

# District Courts Should Issue Habeas Corpus

Episode 71 | Big Ideas

Transcript

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## Abstract

India's constitutional protection against unlawful detention is artificially constrained by limiting habeas corpus powers to higher courts. Alok Prasanna Kumar presents a compelling case for democratizing this fundamental remedy by empowering all courts, including district courts, to issue writs of habeas corpus.

Kumar argues that concentrating this power in Supreme Court and High Courts creates unnecessary barriers to justice, given that 95% of judges serve in district courts and handle 99% of cases that Indians file. He outlines three pathways to implementation: constitutional provision under Article 32(3), legislative amendment to the Criminal Procedure Code, and creative interpretation of existing civil procedure powers. The conversation explores practical challenges around enforcement, judicial independence, and the structural changes needed to make constitutional remedies truly accessible to all citizens.

This episode challenges conventional thinking about judicial hierarchy and constitutional remedies, proposing a more distributed approach to protecting fundamental rights.

## Supplementary Resources

- **Article 142: Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.** by Centre for Law and Policy Research (Web Article) [1]
- **Article 226: Power of High Courts to issue certain writs** by Centre for Law and Policy Research (Web Article) [2]
- **Section 151, The Code of Civil Procedure, 1908** by Government of India (Web Article) [3]
- **District courts are not subordinate in judiciary, they are just a rank below to High Courts, says Chief Justice of India** by Sambasiva Rao M. (Web Article) [4]

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## Introduction to the big idea

[00:00:09]  
**Interviewer:** Hello and welcome to the Big Idea series. In this episode, I am in a conversation with none other than Mr. Alok Prasanna Kumar, a prolific author, policy expert, and renowned jurist. Alok is a graduate of Nalsar, Hyderabad and later the University of Oxford.

[00:00:09]  
**Interviewer:** He has practiced in high courts and tribunals across the country as well as the Supreme Court.

[00:00:29]  
**Interviewer:** In this episode, he argues that district courts must be vested with the power to issue constitutional remedies. Let's hear him out.

## District courts should have habeas corpus power

[00:00:37]  
**Alok Prasanna Kumar:** Thanks Gokul. My big idea is that every court in India should have the power to issue the writ of habeas corpus. It should not be limited only to the Supreme Court or the High Court.

[00:00:48]  
**Interviewer:** Okay. Uh, that sounds blasphemous to me as someone who has just came out of law school, but uh, let me push you a little bit further. Um, why can't this be mechanized only through the Supreme Court and the High Court? Why is it necessary that the district court should have a right to issue habeas corpus?

## Why not just expand high court benches

[00:01:04]  
**Alok Prasanna Kumar:** Yeah. So let's think about it this way. Uh, if you look at the sum total of all the judges in our country, ninety-five percent of judges are in the district court category, right? Whether they are magistrates or principal district judges.

[00:01:17]

**Alok Prasanna Kumar:**

Second of all, most cases aren't appealed to the High Court or the Supreme Court at all. So maybe anywhere between ninety-five to ninety-nine percent of Indians who file a case never file it in the High Court or the Supreme Court. These are just the raw numbers that you get from the National Judicial Data Grid. Uh, we know that of the whatever, four crore cases that are filed in a given year, three crore plus are in the district courts, including criminal cases, and the rest are a few are in the high courts and a very, very few are filed in the Supreme Court.

[00:01:45]

**Alok Prasanna Kumar:**

So just in terms of making justice accessible to everyone, you would want people to be able to file cases for the most basic civil right, that no one shall be detained without the authority of law, to be accessible from their nearest court as opposed to the court which we think they should go to.

[00:02:04]

**Interviewer:**

But so why can this not be in the form of decentralized High Court benches or the Supreme Court benches? Why should this be vested with the district court apparatus according to you?

[00:02:13]

**Alok Prasanna Kumar:**

Yeah. The we are asking for creating new high court benches, enormous amount of resources are needed. Because you don't just create a new high court bench. There is also the fact that you can't create, let's say for instance, the state of Karnataka has twenty-eight districts.

[00:02:13]

**Alok Prasanna Kumar:**

There are now three benches, one for Northeast, one for Northwest and one for the rest of the state.

[00:02:33]

**Alok Prasanna Kumar:**

If you actually look at the data, these are the wrong places to put the benches, except the main bench which is in Bangalore. You should be putting benches in in districts where actually much more cases come from. But then that means you'll have to have effectively twenty, twenty-five benches, if not more per state, which is extraordinarily resource intensive. You don't create a bench just for one jurisdiction.

[00:02:33]

**Alok Prasanna Kumar:**

So there is therefore the negative reason why it should not be done.

[00:02:57]

**Alok Prasanna Kumar:**

The positive reason is the Constitution already provides space for this. You have clause three of Article thirty-two which says that Parliament may by law, vest the power that the Supreme Court has in issuing any of the writs of habeas corpus, certiorari, et cetera with any other court. So all it effectively might need is just an amendment to the CRPC which says that the magistrate shall have the power to issue writ of habeas corpus and parties may, uh, affected persons may appear before the concerned magistrate for this.

## Using existing legal provisions for implementation

[00:03:28]

**Alok Prasanna Kumar:**

The third reason that I was sort of offer is that maybe we don't even need litigation or uh, legislation to make this happen. There is already section 151 of the Code of Civil Procedure. This is one of the widest provisions in any legislation that you'll find in India, which say that the civil court shall have the power, shall have whatever power is necessary to do complete justice in any given case.

[00:03:51]

**Alok Prasanna Kumar:**

This power was most famously used uh to offer interim compensation before trial began in the Bhopal gas tragedy and the court, superior courts have upheld and everybody acknowledges that this is like anything which is not contrary to what is already there in the Code of Civil Procedure or any other law, you can do to ensure that justice is done in a given case. So let's come back to what is the writ of habeas corpus.

[00:04:14]

**Alok Prasanna Kumar:**

It is asking with what authority of law have you taken someone into custody? It's strictly speaking not a criminal case because it's a criminal case, they are required to produce before the appropriate magistrate, right? So it's effectively still at the end of the day, a writ of habeas corpus is actually a civil remedy asking somebody what authority of law did you have to take this person? It may be that you're asking from somebody who is a police or enforces criminal law, but you can effectively do this against anyone.

[00:04:44]

**Alok Prasanna Kumar:**

Uh, it's just that we have these preconceived notions that it's actually only the criminal jurisdiction because it was there in the CRPC before it was in the Constitution. So my point is you can interpret 151, and I would invite lawyers to argue before courts that let's interpret 151 as broadly as possible. There's no provision of law which says that you cannot file a suit against the police saying why have you detained this person, right? Asking them to answer for, for having detained someone in court and let them produce that person in court.

[00:05:16]

**Alok Prasanna Kumar:**

So I think for all these reasons, there are two positive reasons, you're making use of existing legislation or you're making use of existing constitutional provisions, instead of taking the most difficult, resource-intensive, and possibly not as effective remedy in setting up additional benches in high courts.

[00:05:33]

**Interviewer:**

Understood. Extending this idea a bit further, uh you say that we can perhaps use the inherent powers vested in civil courts, which is also therefore vested in the High Court and the Supreme Court under Section 151 of the CPC and perhaps 482 of the CRPC too for criminal courts?

[00:05:47]

**Alok Prasanna Kumar:**

Probably less so, it will be much more difficult. Yeah.

[00:05:49]

**Interviewer:**

Um, okay. Um, to um allow every district court in the country to issue habeas corpus. Uh, but uh there is a famous legal maxim that starts with um, *expressio unius*.

## Constitutional interpretation and *expressio unius* principle

[00:06:03]

**Alok Prasanna Kumar:**

*Exclusio alterius*.

[00:06:04]

**Interviewer:**

*Exclusio alterius*. So, is the specific expression of writ jurisdiction being rested in article 32 and 226 um, an implication that it is excluded from all other forums where it can possibly come about? Can you just flesh that out a little bit?

[00:06:21]  
**Alok Prasanna Kumar:** Sure. Let me sort of uh address that by just looking at the first text of it, right? Nowhere in Article 32 or 226 does the Constitution say this power shall vest only with these courts. Two, the Constitution expressly allows that you can vest this power in other courts.

[00:06:21]  
**Alok Prasanna Kumar:** And that's in the context of the Supreme Court, but you potentially can do this another high courts as well.

[00:06:43]  
**Alok Prasanna Kumar:** Three, it goes even more fundamental. It and it goes to the point that we have now accepted that it's not the constitution which is granting us rights. The constitution is acknowledging the existence and laying down boundaries in case there is some infringement of this right. Similarly, the function of any court is to ask a question, is this been done legally, right?

[00:06:43]  
**Alok Prasanna Kumar:** Is to enforce your legal right.

[00:07:10]  
**Alok Prasanna Kumar:** If you have that right, that basic human right of not to have your body or your freedom interfered with, you should be able to go to court to enforce that right. Rules of procedure are not what creates this right. Rules of procedure are to ensure that there is fairness in enforcing this right and you know what path to follow. So there is nothing that in the Constitution was intended to exclude or remove ways for you to enforce a basic human right.

[00:07:41]  
**Alok Prasanna Kumar:** So to that extent, I think the statutory interpretation does not exclude the possibility. It does not in any way say that this court absolutely does not have the power to demand that somebody who's been detained by the police should be produced before the court.

[00:07:57]  
**Interviewer:** So, um, my my next question comes along the lines of how do you actually implement this, right? Imagine people have to take this idea ahead. So uh, your colleague and co-founder at Vidhi, Arghya Sengupta in a podcast talked about how uh, there was a Supreme Court order explicitly asking an officer to do something. Uh, but the litigant concerned took the matter to the officer and the officer said, sorry, this might be a Supreme Court order, but I need my superior ordering me to do this.

[00:07:57]  
**Interviewer:** Yeah, yeah.

## Enforcement challenges and contempt jurisdiction

[00:08:24]

**Interviewer:**

There is also a famous story from the United States where the Supreme Court of the US issued an order and the President, Andrew Jackson. Andrew Jackson, the President seem to have said, um, uh he has issued his judgment. Now, let him enforce it. So, uh imagine a civil court now, um, dares to issue a habeas corpus.

[00:08:24]

**Interviewer:**

How do we mechanize this?

[00:08:42]

**Alok Prasanna Kumar:**

So this is this is so now we've get got to the next stage of enforcement, right? This is a problem which civil courts face all the time. Let's be very clear about it. Even today, uh they do have a problem of getting their orders enforced because the police authorities in a lot of times simply defy the orders.

[00:08:42]

**Alok Prasanna Kumar:**

Not just the police, but regular individuals as well. For that you have the contempt jurisdiction. You have a range of powers the courts have been given to ensure compliance with their orders, one of which is the power of contempt.

[00:09:08]

**Alok Prasanna Kumar:**

Now, this is where the constitution is explicit in saying that the High Court is a court of record, and the Supreme Court is a court of record. So they have the power to punish for contempt of themselves. Which district courts are not, they still have to tell the High Court, please punish this person for having committed contempt of me. In which case there is already an existing mechanism.

[00:09:08]

**Alok Prasanna Kumar:**

Again, in the face of defiance, while there are a lot of people who will violate, there will probably be a significant number of people who are like this is not some personal enmity I'm detaining this person for.

[00:09:39]

**Alok Prasanna Kumar:**

If the court has ordered that they be released, they will be released because at the end of the day, I will now get personally entangled in a contempt case. So which is where I think the power exists, the mechanism exists in the Contempt of Courts Act of how to ensure that the order of the court is complied with. Uh but by and large, that will be needed for the few delinquents who currently the court is already dealing with, right? Delinquents and those who refuse to follow the orders of court, that courts are already dealing with.

[00:10:07]

**Alok Prasanna Kumar:**

Um it's a larger, deeper structural problem, which I won't get into at the moment, but there are existing mechanisms. So the actual enforcement of the order against the delinquent will not be as big a problem.

[00:10:17]

**Interviewer:**

Uh, and now that we have spoken about the disparity between the district judiciary and the high court and the, the constitutional courts so to speak uh in terms of the the likelihood of delinquency um in these matters and and the kind of reverence vested in them in our scheme uh of constitutional structure. Um would you like to shed light upon how district court judges aren't perhaps as protected in terms of their independence from other forces as high court judges and Supreme Court judges are, and the implications this might have on an idea of this sort.

## Judicial independence at the district level

[00:10:49]

**Interviewer:**

This, this strikes at the root of their salaries, their terms of office, et cetera. Um, High Court judges and Supreme Court judges in my understanding are protected way more by the constitutional scheme than district court judges and what implication would that have?

[00:11:01]

**Alok Prasanna Kumar:**

So, let me just clarify first, all judges in India are constitutional court judges. Because the constitution does have provisions relating to the district and magistrate courts as well. In fact, and I have argued this in a paper that uh, the constitution mentions the magistrate before it mentions the Supreme Court. If you were to read article by article, the first article which talks about any court or judiciary is Article 22.

[00:11:01]  
**Alok Prasanna Kumar:** It's a fundamental right to be produced before a magistrate within 24 hours of your detention.

[00:11:31]  
**Alok Prasanna Kumar:** So in that context, I don't see any difference as far as their constitutional status is concerned. Now, as far as their protections are concerned, it is quite different, but not inferior. You obviously don't need an impeachment to remove a district judge, but they are also protected uh because it's not that the state government can dismiss them. It's not that the central government can dismiss them.

[00:11:31]  
**Alok Prasanna Kumar:** It is within the state judicial mechanism, you have the High Court, which is constitutionally in charge of discipline among the district court judges. So they're protected there.

[00:12:02]  
**Alok Prasanna Kumar:** If we believe that our mechanisms for ensuring independence of High Court and Supreme Court are protected, then as a flow from that into protecting the, but there is a way in which their independence might sometimes be affected. And that's a very valid point that you've brought out, which is where a lot of times the heavy reliance is placed on police reports by the High Courts when they're assessing judges. When they want to know is this judge corrupt, not corrupt, do they do a good job, not job, or are they somewhat suspicious in some way, right?

[00:12:31]  
**Alok Prasanna Kumar:** Because you never have some clear finding that this person is corrupt in which case you start criminal proceedings. This is where state intelligence reports, where inputs from police can sometimes play an unfortunate role in hampering a judge's career. This is a larger problem which is being faced now. It's not going to be faced when habeas corpus is made applicable to everyone.

[00:12:31]  
**Alok Prasanna Kumar:** Uh, police would love nothing more than to have judges simply say yes to whatever that they do.

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**Alok Prasanna Kumar:** And there is an unfortunate tendency a lot of judges don't take their work seriously enough where they think that they don't think that their job is to like check what the police does. So, I think this is a current structural problem. It's not going to happen in the future. And we need to fix that current structural problem, irrespective of whether, you know, we sort of say, uh, habeas corpus should be, the power of issuing habeas corpus should be available to all judges.

## Concluding thoughts on constitutional implementation

[00:13:18]

**Interviewer:**

Understood Mr. Alok. And I think, uh, in a time where prisoners especially under the UAPA are languishing in jails without even proper bail hearings, um, it is very important that courts across the country have such powers so that some daring judge may be able to finally make the person be produced in front of the court and question why they were kept in prison in the first place. Thank you so much for that big idea.

[00:13:18]

**Interviewer:**

Any concluding thoughts?

[00:13:42]

**Alok Prasanna Kumar:**

Uh, my only one concluding thought is that the constitution doesn't execute itself. It requires people to constantly find ways to implement it, to constantly push the boundaries of what the constitution protects us. I mean, we always already have somebody pushing the boundaries of what the constitution does not permit. Now we should push the boundaries of what the constitution does permit to further its values.

[00:13:42]

**Alok Prasanna Kumar:**

And my concluding thought is to lawyers across the country to be more creative, to take a little bit more initiative in the cause of furthering people's rights.

[00:14:13]

**Interviewer:**

Thank you so much, Mr. Alok Prasanna Kumar.

[00:14:14]

**Alok Prasanna Kumar:**

Thank you. Thank you.

## References

- [1] Centre for Law and Policy Research. Article 142: Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc. Constitution of India, 2024. URL: <https://www.constitutionofindia.net/articles/article-142-enforcement-of-decrees-and-orders-of-supreme-court-and-orders-as-to-discovery-etc/>.
- [2] Centre for Law and Policy Research. Article 226: Power of High Courts to issue certain writs. Constitution of India, 2024. URL: <https://www.constitutionofindia.net/articles/article-226-power-of-high-courts-to-issue-certain-writs/>.
- [3] Government of India. Section 151, The Code of Civil Procedure, 1908. India Code, 1908. URL: [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_3\\_20\\_00051\\_190805\\_1523340333624&sectionId=33494&sectionno=151&orderno=162](https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00051_190805_1523340333624&sectionId=33494&sectionno=151&orderno=162).
- [4] Sambasiva Rao M. District courts are not subordinate in judiciary, they are just a rank below to High Courts, says Chief Justice of India. The Hindu, December 2022. URL: <https://www.thehindu.com/news/national/andhra-pradesh/district-courts-are-not-subordinate-in-judiciary-they-are-just-a-rank-below-to-high-courts-says-chief-justice-of-india/article66321647.ece>.