

THE EVOLUTION OF HABEAS CORPUS

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ORIGIN OF HABEAS CORPUS IN INDIA

In India, the history of this great writ can be studied from 1774 onwards. Habeas Corpus was introduced in Calcutta by the English colonizers. The power to issue the writ to the petitioner came from the English to the select Supreme Court judges and they would then proceed with it. This power was not granted to the entire court. Therefore, later it was decided that not just the few select judges of the Supreme Court but the whole court is empowered to issue the writ of Habeas Corpus. After 1774, the writ was sent from the Supreme Court to even the Mofussil towns. This wide expansion of the court's authority led to a conflict between the Government and the court. It was decided that the court could expand its powers to the Mofussils however the right was limited to subjects of British origin.

In 1862, High Courts were ordered to be established. Three Presidency courts were established at Fort William in Bengal, Bombay and Madras and inherited the power to issue the writ of Habeas Corpus. It was initially incorporated in the Code of Criminal Procedure, 1872.

Indian Constitution and Habeas Corpus

The Constitution of India clearly provides that no person shall be deprived of his life and personal liberty except according to the procedure established by Law². It can be invoked through Article. 32 i.e. Constitutional Remedies for any violation of rights granted under Part III of the Indian Constitution³. The Supreme Court has to decide the relief regarding enforcement of the infringed Fundamental Right only when it is against the State and not against a private body. To move the Supreme Court in case of Violation of Fundamental Rights is a right in itself. If any act takes away the privilege of applying for Habeas Corpus or any writ for that matter, then that act would be void. However, in the case of an emergency, this right

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² Article 21: cf Art, XXXI of the Japanese Constitution, 1946, and Art. 40 of the Irish Constitution

³ Indian Const. Art. 32.

can be taken away as was stated in *ADM. Jabalpur v. Shukla*⁴ wherein it was forbidden to issue a writ petition in a National Emergency.

EVOLUTION OF HABEAS CORPUS

The writ of Habeas Corpus has seen a lot of trends since its inception in India. From being largely narrow at the very beginning, its scope as times have passed has broadened and magnified due to various kinds of writ petitions and a subsequent variety of Judgments. The Supreme Court has interpreted this writ to safeguard the liberty of persons under all types of situations. The technical aspect of law has been subsided by the spirit of law. Today, it is not the mere production of the body that is the concern of Habeas Corpus. It is the ensurance of life and liberty that is becoming its crux. The Supreme Court stated in the case of *Shubhra Chakraborty* stated that “Right to Life” does not merely mean to live but it means to live with self respect and human dignity. The gradual broadening of the scope of Habeas Corpus shall be discussed below by an analysis of factors of change in a few landmark cases.⁵

KANU SANYAL V. DISTRICT MAGISTRATE⁶

The petitioner was an active member of a naxalite group who was remanded in the central jail of Darjeeling for having committed certain offences. A charge sheet was filed against him and some others. The offences committed by him were such as could only be tried by a sessions court where the prisoner be brought before a special magistrate in Vishakhapatnam. For this purpose a special warrant was issued by the special magistrate and until the proceedings were complete, the petitioner was remanded to a prison in Vishakhapatnam itself. The petitioner thus filed suit stating that his detention in Darjeeling was illegal and violative of Art. 22⁷. He claimed that the magistrate in Darjeeling had no right to try his cause as he did not have the adequate jurisdiction. He also claimed that the magistrate in Darjeeling should have not complied with the special order as per the Section 6 of Prisoner's (Attendance in Courts) Act, 1955⁸ which clearly states that an officer can abstain from execution of an order if the accused is under trial or there has only been conducted a preliminary investigation.

⁴ *ADM Jabalpur v. Shukla* AIR 1975 SC 1207

⁵ V.G. Ramachandran, *Law of Writs*, 156, (6ed, 2006)

⁶ *Kanu Sanyal v. District Magistrate*, AIR 1973 SCR 621

⁷ Indian Const. Art. 22.

⁸ Prisoner's Attendance in Courts Act, 1955, Sec 6.

In this decision it was stated that,

1. The writ of Habeas Corpus cannot be issued when it is ascertained that the detention of the person so detained is not illegal and neither is it without jurisdiction. It would be completely out of its purpose in this case as there exists no right to implore the writ when the detention is necessary and purposeful.
2. Also the date that is to be taken into account in case of a writ petition, is the date the petition was filed on. It was decided because the earliest date had to be sought and that automatically would be the date on which the writ petition was filed.
3. The court can hear the Rule Nisi even in the absence of the detained person. Rule Nisi is to “show cause” i.e. an order of a court is final until the party to whom it applies shows reason otherwise.⁹ Once a Rule Nisi has been issued, the body of the detained has to be produced before the court. By the word “presence” it is not meant physical presence. Although the literal meaning of the writ is “to produce the body” it is in fact not as necessary as is to do away with the illegal detention. Presence before the court is subsidiary to the primary objective of Habeas Corpus and that is to ensure an illegally detained man’s liberty. It is referred to as the great writ solely because of the reason that it limits the despotic powers of the State and guarantees liberty to a nation’s citizens.¹⁰

SUNIL BATRA V. DELHI ADMINISTRATION¹¹

The case revolves around the rights of a prisoner. It highlights the horrendous conditions that exist in Indian prisons. Sunil Batra was a prisoner of Tihar Jail in Delhi. There he got the knowledge that one of his fellow prisoners, Prem Chand was being treated barbarically by the prison authorities and was being brutally tortured for money. The warden used to torture him with batons. On one such incident, Prem Chand bled profusely and had to be hospitalized. To do something regarding this grotesque treatment, Sunil Batra, in a letter to the judge addressed this cause. This letter was then transformed into a petition under Habeas Corpus. Here, the learned Justice Krishna Iyer stated that, human rights do not end for a prisoner. A prisoner is as much a citizen of India as is anybody else and had to be granted his basic rights as a person. If a prisoner, as per him is not regarded as a person then there is no point of having a democracy

⁹ “Rule nisi” merriamwebster.com, Merriam Webster n. d. Web. 20. Sept. 2015

¹⁰ V.G. Ramachandran, Law of Writs, 368, (6ed, 2006).

¹¹ *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579.

or a constitution at all. He goes on to say that –

“the finest hour of justice comes when court and counsel constructively collaborate to fashion in the case a relief to the prisoner and fathom deeper to cure the institutional pathology which breeds wrong and defies right¹².”

He even says that it is a State’s Waterloo if its guards are becoming the violators of its laws. And thus the court performs the obligation of being the voice of the constitution and reminds the institutions of the State of their duty. It is therefore the judge’s and the court’s duty to ensure that even when an individual is behind bars he or she is treated with a modicum of decency and not tortured or maltreated. Thus, the need to broaden the scope of Habeas Corpus was felt so that even the ones behind bars could benefit from it and their rights can be safeguarded. Also Sunil Batra’s letter was converted into a writ petition. This opened up new horizons of application of the writ. There existed no one particular straight jacket way to invoke a writ. However, once proceedings have commenced, parties cannot send letters to the judges¹³. A similar judgment was given by Justice Bhagwati as well in the case of *S.P. Gupta v. Union of India*¹⁴. In this case, it was said that as times are changing, new ways have to be formulated in order to ensure easy access to justice and thus, writ petitions in the form of letters were also allowed to be entertained to benefit those who have faced the brunt of a legal wrong and who, because of being poverty stricken are unable to directly approach the court and file a petition. Hence, this case clearly indicated the plurality of functions that this writ served.

NEELABATI BAHERA v. STATE OF ORISSA¹⁵

Another example of a letter being treated as a writ petition is seen in the case of Nilabati Bahera. In this case, the petitioner’s son was taken away from his home by the police for the offence of theft by Saratchandra Barik. The next day, his body was found on a railway track. The police claimed that her son had escaped from the police custody late in the night. Bahera claimed that her son’s was a death in police custody and that the police was fully involved in it and made up the story to cover up their crime and make it seem as if it was an accident. The mother of the deceased, in a letter to the Supreme Court, asked for compensation for her son’s death. The court converted it into a writ petition of Habeas Corpus. An enquiry was ordered and the report stated that Suman (the deceased) had died due to multiple injuries blown on him when he was

¹² *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579.

¹³ V.N. Shukla, *Constitution of India*, 342, (12ed, 2013).

¹⁴ *S.P. Gupta v. Union of India* AIR 1982 SC 149.

¹⁵ *Neelabati Bahera v. State of Orissa* AIR 1993 SC 1960.

in the police station. Those weren't injuries caused by a railway accident. Thus, it was decided that his was a custodial death and not a mere accident. Thus it was ordered that necessary action be taken and the offenders be prosecuted.¹⁶

Thus, it was reiterated that just because an individual has been legally detained in jail, that he be deprived of his fundamental rights and be treated in such a barbaric manner and out rightly be murdered. It is in fact the duty of the state to ensure that rights are guaranteed to a person in jail. In the words of the learned judges:

*"His liberty is in the very nature of things, circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious."*¹⁷

AYYA ALIAS AYUB v. STATE OF U.P.¹⁸

FACTS: The detenu was actively a part of three offences. He was said to have destroyed public vehicles owned by one Anil Gautam and was registered under Sections 504¹⁹, 427²⁰ IPC and then he is said to have murdered Anil Gautam by knife blows wherein he was registered under Section 302 IPC²¹. He was imprisoned and the person who detained him was fearful of the damage he would cause further upon his release. Thereby, the detaining authority prolonged the detention period by bringing the detenu under Sec. 3(2) of the National Securities Act²². The petitioner alleged that detaining him was not justified as the offences he was charged with were not as gregarious so as to disrupt national security. They were offences against a private individual and not against public at large. Thus the petition was granted and the court ordered the petitioner to be set free.

In this case it was held that the personal liberty of a person is sacred to the court that it is almost impatient to remove all violations of Article 21²³ and to ensure utmost liberty to all citizens. Whenever a writ of Habeas Corpus is brought forth, it has always been observed that the duty of the authority is not to merely detain the person accused. Rather, he also has to do so in accordance with the due procedure established by law. Also, if an individual is detained on more than one ground then each ground of detention has to be dealt with separately. Here, the

¹⁶ V.G. Ramachandran, Law of Writs, 407-08, (6ed, 2006).

¹⁷ *Neelabati Bahera v. State of Orissa* AIR 1993 SC 1960.

¹⁸ *Ayya Alias Ayub v. State of U.P.* AIR 1989 SC 364.

¹⁹ Indian Const. Indian Penal Code, Sec. 504.

²⁰ Indian Const. Indian Penal Code, Sec. 427.

²¹ Indian Const. Indian Penal Code, Sec. 302.

²² National Securities Act, 1947, Sec 3. Cl 2.

²³ Indian Const. Art. 21

widening of scope of Habeas Corpus can be clearly seen. It is no more limited to the strict interpretation of the writ. The Supreme Court has on the other hand, widened its scope and it has become a harbinger of personal liberty.

WHEN HABEAS CORPUS WAS STRUCK DOWN

Habeas Corpus has had its moments of highs and lows. Where in the above cases, the writ has come out of its way and has broadened in its scope and reached newer horizons, in some cases it has narrowed or rather even closed itself. One such example is that of *ADM Jabalpur v. Shukla*²⁴. It is said to be a bad case and a bad law. The discussion of the same is present below.

ADM JABALPUR v. SHUKLA, 1975

April 28th is regarded as a black day in the history of Habeas Corpus in India. A presidential order was passed stating that nobody had the right to move any court in a writ petition for enforcement of Fundamental Rights. The High Courts had decided to entertain the writ petitions despite government order. The Supreme Court though, thought otherwise. Five hon'ble judges asked the High Court not to consider any Writ Petitions filed during the emergency period.²⁵ This was applicable even to the state of Jammu and Kashmir. Justice Khanna was the only one with the dissenting opinion. Therein he said:

*"As observed by Chief Justice Huges, Judges are not there simply to decide cases, but to decide them as they think they should be decided, and while it may be regrettable that they cannot always agree, it is better that their independence should be maintained and recognized than that unanimity should be secured through its sacrifice. A dissent in a Court of last resort, to use his words, is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possible correct the error into which the dissenting Judge believes the court to have been betrayed."*²⁶

Where does judicial discretion go in case of a presidential order? It was the main point to be raised in this case. Is the emergency period so crucial or despotic so as to give ultimate powers to the State, so much so that the whole point of granting liberty in the first place to all individuals is taken away? In fact it was this bad judgment that gave way to the 44th Amendment in 1978 wherein Fundamental Rights could not be suspended in case of a

²⁴ *ADM Jabalpur v. Shukla* AIR 1975 SC 1207

²⁵ Jos Peter D'Souza, *When the Supreme Court Struck Down the Habeas Corpus*, (June, 2001) <http://indiacode.nic.in/coiweb/amend/amend44.htm>

²⁶ *ADM. Jabalpur v. Shukla*, AIR 1975, SC 1207

National Emergency.²⁷ Thus the wrong was made right later on however the scar remains forever.

CONCLUSION:

In the above cases a complete view of the scope of the writ of Habeas Corpus can be extracted. Its assimilation to the Indian legal system is brewing justice all over the country. Like it has already been mentioned that one cannot think of Habeas Corpus as a mere production of the body but in fact it is the removal of the illegality of detention and to help the one so detained by restoring his liberty and granting him justice. It has been sought by all who have wanted to enforce their fundamental rights in such a case. From protecting prisoners from the wrath of jail authorities to even protecting the innocent people from unlawful detention, Habeas Corpus has done its duty in manifold parts and has come to the rescue of all who genuinely sought the same. From Sunil Batra²⁸ to ADM Jabalpur²⁹, the writ has seen all its highs and lows. Its interpretation has been thoughtfully used as well as it has been abused. However, at the end of the day, the writ has come a long way from its former days and has a lot of prospects and promises. All that can be asked for, is that its scope extend more and may provide justice to all those petitioners who seek it.



The LAW BRIGADE

²⁷ Jos Peter D'Souza, *When the Supreme Court Struck Down the Habeas Corpus*, (June, 2001) <http://indiacode.nic.in/coiweb/amend/amend44.htm>

²⁸ *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579.

²⁹ *ADM. Jabalpur v. Shukla*, AIR 1975, SC 1207