 1, 1862.

The 1862 Indian High Court Act was a watershed point in the advancement and development of the British legal system in the Indo-Pak Subcontinent. The Indian Act of 1874 was often referred to as a "half-segment" structure because of its endeavor to intervene itself. There was only provision in the law under section 45 of the Specific Relief Act 1935 that permitted the issuance of writs prior to the Government of India Act 1935.

In summary, the writ domain plays a vital role in protecting fundamental rights and ensuring the protection of these rights. The Supreme Court and the High Court have been instrumental in enforcing these rights, but their sustainability has been greatly influenced by the court's delay in removing writs. Comparative analysis can provide valuable insights into the complexities of the writ system and the potential benefits it offers for legal scholars and practitioners.

### **3. Comparative Analysis: UK, India, and Pakistan**

Even comparing the writ systems of UK, India and Pakistan certain likeness and differences can be drawing out. Preconditions of the writs stay same however the structure and functioning of the writ systems varies according to the jurisdiction and the legal and cultural environment of different nations. The UK has reformative amendments in the writ system while India & Pakistan have the classical writ system but with stringent provisions in the constitution. It indicates that different jurisdictions of the Canadian legal system differ somewhat in terms of how successful and easy they are to sustain writs because of the specific ways that posted judicial review and rights protection in each context.

#### **3.1. Contemporary Challenges**

There are several issues and challenges associated with the use and functioning of prerogative writs in today's legal frameworks. To some extent, equality of legal bookmark may be problematic in terms of accessibility and timeliness of the judicial remedies. The



intermediate appellate courts along with the high cost and time consumption of litigation can lead to inefficiency of the writs in addressing justice in the quickest way possible. Also, the exclusion of certain actions of military and the government from the jurisdiction of writs is not good for the principles of accountability and the rule of law (Racabi, G. (2022).

### 3.2. Constraints to the Application of the Spirit of Writs in Pakistan

#### 3.2.1. Jurisdictional Limitations

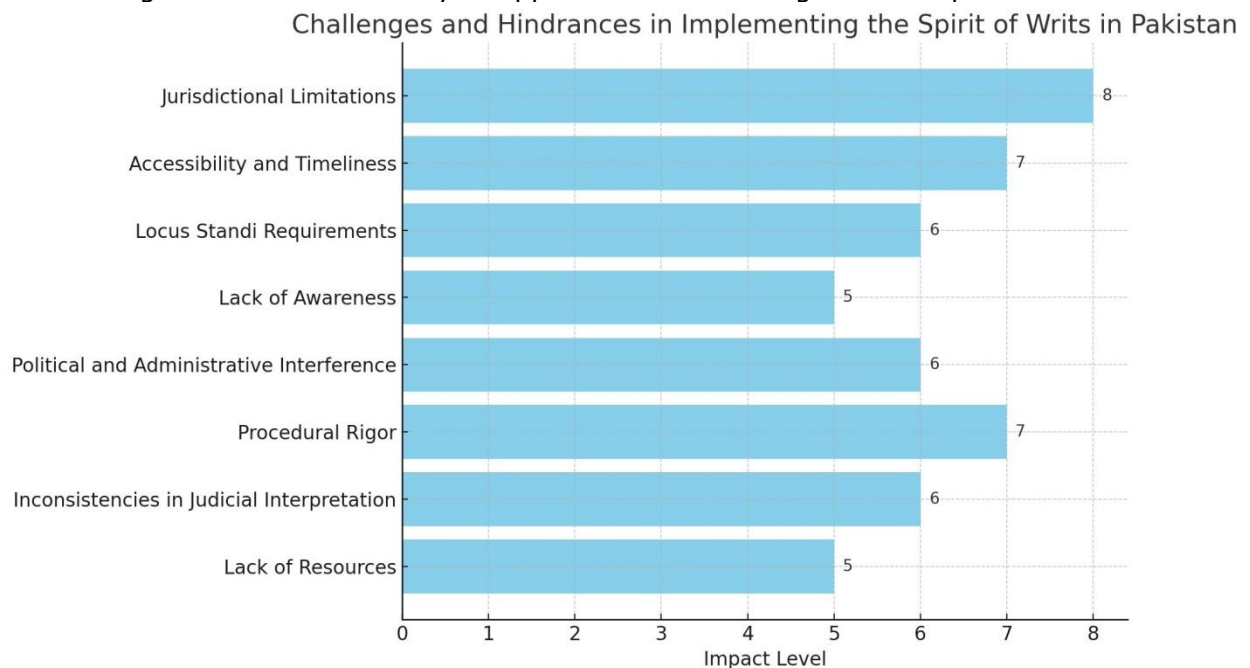
This appears to render a substantial amount of decisions made by the military and certain government actions immune to legal redress by calling it beyond the jurisdiction of the writ. This limitation negates the principle of justice for all citizens by putting a wall between civil and military law.

#### 3.2.2. Accessibility and Timeliness

The use of writs may also be hampered by such factors as long time taken in delivering justice and high cost that is usually associated with taking the matter to court. Due to the procedural arrangements and costs, these remedies are not easily accessible by the average person.

#### 3.2.3. Locus Standi Requirements

The aspect of locus standi when it comes to some of the writs remains a challenge when it comes to the access to justice although others have been eased. This procedural hurdle can make those who are adversely affected by governmental actions but not directly under the government’s authority to approach courts through the writ petitions.



**Figure 5: Bar chart of key challenges & Hindrances in implementing the Writs in Pakistan**

#### 3.2.4. Lack of Awareness

Interestingly, there is a general ignorance that prevails among the public regarding the availability of prerogative writs and the kind of cases that categorically fall under this area of law. Through lack of information, persons are denied the opportunity to use these legal instruments to counter unlawful conducts by the public organs.

#### 3.2.5. Political and Administrative Interference

Interference by the political and or administrative authorities in the Judiciary delays its independence. This kind of interference can effectively determine the results of writ

petitions, and undermine the population's confidence in the justice delivery system, since it heralds bias.

### **3.2.6. Procedural Rigor**

Due process can be strenuous in the filing and processing of Writ Petitions which might act as a strong discouragement to the petitioners. Formal legal reasons, the need to ferret solid evidence and the necessity to adhere to time-barred civil rules often dissuades people from seeking the writ remedies.

### **3.2.7. Inconsistencies in Judicial Interpretation**

Hence, variability in the interplay of writ jurisdiction by various courts implies that there is variability in the judicial effects. Such irregularities cause confusion and thus make the writs to be less effective in providing justice as well as accountability.

### **3.2.8. Lack of Resources**

On the same note, the judiciary is usually under endowed in terms of staffing and infrastructure which poses a major challenge in handling of the petitions. Glyn's (1995: p 194) study also reveals that the modality of the writ systems exposes them to resource constraints that hampers their efficiency in delivering timely justice.

## **4. Summary of Challenges in Implementing the Spirit of Writs with under developed countries**

The implementation of the spirit of writs in Pakistan faces several significant challenges. When compared to other countries such as India, Bangladesh, and Sri Lanka, the following insights can be observed:

### **4.1. Jurisdictional Limitations**

Pakistan: Rated the highest at 8, indicating substantial limitations, particularly with the exclusion of military and certain government actions from writ jurisdiction.

- India: Slightly lower at 7.
- Bangladesh: At 6, shows less concern compared to Pakistan.
- Sri Lanka: Matches India's concern level at 7.

### **4.2. Accessibility and Timeliness**

- Pakistan: Rated at 7, highlighting delays and high costs.
- India: Lower at 6, suggesting relatively better accessibility.
- Bangladesh: Matches Pakistan at 7, indicating similar challenges.
- Sri Lanka: At 6, suggesting better conditions compared to Pakistan.

### **4.3. Locus Standi Requirements**

- Pakistan: Rated at 6, showing moderate challenges.
- India: At 5, indicating slightly fewer challenges.
- Bangladesh: Matches Pakistan at 6.
- Sri Lanka: Also at 5, similar to India.

### **4.4. Lack of Awareness**

- Pakistan: Rated at 5, reflecting a moderate lack of public awareness.
- India: Higher at 6, indicating a greater need for public education.
- Bangladesh: Matches Pakistan at 5.
- Sri Lanka: At 6, similar to India.

### **4.5. Political and Administrative Interference**

- Pakistan: Rated at 6, showing notable interference.
- India: Higher at 7, indicating significant interference.
- Bangladesh: Matches Pakistan at 6.
- Sri Lanka: Also at 7, similar to India.

#### 4.6. Procedural Rigor

- Pakistan: Rated at 7, highlighting the complexity and rigor.
- India: Slightly lower at 6.
- Bangladesh: Matches Pakistan at 7.
- Sri Lanka: Also at 6, similar to India.

#### 4.7. Inconsistencies in Judicial Interpretation

- Pakistan: Rated at 6, indicating some inconsistency.
- India: At 5, suggesting fewer inconsistencies.
- Bangladesh: Matches Pakistan at 6.
- Sri Lanka: Also at 5, similar to India.

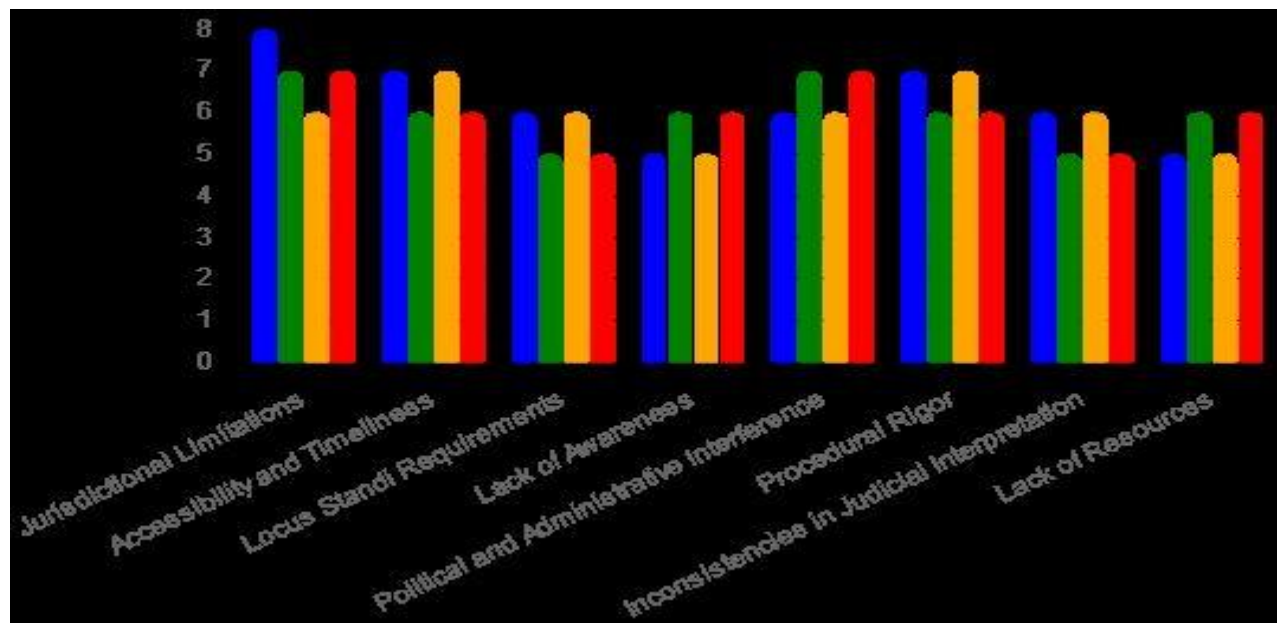
#### 4.8. Lack of Resources

- Pakistan: Rated at 5, showing a moderate lack of resources.
- India: Higher at 6, indicating more significant resource constraints.
- Bangladesh: Matches Pakistan at 5.
- Sri Lanka: Also at 6, similar to India.

In summary, while Pakistan faces several challenges in implementing the spirit of writs, these challenges are somewhat comparable to those faced by India, Bangladesh, and Sri Lanka. However, Pakistan tends to have slightly higher ratings in certain areas, indicating more severe issues in those domains.

#### Comparison of Challenges in Implementing the Spirit of Writs

1. Pakistan
2. India
3. Bangladesh
4. Sri-Lanka



## 5. Judicial Approaches to Legal Theories of Writs

### 5.1. United Kingdom

Regarding the forms and procedures of writs, UK's legal system is based on common law traditions and judicial decisions. The courts have always placed a strong focus on the regard of individual freedoms and the Law. This has strengthened the argument that with the

development of judicial review the writs continue to perform the duty of checks and balances on the administrative actions.

## **5.2. India**

Indian judiciary however had over-extended the ambit of writ jurisdiction more especially in protection of fundamental rights. The Supreme Court and High Courts have not waited to be called upon as may be seen in the use of the writs in social injustices, environmental questions or administrative wrong doings. PIL has even extended the ambit of writ jurisdiction, empowering citizens to knock the courts' door for change on several perturbing issues of public interest.

## **5.3. Pakistan**

The Pakistan's judicial system has been somewhat erratic in the level of assertiveness demonstrated in its usage of writs jurisdiction. Due to their historical background, the courts have been very significant in the protection of constitutional provisions especially at moments of struggle. However, the effectiveness of writs is normally determined by political factors in relation to the role of judiciary arm of government and the executive arm of government, and the political climate in the country. Some jurisdictions have times experienced a tough time keeping the judiciary at arms' length and as a result, creating disruptions when issuing of the writs.

## **6. Implementation Hindrances in Pakistan:**

### **6.1. Political and Judicial Independence**

Of all the issues that has affected the operation of the Writs of Pakistan the most, there's none more crucial than the independence of the Judiciary. It is important that the judiciary is able to issue the writs of the court without any hindrance from those in superior authority by using the protection of the law. The exercise of the writ jurisdiction is still fragile because political pressures and other efforts to attenuate the power of the judiciary are still possible.

### **6.2. Administrative and Bureaucratic Hurdles**

It is also a fact that the efficacy of the writs greatly depends on the reaction of the administrative machine. Despite being issued by courts with administrative and legal power, the enforcement of writs can be hindered bureaucratic tendencies and unwillingness to follow a court decision. Improving the institutional framework for timely and efficient compliance with the legislation's provisions is crucial in this regard. This also involves raising awareness of the general public on legal matters and thus the much needed access to justice.

Thus, for writs to effectively act as remedies, issues of publicity and accessibility to justice are very vital. Socio-economic factors and the lack of legal awareness may prove to be a barrier to Pakistan's public in filing cases through the writs. Populating the community with legal knowledge and making a legal service inexpensive will further the writ jurisdiction's usage.

Thus, it would be possible to consider a range of measures to increase the effectiveness of writ jurisdiction in Pakistan considering the necessity of carrying out extensive judicial reforms and building up judiciary's capacities. When there are proper education forums for training the judges as well as the lawyers on the principles and procedures of writs, provoking change in the physical aspects of the courts, and making legal materials accessible, the judiciary has the capacity to implement the use of writs.

## **7. Comparative Insights and Recommendations**

### **7.1. Strengthening Judicial Independence**

In the context of the current discussion, both India and the UK show how pivotal it is for the judiciary to be independent in the exercise of the use of the writs. This therefore

means that to enhance the writs jurisdiction in the Pakistan, it important that the judiciary remains independent of the Political system interferences.

## **7.2. Enhancing Administrative Accountability**

The account manufactured by the UK to increase administrative accountability with the use of writs like the mandamus was useful in this case. Enhancing possibilities the alteration of writs and steps to increase formal institutional supervisory and compliance may be useful for Pakistan.

## **7.3. Expanding Public Interest Litigation**

In this context, India experience with the use of Public Interest Litigation (PIL) reveals how the use of writs can be effective in dealing with the society issue. PIL therefore could make a positive social change to the Pakistani society and strengthen the judiciary's mandate in advanced social justice cause and protecting the public interest.

## **7.4. Enhancing the Understanding of the Law and Legal Services**

This can be a central loophole, as there seems to be a lack of information regarding writs and thus no proper means of access to justice for the public. Awareness programs about legal rights and reduction of formalities in writ petitions can enhance the writ jurisdiction in Pakistan.

## **7.5. Training and Capacity Building of the Judiciary**

Training of the judiciary and capacity enhancement is required. Education and training for the current and prospective judges and lawyers on the writ jurisdiction leads to enhancement of efficaciousity and harmonization of the courts' decisions.

## **8. Conclusion**

By elucidating on the two jurisdictions of writ in the UK, India, and Pakistan, the study establishes the use of writs in the protection of individuals' rights together with ensuring the check on the administration. Although the UK and India have laid the framework for the proper utilization of the writs, Pakistan has issues regarding the utilization of the writ jurisdiction because of sociopolitical, administrative, and socio-economic factors. A key proposal to improve the viability and effectiveness of writ jurisdiction in Pakistan is to strengthen the independence of judiciary, enhance the accountability of administrative branches, increase the awareness of people with the law and invest in the judicial development.

Thus Pakistan will be able to avoid situations when these writs turn into a dent at the face of justice and rule of law in the country.

The present paper identifies some serious issues that challenge the actual administration of the spirit of writs in Pakistan: these are the jurisdictional restrictions, procedural issues, lack of awareness, and political influence. Solving these issues calls for extensive reforms in respect of improvements in the availability, speed, efficiency and reliability of traditional remedies in writ, which, in turn, advances the formation of the rule of law and continuous provision of justice to common populace.

Thus, the prerogative writs act as important means for ensuring justice and combating unlawful actions in the context of the UK, Indian and Pakistani legal systems. Nevertheless, these writs are still used in modern legal practices despite the fact that they originated in the consistorial periods. However, there are issues like accessibility, procedural delays and the jurisdictions that still require attention to make those instruments effective. The enhanced comparative analysis of these writ systems shall help in the appropriate future reforms and developing the lost sound legal systems.

The measures that the Pakistan Criminal Justice System should implement include; increase independence of judiciary, expand jurisdiction, improve education for legal professionals, enhance overseeing bodies, and modernize Pakistani laws governing

jurisdiction, grant access to justice, increase public confidence, integrate technology in writing submissions and documentation of jurisdiction, and review and reform jurisdictions linked to writs frequently. This will assist in expanding the delivery of proper legal help, raising the level of exposure and public confidence in matters concerning the legal system.

### **Authors Contribution:**

Farah Amir: Contributed to the conceptualization of the study and conducted the literature review on writ jurisdiction.

Shahzada Aamir Mushtaq: Led the research design and methodology while interpreting the legal implications of writ jurisdiction.

Humera Nawaz: Conducted empirical research and analyzed case studies to discuss the practical applications of writ jurisdiction.

Shabnam Shahab: Edited and finalized the manuscript, ensuring clarity and coherence in presenting the research findings.

### **Conflict of Interests/Disclosures**

The authors declared no potential conflicts of interest w.r.t the research, authorship and/or publication of this article.

### **References**

- Abbas, N. (2023). CONSTITUTIONAL CRISIS OF PAKISTAN: A HISTORICAL STUDY. *Pakistan Journal of International Affairs*, 6(2).
- Agrawal, P. K., & Gupta, V. (2023). *The Constitution of India Bare Act with Short Notes-Useful for Competitive Examinations: The Constitution of India Bare Act: Dr. PK Agrawal & Virag Gupta's Unabridged Legal Guide*. Prabhat Prakashan.
- Ahmed, N. (2021). A critical analysis of fundamental rights under the constitution of pakistan, 1973. *J. Pol. Stud.*, 28, 11..
- Batool, U. (2024). Justice, Equity and Good-Conscience: Analysis of the Case Law in Pakistan. *Pakistan Journal of Humanities and Social Sciences*, 12(2), 1474-1479.
- Bayefsky, R. (2021). Administrative Stays: Power and Procedure. *Notre Dame L. Rev.*, 97, 1941.
- Bhat, R. M. (2022). Historical Review of Indian Constitution. *Traditional Journal of Law and Social Sciences*, 1(02), 100-110.
- Degan, V. D. (2024). *Sources of international law* (Vol. 27). BRILL.
- Edwards, S. S., & Edwards, S. S. (2021). The "Rule of Law" and the "War on Terror". *The Political Appropriation of the Muslim Body: Islamophobia, Counter-Terrorism Law and Gender*, 111-150.
- Haines, C. G., & Sherwood, F. H. (2022). *The Role of the Supreme Court in American Government and Politics, 1835-1864*. Univ of California Press.
- Hassan, M. (2023). Military Court Trials of Civilians in Pakistan: Constitutional Rights, International Obligations and Sustainable Justice. *Policy Perspectives*, 20(2), 1-18.
- ibn Munir, A. (2024). Maintainability of Writ Jurisdiction under Article 199 of the Constitution of Pakistan: A Critical Exposition.
- Inagaki, H. (2021). *The Rule of Law and Emergency in Colonial India: Judicial Politics in the Early Nineteenth Century*. Springer Nature.
- Khan, Y. R., & Bashir, A. (2022). Unlocking Prerogative Writs: Concept and Scope of Writ Jurisdiction under Article 199 of the Constitution of Pakistan. *Law and Policy Review*, 1(1), 82-95.
- Knopf, J. (2022). The New'Renegade Jurisdiction': How the Fifth Circuit Can Prevent the Extraordinary Writ of Mandamus from Becoming an Extra-Ordinary Remedy. *Geo. Mason L. Rev.*, 30, 831.
- Lemley, M. A. (2022). The Imperial Supreme Court. *Harv. L. Rev. F.*, 136, 97.
- Munawar, C. S., & Mushtaq, M. (2022). Evolution of Federalism in Pakistan: A Constitutional Study. *Pakistan Journal of Social Research*, 4(4), 468-479.
- Munir, A. I. (2022). Equity in Pakistan: Origin, Evolution and Application from the Time of The British India Till Today. *Evolution and Application from the Time of The British India Till Today (December 26, 2022)*.
- Munir, A. I. (2024). The History and Development of the Law of Prerogative Writs under the Pakistani Legal System: A Critical Evaluation. Available at SSRN 4706237.

- Munir, A. I. (2024). The History and Development of the Law of Prerogative Writs under the Pakistani Legal System: A Critical Evaluation. *Available at SSRN 4706237*.
- Munir, A. I. (2024). The History and Development of the Law of Prerogative Writs under the Pakistani Legal System: A Critical Evaluation. *Available at SSRN 4706237*.
- Munir, A. I. (2024). The History and Development of the Law of Prerogative Writs under the Pakistani Legal System: A Critical Evaluation. *Available at SSRN 4706237*.
- Munir, A. I. (2024). The History and Development of the Law of Prerogative Writs under the Pakistani Legal System: A Critical Evaluation. *Available at SSRN 4706237*.
- Munir, A. I. (2024). The History and Development of the Law of Prerogative Writs under the Pakistani Legal System: A Critical Evaluation. *Available at SSRN 4706237*.
- Munir, A. I. (2024). The History and Development of the Law of Prerogative Writs under the Pakistani Legal System: A Critical Evaluation. *Available at SSRN 4706237*.
- Munir, A. I. (2024). The History and Development of the Law of Prerogative Writs under the Pakistani Legal System: A Critical Evaluation. *Available at SSRN 4706237*.
- Munir, A. I. (2024). The Prerogative Writs of Habeas Corpus and Quo Warranto under the Pakistani Legal System: A Critical Overview. *Available at SSRN 4706608*.
- Racabi, G. (2022). Abolish the employer prerogative, unleash work law. *Berkeley J. Emp. & Lab. L.*, 43, 79.
- Riaz, S., & Begum, S. (2021). Non-Maintenance Creates the Right of Separation for Woman: A Study of Shariah Law and Pakistani Court Practices". *ĪQĀN*, 4(01), 19-36.
- Sagan, S. D., & Weiner, A. S. (2021). The rule of law and the role of strategy in US nuclear doctrine. *International Security*, 45(4), 126-166.
- Sandberg, R. (2023). *A historical introduction to English law: Genesis of the common law*. Cambridge University Press.
- Smith, M. H. (2021). *The Writs of Assistance Case*. University of California Press
- Thakur, G. (2021). Writ Jurisdiction: Scope and Limitations Faced by the Courts. *Indian JL & Legal Rsch.*, 2, 1.
- Wacks, R. (2023). *Law: A very short introduction*. Oxford University Press.