

Writ of Habeas Corpus

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ABSTRACT: *Writs are a written order by the Supreme Court or High Court directing Indian people to have constitutional redress against the violation of their fundamental rights. Article 32 of the Indian Constitution deals with the constitutional remedies which an Indian citizen can bring against the infringement of his/her fundamental rights before the Supreme Court and the High Court. The same clause grants the Supreme Court the authority to issue complaints for the protection of justice, while, under Article 226, the High Court has the same power. 'To have the body of' is the Latin sense of the word 'Habeas Corpus.' This document is used to uphold the constitutional right of human rights from arbitrary imprisonment. The Supreme Court/High Court, by Habeas Corpus, orders a person who has detained another person to put the latter's body before the court.*

KEYWORDS: *Constitution Law; Habeas Corpus; High Court; India; Supreme Court; Writ.*

INTRODUCTION

The Latin term habeas corpus indicates that the body must be in place, and a writ was called habeas corpus ad subjiciendum to secure rights. The court orders the person or authority who has arrested another person to put the prisoner's body before the court in order to allow the court to assess the legitimacy, jurisdiction or reason for such detention. The primary object of the writ is to guarantee that the suspected wrongful imprisonment on the right or freedom of the prisoner or imprisonment is immediately judicially checked[1].

The great strength of the writ is that it requires a person's right to rights to be decided automatically. Under Art. 22, within 24 hours of his detention, a person convicted would be produced before a judge, and failure to do so will entitle the arrested person to be freed. Habeas corpus cannot be issued if, by a warrant by a competent judge, a person has been sentenced to detention where the decision does not appear to be prima facie beyond authority or completely unconstitutional. Habeas corpus may be used not only against the state, but also against any person who holds any human in unlawful custody or detention[1].

In such cases, it is the responsibility of the police to make the required attempts to ensure that the arrest is released, but if an individual is not identified after such efforts, the police should not be placed under excessive pressure to do impossible[2].

It is the most sacred text for personal liberty. Habeas Corpus means, "Let us have the body." A individual may move the Court to the Habeas Corpus question when arrested. It is an order of the Court to produce the accused person before the detaining jurisdiction so that it can examine whether the person has been detained legally or otherwise. If the Court is persuaded that the person is unfairly imprisoned, it can issue orders for his release. A writ of habeas corpus derived from the Latin word indicates that "you may have the body" is a writ (judicial order) demanding that a person under arrest be taken before a judge or court[3].

The habeas corpus theory guarantees that an inmate may be freed from arbitrary imprisonment, i.e. detention without adequate justification or proof. The cure may be found by the inmate or by another person coming to the assistance of the inmate. This privilege originated in the legal

system of England, and is now accessible in many nations. Historically, it has become an essential legislative tool that safeguards individual liberties against unconstitutional state intervention. As in the 1898 Queen's Bench case of *Ex Parte Dorothy Hopkins*, which was successfully used more recently in India to free a woman from a madrasa, it has been applied to non-police officials[4].

The general rule is that a person who is unlawfully detained can make an application. Except in some situations, any person on behalf of the inmate, i.e., a friend or a relative, may apply for habeas corpus. A writ of habeas corpus, also known as the "great writ" is a summons with the power of a judicial order; it is sent to the custodian (for example, a prison official) and requires that a prisoner be brought before the court, and that the custodian give evidence of jurisdiction to allow the court to decide if the custodian has the right to arrest the prisoner[4].

If the custodian behaves outside his control, so the inmate must be released. Any convict, or another person acting on his or her behalf, can seek a writ of habeas corpus from the court, or from a judge. One justification for a party other than the prisoner to seek the writ is that the detainee may be kept incommunicado. There are also drawbacks to habeas corpus. Technically, it is simply a legal remedy; it is a guarantee against any incarceration prohibited by statute, although it does not inherently secure such liberties, such as the right to a fair trial[5].

This text has been described as the rule of law that is grantable *ex debito justitiae*. The writ of habeas corpus is used to secure the release of a person who has been wrongly imprisoned or without valid excuse. The value of the writ is an immediate determination of the right of an individual to liberty[5].

DISCUSSION

In such situations where a citizen is unlawfully arrested, the Writ of Habeas Corpus is issued by the Courts. Habeas Corpus means 'getting the body' and it is one of a detained person's most effective treatments available[6].

In this Writ, the Court orders the party or authority who has arrested or prohibited another person from bringing such a person before the Court. The Court allows the person detained to state the basis on which the person has been detained and, in the absence of a legitimate basis of detention, the person who has been detained shall automatically be released from detention by the Judge[6].

In the Habeas Corpus cases, the courts have noted the country's current socio-economic conditions and the fact that many people are already illiterate and weak. Accordingly, the courts do not deny the appeal brought by the petitioner on the basis that he has not shown the correct ground on which the detention was questioned[6].

"Habeas Corpus" is a Latin word that simply means "you may have the body." The warrant is given to put before a judge a person who has been arrested, whether in jail or in private custody, and to free him if such detention is considered unconstitutional[6].

Habeas Corpus is a Latin word meaning "You should have the body" literally. A person who has been arrested or incarcerated and not brought before the judge within 24 hours, whether in jail or private custody, is given a writ to a producer before a Court and must free the person if

such arrest is considered unconstitutional. The object of the letter is not to prosecute the wrong doer, but merely to release the illegally detained person[7].

However, except after the proclamation of Emergency, Article 21 (Protection of life and personal liberty) cannot be suspended. Therefore, Habeas Corpus becomes a very useful writ for safeguarding the personal liberties of a citizen. While the Supreme Court can only grant a writ of habeas corpus against the State in the event of a breach of constitutional rights, it can also be granted by the High Court against private persons who apprehend any other citizen unlawfully or arbitrarily[7].

Any person may file a writ of habeas corpus on behalf of the detained person or on behalf of the detained person himself. In *Sunil Batra II vs Delhi Administration*, a letter to one of the Supreme Court justices, submitted by a prisoner, was considered as a written appeal. For the negligence of state correctional institutions, the court used this writ. The letter was also released as the law students were barred from holding interviews with jail mates to provide them with legal redress[8].

In essence, the statute of "Habeas Corpus" is used by the courts to check if a person's imprisonment is mala-fide or not. It means that, with a wrong reason or without authority, a person has been restricted. If the body's detention is considered to be unlawful, the court can order the release of the body. If the imprisonment of an individual is unconstitutional, a friend or even a relative can file a Habeas Corpus letter. In Latin, Habeas Corpus stands for "Let us have the body" or "you may have the body." The warrant is given to put before a court a person who has been arrested, whether in jail or in private custody, and to free him if that detention is considered unconstitutional[8].

Thus, an order addressed to a person who is believed to have another person in his possession unfairly allows the person to which the order is addressed to deliver or carry the body of that person before the Court of Justice[9].

The writ of Habeas corpus can, according to the general law, be brought by an individual whose rights have been infringed. But, an exception still occurs. It notes that the petition may be submitted by the person himself or by his friend or relative[9].

The writ of habeas corpus is the civil process in which the person who is unlawfully imprisoned serves as a remedial action. The expression habeas corpus is a Latin word that means putting the body to the court or submitting it. It is the most valuable right available to an illegally detained citizen. The fundamental reason for which this statement is used is to free a person from arbitrary detention or incarceration. This text is of immense significance since it outlines a person's right to liberty and personal rights[10].

It is possible to date the theory of habeas corpus back to the thirteenth century. The writ of Habeas corpus cum causa is an order that calls for the person who has arrested another person to put the person before the court to defend his conduct under what grounds and to what jurisdiction that person has been confined. If the court does not see any legal basis for the situation, it will require the person confined or incarcerated to be promptly freed[10].

The writ of habeas corpus is the most important writ available to a citizen as it allows him to assess the right to his liberty. It serves as a remedial action and assures that the arrested citizen is freed from unlawful detention. It does not, however, absolve any person from his obligation. It requires lawful reason for the imprisonment and protects the applicant from some form of ill-treatment and prejudice by the detaining authority. In this way, in order to ensure the freedom of an individual from wrongful imprisonment, the judiciary uses this writing in such an efficient manner[10].

Habeas corpus is the writ that was visualized without any legitimate basis as an immediate way of delivering a rapid solution to a citizen who has lost his personal liberty. It cannot, however, be used to complain about previous wrongful imprisonment. In India, however, the Supreme Court has widened its jurisdiction and compensation is being compensated not only for past wrongful imprisonment, but also for loss of life. Initially, the state was asked to pay the inmate a particular amount[10].

CONCLUSION & IMPLICATION

The Constitution of India has granted the authority to issue Writs to the Supreme Court under Article 32 and to High Courts under Article 226. This Writs are a command issued by the Courts to the public authorities for the execution of an act that has an obligation to execute it.

There are five types of Writs, Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Injunction, and both of these writs are an important means of upholding people's rights and compelling the government to satisfy the obligations they are bound by the constitution to execute.

Among these writings, Mandamus's reach is the broadest. Although such writings are provided only under such situations, such as where a person is unlawfully arrested (Habeas Corpus) or where a court lacks jurisdiction (Certiorari), Mandamus can be issued in certain cases where the authority is in charge of performing the task.

All these Writs have also played a crucial role in the protection of people's rights and have therefore expanded the scope of the judicial review of courts' authority.

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