

THE ROLE OF HABEAS CORPUS IN HUMAN RIGHTS PROTECTION: AN INTERNATIONAL EVALUATION OF PREVENTIVE DETENTION LAWS AND APPLICATION OF HABEAS CORPUS

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Abstract

In this contemporary era where politics has proven to influence the enjoyment of human rights and personal liberty, as political decisions often defines the extent of individual freedoms, such includes freedom of speech, assembly, and movement. Politics, though have a positive impact in framing laws and regulations that safeguard rights, it also has significant adverse impact on human rights and persona liberty, primarily by concentration state power, eroding democratic institutions, and enabling discriminatory and repressive policies. It is however, no doubt that politics suppresses civil liberties where political actions often justified under the guise of national security can lead to suppression of dissent, censorship of the media and internet, and the prohibition of peaceful assembly and protest. The use of draconian preventive detention laws allows for the arbitrary arrest and prolonged detention of political and social justice activists, journalists and perceived opponents which creates a climate of fear thereby silencing criticism. Preventive detention is often politically influenced and could be used as a tool for suppressing political dissent and opposition, rather than being solely used for the stated purpose of maintaining public order and national security. This subjective nature of the power and the lack of robust judicial oversight makes it prone to abuse by the executive branch. In as much as these preventive detention laws often use vague and broad definitions of terms like 'public order' or 'national security' or 'anti-social activities', gives the detaining authorities significant discretion and allows authorities to act on political motives rather than objective evidence of an imminent threat. The framework of preventive detention concentrates significant powers in the hand of the executive including the district magistrates and police commissioners to issue detention orders based on their subjective satisfactions. This undermines the separation of powers and the rule of law in any given democracies, especially when the judiciary defers to the executives claims of national security.

Keywords

Preventive detention laws, Writ of Habeas Corpus, Human Rights Enforcement

Introduction

Habeas Corpus exists as a fundamental human right enforcement mechanism typically as a writ from the courts which demands to have the living body of a person that has been illegally detained either beyond statutory deadline or the violation of his right during the effectuation

of the arrest, to be brought before the court. The primary function of habeas corpus is to protect individuals from being held in custody without just or legal cause. Habeas corpus ensures that no person is deprived of their freedom arbitrarily, particularly where state powers in matter of national security and public order can lead to potential overreach. It serves as a legal

action preventing unlawful and arbitrary detention by forcing detaining authorities to present the prisoner in court and provide legal justification for their detention. This writ protects personal liberty and ensures that no one is held illegally or for an excessive period, it can result in immediate release if the detention is found to be unlawful. The writ of habeas corpus can be filed to challenge an arrest made without a warrant, valid reason, or proper legal procedure. The concept of the writ of habeas corpus can be traced to have its origin in the late 13th century England along with the principle of 'lawful judgement of his peers' found in the Magna Carta. The modern form developed overtime from centuries to centuries notably with the *Habeas Corpus Act of 1679*¹⁴⁵⁶, as a way of challenging illegal detention by requiring a prisoner's custodian to appear before a court to justify confinement. The concept was adopted into the United States laws, being codified by the *First Judiciary Act of 1789*¹⁴⁵⁷ and was later expanded to include state prisoners by the *Habeas Corpus Act of 1867*¹⁴⁵⁸.

In the United States, the writ was brought to the colonies and was later guaranteed under the U.S. constitution. It is considered a crucial safeguard of personal liberty and is linked to due process rights guaranteed under the Fifth Amendment. In the Indian legal system, the writ stems from the late 1774 when it was introduced by the British from the English law, in the Supreme Court of Calcutta. From the first instance, the power to issue this writ was limited to a few judges and only Presidency High Courts like Bombay, Calcutta, and Madras could issue this writ under specific acts. The writ was thus incorporated in the Indian constitution after independence and its powers was extended to all High Courts. In Liberia the concept of habeas corpus has been followed since its independence from the American Colonization Society (ACS), the country has adopted habeas

corpus as a fundamental legal protection drawing directly from then principles of the American and English common law. Liberia's legal system is heavily influenced by the American common law thus, as the American legal system regards habeas corpus as a fundamental safeguard of personal liberty against arbitrary detention, the right of habeas corpus has been consistently enshrined in Liberia's constitution from the 1847 Constitution which was suspended during the civil war, to the 1986 Constitution, it has been a fundamental right against unlawful detention.

A. Research Objectives

The objective of this paper is to evaluate the effectiveness, challenges and applicability of the writ of habeas corpus in protecting fundamental rights especially the right to personal liberty. The paper will;

1. Investigate the applications of habeas corpus writs across India, Liberia and the United States
2. Evaluate the effectiveness of Habeas corpus amid political motives, and in the context of ensuring national security and public order
3. Analyze the role of court systems in preventing the misuse of preventive detention laws against right to personal liberty, and
4. Recommend possible changes in the definition, scope and application of preventive detention to avoid its misuse.

B. Research Questions

In this paper, the following questions will be answered;

1. How do we strike a balance between preventive detention laws and the right to habeas corpus?
2. What is the role of the courts in ensuring that habeas corpus remains a fundamental right, free from arbitrary state actions while ensuring that it does not overstep its functions?

¹⁴⁵⁶ Habeas Corpus Act, 1679 (31 Cha. 2 c. 2) Act of Parliament of England

¹⁴⁵⁷ First Judiciary Act, 1789 (Cha. 20 1 Statute 73) United States Federal Statute, Act of New Congress

¹⁴⁵⁸ Habeas Corpus Act of 1867 Sess. II. Ch. 26, 27, 28. 1867 United States Statute

3. Why is preventive detention necessary in ensuring public order despite relying on mere suspicions?
4. Under what justifiable circumstances can the right to personal liberty be restricted or taken away?

Research Hypothesis

As the concept and application of habeas corpus appears to be similar in international context, the paper acknowledges the variance in scope and definition and attempts to merge international perspectives into a single but consistent definition and scope as it will ascertain the balance mechanism used in preventive detention and habeas corpus. Relevant case laws, statutory legislations and constitutional provisions are key instruments used in ensuring authenticity, credibility and conciseness of the research. By the conclusion of this paper, the reader would understand from an international perspective, the intricate relationship between human rights and the right to habeas corpus and how habeas corpus ensures the protection of human rights particularly the right to liberty and a fair trial.

Research Methodology

This paper is explorative and comparative in nature, it blends together three distinct but connected legal systems to ensure a clear understanding of the subject matter. The paper relies on both primary and secondary resources for authenticity and credibility. Primary sources like constitutional provisions, international treaties, landmark judgements and statutory legislations for in-depth understanding on the subject, while secondary sources like journals, academic articles, blogs and websites are used for simplified explanation on the subject matter.

Review of Literature

The writ of habeas corpus challenges preventive detention laws as it directly questions the lawfulness of the detention. While preventive detention allows for detention without trial to prevent future offenses, it must adhere to strict constitutional and legal

procedures. A writ of habeas corpus can only be argued when these procedures are violated, such as when there is a lack of proper justification, legal grounds are vague, or the detenu is not informed of the reasons for their detention. Although the purpose of preventive detention is to detain someone for potential future actions, habeas corpus ensures that this is done without violating the fundamental right to life and liberty, which can only be deprived according to procedures established by law.

In India, preventive detention laws include provisions like Article 22 of the Indian Constitution which provides for safeguards that allows a person to be detained up to three months without board's report, for the purpose of safeguards. Other statutory legislations like the *National Security Act (NSA) 1980*¹⁴⁵⁹ allows detention even up to 12 months on grounds of national security, public safety or interference with public services. The *Unlawful Activities (Prevention) Act (UAPA) 1967*¹⁴⁶⁰ is a central law that can be used for preventive detention targeting individuals involve in unlawful activities. Furthermore, the *Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974*¹⁴⁶¹ targets individuals suspected of economic offences related to smuggling and foreign exchange violations and other specific laws like the Public Safety Act which may varies from state to state can be used for preventive detention.

In the United States, preventive detention is a practice permitted under federal and state laws although being subject to constitutional protections like due process and right to bail. Federal laws like the *Bail Reform Act of 1984* couple with many other state laws allows for preventive detention to ensure that defendants appear in court and to protect the community from individuals who pose significant danger, especially in cases involving violent crimes or high risk of flight. The Courts often relies on the

¹⁴⁵⁹ National Security Act, 1980 (Act No. 65 of 1980) Parliament of India

¹⁴⁶⁰ Unlawful Activities (Prevention) Act, 1967 (Act No. 37 of 1967) Parliament of India

¹⁴⁶¹ Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974 (Act No. 52 of 1974) Parliament of India

Supreme Court case of *United States vs. Salerno* which affirmed the constitutionality of preventive detention provided that it serves a legitimate public safety interest and expanded the purpose beyond just court appearance¹⁴⁶².

Whereas in Liberia, the practice of preventive detention is considered unconstitutional as the Liberian Constitution provides under Article 21(f) which requires judicial examination within 48 hours to determine if a prima facie case exist and thus, prohibits arbitrary detention without charge. A significant case in Liberia is the case of *Clark vs Clinton – Johnson*¹⁴⁶³, wherein the Liberian Supreme Court upheld the Act Creating Criminal Court 'E' section 25.3(a) that allows special procedures for serious sexual offense cases, even if those procedures resulted in longer pre-trial detention time that might otherwise be considered 'preventive detention'.

The Hon'ble Supreme Court determined that those procedures were not violative of the constitution reasoning that magistrates of the courts were not adequately equipped to protect the psychological well-being of victims and witnesses who might suffer harm from direct exposure to the defendants during the preliminary hearing.

India and the Concept, Enforcement and Application of Habeas Corpus

In India, the right to be released from unlawful arrest can be sought under the writ of habeas corpus as provided under Article 32 of the Indian constitution which grants the power to the Supreme court to issue such writs for the enforcement of fundamental rights. This provision grants citizens the fundamental right to petition the Hon'ble Supreme Court directly for the enforcement of their basic rights and the court thus, having the power to issue writs like habeas corpus to ensure lawful detention and release from illegal confinement. Habeas corpus allows individuals or NGOs to challenge unlawful or arbitrary imprisonment by compelling the custodian to present the

detainee before the court to justify the detention. Habeas Corpus safeguards liberty against state overreach and protects the rights of individuals held in prisons, mental institutions, or other forms of detention.

The writ of Habeas Corpus is filed in the Supreme Court particularly under Article 32 or the High Courts under Article 226 of the Indian Constitution by the detained person or a third party. The court issues a Rule Nisi" to the detaining authority, ordering them to produce the detainee and show cause for the detention. After hearing the court can order the person's immediate release if the detention is found to be unlawful. In a landmark judgement in the case of *Sunil Batra vs Delhi Administration*¹⁴⁶⁴, the Hon'ble Supreme Court said that prisoner have the fundamental rights to petition the court for relief from inhumane treatment. The judgement affirmed that a prisoner does not lose their constitutional rights simply by virtue of being incarcerated and established that the judiciary can intervene to protect prisoners from cruelty, torture, or any violation of their dignity. Another significant case was the 1983 case of *Rudul Shah vs. State of Bihar* wherein the court held that the writ of habeas corpus can be used to claim compensation for illegal detention in cases where the government was responsible¹⁴⁶⁵.

Grounds for Preventive Detention in India

The primary grounds for preventive detention in India include actions that could prejudice the defence of India, its foreign relations, or for security reasons, or such actions as would be prejudicial to the maintenance of public order or the prevention of essential supplies and services. These grounds are provided for under laws like the *National Security Act (NSA) of 1980* and can include offences related to smuggling and foreign exchange, which are covered by legislations like the *COFEPOSA Act of 1974*. The Hon'ble Supreme court held in the case of *Ankul Chandra Pradhan, Advocate vs. Union of India*

¹⁴⁶² United States vs. Salerno 481 U.S. 739 (1987)

¹⁴⁶³ Clark et al vs. Clinton Johnson et al. LRSC 34 (2015)

¹⁴⁶⁴ Sunil Batra vs. Delhi Administration 1978 SCC (4) 494

¹⁴⁶⁵ Rudul Shah vs. State of Bihar SCC (4) 141 1983

1997¹⁴⁶⁶ that the purpose of preventive detention was to prevent harm to the security of the state, rather than to impose punishment. This was further emphasized in the 2023 case of *Ameena Begum vs. State of Telangana*¹⁴⁶⁷, the Hon'ble Supreme court held that preventive detention was an exceptional measure which is meant for emergency situations and should not be used routinely.

United States Enforcement and Application of Habeas Corpus

In the United States, the writ of habeas corpus is enforced through a combination of constitutional provisions, federal statutes as well as case laws. The constitution guarantees the privilege in Article 1 (u/s 9.2) in its 'suspension clause' that states;

*"The privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it"*¹⁴⁶⁸.

This clause, thus protects the rights of individuals to challenge the legality of their detention by government in court. Without habeas corpus, the government could arrest and hold individuals indefinitely without trial, which is considered a cornerstone of a free society. It ensures that government has a legal basis for detaining a person, and prevents the arbitrary imprisonment of individuals. This part of the constitution is a crucial civil liberty protection, acting as a check on the executive and judicial branches to prevent unlawful or arbitrary imprisonment. The Constitution provides that this writ could only be suspended under specific, extraordinary circumstances including; cases of rebellion involving an open, organized, and armed resistance to the government, or invasion that involves an act of foreign entity entering the U.S. territory by force, or in cases where public safety requires such suspension.

The Hon'ble Supreme Court in the case of *Fay vs. Noia in 1963*¹⁴⁶⁹, held that habeas corpus was the ultimate remedy for personal liberty, allowing Noia to challenge a conviction based on a coerced confession even though he had not raised the issue in state court. Additionally, in the 2008 case of *Boumediene vs. Bush*¹⁴⁷⁰, the Hon'ble Supreme Court ruled that non-citizens detained at Guantanamo Bay have the right to petition for habeas corpus, affirming that habeas rights right are not limited by nationality or location and that judicial oversight is essential, even in national security cases.

United States Preventive Detention Grounds

Preventive detention in the U.S. refers to the practice of holding individuals in custody prior to trial based on the determination that they pose a flight risk or a threat to public safety. Defendants were denied bail for serious offenses during the British system prior to the American revolution. Preventive detention is allowed for under Federal and state laws and in specific circumstances, such as in cases involving violence, previous felony convictions, or where defendants might obstruct justice¹⁴⁷¹.

A significant legislation allowing for preventive detention in the U.S. is the *Bail Reform Act, 1984*¹⁴⁷², which authorizes judges to detain defendants before trial if they pose a danger to the community. Judicial officers must consider public safety when making release decisions and establishing the condition that the defendant may not commit a new crime while on release.

Liberia; Enforcement of Habeas Corpus

In Liberia, habeas right is primarily enforced through the filing of petitions by independent national human rights commissions or by the Courts via *Suo moto* petitions challenging the legal basis for detention of individuals. The Constitution of Liberia guarantees the right to the writ of habeas corpus as a fundamental

¹⁴⁶⁶ Ankul Chandra Pradhan, Advocate vs. Union of India AIR 1997 SC 2814

¹⁴⁶⁷ Ameena Begum vs. State of Telangana and Ors (2023) 9 SCC 587

¹⁴⁶⁸ Constitution of the United States 1789 (Article I, Section 9.2)

¹⁴⁶⁹ Fay vs. Noia, 372 U.S. 391 (1963)

¹⁴⁷⁰ Boumediene v. Bush 553 U.S. 723 (2008)

¹⁴⁷¹ Preventive Detention; EBSCO Knowledge, 2024, Clifford, Scot

¹⁴⁷² Bail Reform Act 1984 S.215, 98th Congress (1983-1984) U.S.

safeguard against arbitrary arrest and unlawful imprisonment. The Supreme Court and various subordinate courts like the Circuit courts and the Magisterial Courts are the primary mechanisms for the enforcement of habeas corpus.

The process involves the following;

- Application can be filed to the court by the detained person, or his legal representative or any acting on his behalf under the provisions of Article 21(f) (either family, or civil society organizations).
- The Court, then issues a writ, an order requiring the detaining authority (police or prison officers) to bring the imprisoned person physically before the court.
- The detaining authority, by the Order of the court, must provide a legal justification for the detention. The burden of proof is on the prison officials to show that the detention is lawful.
- If the court finds that the detention was without lawful authority or in an unlawful manner, it orders the immediate release of the individual.

Interestingly, the Liberian constitution, under the provision of Article 21(f) guarantees the right to habeas corpus, ensuring that anyone arrested or detained can exercise this right if they are not brought before the court within the time stipulated under the constitution (48 hours from the time of the arrest), and in furtherance to this provision, Article 87 protects this right by prohibiting the suspension thereof even during the time of emergencies.

Role of Independent National Human Rights Commission in ensuring Human Rights Protection in Liberia

The Independent National Human Rights Commission on Liberia (INCHR) is mandated to promote and protect human rights by ensuring their realization, enhancing peace and national reconciliation, and implementing recommendations from the Truth and

Reconciliation Commission. It investigates Human rights violation, provide mechanisms for addressing human rights issues, raises public awareness through programs and consultations, and provides capacity building for stakeholders on human rights implementation and reporting. Although being a National Body, the INCHR lack enforcement powers and is often supported by international partners like the Office of the High Commissioner for Human Rights (OHCHR).

Challenges with Enforcement of Habeas Corpus Globally

Upon careful observation and evaluation of the three jurisprudence on habeas corpus, it be finally be deduced that, the right of habeas is seriously challenged in today's judicial setting by factor like tension between individual liberties and government interests, such as national integrity, security and judicial efficiency. Government often seeks to limit the scope of habeas corpus during the times of emergency or national security threats, arguing that the need to detain suspected terrorists without traditional criminal proceedings outweighs individual due process rights as seen in the United States' legal system under Article 1 section 9 clause 2 of the U.S. Constitution. Executive power and secrecy are another significant challenge to the enforcement of habeas rights, wherein the use of broad executive powers leads to the detention of individuals without sufficient disclosure of the reasons or evidence against them, thereby, making it difficult for the detainees to mount an effective challenge. The authorities may use terms like public interest to withhold facts, which can hinder judicial review. Judicial workloads, jurisdictional issues, procedural limitations and technicalities as well as political pressure and public opinion couple with the setting of a scope of judicial review has had significant impact on the enforcement of habeas corpus in today's legal scenery.

Preventive Detention; a Contention to Due Process and Criminal Justice

Preventive detention, given the discretionary nature which follows as based on assertions like; public safety, national security and public interests which cannot be defined in any statute, has adverse impact on the enforcement of habeas rights, by allowing detention without tangible proof of guilt undermines the concept of due process and criminal justice and fairness, thereby creating secrecy and lack of transparency, and causing significant delays in judicial review that can hinder the remedy meaningless. Laws allowing for preventive detention can evade the constitutional and fundamental remedy for challenging unlawful detention based on the subjective assessment of future risks which delays or prevents a proper judicial challenge to the detention. A serious conflict with these preventive detention laws is the lack of clear disclosure of evidence and information owing to what is termed 'national interest' even during judicial review. This secrecy prevents the detainee from knowing the full case against them, making it difficult to challenge the detention effectively.

In contention with due process, individuals can be detained under preventive detention laws purely on 'suspicion of future wrongdoing', rather than on evidence of a crime that has already been committed, thereby circumventing core legal safeguards. In the context of Criminal law, due process clearly guarantees a fair and systematic procedure, thus, ensuring that no person is deprived of life or liberty without a fair, just, and reasonable legal process. Additionally, fundamental principles of criminal justice is being undermined by preventive detention laws in the sense; criminal justice is a rather punitive legal system ensuring that individuals are punished for offenses committed and based on evidence and established legal procedures, these preventive detention laws relies on the suspicion of or subjective satisfaction of an executive authority regarding a potential future threat. These are extraordinary measures which should be used only in exceptional cases like

imminent national security threats, but courts have noticed a consistent pattern of abuse where these laws are used for ordinary law and order issues that could be handled by regular penal laws.

Recommendations

Upon the above stated findings, it is sufficient to recommend the following;

That Strict limitations be established and preventive detention be limited by legislation aiming at safeguarding fundamental human rights, and the courts must hold the state accountable for any transgression of these limitations. Tribunals and courts on the other hand, must be able to quickly review to ascertain the legality and validity of detention orders. This requires expediting the processing of habeas corpus petitions, which currently can face significant delays.

That habeas corpus petitions be heard in the earliest possible time, ideally by a division bench rather than a single judge, to prevent the 'great wit' from becoming meaningless due to delay. That in ensuring administrative and legal processes are complied with, the detaining authorities must immediately inform the detained person of the grounds for their detention as soon as possible after the arrest, and the reason for detention must be transparent and have a logical connection to the stated purpose, thus, allowing the individual to make a representation against it. Additionally, that preventive detention be incorporated as a separate chapter in the Criminal Procedure Codes so as to maintain clarity and a structured process consistent with due process mechanisms¹⁴⁷³.

Conclusion

Based on the issues evaluated and the facts which were discovered, it can be concluded that preventive detention laws are primarily effective when used under circumstances

¹⁴⁷³ Etisa Debbarma; A Legal Analysis of Preventive Detention Laws in India (International Journal of Legal Studies and Social Sciences) IJLSSS <https://ijlss.com/a-legal-analysis-on-preventive-detention-laws-in-india/>

established by law, which must be just, fair and reasonable, and that it must only be applied in exceptional cases of imminent national security threats. The laws establishing preventive detention must be corroborative with the criminal procedure codes and such chapters providing it must set reasonable limitations and fundamental processes. In the absence of these considerations, preventive detention laws have a tendency to contravene the concept of due process and the principle of criminal justice as it would be vulnerable to misuse and abuse by state authorities. Provided that these procedures are followed and measure are well taken for consideration, the true spirit of the 'great writ' can be felt and human rights could be protected from arbitrary seizure of liberties. Habeas corpus is not merely a fundamental right, not merely a basic writ, but an instrument used for the enforcement of fundamental rights and the fundamental safeguard for personal liberty, which provides a swift way to challenge unlawful detention and guarantees freedom from unlawful imprisonment.

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