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## THE WRIT OF HABEAS CORPUS: A PILLAR OF PERSONAL LIBERTY UNDER THE INDIAN CONSTITUTION

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### ABSTRACT

*The writ of Habeas Corpus plays a pivotal role in the Indian legal system, serving as a vital instrument for protecting fundamental rights enshrined in the Constitution. It is a legal remedy available to citizens, ensuring that unlawful detention is swiftly addressed. Empowered by Articles 32 and 226, the writ is a cornerstone of judicial oversight, enabling the Supreme Court and High Courts to act as custodians of personal liberty. This article delves into the meaning, significance, and procedural aspects of Habeas Corpus in India, alongside exceptions and landmark judicial pronouncements that have shaped its application.*

**KEYWORDS:** Habeas Corpus, Indian Constitution, Article 32, Article 226, Personal Liberty, Judicial Oversight.

### I. Introduction

The writ of Habeas Corpus stands as one of the most powerful legal mechanisms for safeguarding individual liberty under the Indian Constitution<sup>429</sup>. As a judicial tool designed to challenge illegal detention, it acts as a bulwark against state excesses and arbitrary deprivation of personal freedom. Rooted in the Latin phrase meaning "You shall have the body,"<sup>430</sup> the writ compels authorities to bring the detainee before a court to examine the legality of their detention. The writ of habeas corpus in India functions as a critical legal safeguard for personal liberty, anchored under Articles 21, 32, and 226 of the Constitution. This writ allows individuals or their representatives to petition the Supreme Court or High Courts for immediate relief if someone is detained without lawful grounds. Under Article 32, the Supreme Court holds the power to enforce fundamental

rights, whereas Article 226 empowers High Courts to issue writs for the enforcement of both fundamental rights and other legal rights

The significance of habeas corpus grew with the 44th Constitutional Amendment, which altered emergency provisions. This amendment limited the suspension of habeas corpus by ensuring Article 21 protections during national emergencies. Consequently, personal liberty under Article 21 remains safeguarded even if the state enacts emergency provisions, underscoring habeas corpus's role in combating arbitrary detention<sup>431</sup>

Under Articles 32 and 226, the writ can be invoked before the Supreme Court and High Courts, respectively, positioning the judiciary as the ultimate guardian of personal liberty.<sup>432</sup> While the primary objective is to secure the release of individuals held unlawfully, the evolution of Habeas Corpus has allowed it to extend beyond just securing release from illegal

<sup>429</sup> Civildaily 'What is Habeas Corpus Petition?' at <https://www.civildaily.com/news/what-is-habeas-corpus-petition/> Visited on 21.10.2024.

<sup>430</sup> LeoCussen Centre for Law 'Habeas Corpus-You shall have the body!' at <https://www.leocussen.edu.au/habeas-corpus-you-shall-have-the-body/> Visited on 21.10.2024.

<sup>431</sup> Justice Satya Poot Mehrotra, "Habeas Corpus Case and its culmination."

<sup>432</sup> Bn'W 'Petitions U/Article 32 & 226 of Indian Constitution' at <https://bnwjournals.com/2021/02/02/petitions-under-article-32-and-226-of-the-indian-constitution/> Visited on 21.10.2024.

detention to addressing conditions of imprisonment, humane treatment of prisoners, and violations of human rights within custody. This article delves deeply into the history, jurisprudential developments, limitations, and modern applications of Habeas Corpus in India while comparing it with its counterparts in other jurisdictions.

## II. The Concept and Constitutional Framework of Habeas Corpus

At its core, the writ of Habeas Corpus embodies a legal mandate that demands the production of a detainee in court, allowing the judiciary to scrutinize the grounds of detention. The Indian legal system recognizes two primary sources of Habeas Corpus petitions: Article 32, which permits direct access to the Supreme Court in cases where fundamental rights have been violated, and Article 226, which grants High Courts the power to issue the writ for both fundamental and legal rights.

**Article 32** of the Constitution is considered the cornerstone of fundamental rights protection, often described by Dr. B.R. Ambedkar as the "*Heart & Soul of the Constitution*."<sup>433</sup> It guarantees individuals the right to approach the Supreme Court for the enforcement of their rights, including the right to personal liberty. Habeas Corpus under this article is viewed as a swift remedy for challenging unlawful detention.

**Article 226** empowers High Courts with the ability to issue writs for not only the enforcement of fundamental rights but also for any legal right. This expanded jurisdiction allows individuals to challenge illegal detention even in cases where fundamental rights may not directly be implicated. The concurrent jurisdiction under Articles 32 and 226 ensures that individuals have multiple avenues to seek redress for unlawful detention, thereby enhancing access to justice.<sup>434</sup>

## III. Historical Evolution of Habeas Corpus in India

The writ of Habeas Corpus has its origins in English common law, where it developed as a safeguard against the arbitrary exercise of power by the Crown. Over time, it evolved into a legal remedy for addressing unlawful detentions.<sup>435</sup> In colonial India, the writ was primarily used by the British government to protect their own citizens but was later incorporated into Indian jurisprudence as an essential legal tool post-independence<sup>436</sup>. India's experience with Habeas Corpus has evolved significantly since independence. In the early years, the writ was primarily seen as a procedural safeguard, focusing on the immediate release of individuals from unlawful confinement<sup>437</sup>. However, judicial interpretations expanded its scope, making it a substantive right under Article 21 of the Constitution, ensuring protection against any form of illegal detention.

## IV. Jurisprudential Developments and Landmark Cases

Over the years judiciary has applied their minds to bring out the correct application and meaning of this through various cases. Several landmark cases have contributed to the evolution of Habeas Corpus in India. These cases demonstrate the judiciary's active role in interpreting the writ and expanding its scope to address broader issues concerning personal liberty and state accountability.

A. **Kanu Sanyal v. District Magistrate, Darjeeling (1974)**<sup>438</sup>: In this seminal case, the Supreme Court clarified that the scope of Habeas Corpus proceedings should focus on the legality of the detention itself, rather than merely ensuring that the detainee is physically brought before the court. The court emphasized that the writ is not merely

<sup>433</sup> Legal Bites 'Ambedkar & his idea of constitution' at <https://www.legalbites.in/ambedkar-and-his-idea-of-the-constitution/> Visited on 21.10.2024.

<sup>434</sup> *Id.*, 3

<sup>435</sup> The Rutherford Institute 'Habeas Corpus' at <https://www.rutherford.org/constitutional-corner/habeas-corpus> Visited on 21.10.2024.

<sup>436</sup> *Ibid.*, 4

<sup>437</sup> *Id.*, 1

<sup>438</sup> Kanu Sanyal v. District Magistrate, Darjeeling, AIR 1974 SC 510

- a procedural formality but a substantive mechanism to prevent arbitrary state action.
- B. **Sunil Batra v. Delhi Administration (1980)**<sup>439</sup>: This case significantly broadened the application of Habeas Corpus by extending it to address inhumane and degrading treatment of prisoners in custody. The Supreme Court ruled that the writ could be used not only to challenge illegal detention but also to improve the conditions of incarceration. The judgment established that personal liberty does not end with confinement and that the treatment of prisoners must adhere to constitutional standards.
- C. **Sheela Barse v. State of Maharashtra (1983)**<sup>440</sup>: In this landmark ruling, the Supreme Court allowed the relaxation of the traditional rule of *Locus Standi* for filing Habeas Corpus petitions. The court accepted a petition filed by a public-spirited individual on behalf of women prisoners who were allegedly being mistreated. This decision highlighted the importance of ensuring that anyone acting in the public interest could petition the court to protect the liberty of another, underscoring the judiciary's proactive approach to safeguarding human rights.
- D. **Nilabati Behera v. State of Orissa (1993)**<sup>441</sup>: In a case involving custodial death, the Supreme Court awarded compensation to the victim's family, holding the state accountable for ensuring the safety of individuals while in custody. This case marked a crucial shift in Indian jurisprudence by recognizing that the writ of Habeas Corpus can serve as a remedy not just for immediate release from unlawful detention but also for addressing state responsibility in cases of custodial violence and death.

- E. **ADM Jabalpur v. Shivkant Shukla (1976)**<sup>442</sup>: Known as the Habeas Corpus case, this ruling is often considered one of the darkest moments in Indian judicial history. During the Emergency (1975–77), the Supreme Court controversially held that the right to Habeas Corpus was suspended when emergency provisions were invoked, effectively allowing the state to detain individuals without judicial oversight. This judgment was later overruled, and the Supreme Court in *Justice K.S. Puttaswamy v. Union of India (2017)* reaffirmed that the right to personal liberty is inalienable and integral to human dignity.
- F. **Anand Teltumbde v. State of Maharashtra (2023)**<sup>443</sup>: The Bombay High Court granted bail to activist Anand Teltumbde, who was detained under the UAPA, underscoring the need for judicial scrutiny of detentions under stringent laws.
- G. **Gautam Navlakha v. National Investigation Agency (2022)**<sup>444</sup>: The Supreme Court emphasized that Habeas Corpus petitions should be considered expeditiously, highlighting concerns over delays in cases involving preventive detention.

#### V. Modern Applications and Challenges

While Habeas Corpus continues to be a powerful remedy for protecting personal liberty, its modern-day application faces challenges and limitations. Courts in India have progressively extended the scope of the writ to address issues beyond mere unlawful detention, such as the conditions of detention, treatment of prisoners, and custodial deaths<sup>445</sup>. However, there are still several limitations to its applicability.

- A. **Preventive Detention Laws**: One of the major limitations to the effectiveness of Habeas Corpus is the existence of

<sup>439</sup> Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.

<sup>440</sup> Sheela Barse v. State of Maharashtra, AIR 1983 SC 378

<sup>441</sup> Nilabati Behera v. State of Orissa, (1993) 2 SCC 746

<sup>442</sup> ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521

<sup>443</sup> Anand Teltumbde v. State of Maharashtra, 2023 SCC OnLine Bom 2355.

<sup>444</sup> Gautam Navlakha v. National Investigation Agency (2022), the citation is SLP (Crl.) No. 9216 of 2022

<sup>445</sup> Indian Law Offices LLP “Habeas Corpus” at – <https://www.indialawoffices.com/knowledge-centre/habeas-corpus>, Visited on 23.10.2025

preventive detention laws. Under Article 22, preventive detention allows the state to detain individuals without trial for specified periods to prevent potential harm to public safety or order. Courts have, at times, been hesitant to interfere with preventive detention orders, particularly when national security or public safety is cited as justification. Cases like *A.K. Gopalan v. State of Madras (1950)*<sup>446</sup> showcase the court's deference to preventive detention statutes.

- B. **Emergency Provisions under Article 359:** During times of emergency, the right to move for enforcement of fundamental rights, including Habeas Corpus, can be suspended. The 1976 decision in the ADM Jabalpur case serves as a reminder of how fragile civil liberties can become under emergency powers. Although subsequent judicial pronouncements have curtailed the state's ability to suspend Habeas Corpus petitions, the possibility of its suspension remains a concern.
- C. **Delays in Judicial Proceedings:** One of the significant challenges in the contemporary application of Habeas Corpus is judicial delays. The efficacy of the writ depends on the speed with which courts hear and dispose of cases. Delays in filing, hearing, and disposing of Habeas Corpus petitions undermine its very purpose, allowing illegal detention to persist for longer periods.
- D. **Political Misuse of Detention Laws:** In recent times, there have been concerns about the use of stringent laws like the *Unlawful Activities (Prevention) Act (UAPA)* and the *National Security Act (NSA)* to suppress political dissent. Habeas Corpus petitions have been filed in cases where activists, political opponents, and dissenters were

detained under these laws. Recent cases like *Anand Teltumbde v. State of Maharashtra (2023)*<sup>447</sup> and *Gautam Navlakha v. National Investigation Agency (2022)*<sup>448</sup> highlight the need for judicial scrutiny in cases of preventive detention involving political dissent.

#### VI. Comparative Perspective: The USA and the Suspension Clause

The writ of Habeas Corpus has global significance, especially in constitutional democracies like the United States. The Suspension Clause in Article I, Section 9 of the U.S. Constitution states that the writ of Habeas Corpus shall not be suspended unless in cases of rebellion or invasion where public safety may require it. Like in India, Habeas Corpus in the U.S. has evolved to address issues of unlawful detention, treatment of prisoners, and conditions of confinement<sup>449</sup>. One of the most notable U.S. cases involving the writ is *Boumediene v. Bush (2008)*<sup>450</sup>, where the Supreme Court held that foreign detainees at Guantanamo Bay had the constitutional right to challenge their detention via Habeas Corpus petitions.

#### VII. Judicial Considerations

The writ of Habeas Corpus stands as a fundamental right under Article 21 of the Indian Constitution, providing crucial protection against unlawful detention and preserving individual liberty. It empowers individuals to challenge the legality of their confinement, compelling the detaining authorities to produce the person before a court and justify the grounds for their detention. Habeas Corpus serves not only to secure the release of those wrongfully detained but also to affirm the principle that personal liberty is sacrosanct, shielded from arbitrary state action. The judiciary, particularly through the Supreme Court and High Courts under Articles 32 and 226

<sup>447</sup> *Id.*, 6

<sup>448</sup> *Id.*, 7

<sup>449</sup> Harvard Law Review 'Habeas Corpus and the Suspension Clause' at <https://harvardlawreview.org/topics/habeas-corpus/>. Visited on 21.10.2024

<sup>450</sup> *Boumediene v. Bush*, 553 U.S. 723 (2008).

<sup>446</sup> *A.K. Gopalan v. State of Madras*, 1950 SCR 88; AIR 1950 SC 27.

respectively, plays a pivotal role in upholding this right, acting as the guardian of the Constitution and the protector of fundamental rights. Over the years, the Indian judiciary has fortified the scope of Habeas Corpus through landmark judgments and progressive interpretations. Cases such as *ADM Jabalpur v. Shivkant Shukla*<sup>451</sup> highlighted the judiciary's struggle to balance state security with individual rights, while subsequent rulings in cases like *Justice K.S. Puttaswamy v. Union of India*<sup>452</sup> reaffirmed the inalienability of the right to personal liberty. The judiciary's evolving stance has broadened the writ's application beyond mere challenges to unlawful detention to include addressing conditions of imprisonment and custodial treatment, as seen in *Sunil Batra v. Delhi Administration*<sup>453</sup>. This expansion underscores the judiciary's commitment to safeguarding human dignity and protecting individuals from inhumane treatment within custodial settings.

However, despite judicial efforts, the challenge of illegal detention remains pervasive in India. Numerous factors contribute to this persistent issue, including administrative inefficiencies, delays in adjudicating petitions, a lack of public awareness about legal rights, and systemic flaws in law enforcement practices. Vulnerable groups such as marginalized communities, minorities, and political dissenters often bear the brunt of illegal detention, facing discrimination and abuse of power by authorities. In certain cases, stringent laws like the *Unlawful Activities (Prevention) Act (UAPA)* and preventive detention statutes exacerbate the problem, allowing for prolonged detention without trial based on broad executive discretion.<sup>454</sup> This situation points to a need for more stringent checks on executive power and greater procedural safeguards to prevent misuse. To enhance the effectiveness of Habeas Corpus in India, several measures must be

undertaken. First, strengthening judicial oversight by ensuring prompt hearing of petitions and minimizing delays is essential to prevent prolonged unlawful detention. Courts should prioritize Habeas Corpus cases to safeguard against rights violations. Second, expanding public awareness initiatives and providing legal aid are crucial for empowering individuals to challenge illegal detention, especially for those who cannot afford legal representation. Legal aid services should be accessible, particularly for marginalized and economically weaker sections. Third, implementing robust procedural safeguards, such as regular review of detention orders and imposing strict requirements for authorities to justify continued detention, can help curb arbitrary detentions. This would ensure that the state's power to detain individuals is exercised within legal boundaries<sup>455</sup>.

Additionally, aligning domestic legal frameworks with international human rights standards, such as those enshrined in the International Covenant on Civil and Political Rights (ICCPR), can reinforce India's commitment to protecting individual liberties<sup>456</sup>. Promoting accountability mechanisms, including compensation for wrongful detention and holding law enforcement officials responsible for illegal actions, is crucial for deterring violations.

#### VIII. Conclusion

The writ of Habeas Corpus remains an indispensable safeguard for personal liberty in India. It embodies the judiciary's role as a protector of individual freedoms against arbitrary state action. Over the years, the Indian judiciary has expanded the scope of Habeas Corpus, ensuring that it serves not only as a remedy for unlawful detention but also as a mechanism for addressing broader violations of human rights within custodial settings. However, its application is not without challenges,

<sup>451</sup> *Id.*,5

<sup>452</sup> Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors., (2017) 10 SCC 1.

<sup>453</sup> *Id.*,2

<sup>454</sup> Indian Law Institute Journal "Right to Life and Personal Liberty" by J.B.P

<sup>455</sup> *Ibid.*,24

<sup>456</sup> National Human Rights Commission India 'Human Rights and the judiciary' at- <https://nhrc.nic.in/> Visited on 21.10.2024

particularly concerning preventive detention laws and political misuse of detention powers.

As India continues to grapple with balancing individual rights and state interests, the judiciary must remain vigilant in upholding the sanctity of Habeas Corpus as a cornerstone of personal liberty. Its robust application is essential for ensuring that the constitutional guarantee of personal liberty under Article 21 is not rendered illusory but continues to serve as a living reality for all individuals.

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