



**DEMOCRATIC BACKSLIDING OR PROCEDURAL TIGHTENING?
A COMPARATIVE STUDY OF HABEAS CORPUS DEBATES IN THE UNITED
STATES AND INDIA**

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ABSTRACT

Habeas corpus has long been seen as a fundamental aspect of constitutional freedom. It protects individuals from being held without lawful cause. However, in recent years, democratic countries have approached this protection in very different ways. In the United States, political discussions increasingly mention the potential suspension of habeas corpus, especially concerning immigration and national security. These comments have raised significant worries about a decline in democracy and the weakening of established constitutional principles. In India, the situation is quite different. Indian courts have kept reaffirming the importance of habeas corpus while also tightening its procedural limits to avoid misuse. This article compares these differing approaches to see if recent developments suggest a decline in democracy or a valid effort to tighten procedures aimed at preserving the integrity of the writ.

Keywords: Habeas Corpus, United States, National Security, Democracy, Writ.

INTRODUCTION

The writ of habeas corpus holds a special and respected place in constitutional democracies. Often seen as the ultimate protection of personal freedom, it allows courts to question the legality of detentions and limit the arbitrary use of state power. Despite its historical stability, habeas corpus has once again sparked intense debate. These discussions go beyond legal rules; they show deeper worries about the strength of democracy, executive power, and the role of courts during political pressures. By looking at recent changes in the United States and India,

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this article aims to determine whether current trends indicate a decline in democracy or represent a thoughtful attempt to improve procedural standards.

HABEAS CORPUS IN THE UNITED STATES: POLITICAL RHETORIC AND CONSTITUTIONAL UNEASE

In the United States, habeas corpus is constitutionally protected and can only be suspended in exceptional circumstances, such as rebellion or invasion. Historically, suspension has been rare and treated as an extraordinary response to national emergencies. Nevertheless, recent political statements suggesting the possibility of suspending habeas corpus—particularly to facilitate immigration enforcement—have generated widespread concern. While these statements have not translated into concrete legislative or executive action, their very articulation signals a troubling shift in political attitudes towards constitutional safeguards. Legal scholars have pointed out that such rhetoric risks normalising the idea that fundamental rights may be set aside for administrative convenience. Courts in the United States have largely acted as a stabilising force, reaffirming judicial oversight over detention and resisting executive overreach. However, the persistence of political threats, even if symbolic, raises questions about how robust constitutional culture remains when rights become bargaining tools in policy debates.

INDIA'S APPROACH: JUDICIAL CAUTION AND PROCEDURAL REFINEMENT

India's constitutional framework offers strong protection for personal liberty through Articles 32 and 226. These articles allow individuals to go directly to the constitutional courts for help. Unlike the political debates in the United States, recent developments in India have mainly taken place in courtrooms instead of on political stages. Indian courts have often stressed that habeas corpus serves as a remedy for illegal detention. It cannot be used as a substitute for other processes like bail applications, custody disputes, or missing-person cases.

This judicial approach shows a clear effort to maintain the effectiveness of the writ. By setting clear procedural limits, courts prevent habeas corpus from being weakened by overuse or strategic lawsuits. Importantly, this tightening does not limit access to the writ in cases of true violations of liberty. Instead, it reflects careful judicial practice that is rooted in constitutional discipline.

COMPARATIVE ASSESSMENT: BACKSLIDING VERSUS TIGHTENING

A comparative study of these developments highlights a significant contrast. In the United States, the primary source of concern stems from political discourse that appears willing to question or downplay entrenched constitutional protections. Although institutional checks remain intact, such discourse can weaken public confidence in democratic norms. India's experience, on the other hand, illustrates how courts may strengthen rights protection through procedural clarity rather than expansion.

The weakening of checks and balances and the acceptance of extraordinary measures are two signs of democracy backsliding. On the other hand, procedural tightening tries to make sure that constitutional remedies stay clear, useful, and hard to misuse. Indian jurisprudence over habeas corpus in recent years aligns more closely with the latter model.

CONCLUSION

The contemporary debate surrounding habeas corpus reveals much about the health of democratic institutions. While the United States continues to possess strong constitutional and judicial safeguards, political rhetoric questioning fundamental rights serves as a cautionary signal. India's judicial response demonstrates an alternative path—one in which courts actively protect liberty by refining procedure rather than expanding executive discretion. Ultimately, the strength of a democracy lies not only in the rights it recognises but in the seriousness with which those rights are treated in both law and political discourse.

REFERENCES

1. US Constitution art I, § 9.
2. Constitution of India art 32.
3. Constitution of India art 226.
4. A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).
5. William Blackstone, *Commentaries on the Laws of England*, vol 3 (Clarendon Press 1768).
6. *R v Secretary of State for the Home Department, ex p Khawaja* [1984] AC 74 (HL).
7. Abraham Lincoln, 'Message to Congress in Special Session' (4 July 1861).
8. *Hamdi v Rumsfeld* 542 US 507 (2004).

9. Boumediene v Bush 553 US 723 (2008).
10. Stephen I Vladeck, 'The Suspension Clause as a Structural Right' (2019) 62 William and Mary Law Review 275.
11. ABC News, 'Trump Administration Weighs Habeas Corpus Suspension Amid Immigration Push' (10 May 2025).
12. The Washington Post, 'What It Would Mean to Suspend Habeas Corpus in the United States' (12 May 2025).
13. PBS NewsHour, 'What Is Habeas Corpus and Why Does It Matter?' (15 May 2025).
14. ADM Jabalpur v Shivkant Shukla (1976) 2 SCC 521.
15. Justice KS Puttaswamy (Retd) v Union of India (2017) 10 SCC 1.
16. Sunil Batra v Delhi Administration (1978) 4 SCC 494.
17. Kanu Sanyal v District Magistrate, Darjeeling (1974) 4 SCC 141.
18. Saurabh Kumar v Jailor, Koneila Jail (2014) 13 SCC 436.
19. Supreme Court of India, Sonam Wangchuk v Union of India, Writ Petition (Habeas Corpus), pending (2025).
20. Allahabad High Court, X v State of Uttar Pradesh, Habeas Corpus Petition of 2025.