

Free essay on habeas corpus as an extension of fundamental human rights

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Introduction

The United States of America has a record of declaring war on certain issues and countries, given specific circumstances and its declaration of war on terror is just one of them. As much as some of these wars declared in the past were well criticized in certain quarters, the war the US declared on terrorism is one that is well agreed with by the vast majority of citizens. The reasons for this is very obvious; terrorism is an act no state will ever wish it experiences due to the number of innocent lives that gets wasted, thereby robbing the state of its most valuable assets, the human resource.

Fundamental human rights are advocated to be respected by any person, either individual or state, but an outbreak of war brings about the infringement of many. For example, in an outbreak of war, the rights of human beings to freedom of movement will be well infringed upon in the face of incessant bombings and massive destruction of the environment where humans once freely walked.

Apart from the fundamental right humans are entitled to enjoy, there are other important civil rights which countries like the US grants to its citizens as a way of extension to the basic ones. One of such further rights is the writ of habeas corpus (a Latin word meaning “ may you have the body”). The writ of habeas corpus is a legal instrument which was used in protecting the freedom of individuals against some actions of the state which might have been misguided or literally arbitrary. The Habeas Corpus is considered by many sociologists and political lawyers as one of the most important rights in modern-time democracy.

The History of Habeas Corpus

The writ of habeas corpus was associated with the US in the previous paragraph, but it is good to point out here that this writ has a history beyond its US usage; habeas corpus' usage dates back to the English legal system. Habeas corpus as a writ is believed by some to have originated in the Magna Carta (charter) of the 17th century, but the real origin of habeas corpus' usage can be found as early as in the 12th century, during the reign of Henry II. Later, during the reign of King Edward I, in 1305, habeas corpus became a coded legal instrument, this evolved into what became the Habeas Corpus Act of 1640 and later Habeas Corpus Act of 1679. The 1679 Act was the first codification of the writ in which the process of issuance was laid out as an answer to the rulings of the judiciary that were restrictive on its operations. When the United States became independent, from England, habeas corpus was one of the things in it rather happily inherited as one of the cornerstones of the new legal system of the young country. It has been even planned to be a part of the initial US Constitution.

Habeas Corpus Explained

As previously explained in brief, the writ of habeas corpus is a legal document that protects the freedom of individuals against arbitrary state action. A person could get arrested for any kind of offence and such an arrest could either be viewed as legal or illegal. When such an arrest is viewed as carried out illegally, the person whose freedom of movement was curtailed or any third party associated with him can call for the operation of the writ of habeas corpus. In the application of the writ, the person opposing the arrest

and detention of the detained will require that such a person be brought to court or to a judge who will either substantiate or overturn the arrest and detention. In this way, a person who was detained unlawfully can regain his freedom in the event that the judge overturns the action.

The operation of habeas corpus is not rendered ineffective in seasons when courts are out of session, because a judge, not necessarily within the confines of the court room, can hear a case brought under the writ of habeas corpus. The writ is one legal document which carries the highest authority of the country, the president, and is usually being issued by a superior court to a lesser one.

In operation, habeas corpus proceedings are initiated in order to determine the authority and jurisdiction of a lesser court on a sentence imposed on the defendant. The writ could also be used to make proceedings to determine the present legality of a court sentence. In cases awaiting trial, the writ of habeas corpus is also effective in fighting the detention of an incarcerated person.

The Suspension of Habeas Corpus

As protective as habeas corpus may seem to be, it has been a legal instrument that has had its share of tampering in the past. It is good to state here that the constitution of the United States has habeas corpus incorporated in its Suspension Clause in which the circumstances when the writ can be suspended are stated. According to the clause, the exercise of the writ of habeas corpus can be suspended in an event when public cases require it so or in cases of rebellion or invasion. The very first suspension of

the writ of habeas corpus on record is that done by Abraham Lincoln in 1861. The reason for that action is, of course, obvious: the outbreak of a civil war. As soon as Abraham Lincoln was elected president of the United States of America, the evolving resentment between the then US states, divided into northern and southern regions, was culminated in the cessation of South Carolina from the US. That marked the beginning of American civil war which lasted four years, ending in 1865. Just as the war was breaking out, the president suspended the exercise of habeas corpus but this was applicable only in Maryland and some parts of the Midwestern states. The suspension did not go without some wrestling at the court as Roger B., the Supreme Court Chief Justice at that time defied the suspension and issued a habeas corpus to bring Merryman (arrested for secessionist offence) before the court. In response to this, Abraham Lincoln issued a proclamation to suspend the writ in every state of the US in order to counter the ongoing insurrection. It is believed that the operation of the writ came back into force when the war ended since it is a writ that is regarded as one in the center of Americans' liberty.

Also, in 2006, President Bush slammed a suspension on the writs operation by signing the Military Commission Act of 2006. Once again, the circumstances were very unsettling, as the action was done to cope with legal issues that might have arose when hunting those responsible for the terrorist attacks on the US in 2001. The nature of suspension in this case was somehow different to that of Abraham Lincoln because the scope of suspension was different. In the era of Lincoln, the writ's suspension affected rebels, insurgents, their collaborators within the US, persons discouraging

volunteer enlistment into the military or found guilty of any kind of disloyal act to the US, among other such persons. However, in the case of Bush's suspension of the writ of habeas corpus, all enemy combatants, as determined by the US, in its global war on terror, are those to which the operation of habeas corpus becomes ineffective.

Conclusion

Being an important writ to protect citizens against the state's "non-legal" actions, the operation of habeas corpus has two sides of the coin in acceptance. While some believe that it is good to protect citizens in case of the excesses of state officials, some are of the opinion that the operation of the writ threatens the capacity of the US judiciary system to settle primary disputes and should be executed with extreme care as the state has every right to protect itself.

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