



Envisaging the Dynamic Role of Writ of Habeas Corpus in Context to Prison Jurisprudence in Indian Scenario

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Abstract

The concept of Writ of Habeas Corpus is dynamic in nature with respect to its functioning in Indian and Global scenarios. In India, it has been transformed by judicial pronouncements from a Colonial era Writ into a complex legal tool functioning as a first line of defense for protecting the rights of Prisoners granted under the Indian Constitution. This has considerably evolved through judicial interpretation from a simple Writ of inquiry as a basic objective into a more remedial form of Writ being its main Constitutional objective. Nowadays, the literal meaning of this Writ “to produce the body” has been considerably liberalized by Supreme Court through its various Judgements with respect to Prisoners’ rights from time to time.

Henceforth, this paper deals with changing dimensions of scope the Habeas Corpus Writ in Indian scenario. It has been evolving itself from a Writ of Colonial era origin into a Writ for ensuring fair Justice in modern day civilized world. In this paper, an effort has been made to recognise the wider fabric and application of this Writ in a liberalised approach leading to refinement of Prison Jurisprudence in Indian scenario through considerable judicial intervention in past, present and its future applicability.

Keywords: Habeas Corpus, Prisoners, Writ, Colonial, Prison, Jurisprudence, Judicial, Court.

Introduction

The Indian Constitution grants right to Constitutional remedies to its citizens with an objective of protection and enforcement of their Fundamental rights. Henceforth, this right has been rightly stated as ‘heart and soul of the Constitution’ by Dr. B. R. Ambedkar. Technically, mere declaration of Fundamental rights under the Constitution is useless, unless effective remedies are available for their enforcement. Therefore, Articles 32 & 226 of the Constitution ensures remedies in the form of different Writs of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari to the citizens of India. The High Court and Supreme Court of India had been vested with the authority to issue declaration in the form of above mentioned Writs with an

objective of enforcement of the Fundamental rights conferred under the Constitution through reasonable judicial interpretation from time to time.

As far as Habeas Corpus Writ is concerned, it plays major role in protection of rights of Prisoners in Case of unlawful arrest or detention. In this context, Justice Bhagwati has rightly observed that “the Writ of Habeas Corpus is the most renowned contribution of the English common law to protect the liberty of an individual”. In Indian scenario, since the time of independence, till the modern day timeframe, the dynamism in nature and functioning of the Writ has been considerably liberalised by the Judiciary through various Judgements. Now a day’s Habeas Corpus Writ is not only functioning with an objective of a Writ of inquiry, but it has been evolved into a remedial Writ subsequently acting as a primary line of defence in regard to protection of liberty of an individual detained unlawfully. Hereby, it could be inferred that the Writ of Habeas Corpus has transformed Prison Jurisprudence in India to a greater extent through its liberalised application by the Supreme Court in its various Judgements from time to time. However, the Writ of Habeas Corpus should be used more frequently, as it could act as a tool to protect individuals from indiscriminate arrest and unlawful detention, otherwise leading to a majority of Under-trial Prisoner population languishing in Prisons mainly compromising of marginalised sections of Indian society.

Meaning and Diverse Nature of the Writ of Habeas Corpus

Writ of Habeas Corpus in simple terms means ‘to have the corpus or body’. Lord Wright defines it as “the incalculable value of the Writ of Habeas Corpus is that it enables the immediate determination of the right of appellant’s freedom”. In the words of William Blackstone, it has been described as “great and efficacious form of Writ in all manner of illegal confinement”. In Indian legal system, it has been Constitutional Writ, the issuing power of which has been conferred upon Supreme Court and High Courts as enshrined in Articles 32 & 226 of the Indian Constitution. Habeas Corpus at first instance, acts as a Writ of inquiry, as the Writ is issued by the competent Court with an objective of inquiring into, whether detention regarding concerned Prisoner is lawful or unlawful. Thereafter, it acts in remedial form in Case scenario of unlawful detention subsequently ensuring the release of the person detained illegally. It could be inferred that the main objective of this Writ is providing of legal release of the concerned Prisoner. In general sense, this Writ is applied post unlawful detention of person. However, in exceptional Cases, it could be granted prior, in Case of illegal detention or not yet to be carried out. The Apex Court through Judicial interpretation has considerably widened the meaning of Habeas Corpus Writ according to modern day need in a liberalised manner.

In **Kanu Sanyal vs. District Magistrate, Darjelling**, Justice Bhagwati, J. while giving a new dimension to the applicability of the Habeas Corpus Writ observed that the production of body before Court, of the detained person, which is literal meaning of this Writ is not necessary regarding objective of hearing and disposing of Writ petition by Court subjected to reasonable grounds. Accordingly, production of the body of prisoner is not an essential feature of this Writ. It was held that “there is no need to hold ourselves in fetters by a practice that originated in Britain about 300 years ago on an account of certain historical circumstances that have ceased to be valid even in that Country in modern day scenario and which have certainly no relevance in

ours”. On the other hand, this practice is also followed in United States of America irrespective of being a Colony of Britain as India, for dealing of an application of above mentioned Writ in a more liberalised and dynamic approach in modern day scenario.

Different kinds of Writs falling under the wider functional framework of Habeas Corpus Writ

There are different kinds of sub classification of Writs under the wider fabric of Habeas Corpus Writ based upon the functional point of view such as:-

- a) Habeas Corpus ad Subjiciendum: It is also known as great Writ meaning “that you have the body to submit to”. It is most common and important form of prerogative Writ under English Law, as remedy regarding person being deprived of liberty in an unlawful manner. Accordingly, it is Writ directed with an objective of securing liberty of person illegally detained, whether in Prison or private custody. It could be inferred that it has a twofold objective. Former objective is of inquiring into the matter and latter one is in remedial form to determine the legality of detention of the concerned person and if the detention is found illegal, then release of prisoner from illegal detention is ensured. Habeas Corpus ad Subjiciendum is having colonial background has been considerably liberalised by Judiciary from time to time in context to the changing dimensions of Justice delivery mechanism in modern day civilized world for ensuring the enforcement of Writ in remedial form as enshrined in the Constitution.
- b) Habeas Corpus ad Testification: In its literal sense, “you have to produce the body for testifying”. However, from a functional point of view it is a Writ issued to ensure presence of witness into Court, who is in Custody as a Prisoner in Prison, regarding giving evidence in front of concerned Court at the time of trial before the concerned Court. Therefore this Writ helps in smooth delivery of Justice through fair trial.
- c) Habeas Corpus ad Deliberandum et Recipiendum: Literally, it means “to produce the body for the purpose of deliberating and receiving”. The objective of this Writ is Jurisdictional from functional point of view as it is issued with an objective of removing a Prisoner confined in a place regarding the purpose of trial to another location in which offence has been alleged to have been committed.
- d) Habeas Corpus ad Faciendum et Recipiendum: Literally it means “that you have may hold or have the body when there is a Case at Law”. This Writ in simple terms is also known as Habeas Corpus Cum Causa, as it is issued to with an objective of removing a Case from present Court of trial to a Superior Court having Jurisdiction regarding disposal of Civil Case on reasonable cause.
- e) Habeas Corpus ad Presequendum: The literal meaning of this Writ is “to produce the body for prosecuting”. From the functional point of view, it is issued by the Court for the purpose of removing a Prisoner in order to prosecute him under the proper Jurisdiction, thereby issued with a twofold objective before the issuing Court for trial generally confined for some other offence or for answering where he is required to become a witness for prosecution in a Criminal Case for trial purpose.

- f) Habeas Corpus ad Satisfaciendum: It is a Writ that has been issued in Civil Case when Prisoner has had a Judgement issued against him in an action and moreover, plaintiff is not satisfied, thereby is of the desire of bringing him in front of superior Court with an objective of charging him with execution process.

It could be inferred that Habeas Corpus is a diverse Writ having different objectives distilled with the course of time commonly used to inquire into the matter and thereafter to ensure the release of the person wrongfully detained, thus acting as a shield of protecting the liberty of citizens. In **A.D.M. Jabalpur vs. Shivakant Shukla**, it was laid down that the Court's power to issue Habeas Corpus is recognised of utmost significant characteristics of the State's democratic fabric.

Liberalisation of the Writ of Habeas Corpus through Judicial Activism in Context to Prison Jurisprudence in Indian scenario

The genesis of Habeas Corpus could be established in accordance to framing of Magna Carta in England by King John in 1215 A.D. It was laid down in 39th Magna Carta clause according to which "No man shall be arrested or imprisoned except through lawful Judgement of his peers and by the Law of land. Thereafter, the Writ of Habeas Corpus was streamlined in England under Habeas Corpus Act of 1679. On the other hand, since India had a Colonial background, Writ of Habeas Corpus was introduced in India in the beginning of Colonial British regime in 1774 In Calcutta. At that time power to issue the Writ only vested with the selected Judges of the Supreme Court. Thereafter, the power to issue the Writ was given to other Courts also. Later on, as the Constitution of India was framed, Writ of Habeas Corpus was included in the Constitution as a remedial form of Writ with other Writs for the enforcement of Fundamental Rights under Article 32 and 226 of the Constitution of India. However, afterwards, the Writ of Habeas Corpus has been substantially liberalised by the Supreme Court of India through various Judgements from time to time.

Accordingly, it is one of the basic principles that the person for whom the application should be made must be in Custody. The general rule regarding the demand for the Writ of Habeas Corpus is that an application regarding the Writ could be made by the person illegally detained. However, in certain reasonable Cases, an application on behalf of the Prisoner could be made by the person illegally detained. In **Kanu Sanyal vs. District Magistrate Darjeeling**, it was held that it is not necessary to produce the body of the person detained to be brought before the Court while dealing with an application of the Writ of Habeas Corpus. The production of body of the person detained is not essential regarding the Jurisdiction of the Supreme Court to deal with an application of the Writ of Habeas Corpus. It was also observed that Habeas Corpus is Prerogative Writ of right and not a Writ of course. Writ of Habeas Corpus is also an extraordinary remedy. Thereafter, In **Sunil Batra vs. Delhi Administration**, this concept was liberalised. It was observed that "the technicalities and the legal necessities are no impediment; the Court should be entertaining even an informal communication as a proceeding for the Writ of Habeas Corpus". Justice Krishna Iyer further held that "the dynamic role of judicial remedies after Batra's Case imparts to the Habeas Corpus Writ a versatile vitality and operational utility that makes the healing presence of the Law live up to its reputation as bastion of liberty even within Jails". On

the other hand, the Writ of Habeas Corpus could serve as a dual role of releasing a person detained under unlawful Custody and it could also be used for protecting him against the illegal and inhuman treatment inside Jails. It could be inferred that the Supreme Court has now considerably liberalised the scope of locus standi in context to the Writ of Habeas Corpus, as now any person substantially interested” can approach the Court on behalf of any class of persons who are otherwise unable to approach the Court within reasonable time due to justified reasons for the demand regarding issuance of the Writ of Habeas Corpus. Moreover, in **Seela Barse vs State of Maharashtra** and in **People’s Union for Democratic Right’s** the apex Court held that this Writ should be mainly filed by husband or wife of the detainees.

Moreover, the Apex Court in **A.K. Gopalan vs. State of Madras** held that this Writ would lie if all formalities relating to arrest and detention by the concerned authority were based on malafides and made in collateral and ulterior objectives. Later on in **Ichhu Devi vs. Union of India**, the Apex Court observed, the burden of proof to justify the detention lies on the detaining authority. On the other hand, in **Rudal Shah vs State of Bihar**, Apex Court expanded the scope of this Writ as now a day’s compensation is also being awarded regarding past illegal detention and also for loss of life. The pith and substance of this Case was based on widening the scope of Article 32 of Indian Constitution under wider fabric of Article 21 of Indian Constitution. Compensation was imparted to the victim indirectly enlarging the scope of Article 32 in Case of illegal arrest and detention.

Legally, Habeas Corpus is issued with an objective of protecting the personnel liberty of the accused as granted under Article 21 under wider framework, if the liberty of accused is threatened by unlawful arrest or detention is not legally valid. Accordingly, **District Magistrate Jabalpur vs. Shivkant Shukla**, Justice Bhagwati observed that Habeas Corpus cannot be issued on basis of Article 21 as it is automatically inoperative in Case of emergency. On other hand, in this Case Justice Khanna was of the different opinion by stating that Article 21 during emergency only loses its procedural power and therefore its substantive power could not be held inoperative during the emergency as the State cannot deprive any person of his Fundamental Right granted under Article 21 without the due process of Law. Afterwards 44TH amendment Act 1978 provided that right relating to Personal liberty under Article 21 of Fundamental Rights granted under Constitution of India is operative even in Proclamation of emergency. Therefore, it is subjected to Judicial Activism to exercise the Writ of Habeas Corpus cautiously post 44th Amendment 1978 in Indian scenario in limelight with the Article 21. It could also be directed when detention is ultravires to statute under which the person is detained. However, Habeas Corpus Writ could be rejected in circumstances such as:-

- a) Writ petition is pending before Court, the prisoner is released;
- b) Application of the Writ of Habeas Corpus is made to the High Court and location where such individual is detained is outside the limits of Jurisdiction of concerned High Court;
- c) Detention is with an objective of execution of sentence on inducement of Charge of Criminal nature been imprisoned by the Court of Law;
- d) In Case where the detention of person is under law of preventive detention;
- e) The Writ also cannot be directed to interfere with the proceeding regarding contempt of Court of record by the Indian Parliament.

Conclusion

It could be inferred that Habeas Corpus given to citizens of India has transformed Prison Jurisprudence to a certain extent. The basic functional concept of this Writ of inquiry and thereafter remedial form of Writ has been considerably liberalised by the Judiciary in Indian scenario time and again. Accordingly, it is dynamic and of versatile nature as it has been considerably liberalised by the judicial decisions in order to ease the Justice delivery mechanism and also to protect the Fundamental rights of Citizens. It has a wider role to play in a developing Country such as India, as it is a major legal provision that acts as a tool against illegal arrest and detention by concerned authorities as Prison Jurisprudence is unrefined in Indian scenario, still functioning under shadow of Colonial era framework.

However, the role and application has not been established clearly at time of proclamation of emergency in global or Indian scenario. Time and again applicability of this Writ comes to question when a particular Country comes under emergency, be it a developing Country such as India or developed Countries such as France or America, also referred to as a Country of 'due process of Law'. Therefore, Habeas Corpus Writ is not only necessary regarding protection of the liberty of individuals, but also necessary for establishment of Democracy.

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