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THE DOCTRINE OF ALTERNATIVE REMEDY: Balancing Procedural Efficiency and Fundamental Rights in Writ Jurisdiction

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THE DOCTRINE OF ALTERNATIVE REMEDY: Balancing Procedural Efficiency and Fundamental Rights in Writ Jurisdiction

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[Abstract: *This article explores the doctrine of alternative remedy in writ jurisdiction, tracing its foundation, evolution, progression and application in the Indian legal system. It critically examines the frictions between procedural efficiency and substantive justice, especially in scenarios involving fundamental rights. It begins with a narrative – a legal anecdote about an aspiring young teacher's dashed dreams, demonstrating the real-world implications of procedural rigidities manifested in the doctrine of alternative remedy.*

The discussion follows the doctrine's progression from the English common law to its current interpretation by Indian Constitutional Courts, focussing on significant judicial pronouncements that have shaped its application over the years. It posits that while the doctrine serves procedural purposes, its unyielding, mechanical application can lead to justice delays and/or denials, especially for the disadvantaged individuals/groups. The discussion in the last leg of this piece introduces and integrates Amartya Sen's capability approach to the doctrine of alternative remedy, arguing for the reconceptualization of the doctrine that prioritizes access to justice over mere procedural formalism. The article suggests that courts must evaluate alternative remedies by looking at their actual or genuine accessibility, equity, and timeliness, beyond their mere existence. The conclusion calls for a transformative shift in the judicial approach to balance procedural norms with the safeguarding of fundamental rights. It advocates for a more context-sensitive application of the doctrine, focussing on the need for a legal system that is not just efficient but also deeply empathetic and responsive to the real-life experiences of those seeking justice.]

Keywords: *Fundamental rights, writ petition, constitutional law, capability approach, alternative remedies etc.*

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I

Introduction: Substance Over Form

Ever since the advent of court system, the world of law and justice, has often faced a contested discourse over whether essence (substance) should take precedence over appearance (form). On this point Shakespeare famously quoted, "*The Law hath not been dead, though it hath slept*,"[1] hinting that law, though bound by procedures, must stay true to the core of justice, and not hinder it. Yet, many a time, several anecdotes come to light demonstrating how strict operation of procedural rules demolishes individuals' quest for justice, leaving them feel 'oppressed' or 'wronged' by the legal system. This is where the doctrine of alternative remedy - which demands prior exhaustion of alternative administrative means (bureaucratic labyrinth) before seeking judicial intervention from the Court of Writ - frequently places litigant in a precarious situation. Often the litigant feels 'forced' by the system to walk on a tightrope, to balance his/her freedoms/rights against the imperatives of procedural efficiency. When fundamental rights are at stake, it raises the profound dilemma, begging an age-old question: Should justice be eclipsed by the shadow of technicalities?

In the province of law and jurisprudence, where the pursuit of justice is of critical significance, a delicate equilibrium must be maintained between procedural efficiency and the safeguarding of fundamental rights. This equilibrium is claimed to be inherent in the application of the doctrine of alternative remedy. Yet, as we will see, this doctrine, despite its essential role, has on several occasions, erected impediments in the realization of justice.

Consider the story of a man, raised in adversity but fueled by high determination, whose lifelong passion was to share his knowledge and wisdom with students as a university professor. Against all odds, he had diligently earned the necessary qualifications and experience. When a renowned university announced teaching positions, he saw it as a much-awaited opportunity to achieve his lifelong dream. The job requirements were in line with his credentials, therefore his hopes surged as he submitted his application.

Nonetheless, fate took an unexpected turn. To the applicants' consternation, the university administration suddenly and arbitrarily raised the eligibility criteria after the applications had been submitted. The University, a public body, without any

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[1] Daniel J. Kornstein, KILL ALL THE LAWYERS?: SHAKESPEARE'S LEGAL APPEAL 47 (University of Nebraska Press 2005). Above Shakesperean caveat is typically echoed in this Latin legal maxim: *Dormiunt leges aliquando, nunquam moriuntur* meaning, i.e., 'The laws sometimes become dormant, but they never die.' *See*, John R. Stone, ROUTLEDGE DICTIONARY OF LATIN QUOTATIONS 24 (Routledge 2013).

prior notice, dashed his hopes by rejecting his application in the screening process. Refusing to surrender to despair, the man turned to the law in hopes of getting a legal remedy. He petitioned the High Court, invoking its writ jurisdiction – a mighty constitutional device created to shield fundamental rights from governmental excesses and administrative arbitrariness. "Let justice be done, even if the heavens fall," the young man affirmed, convinced that the Court would recognize the unfairness of his situation and right the wrong done to him by the university administration.

But the response he received from the Court was not what he had anticipated for. Court, instead of examining the merits of his case, asked if he had first tried to resolve the issue with the university administration. The judge, in denying his plea, remarked: "There is an alternative remedy prescribed by the university."[2] "You should have first taken up the matter there, before coming to the Court." "At this stage, the Court cannot intervene." With these words, the Court's gavel silenced the young man's hopes. By the time, Court's snail-like proceedings wound up, it came to everybody's knowledge that the university had already completed the appointment process, thus leaving the young man's dreams to dust.

In the eyes of law, the Court did not seem to act without reason, as its ruling was rooted to the doctrine of alternative remedy - a procedural device, seen as a way to conserve the Court's time, energy and resources. However, in justicial sense, the entire tale captures a very real, extremely deplorable situation within the legal system. Little doubt, the protagonist's deep despair and bewilderment, as seen in the tale, is not an isolated instance, but the same routinely echoes in countless other cases in the backlog-ridden judiciary of India. Courts, at the mere calling, always seem to be willing to apply doctrine of alternative remedy.

The tale based on the stark realities of snail-paced justice system of India highlights a central paradox - the tension between procedural formality and substantive justice. In the given situation, the adage, "the law will not force anyone to do a futile or impossible thing"[3] rings hollow as the university already concluded the process of appointment by the time Court made its ruling. This demonstrates a tragic irony bordering on the 'unreason'.

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[2] In the instant scenario, alternative remedy refers to the grievance redressal procedure of the university, which the applicants can use to voice concerns, submit evidence, and request a re-consideration of their application.

[3] Latin maxim *lex neminem cogit ad impossibilia* expresses the principle that law does not impose unreasonable or impossible burdens on the individuals. This principle illustrates the concept of fairness and the limitations of legal obligations. *See*, John R. Stone, ROUTLEDGE DICTIONARY OF LATIN QUOTATIONS 54 (Routledge 2013).

What is faced by the young man is nothing sort of a 'kafkaesque ordeal'.[4] His dilemma, confusion and frustration extends far beyond a single anecdote. As in a number of instances, the doctrine of alternative remedy is routinely applied in a formulaic fashion. In fact, the list is long, where judicial scrutiny was desperately needed but 'predictably' denied following the invocation of this procedural doctrine. For instance, under Article 226 of the Constitution of India, the High Courts are armed with the authority to issue writs for the enforcement of fundamental rights. This exceptional judicial power was conceived as a robust barricade against the encroaching tides of governmental overreach and bureaucratic tyranny. Despite this expansive jurisdiction, High Courts are seen to frequently delay (or even refuse) judicial intervention imposing a procedural barrier requiring petitioners to first exhaust all available administrative or statutory remedies before reaching the courtroom for judicial relief.

Heart of the issue lies in discerning when an alternative remedy is genuinely adequate and effective, and when it devolves into a bureaucratic bottleneck or a simple formality that hinders access to justice. If the remedy is sluggish, inefficient, ineffective or a mere facade for capricious decisions, does not insisting on exhausting it gravely undermine the very essence of fundamental rights and justice?

The tale of the aspiring teacher, who endured a Kafkaesquen ordeal, reveals a critical dilemma and a formidable challenge within the justice delivery system: striking the right balance between procedural purities and ensuring substantive justice. Although doctrines like alternative remedies aim to conserve judicial resources, but their strict, pedantic application should not come at the expense of fundamental rights or justice.

The judiciary's cardinal role is to rectify injustices, and denying or delaying writs in the face of clear breaches of constitutional rights erodes the core promise of our legal system. That is to say, when someone's fundamental rights are critically endangered, the doctrine of alternative remedy should not become an impassable barricade.

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[4] The term 'Kafkaesque ordeal' has been frequently referenced in legal discourse and scholarship to portray a harrowing situation characterised by complex, absurd, unfeeling and oppressive judicial or bureaucratic processes, similar to the protagonist's situation in the Franz Kafka's monumental work titled the 'The Trial' (1925). American courts, since the 1970s, have increasingly referred to this term to deplore situations where litigants are seemingly trapped in legal labyrinths and confusing procedures. In other words, Kafka's name is invoked to critique judicial or administrative inefficiency and empathise with litigants facing the oppressive system. *See generally*, Parker B. Potter, J., *Ordeal by Trial: Judicial References to the Nightmarish World of Franz Kafka* 3(2) PIERCE LAW REVIEW 195-330 (2005), *available at*: https://scholars.unh.edu/cgi/viewcontent.cgi?article=1052&context=unh_lr (last visited Sep. 20, 2024).

Considering the complexities and widespread application of the doctrine under writ jurisdiction of the High Courts, it its imperative to confront several critical questions in this regard: How might the Court equilibrate procedural rigours with the need for ensuring substantive justice? Under what situations should Court set aside the doctrine of alternative remedy to avert lasting harm? How it can be ensured that the pursuit for procedural correctness does not come at the expense of substantive justice? And equally crucially, how can courts effectively determine whether alternative remedies are genuinely viable options or merely illusory devices created to deflect judicial scrutiny?

Far from being academic abstractions, these inquiries directly impinge the lives of countless individuals seeking justice from the Court of Writ, reflecting the manner in which legal and public institutions function. As we analyze the doctrine more closely, we must remember that beneath the veneer of every legal principle and rule lies human stories – tales of hope, despair, disillusionment and the tireless quest for justice within the labyrinthine system.[5]

This article is structured as follows: First it introduces the doctrine of alternative remedy through a compelling narrative that bring out its real-world implications. Second, it explores the evolution of the doctrine in English common law, along with its development and progression in the Indian legal system. Third, it critically analyzes the leading judicial pronouncements of the Constitutional Courts on the doctrine, which have shaped its varied applications. Fourth, it delves into the tensions between procedural efficiency and substantive justice, employing Amartya Sen's capability approach for a new insight. Finally, it concludes by arguing for a transformative shift in the judicial approach, calling for a context-sensitive application of the doctrine that balances strict procedural framework with the safeguarding of fundamental rights and human dignity.

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[5] Justice Oliver Wendell Homes's masterpiece, *The Common Law*, prominently articulated the idea that 'The life of the law has not been logic, it has been experience.' Holmes' observation underlines the idea that legal rules and principles are not entirely shaped by complex logical thoughts, but by the lived experiences of common individuals and society. This insight contests the general understanding about law as a purely rational system. Holmes' famous observation resonates with the notion that beneath the veneer of every legal principle and rule lies human stories - narratives of hope, despair, and the relentless pursuit of justice. These stories highlight the significance of empathy and understanding in the adjudication, execution, interpretation and application of the law. Holmes' insight illuminates how the law evolves (must do so) through practical problems and implications, ethical concerns, and collective necessities of the society. *See*, Oliver Wendell Homes Jr., THE COMMON LAW 1 (1881).

II

Alternative Remedy Doctrine: From Conception to Application

The doctrine of alternative remedy, as an element of judicial discretion within the writ jurisdiction, has wended its way through the annals of legal history. Its complex journey from the Courts of England to the corridors of modern Indian High Courts reveals the persistent critical debates that has often surrounded its scope and application, controverting its acclaimed goal of meeting the needs of justice.

Origins in English Common Law

The origin of this doctrine can be traced to the strong legal traditions of England, where it evolved as an organic extension of the prerogative writs. These exceptional remedies, such as the *habeas corpus*, *mandamus*, *prohibition*, *certiorari*, *quo warrants*, were the much-acclaimed tools of the King's Bench,[6] employed to uphold justice in the face of bureaucratic or administrative intransigence. With the growing complexity of governance, the demands for specialized tribunals and administrative agencies also expanded.

Within this evolving juridical order, the notions of alternative remedies began to take root. English courts, with their characteristic pragmatism, began to emphasize in appropriate cases that litigants exhaust all other available remedies prior to seeking the exceptional relief of prerogative writs.[7] This doctrine, born out of necessity, aimed to balance the access to justice and the effective functioning of the legal system.

In the late 18th and early 19th centuries, courts started to indicate, though not strictly, that if alternative remedy was available, it should be resorted to first. The case of *R* v. *Morley* (1760)[8] is the first recorded instance where the English Court underscored importance of alternative recourse before seeking issuance of prerogative writs. This ruling, to some measure, set the stage for more structured approach to judicial

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[6] The King's Bench employed prerogative writs to supervise subordinate courts and public officials, ensuring the Crown's control was preserved. *See Generally*, Edward Jenks, *The Prerogative Writs in English Law*, XXXII(6) YALE LAW JOURNAL 523-534 (April 1923) *available at*: https://openyls.law.yale.edu/bitstream/handle/20.500.13051/11762/53_32YaleLJ523_1922_1923_.pdf?sequence=2&isAllowed=y (last visited Sep. 20, 2024).

[7] *See generally*, Paul Craig, *English Administrative Law History: Perception and Reality* in Swati Jhaveri & Michael Ramsden (eds.) Judicial Review of Administrative Action Across the Common Law World 27-45 (Cambridge University Press 2021); *See also*, Clive Lewis, *The Exhaustion of Alternative Remedies in Administrative Law*, 51(1) THE CAMBRIDGE LAW JOURNAL 138-153 (March 1992).

[8] *R* v. *Morley* (1760) 2 Burr 1040.

review. In the 19th century, as administrative bodies and tribunals proliferated, courts sought to manage the growing caseload by insisting the litigants to exhaust statutory remedies before turning to the judiciary. This approach was exemplified in cases such as the *R* v. *Middlesex JJ*[9] (1840), where the Court refused to issue writ of *habeas corpus* because an alternative statutory appeal process was available. The decision emphasized the Court's role as the ultimate arbiter, thereby reinforcing the significance of administrative processes.

The case of *R* v. *Commissioner of Police of the Metropolis*, *ex-parte Blackburn*[10] (1968) marked a critical juncture in the modern consolidation of this doctrine in the UK's legal system. The Court's ruling highlighted the discretionary nature of writs such as *mandamus*, stressing that their issuance could be withheld if an adequate alternative remedy was available. Given the judgment's delicate balancing between administrative autonomy and the need for judicial oversight, it quickly gained legal traction in several common law jurisdictions. By outlining when courts should refrain from judicial intervention, the case significantly influenced the modern approaches to judicial review and administrative law.

The modern application of the doctrine in UK demonstrating obvious prioritising of procedure over substantive justice is found in cases such as *R (on the application of G)* v. *Governors of X School*[11] (2011, *Teachers' Case*) and *R (on the application of of O)* v. *Secretary of State for the Home Department*[12] (2016, *Refugee's Case*). In the *Teacher's Case*, UK Supreme Court held that the teacher, who sought judicial review following his suspension for alleged misconduct, was required to exhaust internal appeal mechanism provided under the school set up. Similarly, in the *Refugee's Case*, SC held the asylum seeker, whose application for asylum was refused, should have utilised the statutory appeal process first before seeking judicial intervention. Both cases reaffirmed that judicial review should be pursued only as a matter of last resort. However, these judgments have sparked critical debate over balance between procedural efficiency and substantive justice. Critics have pointed out that internal or statutory remedies can be inadequate, time-consuming, biased, which

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[9] *R* v. *Middlesex JJ* (1840) 11 Ad & E 273. (Popularly known as the case of the *Sheriff of the Middlesex*, wherein the Court examined if the Sheriffs had explored other available legal remedies before invoking its writ jurisdiction).

[10] *R* v. *Commissioner of Police of the Metropolis*, *ex-parte Blackburn* [1968] 1 QB 265; In *E* v. *Epping & Harlow General Commissioners, ex parte Goldstraw* [1983] 3 All ER 257, the Court expressed the rule in strong terms: '…it is cardinal principle that, save in the most exceptional circumstances, that jurisdiction [in judicial review] will not be exercised where other remedies were available and have not been used.'

[11] *R (on the application of G)* v. *Governors of X School*, [2011] UKSC 30, [2012] I AC 167.

[12] *R (on the application of of O)* v. *Secretary of State for the Home Department*, [2016] UKSC 19, [2016] 1 WLR 1717.

can leave vulnerable people such as teacher in the afore-mentioned case[13], and asylum seeker[14], for example, without timely substantive justice.

The American Interpretation

Exhaustion doctrine, as it is known in the US, has strong roots in American jurisprudence. The doctrine emerged primarily in early tax litigation within the lower federal courts, where plaintiffs were frequently denied injunctions if they had not exhausted available administrative remedies.[15]

The doctrine's development reached a significant milestone in United *States* v. *Sing Tuck*[16] (1904), wherein Justice Holmes emphasized the principle that statutory procedures must be exhausted before resorting to judicial remedies.[17] The doctrine gained further consolidation in *Prentis* v. *Atlantic Coast Railway*[18] (1908), wherein it was made clear that litigants had to go through all the state-level appellate remedies before they could petition federal courts for intervention. Similarly, in *Myer* v. *Bethlehem Shipbuilding Corp*.[19] (1938), US Supreme Court emphasized the importance of respecting administrative processes and expertise.

In this respect, the US Administrative Procedure Act of 1946[20] is worth to mention as it codified the relationship between administrative bodies and need for judicial review. The Act thus formalized the exhaustion doctrine, and made it a pre-requisite for judicial intervention, thereby also appreciably restraining the scope of judicial discretion in cases where statutory remedies (tribunals) were available. The Act aims to alleviate judiciary's caseload and empowers administrative agencies to address and correct their own errors. The philosophy underlying the Act is to ensure that administrative processes are respected, and judicial resources are judiciously utilized.

However, the Act of 1946 has been criticized for allowing bureaucratic agencies to operate with insufficient judicial oversight. This makes the situation complex and less accessible for those who do not have the means to deal with these administrative

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[13] Thomas Linden, Andrew Smith, Matrix Law, Case Comment: *R (G)* v. *The Governors of X School* [2011] UKSC 30 *available at*: https://ukscblog.com/case-comment-r-on-the-application-of-g-v-the-governors-of-x-school-2011-uksc-30/ (last visited Sep. 21, 2024).

[14] Asad Ali Khan, Case Comment: *R (on the application of of O)* v. *Secretary of State for the Home Department*, [2016] UKSC 19 *available at*: https://ukscblog.com/case-comment-r-o-v-secretary-of-state-for-the-home-department-2016-uksc-19/ (last visited Sep. 21, 2024).

[15] Raoul Berger, *Exhaustion of Administrative Remedies*, 48(6) YALE LAW JOURNAL 981 (April 1939).

[16] *United States* v. *Sing Tuck*, 194 U.S. 161 (1904).

[17] Raoul Berger, *supra* note 15 at 982.

[18] *Prentis* v. *Atlantic Coast Railway*, 211 U.S. 210 (1908).

[19] *Myer* v. *Bethlehem Shipbuilding Corp*., 303 U.S. 41 (1938).

[20] Administrative Procedure Act, 5 U.S.C. §§ 551-559 (1946).

procedures, thereby resulting in inequities in accessing justice. Further, it discourages prompt judicial relief, which is particularly detrimental in urgent cases.[21]

The rigours of the Act of 1946 have called for flexible approach from the US courts in some cases. For example, the US Supreme Court's judgment in *Elgin* v. *Department of Treasury*[22] (2012) shows a balanced interpretation of the exhaustion doctrine, recognizing that rigid application of the doctrine can sometimes impede justice especially where questions of fundamental rights are involved. Despite such occasional flexible approach, by and large, the US legal system predominantly upholds the exhaustion doctrine, often prioritizing adherence to administrative processes over needs for immediate access to justice though judicial review.

India's Alternative Remedy Journey

From its inception in English common law, the alternative remedy doctrine has undergone a complex evolution. Its journey to/in the Indian legal system has been marked by adaptations and re-interpretations in varied contexts, with the courts often grappling hard with the critical question: When it is appropriate to require individuals to exhaust alternative remedies before coming for judicial relief?

The doctrine found a receptive environment following the advent of the Constitution of India in 1950. Articles 32 and 226 codified the writ jurisdiction of the Supreme Court and High Courts respectively, giving it a constitutional stature. Article 226, in particular, endowed High Courts with the power to issue writs not only for the enforcement of fundamental rights but also for "any other purpose".[23] This expansive writ jurisdiction posed a conundrum: How to reconcile the constitutional command of safeguarding fundamental rights of people with the pragmatic necessity of upholding an efficient judicial apparatus? The answer lay somewhere in the judicious application of the doctrine of alternative remedy.

Early Precedential Course

The journey of the doctrine of alternative remedy in Indian jurisprudence can be most effectively understood though a succession of leading judgments that have progressively shaped its parameters over the years.

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[21] For critical views about US Administrative Act, 1946, *see generally*, Christopher J. Walker, *The Lost World of the Administrative Procedure Act: A Literature Review* 28 GEORGE MASON LAW REVIEW 733-763 (2021).

[22] *Elgin* v. *Department of Treasury*, 567 U.S. 1 (2012).

[23] *See*, Article 226, Constitution of India, 1950: Power of High Courts to issue certain writs.

The doctrine was significantly influenced by the Supreme Court's early decisions in the 1950s, namely, *Rashid Ahmed* v. *The Municipal Board Kairana,* 1950[24]; *Union of India* v. *T.R. Verma*, 1957[25] & *Sohan Law* v. *Union of India*, *1957*[26].

Interestingly, the SC in *Rashid*'s case demonstrated a flexible and progressive stance on the application of the doctrine, prioritizing the safeguarding of fundamental rights. The petitioner's fundamental right to carry on his business, guaranteed under Article 19(1)(g) of the Constitution was alleged to have been infringed by the imposition of an unreasonable municipal laws. Despite the petitioner had an alternative appeal mechanism available under the UP Municipalities Act, 1916, the Court permitted the writ petition, affirming that sanctity of constitutional rights should transcend the procedural constraints.

In *T.R. Verma*, however, the Court gravitated towards a more restrictive application of writ jurisdiction, underlining a discretionary but cautious use of writs, especially where other remedies offered adequate relief. The petitioner in the case sought to nullify a dismissal order passed against him, citing procedural flaws in the departmental inquiry. But the Court held that alternative remedy - in this case civil remedy- if available, the same should be first exhausted before seeking writ intervention. The Court famously articulated the doctrine in these words: "It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the high Court to issue a prerogative writ."

Further, in *Sohan Lal*, the SC once more drew the boundaries tighter around the writ jurisdiction. It held that evaluating the sufficiency of an alternative remedy is inherently a factual inquiry, to be measured individually for each case. The burden of proof lies with the petitioner to show the insufficiency of the alternative remedy. It then specified instances where a writ might be refused, including situations where the petitioner can obtain adequate relief through ordinary legal means, where the matter involves enforcing contract and seeking compensation, where the petitioner has already initiated legal proceedings, and where matter is barred by time.

State of Uttar Pradesh v. *Mohammad Nooh*, (1958):[27] In this major landmark case, a Head Constable, Mohammad Nooh faced dismissal following a departmental inquiry conducted by the District Superintendent of Police (DSP). Oddly, during the inquiry, DSP himself became a witness and gave evidence against Nooh while also presiding over the proceedings. The inquiry declared Nooh guilty, leading to his dismissal. The aggrieved then pursued internal processes, appealing and filing revision application to the superior police authorities, which all went in vain.

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[24] *Rashid Ahmed* v. *The Municipal Board Kairana*, (1950) SCR 566.

[25] *Union of India* v. *T.R. Verma*, AIR 1957 SC 882.

[26] *Sohan Law* v. *Union of India*, AIR 1957 SC 529.

[27] *State of Uttar Pradesh* v. *Mohammad Noah*, AIR 1958 SC 86

Finally, he filed the writ petition under Article 226 before the Allahabad High Court, challenging his dismissal for breaching the principles of natural justice. State of Uttar Pradesh (UP) protested the maintainability of the writ petition, contending that Nooh had already availed statutory remedies by filling appeal and revision within the departmental hierarchical set-up as per the rules of UP Police Manual (enacted under the Police Act, 1861). The State thus argued that departmental inquiry was statutorily mandated and fully compliant with the established rules in this regard, therefore there was no occasion for the High Court to exercise writ jurisdiction in this case. Overruling all these contentions from the State, High Court held that departmental inquiry was fundamentally flawed given the non- adherence to principles of natural justice. On appeal by the State, the Supreme Court, while upholding the HC judgment, declared that the presence of alternative remedies does not preclude the issuance of a writ of *certiorari* especially in situation where the administrative body strays from the path of natural justice, as was evident in the Nooh's departmental proceedings. This watershed ruling eloquently affirmed that the exhaustion doctrine serves as a discretionary guideline rather than an unyielding legal barrier, permitting the Court to step in promptly to correct or strike off flawed administrative proceedings in order to uphold the sanctity of justice.

A.V. Venkateswaran v. *R.S. Wadhwani*, (1961):[28] Building on the groundwork laid in Nooh's case, SC further refined the doctrine in this case. Court determined that although the existence of an alternative remedy is a factor to be considered, it does not eliminate the authority of the High Court under Article 226. Where the alternative remedy is burdensome, ill-suited, onerous or petitioner has lost it through no fault of his, the writ jurisdiction remains open. Further, even where there is an alternative remedy, if the case involves a fundamental breach of justice or lack of jurisdiction, the writ jurisdiction remains open for the aggrieved party. The Court reiterated that Article 226 grants extraordinary authority to ensure that constitutional and legal rights are upheld.

L. Chandra Kumar v. *Union of India*, (1997):[29] This is a seminal judgment in the Indian constitutional law, which, *inter alia*, carried significant implications for the doctrine of alternative remedy. The judgment affirmed that judicial review under Articles 32 and 226 is intrinsic to the constitution's basic structure, and therefore the jurisdiction of the constitutional courts cannot be entirely ousted by legislative amendments. The fundamental issue in the case was whether administrative tribunals, created under Articles 323A[30] and 323B[31] of the Constitution, could act as substitutes for

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[28] *A.V. Venkateswaran* v. *R.S. Wadhwani*, AIR 1961 SC 1506.

[29] *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261.

[30] Constitution of India, 1950, article 323A: Administrative tribunals.

[31] Constitution of India, 1950, article 323B: Tribunals for other matters.

High Courts?[32] The State contended that administrative tribunals offered a sufficient alternative remedy to judicial review by High Courts, justifying the exclusion of High Courts' jurisdiction. SC, however, rejected this contention, clarifying that while tribunals, as alternative institutional mechanism, may play a supplementary role, they cannot entirely supplant the jurisdiction of the High Court, particularly in cases involving the constitutional validity of a statute or rule.[33] The ratio of the judgment had, thus, a limiting effect on the doctrine of alternative remedy when constitutional rights/issues are at stake.

Whirlpool Corporation v. *Registrar of Trademarks, Mumbai,* (1999):[34] Interestingly, whereas the Supreme Court's stance on doctrine has relatively inspired confidence of the petitioners, stringent interpretations or reluctance shown by High Courts, in a catena of cases, have done just the opposite. In this regard, *Whirlpool Corporation* case stands out as a significant precedent on the doctrine (following the early precedents in *Nooh*[35] and *Wadhwani*[36]) where the SC castigated Bombay HC for declining to exercise its writ jurisdiction despite the serious nature of the claim.

In the instant case, Whirlpool Corporation applied to register its "whirlpool" trademark in India. The company discovered that an Indian firm had applied for an identical trademark and had already received provisional registration. Whirlpool sought to cancel the provisional registration, but their plea was dismissed by the the Registrar of Trademarks, Mumbai. Following this, they challenged the provisional registration of the trademark by instituting a writ petition before the Bombay High Court under Article 226. But HC dismissed their petition, citing the reason that the Trade and Merchandise Marks Act, 1958 offers alternative remedies (including appellate and revisional ones) by way of approaching the Registrar of Trademarks and the Intellectual Property Appellate Board (IPAB).

Subsequently, Whirlpool appealed to the Supreme Court, contending that despite the availability of the alternative remedies, HC should not have dismissed their writ

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[32] It is worth to mention that Constitution (Forty-Second Amendment) Act, 1976 had absolutely barred jurisdiction of the High Courts in all cases where alternative remedy was provided by or under any other law except in cases of the enforcement of fundamental rights. However, the said provision of the amendment was repealed by the Constitution (Forty-Fourth Amendment) Act, 1978. *See*, I.P. Massey, ADMINISTRATIVE LAW 267 (2001).

[33] The Supreme Court in *L. Chandra Kumar* case i(1997) invalidated the provisions in Article 323A & 323B (administrative tribunals) to the extent they sought to exclude the jurisdiction of the High Courts under Article 226/227 and Supreme Court under Article 32.

[34] *Whirlpool Corporation* v. *Registrar of Trademarks, Mumbai,* AIR 1999 SC 22; *See also*, *Khaitan (India) Ltd*. v. *Union of India*, AIR 2000 Cal 1.

[35] *Supra* note 27.

[36] *Supra* note 28.

petition, as the circumstances of the case necessitated immediate relief in view of continuing infringement of their trademark. They essentially argued that dismissal of their writ petition was patently unjust.

The substantive issue before the SC was whether the doctrine of alternative remedy should really preclude judicial review even in situations of urgent trademark infringement or for that matter in situations demanding immediate judicial relief. Ruling in favour of Whirlpool, SC found that the HC gravely erred by not exercising its discretion under Article 226 to provide immediate relief despite the pressing necessity to protect Whirlpool's trademark from irreparable harm.

Clarifying some aspects in an otherwise unsettled area, SC in the *Whirlpool* case carved out certain exceptions where the alternative remedy doctrine does not apply, and the litigant can press for judicial review from the Court of Writ[37]. These include:

(i) Infringement of fundamental rights and principles of natural justice
(ii) Where the proceedings are wholly without jurisdiction
(iii) When the remedy available is not equally efficacious
(iv) Where the *vires* of the Act is challenged

It is evident from the *Whirlpool* case that High Court(s) in India commonly demonstrate a certain aversion to intervene even while there are obvious exigencies for invoking the writ jurisdiction. This reluctance reflects the deeper judicial dilemma caused by the tension between maintaining procedural rigour with the moral urgency of delivering timely justice. In other terms, the prevailing reluctance on the part of High Court(s) can be equally linked to a judicial philosophy that often prioritizes efficiency at any cost. This particular rigid philosophy drives the presiding judge to focus more on managing their own Court's caseload, while asking the petitioner to exhaust all available alternative remedies. For ordinary, resource-constraint litigants, such a judicial stance, create an inequitable situation. As seen in the above case, if resourceful parties, such as Whirlpool (a world-renowned Multi-National Corporation), could face unjust situations, one might shudder to say, the destiny of resource-challenged, common petitioners, in a largely poor country like India, becomes even more vulnerable and precarious.

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[37] *Supra* note 34, *Whirlpool Corporation*; Similar view that, 'the doctrine of alternative remedy is not an absolute rule of law, and that there are certain legitimate exceptions where the doctrine does not apply,' was echoed in *Harbanslal Sahnia* v. *Indian Oil Corp. Ltd*. (2003) 2 SCC 107. The Court observed: 'Alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (I) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction, or the vires of an Act is challenged.'

Contemporary Instances

In contemporary period, Constitutional Courts have continued to face the onerous challenge of balancing the application of alternative remedy doctrine.

Radha Krishna Industries v. *State of Himachal Pradesh*, (2021):[38] This case afforded the SC with a recent opportunity to examine the constitutional conundrums involved in the application of the doctrine. The case stemmed from a writ petition instituted by Radha Krishna Industries, challenging the provisional attachment orders issued by the Commissioner of State Taxes and Excise, Himachal Pradesh (HP). HP High Court rejected the petition, citing the existence of an alternative remedy under the HP Goods & Services Tax Act, 2017. Petitioner then appealed to the SC, contending that the attachment order was passed without proper jurisdiction, and that it was extremely punitive in nature, resulting into infringement of their fundamental rights.

SC Bench led by Justice D.Y. Chandrachud overturned the HC's decision, affirming that rigid application of the doctrine could be eased in certain critical situations. It reasoned that doctrine could bend when fundamental principles of law are seemingly compromised, or when the procedural lapses, jurisdictional errors are manifest on the face of the case. It observed that provisional attachment, by its very nature, is a draconian measure, and its exercise must be supported by strong and cogent reason. It found that tax authorities had failed to apply their mind, rendering the attachment order *ultra vires*. Moreover, there was no efficacious remedy available, as the GST Appellate tribunal which was supposed to hear the appeal from the decision of the tax authority, had not been constituted yet., reinforcing the petitioner's view that there was no effective alternative remedy.

The Bench, while acknowledging the purpose of alternative remedies, underlined that their availability does not operate as an absolute bar against the exercise of writ jurisdiction by High Court under Article 226. When fundamental rights are threatened, the writ jurisdiction stands as a sentinel, ready to intervene. The present judgment illustrates the common argument, often advanced by the litigants, that High Court(s) should embrace flexibility when weighing application of the doctrine, carefully considering the distinctive narrative of each case, before setting aside a writ petition in favour of alternative remedies. Embracing this notion of judicial flexibility in these situations means that High Courts should not mechanically discard a writ petition merely because statutory remedies exist. This approach mirrors the judicial reasoning of *Nooh*[39] and *Whirlpool*[40], where the SC delineated notable exceptions to the doctrine.

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[38] *Radha Krishna Industries* v. *State of Himachal Pradesh*, AIR 2021 SC 2114.

[39] *Supra* note 27, *Mohammad Nooh*.

[40] *Supra* note 34, *Whirlpool Corporation.*

The *Radha Krishna* Judgment of 2021 has outlined key principles governing the invocation of High Court's writ jurisdiction and its interface with alternative remedy doctrine[41]:

(i) *Writ can be issued for enforcing fundamental rights and other purposes.*
(ii) *High Courts can turn down writ petitions, especially when an effective alternative remedy exists.*
(iii) *Exceptions to the doctrine of alternative remedy will include situations (a) calling for enforcement of fundamental rights; (b) showing breach of principles of natural justice; (c) demonstrating proceedings without jurisdiction; & (d) where the vires of a legislation is contested.*
(iv) *The presence of an alternative remedy does not automatically strip the High Court of its authority, yet writ petitions should not be allowed when an efficacious alternative exists.*
(v) *For rights created by statutes with prescribed remedies, those remedies should be exhausted first. This is a rule of policy, convenience and discretion.*
(vi) *High Courts may step back from writ jurisdiction in cases involving disputed facts. However, if the Court objectively considers the dispute requires exercise of its writ jurisdiction, such a view will not readily be interfered with.*

While the judicial interpretation in the *Radha Krishna's* case makes a strong pitch about the role of High Courts as guardians of fundamental rights and rule of law, it does not provide enough objective parameters on what constitutes an 'ineffective' or 'inadequate' alternative remedy. Lacking this clarity, inconsistencies are sure to emerge in the High Courts' approach, potentially leading to unpredictable and varied effects.

Magadh Sugar & Energy Ltd. v. *The State of Bihar*, (2021):[42] This case represented yet another opportunity for the SC. The appeal to the SC stemmed from judgment by the Patna High Court, which had declined to entertain the appellant's writ petition, stating the dispute was better suited for the statutory remedy provided under the Bihar Electricity Duty Act, 1948. The appellant had contested the imposition of electricity duty and penalties levied on the power supplied to the State Electricity Board.

Following the general principles formulated in the *Radha Krishna*[43] and *Whirlpool Corporation*[44], Justice D.Y. Chandrachud headed SC Bench in the present case held that High Court erred in rejecting the writ petition on the ground of alternative remedy, reasoning that when the issue is purely legal, such as interpreting laws or determining legislative competence, the existence of an alternative remedy does not prevent the High Court from performing its writ jurisdiction. Moreover, it is

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41 *Supra* note 38, *Radha Krishna Industries*, para 27.
42 *M/s Magadh Sugar & Energy Ltd.* v. *The State of Bihar*, 2021 SCC OnLine SC 801.
43 *Supra* note 38, *Radha Krishna Industries*.
44 *Supra* note 34, *Whirlpool Corporation*.

arguably true that determination of critical issues of statutory interpretation should not be relegated to alternative forums. Rather such matter should remain within the purview of the Constitutional Courts, as nature of these critical issues demand uniform, consistent, standard interpretation, which can not be plausibly attained/established by lower alternative forums. For instance, when a driver's license is revoked due to an erroneous interpretation of statutory provision, compelling the petitioner to exhaust a cumbersome departmental appeal process, despite the core legal issue being statutory interpretation, would unduly delay the delivery of justice to the petitioner.

High Courts' Reluctant Refrain

Justice Krishna Iyer famously stated: "Law is not a brooding omnipresence in the sky but a pragmatic instrument of social order. The Court's jurisdiction is not ousted merely because the remedy is available elsewhere, if the situation demands immediate relief."[45] This profound statement captures the judiciary's solemn constitutional duty to tailor legal remedies to the complexities of actual circumstances, rather than merely clinging to procedural rigidities. Yet the High Courts' reluctance to exercise their writ jurisdiction, when alternative remedies are on the table, has turned into a recurring question.

The cases examined predominantly illustrate scenarios where the Supreme Court has stepped in to rectify the High Court's conservative stance on doctrine of alternative remedy. In a catena of judgments, the SC has voiced its dismay over the High Courts' habitual rejection of writ petitions solely due to availability of alternative remedies, overlooking key exceptions that justify the exercise of writ jurisdictions.

The Delhi High Court's recent decision in 2024 in *Maya* v. *Union of India*[46] is yet another instance exemplifying the ongoing trend in High Court prioritizing alternative statutory remedies over writ jurisdiction. In this case, the petitioners - poor sweepers and peons - found their fates sealed when the State Bank of Mysore, where they were employed on temporary basis for a number of years, was merged with the State Bank of India. The petitioners filed a writ seeking reinstatement, regularization and other consequential benefits, alleging that merger policy discriminated against them infringing their fundamental rights under Article 14. Delhi High Court, however, refused to entertain the writ petition citing the availability of an alternative remedy under the Industrial Disputes Act, 1947.

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[45] *Fertilizer Corporation Kamgar Union* v. *Union of India*, (1981) 1 SCC 568, para 35.

[46] *Maya and Ors.* v. *Union of India*, WP(C) 4455/2017 & CM APPL. 19463/2017, Delhi High Court, 14 May 2024, *available at*: https://indiankanoon.org/doc/188879531/ (last visited Sep. 21, 2024).

The petitioners, after over a decade of service, were terminated. Referring their case to an industrial tribunal would result in extensive delays, which would further compromise their livelihoods. In job termination cases, where timely justice is the only lifeline, the Court's stringent formalism appears oblivious to the urgent pleas and potential unfairness. To reiterate, this intransigent judicial approach produces prolonged delays in justice, especially in employment-related disputes. As in such disputes, by the time a tribunal adjudicates a dispute, years may have waned, rendering any relief ineffectual and worthless.[47]

The *Maya* case prompts a deep reflection on the practical limitations of the doctrine. Industrial tribunals do play a crucial role in resolving employment disputes; however, their functioning is frequently hampered by systemic issues *viz*., resource constraints, vacancies, pendency, delays etc. For petitioners, such as those in the *Maya*' case, must the journey through the alternative forums remains a long an arduous one, marked by years of financial, emotional distress and uncertainty. In these instances, High Courts' timely writ intervention is not merely germane but *sine qua non* for the safeguarding of fundamental rights and principles of justice.

A formalistic judicial approach to the doctrine of alternative remedy is fraught with peril in that it might breed popular dissatisfaction against the legal system in the long term.[48] Therefore it is argued, this should be replaced by a context-sensitive approach or methodology, enabling the constitutional courts to weigh procedural efficiency against the unique details of each case. Such an approach demands that judges to look beyond the strict letters of the law, lend a careful listening to the stories of those before them, comprehending their struggles and hopes, rendering verdicts that truly resonates with the human spirit. It requires judges who are not only trained in legal precedent but are perceptive to the varied transformations happening within the society.

Consider a remote indigenous community in India facing environmental degradation caused by corporate mining companies. For them, alternative administrative remedies may be unobtainable due to geographic, financial or even linguistic barriers. Here, unlike a formalistic court, a context-sensitive court would

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[47] It is recently reported that 9 out of 22 Industrial Tribunals in India remain unoccupied, causing significant delays. *See*, Correspondent, *Supreme Court to hear plea raising issue of vacancies in industrial tribunals*, THE ECONOMIC TIMES (Jul. 16, 2023) *available at*: https://economictimes.indiatimes.com/news/india/supreme-court-to-hear-plea-raising-issue-of-vacancies-in-industrial-tribunals/articleshow/101798530.cms?from=mdr (last visited Sep. 21, 2024).

[48] Barry Friedman, *Popular Dissatisfaction with the Administration of Justice: A Retrospective (and a Look Ahead)* 82(5) INDIANA LAW JOURNAL 1193 (2007): (Author quotes Roscoe Pound, who warned during the well-known Global Pound Conference in the USA in 1976, 'the primary cause of popular dissatisfaction with the law is its failure to adapt to changing times').

understand and readily recognize that in this scenario procedural formalism will conceal a more profound power imbalance. In other words, formalism here would potentially lead to *de facto* denial of justice, exacerbating the marginalization of the community. In contrast, a court dedicated to the goals of substantive justice would identify the critical need for judicial intervention to avert the long-lasting harm to the community's interests. Such a context-sensitive approach will let judiciary affirm its role as preserver of justice instead of mere gatekeeper of procedure.

IV

Alternative Remedies: A Capability Perspective

In comprehending the tension between procedural efficiency and safeguarding of fundamental rights, especially as evident in the doctrine of alternative remedy, it is insightful to draw from a leading theoretical model.

In this regard, Amartya Sen's capability approach, that emphasizes the importance of real opportunities and individual freedoms[49], offers a clear perspective through which to analyze the doctrine of alternative remedy within the framework of access to justice. Sen posits that essence of justice lies not merely in the formal recognition of rights but in allowing individuals to have the true capacity to utilize those rights and secure substantial and beneficial outcomes. From a legal perspective, this provokes a critical inquiry into whether requiring individuals to exhaust alternative remedies before permitting judicial intervention, actually strengthens or weakens their genuine access to justice.

Viewing from the lens of Sen's capability approach[50], procedural pre-requisites, such as requirements of alternative remedies, can diminish the real capabilities of individuals to obtain meaningful justice. Individuals from marginalized communities, often deprived of vital resources – such as money, legal awareness, or institutional access- can get caught up or trapped in bureaucratic systems or processes that do not deliver any substantial or effective remedies. This is precisely

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[49] Ingrid Robeyns, Morten Fibieger Byskov, *The Capability Approach*, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta & Uri Nodelman eds., 2024) *available at*: https://plato.stanford.edu/entries/capability-approach/ (last visited Sep. 23, 2024).

[50] It, *inter alia*, mainly purports that 'freedom to achieve well-being is a matter of what people are able to do and to be and thus the kind of life they are effectively able to lead.' *Id*. *See generally*, Amartya Sen, *Human Rights and Capabilities* 6(2) JOURNAL OF HUMAN DEVELOPMENT AND CAPABILITIES 151-166 (2005); *see generally*, Amartya Sen, THE IDEA OF JUSTICE (Harvard University Press 2009).

where the insistence on pursuing alternative remedies becomes complex and troubling.

When temporary workers are let go after a merger (*Maya* case above), the Court orders them to seek assistance from the tribunals under the Industrial Dispute Act, 1947 instead of admitting their writ petitions. From a capability perspective, this judgment disregarded the practical realities facing the petitioner – years of service without employment security, urgent livelihood needs, and the chronic delays often seen in tribunals. Operating within Sen's framework, a Court attuned to context, would acknowledge that these bureaucratic forums are not real options to individuals in acute economic distress. By dismissing their writ petition, the Court in fact cut down their capability to challenge their retrenchment within the reasonable period of time.

The capability approach urges courts to focus on real justice. It calls for a reconceptualization of the doctrine of alternative remedy, urging courts to verify that remedies are not merely available in theory, but also realistically attainable, fair, equitable and expedient. An example which manifests this aspect of the capability approach is the Supreme Court's timely intervention in the *Whirlpool Corp.*[51] case. Here, the Supreme Court reversed the High Court's dismissal of a writ petition, finding the alternative statutory remedy insufficient and ineffective. The judgment, deemed an example of context-sensitive adjudication, underlines the necessity for courts to scrutinize alternative remedies that do not provide timely or effective relief. In other terms, courts must step in to defend personal capabilities when administrative channels are characterized by inefficiency, bias or remoteness.

In Sen's view, capabilities are real freedoms in the sense that they are corrected for any potential impediments.[52] By integrating this approach in their judicial decision-making, courts can enhance individual capabilities in several distinctive manners:

(a) Recognizing unseen obstacles - By embracing a capability-focused framework, courts would go beyond alternative remedies to detect and address unseen obstacles, *viz*., power imbalances, information asymmetry etc.
(b) Temporal assessment of justice - By applying the capability theory, courts would acknowledge that certain rights and freedoms are affected by time constraints. For instance, the ability to dispute an unfair eviction quickly diminishes over time. Courts may weigh the time factor when deciding on immediate judicial intervention or suggesting alternative remedies.

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[51] *Supra* note 34.

[52] In Sen's perspective, capabilities are authentic opportunities to reach good results by dealing with and overcoming personal, social and environmental barriers that may impede action. *Supra* note 49, *The Capability Approach*.

(c) Capability-increasing interim steps - In order to preserve parties' capabilities, Courts can ensure that parties have continued access to crucial services or resources even while they are referred to alternative forums.
(d) Proactive analysis of capabilities – Courts should take the initiative to preemptively examine the capability – boosting potential of different legal avenues. To this end, regular audit of alternative forums can be done, and feedback can be gathered about their effectiveness.
(e) Combined capability effects – Courts could examine the cumulative effects on capabilities when several individuals or groups experience similar problems. Although an alternative remedy may be suitable for one individual instance, the collective erosion of capabilities in many similar instances could warrant direct judicial involvement to address systemic concerns.

By integrating these deeper elements, Courts can genuinely operationalize the idea of "real freedoms" in their justice approach and framework. This ensures the legal system not only provides formal remedies but also enhances individuals' capabilities to seek and secure meaningful substantive justice.

IV

Conclusion

The doctrine of alternative remedy, though historically grounded in the pursuit of procedural efficiency, stands at a crossroads in the contemporary legal practice. The journey through this article has shed light on the friction between form and substance, between procedural rigour and actual justice. It betokens the law, in all its fairness, must not forget the human narratives that endow it with purpose and meaning.

As the Indian legal system advances into the future, it becomes increasingly clear that a transformative shift in the judicial approach to the doctrine of alternative remedy is essential. The capability approach of Amartya Sen offers a valuable framework, but its practical application hinges on more than just theoretical endorsement. It calls for a deep reimagining of how justice is conceptualized and delivered.

A promising, progressive solution could be the development of a "context-sensitive" approach to alternative remedies. The judiciary, in particular High Courts, may well employ a "capability impact assessment" when deciding whether to impose alternative remedies or grant direct relief. The judicial analysis must encompass not merely the nominal availability of alternative remedies (forums) but

also their tangible accessibility, operational efficacy and the resultant influence on the litigants' functional capabilities.

In this regard, an essential component of critical reform is the continuing legal education, sensitization and awareness training of the judiciary itself. To this end, judicial training should encompass training not only in the precise language of the law, but also the core values they represent, with a strong focus on the lived experiences and narrative of those pursuing justice in the corridors of the courts. Adopting a human-centered perspectives in judicial decision-making can reconcile legal theory with substantive justice, particularly in the application of doctrines like alternative remedies.

Moreover, the adoption of innovative technological solutions can meaningfully enhance access to justice, thereby closing the gap for marginalized, disadvantaged groups. Digital technology could be innovated to provide real-time feedback on the effectiveness of alternative remedies, allowing courts to decide when direct judicial intervention is needed through its writ jurisdiction.

Eventually, the meaningful progression of the doctrine of alternative remedies must be driven by an unwavering commitment to upholding human dignity and the imperatives of constitutional rights. It is crucial for justice to be more than procedurally correct; it must have substantive impact.

As we conclude, let's not disregard that each case, each petition, and each call for justice involves human lives in the balance. The aspiring young teacher whose hopes were dashed by procedural technicalities is not merely a legal anecdote; his case represents numerous others whose pursuit of justice have been delayed or denied.

The true measure of a legal system's success is its capacity to deliver timely justice with empathy and understanding. A system that identifies its success with the lives it transforms, not just the number of cases it closes. In this effort, the doctrine of alternative remedy should be reimagined as a flexible framework that must facilitate equitable outcomes. By embracing this philosophy, we can affirm that our legal system truly honours the spirit of our Constitution and meets the aspirations of our people.