

# Development of the writs of habeas corpus and Certiorari in India

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**ABSTRACT:** *The controls, restrictions and legitimate area of the exercise of power, authority and competence over administrative acts imposed by any state, government agencies and appurtenances as specified in Principles of the constitution of India were significantly distinguished by administrative law. And the judiciary, while carrying out the judicial review of administrative acts, is dynamically craving principles and exceptions. It is possible to draw the roots of the writings from the English folk courts-moots to the common law courts. The rule of writing originates from the orders passed in England by the King's Bench. This paper explores the beginning of the definition of writs and their arrival in India through British rule and discusses the creation of the country's Habeas Corpus and Certiorari writs before concluding with the effect these writs have had on the administration of proper justice by preventing arbitrary detention and correcting incorrect court decisions.*

**KEYWORDS:** *Administrative law, Certiorari, Writs, Habeas Corpus.*

## INTRODUCTION

In mediaeval England, the origin of writing has its origins. Local court administration was used by the baron of the estate where the courts were present. Under the king's side these were royal courts at and above them. He was supposed to have a detailed project royal order for anyone to get revenge, which instructed him to really be representative of the actual instance mostly in court. These warrants might have to be bought from the king's office. The term only for writs for common symptoms was, of course, Writs.

Back in 1774, the writs were introduced by the government by a democratic mandate that called for the establishment of the Supreme Court in Calcutta and gave it the power to issue all writs as in England. Later, in Madras in 1800 and in Bombay in 1823, the Supreme Courts were also created and interstate compacts were bestowed upon them.

Eventually, these three Supreme Courts become replaced by high courts by way of the High Court's Act, and only those three courts were granted the power to issue judgments. The writs allowed were for prohibition and certiorari only.

At its creation, the Constitution of India granted sufficient authority to give judgments to the Supreme Court or to the High Court by means of Articles 32 and 226, accordingly.

The courts have the power to issue judgments on any action by any government agency or any legislation. The Supreme Court mostly in landmark case Satyanarayana Sinha v. Lal & Co. has granted themselves discretion to decide if any person or party has locus standi to appeal the decision on the basis of who can file a written complaint.

## DISCUSSION

### *Development*

In England, habeas corpus originates from common law and however is as ancient as common law itself. "It was described by Earl of Birkenhead as "a written precedent to the legislation and pushing its rich history into the genius of our common law. But the Habeas Corpus Acts of 1640, 1679 and 1816 established its effectiveness. For intents and purposes, habeas corpus acts were around a hundred constitutional articles preserving individual liberty, according to Dicey.<sup>1</sup>

The Act of 1640 also authorised the Court of Common Pleas to issue the writ, and peremptorily requested that unless any parent is committed by the King himself in person or by His Privy Council or any of its members, he must always, upon request of the understand the status, have granted him a writ and the take

<sup>1</sup>Law and the Constitution, 1915, p. 199.

the appropriate actions be investigated within three days of the gain. The Act of 1679 responsible prisoners whom was detained on criminal charges, but the Common Law remedied many other instances of unjust imprisonment by habeas corpus. The 1679 Act sought to prevent legal evasion and protect the freedom of subjects from arbitrary and unlawful detention by totalitarian monarchs but mostly their officers. During the Stuart Kings regime, the prisoner would have been removed to another goal upon receipt including its writ by one gaoler, and then inform the court that he no longer had the prisoner's body, and therefore could not produce it. Sometimes, even the judges refused to hear worship for a helmet corpus script. Many of those crimes have been made punishable.

The 1816 Act inhibited any colony in which a Court is authorised to release the writ from the issue of the writ. There was the Habeas Corpus Suspension Act of 1793 during George III's reign. This Act was revived by Parliament's cross once a year for seven years, finally passing the Indemnity Act in 1801. The confusion of the Suspension Act rule, followed by a statute of indemnity, led to the acquisition of direct powers in the form of the Protection of the Realm Acts 1914-1915 by Act Of parliament during the First World War. They allowed the Executive to make regulations for ensuring public safety or the protection of the realm by the Order-in-Council. The initial release on habeas corpus was said to be avoided by imprisonment without trial. But in *King v. Halliday*, Lord Shaw's dissenting judgement declined to consider this position without expressing words in the law to that effect.

The above deficiency was cured by amending the Defense of the Realm Acts, 1914-1915, during the Second World War in 1939. The Emergency Powers (Defence) Act of 1939 allowed the creation of an Order-in Council Regulation for the improvement of public safety, the defence of the realm, the preservation of public order, The successful prosecution of war and the maintenance of the community's required equipment and services. Other objectives included the authority of the Secretary of State to make arrangements for the detention of individuals in the interests of public safety or in the defence of the realm.

Thus, Regulation 14(b) and in the 2nd World War were in the First World War. Law 18(2)) was subject to pre-trial detention. The Home Secretary's subjective confidence was held to be sufficient for control orders. Just one case of release of detenu has been reported: *R. V. Home Secretary, ex parte Budd*, under which the order for arrest was left unlawful. The action was, therefore, reversed and Budd was captured again.

The order of the Home Secretary was subject to review by the Advisory Committee, during which his objections could be presented by the detainee. He was also provided with the right to legal advice. The Home Secretary was further obliged to report on a monthly basis to Parliament the number of prisoners and also the number of cases in which he failed to comply with the Advisory Committee's suggestions.

By the Controlling Act of 1773, the power to issue parliamentary sovereignty writs in India came with the creation of the Supreme Courts. Section 9 of the latter Act resulted in the introduction by Letters Patent of the High Courts with the dissolution of the three Supreme Courts in Calcutta, Bombay and Madras by either the Act of Parliament in 1861. The initial jurisdiction of those High Courts was only within the corresponding Presidency Cities.

The Supreme Court in Bombay granted a writ of habeas corpus for the output of Moro Raghunath, which his grandfather had detained at Poona. The Advocate General objected to either the letter on the ground that both the individuals (Raghunath and his grandfather Ramchander) were Poona residents and thereby around the jurisdiction of the court. However, the court released a letter and levied a penalty of Rs. 10,000 as well. It has not been obeyed. Therefore, Sir Peter Grant shut the tribunal down and left for England.

It was held in *Amir Khan Re* that only the Supreme Courts could have the power to grant the writ of habeas corpus outside the arbitral tribunal. The mofussil and now the power was however inherited by the High Courts. The 1872 Code of Criminal Procedure abolished the authority of the High Courts and it's Judges outside the Presidency Towns to grant the writ of habeas corpus. Section 491 of the Criminal Procedure Code. 1898 provided for the issuance of orders in the form of habeas corpus, so rather than criminal jurisdiction, and the authority was to be wielded only within limits of its thing that keeps civil jurisdiction.

The decision in 1923 in *Govindan Nair, Re*<sup>2</sup>, indicated that habeas corpus could be issued by the Madras High Court in its appellate jurisdiction but the Privy Council held it to be erroneous.<sup>3</sup>

Section 491 including its Code of Criminal Procedure, 1898, was amended by the Criminal Law (Amendment) Act 1920 and found the writ of habeas corpus applicable in its appeal authority in the national law of every one of the High Tribunals.

After the Constitution of India came into effect, the position was eventually healed. Articles 32 and 226 granted the Supreme Court and all High Courts broad discretion to grant a writ of habeas corpus in their separate territorial boundaries.

On the criminal hand, the first use of certiorari was Certiorari was given to carry the record of an inferior court into the King's Bench for inspection or to dismiss charges for trial in that court, as mentioned in *Halsbury's Laws of England*.

Certiorari established as a general remedy during in the seventeenth century to quash the proceedings of inferior tribunals and was primarily used under different laws to supervise the Justices of Peace in the execution of their criminal and administrative duties. Later on, however, certiorari was also used in civil cases. Similarly, at the outset, certiorari was restricted to strict judicial functions, but subsequently, it was provided by the government and local authorities with regard to quasi-judicial functions and administrative functions.<sup>4</sup>

In addition, certiorari was used in England not only to review/quash final decisions and rulings, but also in cases and matters pending before subordinate courts and inferior injunctions for varying reasons. However, accordingly, the application of certiorari was confined to cases resolved and to final proceedings.<sup>5</sup>

The Supreme Court in Calcutta, created by the Royal Charter in 1774 under the Regulating Act, 1773, was the first Court in India permitted to issue prerogative writs. The 1774 Charter authorised the Supreme Court in Calcutta to issue a certiorari order. The Supreme Courts in Madras and Bombay were equally empowered by Clause 8 of the Charter of 1800 and Clause 10 including its Ratification of 1823. However, the power for the application of the writ was limited to the ambar Alerts Courts' sovereign immunity. In *Ryots of Garabandho v. Zamindar of Parlakimedi*, this has been remembered. There was no question that the High Court of Madras sought, even outside the Presidency Cities, to issue such writs. *Pirbhai Khimji v. Baroda & Central India Rly.Co.* was the youngest Bombay case. Where a writ has been approved to transfer a case to the US Supreme from both the Court of Small Causes.<sup>6,7,8</sup>

## CONCLUSION

At the time of British rule, the idea of writs that was introduced in England and made its way to India was used by the judiciary as an effective instrument to keep a check on the statutory bodies and the laws. The writ of Habeas Corpus, which can be obtained by an illegally detained person to appeal his detention and the justification of it, has been repeatedly used in India and has contributed to the release of many innocent people who have been detained without any valid reason. Certiorari's writ, which is a means for a higher court to examine the lower court's judgement by asking for records of a specific matter, has been used several times to overcome the shortcomings of the lower court in administering justice and to see that the acts he did not perform are not punished by an innocent individual. Both of these writs were a way of

<sup>2</sup> 45 Mad 922 (FB)

<sup>3</sup> *CP Matthen v. District Magistrate, Trivandrum*, AIR 1939 PC 213

<sup>4</sup> *Corpus Juris Secundum*, Vol. 14.

<sup>5</sup> *Halsbury's Laws of England*, 4<sup>th</sup> edition.

<sup>6</sup> AIR 1943 PC 164.

<sup>7</sup> *Rathnamala Pattamahadevi v. Ryots of Mandasa Zamindari*, AIR 1930.

<sup>8</sup> 1871 Bom CR 59

correcting the mistakes that may have been made by another body, which may have caused a blameless person immense damage.

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