

The Primary Duty of the Judiciary to Protect the Personal Liberty under "Habeas Corpus" Frame

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“If it was asked to name any particular Article in this constitution as the most important an article without which the constitution would be a nullity-I could not refer to any other Article except this one. It is the very heart of it.”

Dr. Ambedkar

ABSTRACT

The constitution of India provides six fundamental rights to the citizens of India. The Right to Life and personal liberty is one of the primary fundamental rights which enables a person to live his life freely without any interference has incorporated it in Article 21. The constitution provides that a citizen's personal liberty is absolutely guaranteed unless be taken away by law & anybody can knock doors of the Supreme Court and the High Court. This is the writ of “Habeas Corpus” aims.

KEYWORDS: *Personal Liberty, Judicially Protected, Writ and Constitution*

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INTRODUCTION

The personal liberty is a Citizen's Primary fundamental as well as social rights. The Constitution of India has guaranteed it by its fundamental rights chapter and has incorporated it in Article 21. The Constitution provides that a citizen's personal liberty is absolutely guaranteed unless be taken away by Law and anybody can knock the doors of the supreme Court and the High Court of his or any other one's personal liberty is at stake. This is the writ of 'Habeas Corpus' aims. Etymologically the word writ means a written order. However, a writ is a remedial right for enforcement of the substantive rights or fundamental rights.

In the common Law tradition the protection of the right to liberty in guaranteed essentially by the writ of Habeas Corpus. This remedy provides an effective means of immediate release from unlawful or unjustifiable detention.

According to S. A. De Smith, quoted by duker, the writ was first referred to as a "Prerogative writ" in 1620 by chief Justice Montague in *Richard Bourn's* case¹. As its inception habeas corpus was a "high prerogative writ" by which the crown sought to compel the appearance of a subject before its Judicial organ. As it developed into a beneficent remedy, its continued association with the king's personal solicited for the welfare of its subjects was simply sound politics. The crown was said to have the right to inquire into the cause for which any of its subjects were deprived of their liberty. In a strict legal sense, "prerogative writ" had become a descriptive term that indicated the writ's extraordinary chapter, that is to

¹ SA De Smith, "the prerogative writs", II Cambridge L.J.40, 52-53(1951).

say, habeas corpus issued where the ordinary legal remedies were unavailable or inadequate².

Although the structure of government and the nature of the US Constitutional system have necessitated changes in the scope and Function of the writ, its general form and basic purpose have remained unchanged. Before its introduction into the American legal system, habeas corpus had been "esteemed the best and only sufficient defense of personal liberty"³. Sir William Blackstone called it "another Magna Carta."⁴In the United States the writ continues as the "symbol and guardian of personal liberty."⁵

In England the crown by virtue of his/her 'prerogative' issued the writs, as the writs had no statutory source. It has been incorporated into the laws of the colonial countries as the legacy of imperialism. It is of five different forms viz; habeas corpus, mandamus, prohibition, certiorari, Quo warranto. By the chapters of the three supreme courts in the presidency towns through the Regulating Act of 1773, they were vested with the powers of the Court of king's Bench, which included the powers of prerogative writs. And as coction das regards the writ of habeas corpus in view of provisions of section 491 of criminal procedure code 1898, the Privy Council had held that the legislature has taken away the power to issue this writ from High Courts and the Specific Relief Act of 1877 look away also the power to issue the writ of Mandamus. But all other writs were issued by various High Courts even long after the enactment of the said Act. After the adoption of Indian Constitution according to Articles 32 and 226 the Supreme Court and the High Court's got back this power as a part of the machinery protecting the Fundamental rights guaranteed by it in its 3d chapter of the Constitution of India.

Now coming 'habeas corpus', it literally means, "You must have the body". According to Halsbury, "the writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from the unlawful or unjustifiable detention whether in prison or in private custody". In India this writ can be issued both by the Supreme Court and the High Courts but with a little difference. The Supreme Court can issue this writ only in case of violation of fundamental right guaranteed under Article 21 but does not relate to

interference with the personal liberty by a private citizen. The High Court however does have the Jurisdiction to issue this writ in both the cases. So, where the illegal detention complained of is by a private person the High Court has the Jurisdiction to issue this writ against him whereas the Supreme Court does not have any.

Article 21 of the Constitution of India guarantees the right of personal liberty unless it is curtailed by a procedure in accordance with law. A legal framework is definitely necessary to examine the question of illegal detention Vis-à-vis the enforcement of this fundamental right with utmost promptitude. Now a day the evolution of Human Rights concept has widened the scope of the interpretation of Article 21 and so has the scope of this writ, various forms of illegality committed on human body now form a part of it. In *Maneka Gandhi V. Union of India*.⁶ It was held that the procedure established by law as contemplated in the Article 21 should be Just, fair and reasonable and any unjust, unfair and unreasonable procedure by which liberty of a person is taken away shall destroy the action. The extended interpretation of 'life' has made the scope of this writ very much wider than now! means a dignified life and not merely an animal existence.

In *Sunil Batra V. Delhi Adm.*⁷ and *Charles Sobraj V. Superintendent, Central Jail*⁸, the Supreme Court heard the public Interest litigations and issued directions to mitigate the horrendous condition prevailing in Jails. The handcuffing of under trials/convicts and fettering of them were brought to the notice of the Supreme Court through *Sunil Batra V. Delhi Adm*⁹. and were stopped by it. These situations were also discussed again in *Kishore Singh V. State of Rajasthan*¹⁰, and *Rakesh Kaushik V. Superintendent, Central Jail*¹¹.

In the case of preventive detention, the Supreme Court in *Francis Corallie V. WC Khamba*¹², has held that the right to life can't be reduced to animal existence and that apart from the Article 22 even Article 21 restricts the power of Preventive detention. So, as it can be seen that apart from illegal detention, writ of habeas corpus or quasi habeas corpus now lies for various purposes relating to life and liberty of a person and as held in *David Patrick Ward V. Union of*

² William F Duker, A Constitutional History of Habeas corpus, Greenwood press, London (England) and Westport (Connecticut) (1980).

³Ex parte yerger, 75 U.S.85,95(1868).

⁴William Blackstone, commentaries on the Law of England, Oxford, 1770, Vol.3, at 136.

⁵Peyton V. Rowe, 391 U.S.54, 59(1968).

⁶AIR 1978 SC 597.

⁷AIR 1978 SC 1675.

⁸AIR 1978 SC 1514.

⁹AIR 1980 SC 1579.

¹⁰AIR 1981 SC 625.

¹¹AIR 1981 SC 1767

¹²AIR 1981 SC 746.

India,¹³ the Court has power to examine the place and condition of detention. Even this writ's scopes has been broadened by the case of Chiranjit Lal V. Union of India.¹⁴ Where the Supreme Court has made it clear that habeas corpus is an exception to the general principle that a petition for writ can be made only by the person whose rights have been infringed. Apart from the detenu his parents, wife or any relation or friend can approach the court for this writ. Even in case of Sunil Batra V. Delhi Adm.¹⁵ the Supreme Court has treated letter or telegram as a petition for writ if sent by a public-spirited individual, Justice Bhagwati has made it clear in his Judgment in S P Gupta V. Union of India¹⁶ Commonly known as Judges Transfer case that anybody acting pro bono public or for the interest of public can knock the doors of court for this relief.

In Rajasthan kisan Sang than V. State¹⁷, it was held that it is now well settled that a person even during lawful detention is entitled to be treated with dignity befitting any human being and the mere fact that, he has been detained lawfully doesn't mean that he can be subjected to ill treatment, much less any torturous beating.

First time the Supreme Court in RudulSaha V. state of Bihar¹⁸, openly declared that compensation ought to be paid for the violation of right to life and liberty under Article 21 of the Constitution by departing from the traditional approach and by above post Maneka approach.

Conclusion

As from various Judgments and case laws of the Hon'ble Supreme Court it can be safely concluded that, with the enlargement of the concept of life as well as liberty and guarantee against illegal detention as embodied in Articles 21 and 22 of our esteemed constitution the writ of habeas corpus has been extended to far wider areas and a new-fangled concept of quasi habeas corpus has been formulated even monetary compensations are allowed against the violations of the basic fundamental right of personal liberty.

Thus, the Supreme Court has now realized its proper role in a welfare and democratic country like India and its new strategy not only for protecting the rights and liberties of the people but also for the transformation of the whole society as an ordered and

crime free society. So, in a democratic Country citizens right is paramount and Habeas Corpus is a powerful weapon under the Constitution is safe guarding the interest of the citizen. It is the primary duty of the Judiciary to protect the personal liberty as the guardian and watchdog of the Constitution.

¹³(1992)4 SCC 154.

¹⁴1950 SCR 869, AIR 1951 SC 41.

¹⁵AIR 1980 SC 1579.

¹⁶AIR 1982 SC 149.

¹⁷AIR 1989 Raj.10 at 16.

¹⁸AIR 1983 SC 1086.