Writ of Habeas Corpus Vis a Vis Mental Health Patients : An Analysis

Ishita Sharma

Assistant Professor, School of Law, University of Petroleum and Energy Studies, Knowledge Acres, P.O.- Kandoli via Premnagar, Dehradun

Abstract

Habeas corpus, as a writ has generally been associated with illegal incarceration of individuals. It is a writ, which is considered as an epitome of all remedies as far as implementation of human rights is concerned. Recently, the usage of the writ has surpassed the dimensions of technicalities of procedure of illegal detention and entered into more intricate aspects of an individual's life. Consequently, with the passage of time, the writ assumed varied dimensions, , one among them being the usage of the writ in relation to individuals suffering from mental health issues, for instance, where the individual is being denied the freedom of movement, occupation and exercising the freedom of choice .

Apart from the political domain, the use of the writ has crept into facets of family laws, public laws. The researcher shall deal with the outreach of the writ in matters of health law. There has been very scant research in the outreach of the reach in aspects transcending political scenarios, owing to the fact that there exist explicit legislations on such issues and exploring the possibility of the use of the same in the above mentioned arena has been rarely considered. The researcher has recommended an invigorated use of the writ apart from illegal incarceration of prisoners through an analysis of several cases on this aspect.

Keywords: *Habeas Corpus, Health Laws, Judiciary, writ.*

Introduction

With the passage of time and with the change in the dynamics of society, the writ has assumed various dimensions not only in England but also in jurisdictions where it was brought in by the Britishers [(1)] . Despite its increased use, the prime focus of the writ has been safeguarding the liberty and life of the common man. According to Jenks, it's prime use has been to shield oneself against illegal detentions imposed by the Crown and being a dictum issued solely by the crown, the writ became a harbinger of justice against the excesses of the Crown itself[(1)].

In later years, in order to facilitate a wider outreach of the writ, its use was expanded in various statutes as well as rules that came up in England in due course of time[(2)]. This expanded use of the writ in various statutes, facilitated the transplantation of the writ into the private life of citizens', a stark departure from the usage of the remedy in political conditions. Emphasizing on the importance of the writ against arbitrary detentions, Justice Miller, in the case of *Philip S. Wales v. William G. Whitney*[(3)] observed that

There can no straitjacketed formula applicable to the nature of detentions that warrant the attention of the writ of Habeas Corpus. The spectrum of detentions can range from wives restrained by their husbands or children withheld in dire conditions by their parents to military abusing their powers on garb of suspicions. So the ambit of the reach can have far reaching dimensions.

Consequently, with the passage of time, the writ assumed varied dimensions, one among them being the usage of the writ in relation to individuals suffering from mental health issues, for instance, where the individual is being denied the freedom of movement, occupation and exercising the freedom of choice. Apart from the political domain, the use of the writ has crept into facets of health laws. The researcher shall deal with the use of the writ in foreign jurisdiction in arena of mental health

and the lessons that India can learn in this regard. There has been very scant research in the outreach of the reach in aspects transcending political scenarios, owing to the fact that there exist explicit legislations on such issues and exploring the possibility of the use of the same in the above mentioned arena has been rarely considered.

Findings

Owing to colonial domination, many facets of English law were imported into the Indian legal system. Now as far as India is concerned, there is a lot of incoherency in the development of this writ. The writ has witnessed several changes in the course of its history in India. The writ was not as potent a weapon as in England for safeguard of individual liberty[4].

To be more precise the Clause 4 of the Charter of 1774 gave the power to the Supreme Court of Calcutta to issue the writ of habeas corpus. There as we proceed into the legal history, the Supreme Court was abolished and High Courts established by the High Courts Act of 1861. Thus, the High Courts inherited the power to issue the writ of habeas corpus from the Supreme Court. Then comes the Criminal Procedure Code as Act X of 1872, wherein Sec. 81 explicitly conferred the liberty of European British subjects. Then a string of acts such as the Criminal Procedure Code Act of 1875 (Sec. 148), Act of 1882 which repealed 1872 and 1875 acts gave section 491 the power to issue the writ to the High Courts. Many amendments and repeals were introduced. But the peculiar feature that the benefit of Habeas Corpus was not available to Indians, it was restricted only to English. Change came via the Criminal Law Amendment Act XI of 1923 where it amended Section 491 of Criminal Procedure Code of 1898 and opened the gates of liberty to whole of India.

Thus, the story of habeas corpus shows its development from a luxury available only to Europeans to its recognition as a right available to all, specially after 1923[5].

Discussion

As far as the foreign jurisdictions are concerned, the instances of petitions praying for the writ of habeas corpus in relation to persons suffering from a mental illness, and their liberty being denied to them on the pretext of their illness, limiting their movement are not new. Indian courts needs to take lessons in this novel dimension of the writ. The foreign courts have validated the use of the writ for those detained in mental institutions only as permissible by the law in force and not surpassing the transcension of law [6] The pretext of care and concern towards mentally ill is not seen as a valid cause of curbing the freedom of movement of such individuals[7]. only to the extent where the concerned mentally ill person does not pose a threat to another individual.

A crucial decision on the use of writ of Habeas Corpus in context of mentally ill is the decision of Justice Eastham in Re C (Mental Patient :Contact)[8] where there occurred an altercation between a couple in relation to the custody of their adult daughter. The couple had judicially separated and the girl was under the care of her father. The mother had a grievance that the father restrained her from seeing their daughter. The mother applied for proper visitation rights so that she could meet her daughter through proper legal means as well as a written order by the court restraining the father from stopping her.

The issue which was raised was whether the court could entertain such a plea. The court through Justice Eastham answered in the affirmative [8]and observed that:

The unlawful obstruction by the parent in custody of a child to the visitation rights of the other parent can be rightfully remedied through the writ of Habeas Corpus. Furthermore, he added that if the young girl was not able to meet her mother and given access to her, this is a clear case of the writ of habeas corpus.

He further observed: [8]

The contentions of the mother, if true, must be supported through a writ of Habeas Corpus.

In A Local Authority v MA[9], a case concerned with the assessment of the decision making capacity of a deaf and dumb 18 year old girl specifically to marriage, Justice Mumby observed,

The writ is not limited to the testing of the legality of detention; as it requires the detainee to produce the body of the person before the court, it is also a method of analyzing whether the detention is illegal or not. And

if the court through a committee of medical experts can ascertain the mental health of the individual and establish the factum of coercion.

In another case[10], a woman named Zelika Antunovic, a woman aged 33, was forced into institutional mental care under the Victoria Mental Health Act 1986 (hereinafter referred to as the Act) in 2008. She was ordered to be under community treatment (hereinafter referred to as order) by Dr. Louise Dawson, a certified psychiatrist. The order underwent extensions in 2009 as well as 2010. The 2010 order was due to culminate on 2 May 2011. Now, the act provides specifically under section 14(3)(b) that a community treatment order issued by a certified psychiatrist may also mention the residential requirements of a person and ask the patient to comply to the same. These are the residential requirements under the act. But the same provision was never used by Ms. Antunovic's doctor neither were there any variations to her order. A proper treatment plan, under section 19A of the Act, was prepared by her doctor. At the same time, only on pretext of insufficiency, there was no bar on her to reside at her own home along with her mother. The Mental Health Review Board of Victoria analyzed the order on 18 June 2010. It gave the right of oral hearing to Ms. Antunovic as well as analyzed the findings of her doctor who did not personally appear before the Board. The order was prolonged and again reconsidered for a reanalysis after six weeks. In the reevaluation on the expiration of six weeks, the Board came to the conclusion that it was not satisfied with the treatment being administered to Ms. Antunovic by her doctor. It pinpointed the absence of any objection from Ms. Antunovic's end to continue her stay at the community care unit , where her treatment was underway and reside with her mother[11].

Ms. Antunovic approached the Supreme Court of Victoria stating that the specific requirement of her residence was nowhere mentioned in her treatment plan or there was no specific reference to a mandatory residence at the community care unit, she desired to reside along with her mother . Under Order 57.03 of Victoria's Supreme Court (General Civil Procedure) Rules, 2005, the court issued the writ of Habeas Corpus and ordered the release of Ms. Antunovic.

Justice Bell made an in-depth analysis of the impugned legislation which was the Victoria's Mental Health Act of 1986 and more specifically of the residential requirements of the patients in community treatment homes under it. He observed that such orders are tantamount to obstruction of fundamental rights and freedoms of individuals. The imposition of such orders can be mandated only in instances of pure medical requirements. He stressed that the requirement of a mandatory residential stay through a treatment plan which explicitly mentions it is what is mandated under the act and the plan of the petitioner has no mention of any mandatory residential requirements. Further, he also noted that the treatment plan of the petitioner also had no mention of her desire to cease to live at the commnity care unit and reside with her mother. He further observed that the intention of the legislature through the impugned legislation is to meet the requirements of the 1991 United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care which mandates for a treatment that respects the personal liberty and privacy of an individual, even though he is undergoing mental health treatment.[10]

He further noted that even through the petitioner was not under incarceration akin to those of prisoners, she had the liberty on her movements throughout the day but at night she was confined to four walls of the community care unit. This was not akin to complete control and domination but led to a degree of substantial control and domination by her authorize doctor in the sense that her freedom of movement as well as her wishes were being constrained owing to the treatment plan and the arbitrary review exercised by the Victoria Mental Health Board giving her doctor, a great degree of control which fell within the limits of the legal tests of incarceration.

He further admitted the case of the petitioner, making it a fit example of being subject to the jurisdiction of the writ of Habeas Corpus. He further ordered the release of the petitioner by her doctor from the confines of the Community Care Unit

Conclusion

The above-mentioned decisions clearly bring out the invigorated usage of the writ and the lessons that the Indian judiciary needs to learn. The right to personal liberty is also a divine right under Article 21 of the Indian Constitution. The above mentioned decisions

contain a treasure of analysis of on this cherished and most celebrated writ and its applicability to persons suffering from mental illness from which the Indian medical community can learn to a large extent.

The most unique aspect found by the author through the above mentioned cases is the use of the writ despite the cases not falling within the strict ambit of imprisonment and the individuals enjoying a considerable degree of freedom of movement and exercise of freedom of choice. It brings out an important facet that if there is an unlawful bar on the exercise of liberty and freedom of choice of a person , the writ is called for. Furthermore, the decisions occupies significance in light of its prime concern being people suffering from mental health issues and given equal rights and primacy akin to normal members of the public[11].

Thus, the decisions serve as a positive guiding light for the medical as well as legal community. The Indian medical community can also learn from such progressive decisions and incorporate healthy practices in course of their medical practice.

Source of Funding: Self-funding

Conflict of Interest: The author declares no conflict of interest, financial or otherwise.

Ethical Clearance: None

References

1. Jenks E. The Story of Habeas Corpus. In: Committee of Association of American Law Schools, editor. Select Essays in Anglo American Legal History. Little Brown & Company; 1907. p. 54–67.
2. Norman Bentwich. Habeas Corpus in the Empire. LQ Rev. 27.1911:454–5.
3. US. Philip S. Wales v. William G. Whitney. 1885 Vol 114 p. 564–71.
4. Clark JW. TRACE : Tennessee Research and Creative Exchange Habeas Corpus : Its Importance , History , and Possible Current Threats. 2007;
5. Markose AT. Judicial Control of Administrative Action in India: A study in Methods. Madras: Madras Law journal Office; 1956. 121–122 p.
6. Publications L. Regina v. East London and the City Mental Health NHS Trust and another. 1996.Vol. 58 p. 599–601.
7. High Court (Queen's Bench. R v. Brixton Prison Governor, Ex parte Ahson Vol. 114. 1885. and Others. 1968 Vol. 2. p. 222.
8. Federal Law Reports. Re C (Mental Patient:Contact). 1993.Vol 1 p. 940.
9. Court E& WH. A Local Authority v. MA & Ors.2005 Vol. 2942. p. 75–7.
10. Court VS. Antunovic v. Dawson. 2010 .Vol. 377. p. 173.
11. Sc IF. CASE COMMENTARY Habeas Corpus and Involuntary Detention of Patients with Psychiatric Disorders Antunovic v Dawson [2010] VSC 377 (Bell J). 18 (4) 2011:473–85.