

CHAPTER XVI**Rules to Regulate Proceedings under Article 226 of the Constitution of India
for issue of writs in the nature of Habeas Corpus**

1. An application for a writ of habeas corpus shall be filed before the Bench presided over by the Chief Justice and when no such Bench is sitting before any other Bench and shall be accompanied by an affidavit by the person restrained stating that it is made at his instance and setting out the nature and circumstances of the restraint; and a copy of the application will be served on the Advocate-General before filing :

Provided that where the person restrained is unable, owing to the restraint, to make the affidavit the application shall be accompanied by an affidavit to the like effect made by some other person, which shall state the reason why the person restrained is unable to make the affidavit himself.

2. The application, if received by post, shall be put up as soon as possible before the Chief Justice for orders.
3. The application shall be heard by a Division Bench presided over by the Chief Justice or by any other Bench under special direction of the Chief Justice, except in vacation when it may be heard by a Single Judge but no final order shall be passed by him.
4. If the Court is of opinion that *prima facie* case for granting the application is made, a rule nisi shall be issued calling upon the person or persons against whom the order is sought, to appear on a day to be named therein to show cause why such order should not be made and at the same time to produce in Court the body of the person or of each of the persons alleged to be illegally or improperly detained then and there to be dealt with according to law.
5. On the day fixed for return of such rule or on any day to which the hearing may be adjourned, if no cause is shown or if cause is shown and disallowed, the Court shall pass an order that the person or persons improperly detained shall be set at liberty. If cause is followed the rule shall be discharged. The order for release made by the Court or the Judge shall be a sufficient warrant to any gaoler, public official or other person for the release of the person under restraint.
6. In disposing of any such rule the Court may in its discretion make such order for costs as it may consider just.

7. In case of difference of opinion between the Judges composing the Division Bench, the application shall be referred to and heard by such Judge or Judges as the Chief Justice may appoint and shall be decided according to the opinion of the majority of judges who have heard the application including those who first heard it. The application shall be re-argued before the Judge or Judges to whom it is referred either sitting apart from or with the referring Bench as the Chief Justice shall direct.
 8. In the case of an application where no lawyer is engaged by the applicant, the Court may, if considered necessary, appoint a lawyer at Government expense to represent him.
 9. Every application under this Chapter shall ordinarily be heard and disposed of within 15 days of the receipt thereof.
 10. While disposing of an application under this Chapter the Court may make an order for payment by one side or the other the costs of the rule.
 11. Final orders passed by the Court shall be communicated for compliance to such person or persons as may be necessary.
 12. The form of warrant (Form No. 1 – Criminal) given in Appendix H at page 199 of Volume II shall be followed.
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