



## A Critical Study of the Writ of Habeas Corpus from Indian Scenario

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### ABSTRACT

The Law of Writs mandated under the Indian Constitution indeed play a pivotal role in the essential framework pertaining to the due protection of fundamental rights of the citizens in the greatest aspect. The Law of Writs acts as the Custodian of Fundamental Rights of the Indian Citizens through the collaborative support of Hon'ble Supreme Court and Hon'ble High Court under Article 32 & Article 226 of the Indian Constitution. The Law of Writs mandated by the Indian Constitution helps in the overall justice redressal in case of any substantial, legal, and constitutional violations or loss of the Indian Citizens which further includes Maladministration of Justice, Compromise of Natural Justice, and Failure of Justice, Equity and Good Conscience through actions of any entities, personal conducts or State. Under this Research Article, the Researcher endeavour to highlight about the critical points, and due interpretation of Writ of Habeas Corpus and their regulations and procedures in India.

**KEYWORDS:** (*Writ of Habeas Corpus, Indian Constitution, Article 32, Article 226, Natural Justice*).

### INTRODUCTION

This is done through the active judicial initiative in form of issuing prerogative writs like *Writ of Mandamus, Writ of Quo-Warranto, Writ of Habeas Corpus, Writ of Prohibition & Writ of Certiorari*. Under this Article, the Researcher endeavours to cover about the Writ of Habeas Corpus pertaining to their true facets, advantages, importance of Habeas Corpus in securing, nurturing and protecting the Fundamental Rights of the Indian Citizens and how this Writ actually works and under what circumstances it is being issues by the Hon'ble Courts. The *Writ of Habeas Corpus*<sup>1</sup> renders to be the *Apparent Legal Shield of Justice* and with this the *Substantial Inalienable and Fundamental Rights*<sup>2</sup> are duly and effectively protected by the *Justice Deliverance System of India* including the *Hon'ble Supreme Court and Hon'ble High Courts of India under the legal virtue of Article 32 and 226 of our Indian Constitution*.

### MEANING AND CONCEPT OF HABEAS CORPUS

The basic meaning of *Habeas Corpus*<sup>3</sup> is to '*Duly Produce the Body*' which further means that if the authorities have wrongfully detained the person or the *Detention is Unlawful*, then the person must release on the fair terms without being detained further. The *Principle of Natural Justice and Due Fairness* are the key elements of *Modern Rule of Law and Equitable Justice* which substantially prevails in our *Indian Judicial System*. The Writ of Habeas Corpus is the Legal Weapon for such victims or aggrieved persons who has been wrongfully and illegally detained or arrested by the Police Authorities. The redressal shall be duly claimed by them through active application of Habeas Corpus in the Hon'ble Supreme Court and Hon'ble High Courts and they accordingly after looking into the material circumstances of the facts, issues the Writ of Habeas Corpus and orders the Police Authorities to release such victims on an immediate basis. The wrongful detention<sup>4</sup> or illegal detention leads to the massive loss of the fundamental right of the citizens i.e., *Violation of Article 21 of the Indian Constitution i.e., further related to Right of Personal Liberty*.

### REGULATORS OF WRIT OF HABEAS CORPUS

The paramount authority to issue the *Writ of Habeas Corpus* is vested on both *Hon'ble Supreme Court and Hon'ble High Court under Article 32 of the Indian Constitution and under Article 226* simultaneously. Through the help of this writ, the Hon'ble Courts orders the concerned police authorities to

<sup>1</sup><https://www.civildaily.com/news/what-is-habeas-corpus-petition/>, *Habeas Corpus: A Safeguard for Personal Liberty*.

<sup>2</sup><https://cleartax.in/s/writs>, *Writs in the Indian Constitution*.

<sup>3</sup><https://byjus.com/ias-questions/what-is-the-meaning-of-writ-of-habeas-corpus/#:~:text=Habeas%20Corpus%20is%20a%20Latin,cause%20and%20legality%20of%20detention,> *Meaning of Writ of Habeas Corpus*.

<sup>4</sup><https://www.freelaw.in/legalarticles/The-Writ-of-Habeas-Corpus,> *The Writ of Habeas Corpus*.

produce the person in the Court, so, that they can duly check the merits of the detention whether it was malafide, ultra vires<sup>5</sup>, unlawful or illegal in nature or not or in some cases whether the detention was made lawfully correct or not.

Beside deciding the true merits of the detention, the Hon'ble Courts also administers the valid ground of arrest or the detention done by the Police Authorities and they have to justify their actions per se before the Hon'ble Courts, and if the actions later on seems to be wrong or illegal in nature then they must face stringent consequences by the orders of the Hon'ble Courts, and through this proper way, the end justice is duly served to such innocent persons who have been wrongfully detained by the Police Authorities and in furtherance of such justice being redressed to them, their legal and fundamental rights are effectively protected by the Indian Judiciary<sup>6</sup>.

### **HABEAS CORPUS: A LEGAL TOOL TO ADMINISTER NATURAL JUSTICE AND DUE PROTECTION OF FUNDAMENTAL RIGHTS**

There seems no doubt that the *Writ of Habeas Corpus* is very much crucial for the Indian Citizens in securing and nurturing their *Basic, Inalienable and Fundamental Rights* in best and vigilant manner and the role model shall definitely have awarded to the Hon'ble Courts inclusive of *Hon'ble Supreme Court and Hon'ble High Courts of India*. Through the issuance of *Writ of Habeas Corpus*<sup>7</sup>, not only the person is being released fruitfully but also at the same note of time their rights are being protected resulting into fair procedure being established by the Hon'ble Courts and the proper administration of justice along with compliance of *Natural Justice* principle is also followed on an effective manner.

## **LEGAL COMMENTARIES ON WRIT OF HABEAS CORPUS**

### **IMPLEMENTATION OF WRIT OF HABEAS CORPUS**

The process is very simple as mandated and directed by the Hon'ble Courts in India under the following manner:

- ✓ The person who has been detained illegally or unlawfully by the *Police Authorities*<sup>8</sup> shall invoke the *Jurisdiction of Hon'ble Supreme Court* under **Article 32 of the Indian Constitution** and also simultaneously under **Article 226 of the Indian Constitution** which is vested in the regulation of Hon'ble High Courts in India.
- ✓ The person who might having the knowledge of the wrongful or illegal detention of the accused i.e., person or dependents belonging to such accused, or their respective family members even can put an application for the *Writ of Habeas Corpus* in either *Courts i.e., Hon'ble Supreme Court of Hon'ble High Courts of India*.
- ✓ Whenever any case related to the *Illegal or Wrongful Detention*<sup>9</sup> if made by the Police Authorities, then automatically the subject of action initiates with the active domain of *Writ of Habeas Corpus* as mandated by Indian Parliament under **Article 32 of the Indian Constitution under Right to have Constitutional Remedies**.

## **RULE OF EXCEPTION TO HABEAS CORPUS IN INDIA**

Everything in the legal processes or formulations are supported and restricted by certain limitations or limited parameters and in which the *Writ of Habeas Corpus* is no different. Following below are the grounds on which the *Writ of Habeas Corpus* shall be actively denied<sup>10</sup> by the Hon'ble Courts as follows:

- ✓ When the Hon'ble Courts after taking the cognizance of the case i.e., when the *body is being produced or the detainee is being produced before the Hon'ble Courts and there if the Court considers the detention done by the police authorities to be true and legal*, then in such cases, the Hon'ble Court shall deny the application of *Writ of Habeas Corpus*.
- ✓ The person when done the *Contempt of Court/Contempt of Parliament* with his intended willingness, then in such cases if he is being detained by the Police Authorities, then there shall be no mercy for him and neither he can put an application for *Issuance of Writ of Habeas Corpus in any Courts in India*<sup>11</sup>.
- ✓ When the Hon'ble Courts do not have *proper and original territorial jurisdiction to admit application of Writ of Habeas Corpus*, then even in such cases or circumstances, the *Writ of Habeas Corpus* shall not be processed further.

## **CONSTITUTIONALITY OF HABEAS CORPUS**

There are so many judicial pronouncements in which the importance of *Writ of Habeas Corpus* has been clearly discussed, although in some of the cases the proper utilization of this writ has not been effectively utilized which was undoubtedly the darkest judgement ever pronounced by the Hon'ble Courts in India. Below mentioned are the different judicial pronouncements as follows:

<sup>5</sup><https://www.legalserviceindia.com/legal/article-1328-habeas-corpus.html>, *Habeas Corpus in India*.

<sup>6</sup><https://unacademy.com/content/wbpsc/study-material/polity/habeas-corpus/>, *Introduction of Habeas Corpus*.

<sup>7</sup>Supra Note 6.

<sup>8</sup>Supra Note 3.

<sup>9</sup><https://blog.ipleaders.in/writ-habeas-corpus/>, *The Writ of Habeas Corpus*.

<sup>10</sup><https://byjus.com/free-ias-prep/habeas-corpus-upsc/>, *Habeas Corpus-When can it be availed and invoked?*

<sup>11</sup><https://lawnotes.co/habeas-corpus/>, *Writ of Habeas Corpus*.

In the case namely, *ADM Jabalpur v. Shiv Kant Shukla*<sup>12</sup>, which seemed to be the leading and original case which led the foundation of Habeas Corpus. Under this case, the Hon'ble Supreme Court held that during the emergency period, the writ of Habeas Corpus shall not be maintainable. The rationale of this judgement is indeed not followed the due principle of Justice, Equity and Good Conscience as when any person is wrongfully detained or arrested then there seems to be the violation of *Article 21 of the Indian Constitution* which is Right to Personal Liberty, which is totally ignored in this case and therefore, this judgement referred to be as the '*Darkest Judgement*' ever been pronounced by any Hon'ble Courts in India.

In the case namely *Sunil Batra v. Delhi Administration*<sup>13</sup>, the Hon'ble Court has given the standardized judgement and interpreted Habeas Corpus in a very wide and comprehensive manner. The Hon'ble Court held in its judgement, that whenever a person is wrongfully detained, then not just the Personal Liberty gets suspended of him but also, the manner in which they have been detained by the *Police Authorities* which further violates their basic human rights respectively.

In the case namely, *A.K. Gopalan v. The State of Madras*<sup>14</sup>, the Hon'ble Court has illustrated and gave certain directives, they are as follows:

1. The aggrieved person is having the right to approach to either Hon'ble Supreme Court or Hon'ble High Courts in case of Unlawful Detention done by the Police Authorities.
2. The Hon'ble Courts has a clear mandate to preserve, protect and nurture the Fundamental Right of the person by securing their Right to Personal Liberty under Article 21 of the Indian Constitution.
3. The Hon'ble Court has checked the true validity of Preventive Detention Law under Article 22 of the Indian Constitution, as this law is not related to the wrongful detention but the preventive detention to prevent the successive crimes or offences done by an offender, but still the Hon'ble Court checks the validity and other nuances of this law, so, that no sort of violations pertaining to the fundamental rights of the citizens gets affected.

In the leading case, the Hon'ble Court has mandated about *Writ of Habeas Corpus* to be quite important in terms of securing the real justice and protection of *Article 21 of the Indian Constitution* i.e., *Right to Personal Liberty* of such person who has been wrongfully and illegally detained on unfair grounds by the Police Authorities and simultaneously the judiciary has by using the power of *Judicial Review* under *Article 13 of the Indian Constitution* has duly initiated the due check and balance on the *Detention Laws and Police Authorities* in India.

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## CONCLUSION

India is a democratic country set-up where several persons are living and wants to express their due opinions before the society and they want to develop a good bond and relationships with the entire persons of different culture, creed, religion and caste respectively, and, there simultaneously comes the *Right to Sustainability and Healthy Life* which shall be duly served to them by the Indian Parliament in terms of several rights they get from the Indian Constitution as their Inalienable or Basic or Fundamental or Human Rights which at any cost shall not be deprived by any Authorities or Police Entities or even the State. The writ of Habeas Corpus indeed acts as the legal weapon conferred to the Victims of Illegal or Illicit Detention or Arrest done by the Police Authorities on the unfair grounds.

By invoking the jurisdiction of Hon'ble Supreme Court under *Article 32* and Hon'ble High Courts under *Article 226 of the Indian Constitution*, the person shall easily able to challenge the wrongful detention and shall further put this legal concern before the Hon'ble Courts which results further into the *Due Administration of Justice* done by the Hon'ble Courts. The writ of *Habeas Corpus* acts as the *Custodian of Fundamental Rights of the Citizens*, and simultaneously protects the *Fundamental Rights of the Detainees/Victims of Wrongful Detention*.

Moreover, the Parliament and the other Criminal Authorities must understand about the importance of Writ of Habeas Corpus and how they need to do the proper and legal compliance with the Detention Laws. The fundamental right of *Article 21 of our Indian Constitution* is paramount and this needs to be understand by the Police Authorities that they cannot detain any person on wrongful basis because it further led to deprivation of their Fundamental Right of *Article 21* and also violates the *Basic Human Rights of the Detainee*.

The Government must understand the real time implementation of Detention Laws and how it has to be done properly by the Police Authorities in order to maintain law and order of the country. Instead of adopting the arbitrary practices during the time of detention, the Police Authorities shall detain the true offender or wrongdoer and also they must understand about brief and comprehensive protocols of Legal and Fair Detention which shall promote the *Principle of Natural Justice, Fair Administration of Justice and the sound Principle of Equity, Justice and Good Conscience* which shall further create and promote the *Fair Good Governance* in our country.

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## CONCLUDING SUGGESTIONS

In India, the *Right to Habeas Corpus* is a fundamental protection enshrined in *Article 21 of the Constitution*, which safeguards personal liberty. Habeas corpus serves as a crucial tool to prevent illegal detention and ensure that individuals are not unlawfully deprived of their freedom. *Article 21* guarantees

<sup>12</sup>1976 SC 1207.

<sup>13</sup>1980 AIR 1579.

<sup>14</sup><https://blog.ipleaders.in/writ-habeas-corpus/>.

that no person shall be deprived of their life or personal liberty except according to procedure established by law. The essence of habeas corpus lies in its ability to challenge the legality of detention, compelling the authorities to produce the detained person before a court and justify the legality of their confinement.

To strengthen the efficacy of *Habeas Corpus* in India, several measures can be considered:

- 1. Strengthening Judicial Oversight:** Ensuring that the judiciary maintains a vigilant role in safeguarding individual liberties, including expeditious consideration of habeas corpus petitions.
- 2. Public Awareness and Legal Aid:** Educating citizens about their rights and avenues for redressal, and providing adequate legal aid to those who cannot afford legal representation, thus empowering individuals to challenge illegal detention.
- 3. Limiting Executive Discretion:** Implementing checks and balances to prevent abuse of executive power, including strict adherence to legal procedures and ensuring accountability for any wrongful detention.
- 4. Enhanced Procedural Safeguards:** Implementing procedural safeguards to prevent arbitrary detention, such as regular review of detention orders and requiring the state to provide evidence justifying continued detention.
- 5. Effective Remedies:** Ensuring that remedies for habeas corpus violations are meaningful and effective, including compensation for wrongful detention and holding accountable those responsible for such violations.
- 6. International Standards:** Aligning domestic laws and practices with international human rights standards to ensure that India upholds its commitments to protect individual liberties.
- 7. Strengthening Legal Aid and Awareness:** Providing access to legal aid and raising awareness about legal rights, particularly among vulnerable communities, to empower individuals to challenge illegal detention.
- 8. Promoting Accountability:** Holding accountable those responsible for ordering or carrying out illegal detention, including law enforcement officials and other state actors.
- 9. Reforming Legal Procedures:** Streamlining legal procedures to expedite the adjudication of habeas corpus petitions and ensure timely justice for those unlawfully detained.
- 10. Upholding Human Rights Standards:** Aligning domestic laws and practices with international human rights standards to ensure that India fulfills its obligations to protect individual liberties.

By addressing these aspects, India can further strengthen the protection of habeas corpus rights, thereby upholding the rule of law and ensuring justice for all its citizens. In conclusion, the right to habeas corpus stands as a cornerstone of personal liberty within the framework of the Indian judiciary. It serves as a potent safeguard against arbitrary detention, ensuring that individuals are not unlawfully deprived of their freedom. The judiciary plays a pivotal role in upholding this fundamental right by providing a forum for individuals to challenge the legality of their detention and compelling the state to justify its actions. Over the years, the Indian judiciary has demonstrated a commitment to protecting habeas corpus rights through vigilant oversight and proactive intervention. Through landmark judgments and progressive interpretations of constitutional provisions, the judiciary has reaffirmed the importance of habeas corpus as a bulwark against state excesses.

However, challenges persist, including delays in the adjudication of habeas corpus petitions, instances of executive overreach, and inadequacies in legal representation for marginalized communities. Addressing these challenges requires concerted efforts from all stakeholders, including the judiciary, the executive, civil society, and legal professionals. Moving forward, it is imperative to strengthen procedural safeguards, enhance public awareness, and fortify accountability mechanisms to ensure the effective realization of habeas corpus rights. By upholding the principles of justice, fairness, and the rule of law, the Indian judiciary can continue to serve as a beacon of hope for safeguarding individual liberties and upholding constitutional values.

The Indian judiciary plays a crucial role in safeguarding against illegal detention, ensuring that individuals are not unlawfully deprived of their liberty. Illegal detention violates fundamental rights guaranteed by the *Indian Constitution, particularly Article 21*, which guarantees the right to life and personal liberty, except according to the procedure established by law. The judiciary acts as a guardian of these rights by providing a mechanism for individuals to challenge their detention through writs such as habeas corpus. The writ of *Habeas Corpus* enables individuals to seek judicial review of their detention and compels the authorities to produce the detained person before the court and justify the legality of their confinement. Over the years, the Indian judiciary has issued numerous landmark judgments affirming the importance of protecting against illegal detention and upholding habeas corpus rights. These judgments have reinforced the principle that personal liberty is sacrosanct and must be safeguarded against arbitrary state action.

Despite these efforts, instances of illegal detention continue to pose a challenge in India. Factors such as administrative inefficiencies, lack of awareness of legal rights, and systemic flaws contribute to this issue. Moreover, certain vulnerable groups, such as minorities, marginalized communities, and political dissidents, are disproportionately affected by illegal detention. To address this issue effectively, concerted efforts are needed from all stakeholders. These efforts may include by addressing these measures, the Indian judiciary can further strengthen its role in safeguarding against illegal detention, uphold the rule of law, and protect the fundamental rights of all individuals.

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