

“Writ of Habeas Corpus and Supreme Court”

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“The Habeas Corpus secures every man here, alien or citizen, against everything which is not law, whatever shape it may assume.”

-Thomas Jefferson

Our Constitution and the evolution of writs

Our Constitution, which is the foremost framework, entails the rules and guidelines; guiding, preaching and backing all the rights available and duties imposed upon the citizens as well as the non citizens of the nation. It is considered as the **torchbearer** of all the rights the citizens possess. One of such rights is what we call as the right of WRITS’ petitions. No provision or legal principle listed in the constitution would truly be meaningful unless and until there are mechanisms backing its enforcement most efficiently. The judiciary has thus been given the independence in these matters wherein there is a call for issuing such writs so as to protect the basic essence of our constitution. The concept of issuance of writ has achieved its significance as it is one such enforcement device leading to achieving the benefit of **fundamental rights** in their literal sense. A writ is defined as *a kind of special order* sealed to any authority, government or any sovereign body in furtherance of abstinence or execution of a specified act. Our constitution catalogs five writs which are **PREROGATIVE WRITS**, meaning they can be considered as a privilege or right exclusively for a specific category or class.

Types of Writs and their meaning

These writs have been dealt with in the **Article 32** and **Article 226** of our constitution mainly because there are two ways of approaching the court of law through writs i.e. Supreme Court and High Court respectively. The writs available are namely Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto.

- Writ of Habeas Corpus – This writ (meaning, you may have the body) has been given the status of the most important writ out of all the five as it deals majorly on the liberty and justice of an individual. It is issued in matters when there is a need to produce the detenu before the court so as to judge the preconditions and dimensions of his arrest.
- Writ of Mandamus- This writ (meaning, a command or an order) focuses upon ordering any corporation, authority or any other person to perform or execute any public duty by the Constitution, a statute or common law. Hence, it’s a kind of compelling remedy for carrying out the duties which one is supposed to do but is declining.
- Writ of Prohibition- This writ has been termed as a preventive prerogative writ as its issuance comes into picture whenever the higher courts or authorities sense a need of prohibiting or preventing lower courts, tribunals, officers or individuals in exercising the

powers which are not vested in them or which they are not legally and judicially entitled to possess. This writ can be issued only against a judicial or quasi judicial body and has is known as a judicial writ.

- Writ of Certiorari- This writ (meaning, to be informed of) mentions the concept of judicial review wherein approval is acquired from the higher court for the re-examination of the actions of the lower courts so as to ensure taking up of judicial decision.
- Writ of Quo Warranto- This writ (meaning, by what authority/warrant) requires a person to show the authority or the right they claim to possess on the basis of which the warrant has been issued. It is not basically a petition, but a demand to ask for the authority and hence is considered as a basic legal remedy.

Issuance of any of these five writs has to be by the way of Article 32 or Article 226 for Supreme Court and High Court respectively. Article 226 has a broader jurisdiction than that of article 32 as SC can issue writs only when there is a fundamental right infringement, on the other hand, HC can issue these in both ordinary legal rights' violation and fundamental rights' violation. Article 32¹ has been called as a Constitutional Remedy for the enforcement of fundamental rights and is the most crucial article of all without which Constitution's existence can be questioned as it is the **heart and soul** of the Constitution. The jurisdiction to issue prerogative writs came with the establishment of the Supreme Court by the Regulating Act of 1773.²

Writ of Habeas Corpus and its significance

¹Remedies for enforcement of rights conferred by this Part:

(1.)The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2)The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3)Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4)The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

² V.G. Ramachandran, Law of WRITS, Eastern Book Company, 6th ed., p. 1026.

The paper focuses on the first or the most effective writ i.e. Habeas Corpus which is also known as ‘**The Great Writ**’ or ‘a great constitutional privilege’. The writ refers to a legal procedure which prevents the government to hold a person unnecessarily i.e. without any just cause and provides for the explanation given by the detainer to the court of law regarding the grounds of the detention of the detained person. The writ thus became a means of testing the legality of detention and in this form it may be regarded as the immediate ancestor of the modern writ of habeas corpus.³ The celebrated writ of Habeas Corpus is described by May as “**the first security of civil liberty**”.⁴ This writ holds great significance as it is the most vital right available to a detenu to get protection of personal liberty and justice in the court of law by letting the judge to know that on what ground has the prisoner been detained or arrested or confined and to let him free if there is no proving of legal justification against such arrest, confinement or imprisonment. Julius Stone described it as a picturesque writ with an extraordinary scope and flexibility of application.⁵ The major object behind it being called the great writ is that it provides for a **prompt and effective remedy** against any restraint which is illegal and unreasonable and its sole purpose lies in the enforcement of personal freedom and right of liberty. Personal liberty being the very essence carrier of our Constitution needs to be well taken care of and hence writ of habeas corpus has proven itself as one of such steps towards establishing of civil or personal liberty protection. The great constitutional importance of the writ of habeas corpus lies in the fact that ‘it is available to the meanest against the mightiest’.⁶ The writ of *habeas corpus ad subjiciendum* or the *habeas corpus cum causa* wherein a person is called on command and the grounds of his arrest are looked into cautiously has been granted as matter of right and thus cannot be held as discretionary at the hands of court.

Different dimensions of the writ of Habeas Corpus

Few important aspects relating to this writ of habeas corpus are:

- **Nature of Proceedings:** Regarding the question of whether habeas corpus proceedings are civil or criminal in nature, it was held by the court of law in *Narayan v. Ishwarlal*⁷ that it would depend on the nature of the proceedings in which the jurisdiction has been implemented.
- **Who may apply:** Regarding the question of who may apply for the writ it has been stated by the rule of law that not only the prisoner or the detained, but any

³ Kanu Sanyal v. District Magistrate, Darjeeling, (1973) 2 SCC 674, 678-79 : AIR 1973 SC 2684, 2687-88: (1974) 1SCR 621.

⁴ Constitutional History of England (1912), Vol II, p. 130.

⁵ Social Dimensions of Law and Justice, (1966), p. 203.

⁶ R. v. Vine Street Police Superintendent, (1916) 1 KB 268

⁷ Narayan v. Ishwarlal AIR 1965 SC 1818: (1966) 1 SCR 190

other person who know that merits of the case, acquainted with the facts and circumstances and has recognized interest in moving of such application in front of the court can apply under Art. 32 and Art. 226 of the Constitution.

- **Conditions of refusal:** There may be conditions under which the habeas corpus may be refused which are as follows: i) when the person or authority i.e. detainer does not come under the territorial jurisdiction of the court, ii) when the imprisonment is in nexus with the order or decision rendered by the court, iii) when the detenu has already been set free, iv) when the detention has been validated by removal of defects, v) when the writ is sought during emergency situations, vi) when the petition has been dismissed by a competent court by looking into the merits.
- **Alternative remedy:** Habeas corpus being a writ of course or right may be refused if there is no cause shown. It, however, cannot be refused on the ground that an alternative remedy is available to the applicant.⁸
- **Improper pleading:** The question regarding whether the writ petition can be set aside if the pleading made is improper has been made clear by the court of law in *Ranjit Singh v State of Pepsu*⁹ by stating that “the whole object of proceedings for a writ of Habeas Corpus is to make them expeditious, to keep them as free from technicality as possible and to keep them as simple as possible”.
- **Burden of proof:** In regard to the question pertaining to upon whom the burden of proof lies, it was stated that it is the responsibility of the authority which is questioned for unlawfully detaining a person to prove that the grounds were satisfactory enough to arrest and confine a person behind the bars. But if it is alleged by the detenu (*viz.* the person detained) that the order of detention is mala fide, the burden of proof is on the detenu and he has to establish it.¹⁰
- **New pleadings:** The question regarding whether or not a new plea can be raised during the hearing of the writ petition, it has been stated that no fresh issue can be evoked during the pleadings of writs but Habeas Corpus is an exception to this. But no such plea can be allowed if the respondent has no opportunity to rebut or controvert the plea and it may result in prejudice to the other side.¹¹
- **Territorial jurisdiction:** Regarding the territorial jurisdiction, Supreme Court’s jurisdiction under article 32 extends over all the authorities; be it inside the territory of India or outside it, provided they must be under the control of the Government. Whereas in case of High Courts’ jurisdiction by article 226, it applies to all the authorities lying within the control of that high court or where the cause of action arises.

⁸R. v. Pell, (1674) 3 Keb 279; 84 ER 720

⁹ *Ranjit Singh v. State of Pepsu* AIR 1959 SC 843, 845-46; 1959 Supp (2) SCR 727

¹⁰ *Ram Singh v. State of Delhi*, AIR 1951 SC 270; 1951 SCR 270; 1951 SCR 451

¹¹ *Arun Kumar v. State of W.B.*, (1972) 3 SCC 893

- **Res Judicata:** When the question of whether principle of *res judicata* applies in case of writ petition of Habeas Corpus, it is held that, “So far as Indian Law is concerned, it is fairly well settled that no second petition for a writ of habeas corpus on the same grounds is maintainable if an earlier petition is dismissed by the court.”¹² But this principle would not stand where the forums in which subsequent filing is there, have independent existence from one another and are entirely separate in competency and jurisdiction.
- **Preventive Detention:** With the concept of Habeas Corpus comes the wide ambit of Preventive Detention Theory which is a precautionary activity and not meant as a punishment. In other words, it is not a penalty for the past activities of an individual but is intended to pre-empt the person from indulging in future activities sought to be prohibited by the relevant statute and with a view to preventing him from doing harm in future.¹³ Further article 22 governs the procedure of preventive detention and only one enquiry is needed to be kept in mind i.e. regarding strict adherence of law requirements. Parliament is empowered to enact a law of preventive detention for reasons connected with (i) defence (ii) foreign affairs (iii) Security of India (iv) Security of State (v) maintenance of public order (vi) maintenance of supplies and services essential to the community.¹⁴ However, there may be monitoring of such detention by the way of process of judicial review.
- **Validation order of detention:** There may be fresh validation order of detention being passed by the government in cases when old order suffers from a formal defect or a flaw which is technical in nature. As a general rule, once an order of detention has expired, revoked or is quashed and set aside no fresh order of detention on the same facts and on the same grounds can be made.¹⁵ If, however, new facts or fresh or additional grounds have come into existence after revocation or setting aside of the order, fresh order can be passed.¹⁶
- **Ex parte grant:** Unless the facts and circumstances so demands or to meet the ends of justice, never can this writ be granted ex parte (i.e. for one party).
- **Bail:** The jurisdiction of the Supreme Court or a High Court extends up to granting of bail or parole to a detenu but such power has been limited by crosschecking of preventive detention laws.

¹² Lallubhai Jogibhai v. Union of India, (1981) 2 SCC 427

¹³ A.K. Gopalan v. State of Madras, AIR 1950 SC 27

¹⁴ Ibid. 13

¹⁵ Chaggaan Bhagwan v. Kalna, (1989) 2 SCC 318

¹⁶ Ibid. 15

- **Disobedience of this writ:** An intentional and willful disobedience of a writ of habeas corpus amounts to contempt of court.¹⁷ This may attract punishment of imprisonment and/or property attachment for the one who committed the contempt.
- **Costs and compensation:** The basic purpose behind issuance of this writ is to secure release of the prisoner/detenu rather than to punish the detainer. Although, there may be compensation granted and costs awarded in appropriate cases on the discretion of the court.
- **Emergency proclamation:** It is held by the court of law that writ of habeas corpus would be maintainable for the enforcement of fundamental rights under Article 20 and 21 even during the emergency proclamation time.

Landmark Judgments of Habeas Corpus

Now let us have a look over few landmark judgments for clear understanding of this writ of habeas corpus.

(i) **Additional District Magistrate of Jabalpur V. Shiv Kant Shukla 1976 SC 1207:**

This case is commonly known as **the habeas corpus case** as it was based upon the issuance and validity aspects of this writ. This case was the reason behind the **44th Constitutional Amendment Act, 1978** and also the major decision that **Article 21** can be suspended during emergency. It basically revolves around the emergency which was imposed during the **period 1975-77** on the direction of Smt. Indira Gandhi for the fulfillment of her own political benefits. According to article 21 of our constitution, every person is entitled to life and liberty which also covers the right to move to court. But according to **Article 359**, this right was curbed during this emergency situation whose reason was declared as threat to security of nation by the way of internal disturbances. The whole case revolved around the basic question of whether habeas corpus can be granted in such a situation or even that right would be taken away subsequently. The arguments given from the side of state were that situations of emergency are declared for social, economic and military security of the nation thus in such situations, the state is given the zenith power. Nevertheless, when the state can suspend the fundamental rights of article 14 and 21, then no question arises regarding whether a person can come with a writ petition of habeas corpus regarding these fundamental rights. The major argument from the opposite party was that except the detention talked about in Section 3 of MISA (**Maintenance of Internal**

¹⁷ V.G. Ramachandran, LAW OF WRITS, Eastern Book Company, 6th ed. (2006) , p. 1078.

Security Act), every other detention without any special condition fulfillment will be considered as ultra vires of the court. Major questioning was upon the content and essence of the presidential order and also **the locus standi of the writ of habeas corpus**. The decision of the Supreme Court had its base upon the case of *Liversidge v. Anderson* wherein all the rights were held as **suspended during the emergency** and same was held in this case that even the right to life can be curbed by the state while emergency is imposed. The decision was **highly criticized** and this day became the **black day of Indian legal history**.

(ii) **Sheela Barse v. State of Maharashtra 1983 SCC 96:**

In this case, the plaintiff who was a journalist and an activist for prisoners' rights wrote a letter to the Supreme Court stating that women prisoners were assaulted in the lock up, following which a writ petition was filed by the court and an investigative authority was sent to crosscheck the allegations made which were found true subsequently. Thus, in this case it was held that if the detained person can't file the writ petition, someone else can file it on his behalf quashing the traditional approach of locus standi.

(iii) **Sunil Batra v. Delhi Administration 1980 AIR 1579:**

This case predominantly focused upon the legally enforceable rights of the prisoners and legal sanction against their maltreatment during the detention. It was held by the court of law that writ of habeas corpus can not only be used for against the illegal detention of the prisoner but also for his protection against any maltreatment or inhuman behavior by the detaining authorities behind the bars. Thus this writ can be used not only against the existence of the illegal detention but also checks the manner in which the detention was subjected.

(iv) **Kanu Sanyal v. District Magistrate Darjeeling & Ors. 1974 AIR 510:**

This case dealt with the nature and scope of the writ of habeas corpus where it was stated that it is a procedural writ and not a substantive writ. It was also held in this case that rather than focusing upon the defined meaning of Habeas Corpus i.e. produce the body, there must be a straightforward focus upon the examination of the legality of the detention by looking at the facts and circumstances of the case and hence, this case talked about the real scope and meaning of the writ of habeas corpus.

Concluding, we may say that the writ of Habeas Corpus is rightly called the Great Writ because it is based upon the right of liberty is the very heart and soul of our constitution. Further only one principle must be

kept in mind by the court of law when a person is charged with detention that, “No innocent person should be punished” and therefore before detaining a person, acute scrutinizing of the facts and circumstances stands as a must.

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