

## THE GREAT WRIT IN INDIA: SAFEGUARDING LIBERTY THROUGH HABEAS CORPUS

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### ABSTRACT:

Habeas Corpus or the Great Writ is one of the most important and valuable writs in public law. It is an extraordinary writ through which the court maintains its control over the liberty of the subject. It is known as the greatest safeguard of the personal freedom of the individual. Habeas Corpus is a common law remedy and Articles 32 and 226 of the Constitution of India have incorporated this writ so that the courts can exercise power to issue a writ of Habeas Corpus for the enforcement of Fundamental Rights. In this paper, the origin and history of Habeas Corpus, Constitutional provision regarding the Writ, growth of the Writ of Habeas Corpus in India and the importance of this extraordinary writ in the present scenario is being discussed. The Judicial interpretation of Habeas Corpus in India and the much controversial case of ADM Jabalpur v. Shivkant Shukla and also, the landmark cases that have contributed to the development of the Writ of Habeas Corpus is being highlighted. Habeas Corpus is treated as a fundamental safeguard of personal liberty that requires the state to justify detention before an independent tribunal. The paper analyses the key cases that shaped modern doctrine, and discusses tensions between national security and rights protection in the 21<sup>st</sup> century.

### Introduction:

The common law's ancient writ of Habeas Corpus is one of the most important defenses available against illegal detention. The writ of **Habeas Corpus**, translated from Latin as "you have the body," empowers courts to examine the legality of a person's detention and order release if the detention is found to be unlawful. It serves as a vital judicial mechanism that ensures no individual is deprived of liberty without lawful justification. Historically celebrated as a cornerstone of individual liberty, habeas corpus prevents arbitrary imprisonment and compels executive authorities to justify the grounds of detention before a court of law.

The significance of this writ lies in its role as a safeguard against the abuse of state power. By

enabling the judiciary to review the actions of the executive, it preserves the balance of power within a constitutional system and reinforces the principle that personal liberty cannot be curtailed except in accordance with the law. In democratic societies governed by the rule of law, the availability of habeas corpus acts as a crucial check on arbitrary authority and protects citizens from unlawful confinement.

In the Indian constitutional framework, the protection of personal liberty through habeas corpus has been firmly embedded within **Constitution of India**. The power to issue the writ is conferred upon the **Supreme Court of India** under **Article 32 of the Constitution of India** and upon the **High Courts of India** under **Article 226 of the Constitution of India**, thereby making it an essential remedy for the

enforcement of fundamental rights. Through judicial interpretation and constitutional practice, Indian courts have expanded the scope of habeas corpus to address not only illegal detention by the state but also other forms of unlawful restraint on personal freedom.

Thus, the writ of habeas corpus stands as a powerful instrument for safeguarding liberty and maintaining judicial oversight over executive authority. Its continued relevance in modern constitutional democracies highlights the enduring importance of protecting individuals from arbitrary detention and ensuring that the rule of law prevails over unchecked state power.

#### Origin of habeas corpus:

The phrase “Habeas Corpus” is Latin for you shall have the body, which means produce the detained person before the court. Its foundation can be traced to the Magna Carta (1215). King John was abusing power. Barons forced him to sign Magna Carta. Clause 39 stated that no free man shall be imprisoned except by lawful judgment. This planted the first seed of protection against arbitrary arrest. In the English Courts, between the 13th–17th centuries English judges began issuing writs to jailers. Courts demanded the legal reason for detention. This prevented illegal detention.

And required jail authorities to produce prisoners quickly. It imposed penalties on officials who disobeyed. It became one of the strongest protections of personal liberty in English law.

India adopted the principle from British common law.

Today, habeas corpus is guaranteed under Article 32 (Supreme Court) and Article 226 (High Courts of the Constitution of India).

Habeas Corpus is a part of the five constitutional writs:

- Habeas Corpus
- Mandamus

- Certiorari
- Prohibition
- Quo Warranto

It was created to protect individual liberty of the citizens from unlawful or arbitrary imprisonment by the State. Dr. B.R. Ambedkar called Article 32 the “heart and soul” of the Constitution.

#### Characteristics of habeas corpus:

##### 1. Constitutional and Fundamental Nature:

Habeas Corpus is a constitutional writ guaranteed under Article 32 for the Supreme Court and Article 226 for the High Courts of the Constitution of India. It is not merely a statutory remedy, but also a fundamental right enforcement mechanism. Dr. B.R. Ambedkar called Article 32 the “heart and soul” of the Constitution. Despite being a writ it also acts as a fundamental right and is constitutional in nature.

##### 2. Purpose: Protection of Personal Liberty:

The primary objective is to safeguard Article 21 which is about Right to Life and Personal Liberty.

It ensures no person is detained without lawful authority and detention must follow “procedure established by law.” It safeguards the rights and liberty of the citizens. In the case *Maneka Gandhi v. Union of India*: Procedure must be just, fair and reasonable, not arbitrary. The Supreme Court ruled that “procedure established by law” implies a substantive “due process” standard, ensuring that state action, including detention, must comply with principles of natural justice and cannot be solely based on a, potentially unfair written law.

##### 3. Remedy Against Illegal or Arbitrary Detention:

The writ is issued when arrest is without authority of law, mandatory procedural safeguards are violated and detention exceeds statutory limits. The court does not determine guilt, it only examines legality of detention. If detention is unlawful, the court must order immediate release. It acts as a remedy to illegal detention without any proof or reasonable

charges or a warrant. No person should be illegally detained. This writ safeguards the people from such detention.

#### 4. Wide Locus Standi:

Locus standi is “place to stand” is the legal right or capacity of a party to bring the lawsuit or appear before a court. Unlike traditional remedies, Habeas Corpus allows liberal locus standi.

It may be filed by the detained person, a friend or relative or any public-spirited citizen. This broadened approach developed during the era of Public Interest Litigation. *Sunil Batra v. Delhi Administration*: Even letters were treated as Habeas Corpus petitions. It is a landmark Supreme Court of India case establishing that prisoners do not give up their fundamental rights upon conviction. Triggered by a letter detailing the torture in the Tihar Jail. The court ruled against inhumane treatment, illegal solitary confinement, and excessive bar fetters, ensuring judicial oversight of prison conditions.

#### 5. Available Against State and Private Individuals:

Habeas Corpus can be issued against police or government authorities and against private individuals (e.g., illegal confinement, child custody disputes). This distinguishes it from some other writs like Mandamus. It can be issued against anyone who caused the harm. It can be filed against police or government authorities.

#### 6. Summary and Speedy Remedy:

It is a swift and urgent judicial remedy because personal liberty is at stake. Courts prioritize such petitions to prevent prolonged unlawful detention. Liberty delayed is liberty denied. Speedy judicial remedy is provided as personal liberty cannot be compromised and cannot be delayed as the personal liberty earth is at stake and if it delayed it is considered denied and this leads to injustice.

#### 7. Judicial Inquiry into Legality, Not Merits:

The court examines whether detention is supported by valid law, whether procedural requirements were followed. It does not conduct trial or decide criminal liability. Usually habeas corpus cases do not decide criminal liability. This was clarified in *Kanu Sanyal v. District Magistrate, Darjeeling*: Production of the body is procedural legality of detention is the core issue. Every person detained must be produced before the district court.

#### 8. Operates Even During Preventive Detention :

Preventive detention is the administrative action of holding a person in custody without trial or conviction, based on the suspicion or anticipation that they might commit a future act prejudicial to state security, public order, or foreign relations. Preventive detention laws are constitutionally valid (Article 22), but courts can examine mala fide intention, procedural violation, non-application of mind. However, if detention strictly follows law, the writ will not lie.

#### 9. Suspension During Emergency:

During the 1975 Emergency in *ADM Jabalpur v. Shivkant Shukla* The Supreme Court held that Habeas Corpus was not maintainable when Article 21 was suspended. This decision was heavily criticized. Later, Justice K.S. Puttaswamy v. Union of India Overruled *ADM Jabalpur* and reaffirmed the inviolability of liberty. After the 44th Constitutional Amendment (1978) Articles 20 and 21 cannot be suspended even during Emergency.

#### 10. Rooted in Rule of Law

Habeas Corpus reflects supremacy of law, judicial control over executive power, accountability of the State. Its historical foundation lies in the Magna Carta and the Habeas Corpus Act, which limited arbitrary royal detention. Historically celebrated as a cornerstone of individual liberty, habeas corpus prevents arbitrary imprisonment and ensures executive accountability to the judiciary.

#### Suspension of Habeas Corpus in India:

*ADM Jabalpur v. Shivkant Shukla* (1976)-

**ADM Jabalpur v. Shivkant Shukla**, AIR 1976 SC 1207, was a Landmark Judgement of the Supreme Court of India pertaining to the suspension of Articles 21 and 226 of the Indian Constitution in the event of a National Emergency. This controversial judgment of P.N.Bhagwati, decreed during the emergency from 25 June 1975 to 21 March 1977, held that a person's right to not be unlawfully detained (i.e. *habeas corpus*) can be suspended in the interest of the State. This judgment received a lot of criticism since it reduced the importance attached to Fundamental Rights under the Indian Constitution. Going against the previous decisions of High Courts, the bench which included P. N. Bhagwati concluded by a majority 4:1 in favour of the then Indira Gandhi government while only Justice Hans Raj Khanna was opposed to it. During the 1975 Emergency the government suspended Article 21. Question arose that can courts hear Habeas Corpus petitions during Emergency? Majority judgment said no. Which meant if liberty is suspended, courts cannot help. This decision was widely criticized. Later, it was effectively overruled in Justice K.S. Puttaswamy v. Union of India.

Justice K.S. Puttaswamy v. Union of India:

The Supreme Court declared Right to life and liberty is fundamental and ADM Jabalpur was wrongly decided. This restored faith in constitutional protection. Under Article 359 during a National Emergency, the President may suspend enforcement of certain Fundamental Rights, but after the 44th Constitutional Amendment (1978) Articles 20 and 21 cannot be suspended. This was done to prevent misuse like during the 1975 Emergency.

#### **Conclusion:**

Habeas corpus remains an indispensable legal mechanism for protecting personal liberty against arbitrary state detention. Its long history—from medieval precedents through the Habeas Corpus Act of 1679 to modern constitutional cases—shows an enduring

commitment across legal systems to judicial oversight of executive power. Contemporary challenges, particularly in national-security contexts and managing procedural access, require careful doctrinal and institutional responses that preserve the writ's remedial force while addressing legitimate state concerns.