

## Habeas Corpus [Writs in Indian Constitution]

Habeas Corpus is an important writ provided for in the Indian Constitution. It is an important topic for the UPSC IAS exam. Writs and its types form a part of the polity and governance segments in the [UPSC syllabus](#). In this article, you can learn all about the writ Habeas Corpus, cases pertaining to it and its features.

The Right of Personal Liberty envisaged in different human rights conventions and [Article 21](#) of the Constitution is one of the most basic human rights. Habeas Corpus which literally means “to produce the body” is a protection against illegal and arbitrary detention of a person. The petitions for habeas corpus determine whether the individual has been arrested according to the procedure established by law. Habeas Corpus is one of the five writs through which an individual can approach the Supreme Court or the High Courts for the implementation of his [fundamental rights](#).

### Origin of Habeas Corpus

The origin of Habeas Corpus can be traced back to 1215 AD when King John signed the landmark document of Magna Carta.

- The 39<sup>th</sup> clause of this historical document stated, “No man shall be arrested or imprisoned...except by the lawful judgment of his peers and by the law of the land”.
- The concept of Habeas Corpus is embedded in legal systems all over the world, for instance, in the United States, through the First Judiciary Act of 1789, Congress explicitly authorized the federal courts to grant habeas corpus relief to federal prisoners.

### Features

- The writ of habeas corpus primarily acts as a writ of enquiry; it is issued by the courts to ascertain the grounds of detention of an individual. Therefore, it acts as a procedural safeguard against the law enforcement authorities, specifically their power to take into custody.
- Moreover, if sufficient legal grounds of arrest are missing, the court will order the immediate release of the individual.
- As a fundamental instrument for safeguarding an individual’s freedom against arbitrary and lawless state action, the writ of habeas corpus serves as a procedural device, by which executive, judicial, or other governmental restraints on personal liberty are subjected to judicial scrutiny.
- The Writ of Habeas Corpus is a remedy available to the person who has lost his personal liberty and as such, it cannot be invoked to challenge past illegal detentions.
- However, the [Supreme Court](#) has expanded the dimension of this writ and now the Court awards compensation not only for past illegal detentions but also for loss of life as was done in the case of Rudul Shah v. State of Bihar.

Personal liberty is such an inviolable right that judicial pronouncements have relaxed the rule of Locus Standi and as a general rule, the petition will be filed by the person illegally detained, but in certain cases, a friend or any other person can approach the Court on behalf of the detainee. One reason that the strict adherence to the rule of locus standi is not applied is that the detainee may be incommunicado. The landmark judgement in this regard is Sunil Batra vs Delhi Administration. The Supreme Court broadened the scope of Habeas Corpus by making it available to detainee, but also for safeguarding constitutional rights of fellow prisoners. For other [landmark Supreme Court judgements](#), click on the linked article.

The writ of habeas corpus can be availed in the following cases:

- For the enforcement of fundamental rights; the right to personal liberty is a fundamental right by virtue of Article 21. Hence if the executive arrests or detains a person without the authority of law or in

contravention of the procedure established by law, the High Court or the Supreme Court will order the release of the individual from detention by virtue of a writ of Habeas Corpus.

- The writ can also be issued where the imprisonment or detention is *ultra vires* to the statute that authorises such arrest or detention. This principle has been invoked and implemented in the case of *Keshav v. Commissioner of Police*.

The writ of Habeas corpus cannot however be invoked and implemented in the following cases:

- Where the person against whom the writ is issued or the person who is detained is not within the jurisdiction of the Court.
- In *Janardhan v. State*, the apex court also stated that the writ does not lie to secure the release of a person who has been imprisoned by a court of law on a criminal charge.
- This writ cannot also be issued to interfere with a proceeding of contempt by a court of record or by the Parliament.

When Article 21 was suspended, it was held in *Addl. District Magistrate, Jabalpur v. Shukla*, that an order of preventive detention could not be challenged even if it violated the parent Act (i.e, the Act relating to preventive detention). The 44th Amendment, 1978, has provided that Article 21, relating to personal liberty cannot be suspended even during an emergency. In this way, personal liberty has been strengthened and the writ of habeas corpus retains its potency even during an emergency.

The writ of Habeas Corpus is a check on the governmental powers to curtail the liberty of a person; its fundamental purpose is to ensure the swift review of illegal detentions. The scope and extent of this writ were explained by the Supreme Court in *State of Maharashtra v. Bhaurao Punjabrao Gawande*. The Court stated that the writ of habeas corpus has been described as a great constitutional privilege or the first security of civil liberty as it provides a prompt and effective remedy against illegal detention. By the use of this writ, the Court directs the authority which has detained a person to produce the body of the person before the Court so that it can enable the validity, jurisdiction or justification of the arrest or detention.

One of the key aspects of the writ of habeas corpus is the urgency that is attached to its disposal, it is in this context that the attitude of both the High Court of Jammu and Kashmir and the Supreme Court has been worrisome, to say the least. After the abrogation of [Article 370](#) on 5<sup>th</sup> August 2019, a bunch of habeas corpus petitions were filed in the two above stated forums, but the Courts have been deferring these matters time and again leaving the petitioners in a limbo.

## Conclusion

The text of the Constitution or its spirit remains alive and well only when the rights provided in this sacrosanct document are implemented on the ground. The job of such implementation lies with the constitutional courts and when they abdicate their duties as they did in the (in)famous Habeas Corpus case, democracy and rule of law are pushed into darkness. The attitude of the Supreme Court in petitions relating to Kashmiri political leaders, anti-CAA protestors and other dissenters in the past couple of years is also following a pattern that raises significant questions on both the independence of the judiciary and protection of the right of personal liberty. If this trend is not reversed, the rights provided in the Constitution will amount to nothing but dead words.

