

HABEAS CORPUS AND SECTION 97 OF CRIMINAL PROCEDURE CODE, 1973

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INTRODUCTION

The term 'Habeas Corpus' is translated as 'to have a body of'. The purpose of this writ is to free someone who has been unfairly imprisoned or detained. The effectiveness of this writ is equal to the court's order. Under this writ, the court orders that the person who has been held be brought before it so that the legality of his detention can be determined. If the tribunal finds that the detention was unlawful, the person must be released immediately. It is essential to note that the warrant issued under section **97 CrPC 1973** also performs a similar role as that of the writ of habeas corpus, wherein the police is allowed to intervene on behalf of a person who has been wrongfully imprisoned as a result of a magisterial order.

HABEAS CORPUS

Writs are issued in India by the Supreme Court under Article 32 of the Indian Constitution and by the High Court under Article 226 of the Indian Constitution. Part III of the Indian Constitution contains fundamental rights such as the right to equality, the right to life, and the right to liberty. However, it is insufficient to just provide for fundamental rights. It is also critical that these fundamental rights are safeguarded and enforced. To defend fundamental rights, Articles 32 and 226 of the Indian Constitution give anybody whose fundamental right has been violated the right to file a complaint with the Supreme Court or the High Court, respectively.

This is a writ in the nature of an order calling upon the person who has detained another to produce him before the court, in order to let the Court, know what ground he has been confined and to set him free before if there is no legal justification of imprisonment. In other words, by

this writ, the court directs the person or authority that has detained another person to bring the body of prisoner before the court so that court may decide the validity, jurisdiction or justification of such detention.

SECTION 97 CrPC

Section 97 states that,

“Search for persons wrongfully confined. If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper”

According to Section 97 of the CrPC, if the District Magistrate, SDM or Judicial Magistrate of the First Class has a reason to believe that a particular individual has been wrongfully detained, they may issue a search warrant. On its issuance, the person to whom the search warrant is directed may search for the detained person and if the detained person stands convicted, he would be punished. This provision aims to present the body of the victims before the authorities. In the case of, **Jay Engineering Works vs. The State of West Bengal (1968)**, the Court stated that the writ of habeas corpus granted under Section 97 CrPC is for the rescue of an unlawfully detained person via police intervention, who can intervene post a mandatory magisterial order. But before the magistrate issues a warrant under this clause, he must be reasonably satisfied that the detainee has been unlawfully confined, as was held in **Anuara Begum vs. Habil Mea (1961)**. However, the provision does not mandate the magistrate to carry out any detailed investigations or keep up with records of the findings. Also, the aggrieved party cannot be allowed to be heard before a warrant is issued by the magistrate. If the person is discovered in the course of the search, he must be taken to the magistrate immediately. This action can also be applied in cases where a person has been unlawfully

confined which is irrespective of the fact whether the person was confined by being kidnapped/abducted or not.

PROCEDURE BEFORE APPLYING UNDER CRPC SEC 97 AND WRIT OF HABEAS CORPUS?

Before going into any of the legal procedure one has to reassess and confirm with the circumstances. In case of sec 97 of CrPC, one should have the material fact and good reason to believe the fact. Then he/she can complain in local police station or with Superintendent of Police. After all this one can go and simply file with the help of the advocate an application under section 97 CrPC before the concerned magistrate.

In case of Habeas Corpus, there is no need to file a complaint under SHO or in any police station. One can move directly to the High Court and seek direction against the person or authorities who unlawfully detain the person.

LATEST DISCUSSION ON SECTION 97 AND WRIT OF HABEAS CORPUS

It was on 20th May 2021, while addressing a writ petition of habeas corpus, the bench comprising Justice Maheshwari and Anirudha Bose directed the petitioner to seek remedy under Section 97 of the CrPC over the writ of habeas corpus. The facts of the case were that the petitioner who was aged 28 had married the corpus aged 24 without the consent of her family. When the couple's family got the information of their marriage, the girl was beaten and confined in the bedroom. After getting no help from the police and other authorities, he filed a habeas corpus writ petition seeking the authorities to produce his wife before the court. The bench, on hearing his plea, directed him to employ Section 97 of the CrPC. To this advice, the petitioner consented and withdrew his petition and the case was dismissed. After hearing the case, Hon'ble Justice Maheshwari remarked that Section 97 of CrPC had become a dead letter due to other shortcuts available.

CONCLUSION

As we understand that the scope of section 97 CrPC and writ for Habeas Corpus is almost same. But in reality people are using shortcut and directly approach into High Court and Supreme Court. Recently Honorable Supreme Court Judge Justice Maheshwari rightly said that “Section 97 CrPC has become dead letter because of this Habeas Corpus Shortcut” and because of this burden of the upper court increases and thousands of case of habeas corpus are pending in the upper court. The search warrant under sec 97 of CrPC can be issue by the Magistrate after consideration but as per the trend of filling the writ petition, sec 97 CrPC become a dead letter. It is need of the hour that advocates should take recourse to sec 97 CrPC and avoid shortcuts and overburdening of the upper court.

