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SECTION 97 CRPC : AN ALTERNATIVE REMEDY TO HABEAS CORPUS

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Abstract

Section 97 of the Code of Criminal Procedure (CrPC) in India provides an additional avenue for seeking relief from wrongful confinement beyond the traditional remedy of habeas corpus. Under this section, District Magistrates, Sub-Divisional Magistrates, and other Executive Magistrates are empowered to take action upon receiving information about someone being unlawfully restrained or detained. They can issue orders for the search and release of the individual in question. This provision serves as a vital alternative, offering a practical means for addressing cases of illegal detention promptly. It complements the habeas corpus remedy by providing an additional layer of legal recourse to ensure the protection of individual liberty and prevent arbitrary confinement.

CHAPTER -1 INTRODUCTION

"Habeas corpus" is a Latin term that translates to "you shall have the body." In legal terms, it refers to a fundamental legal principle and a legal writ, or court order, that protects against unlawful detention or imprisonment. The writ of habeas corpus is a legal remedy through which a person can challenge the legality of their detention or imprisonment by bringing the matter before a court.

The literal meaning of habeas corpus reflects its purpose: to ensure that a person who is detained or imprisoned has the right to appear before a court to determine whether their detention is lawful. The writ commands the person or entity holding the individual in custody to produce the detained person before the court and provide legal justification for their detention. This allows the court to review the legality of the detention and determine whether the person's rights have been violated.

In essence, habeas corpus serves as a safeguard against arbitrary detention by ensuring that individuals cannot be held in custody without lawful authority. It is a cornerstone of the rule of law and is essential for protecting individual liberty and preventing government abuse of power. 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 imp 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 searchwarrant, 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.

CHAPTER -2 ISSUES THAT SPARKED THE DEBATE

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.

In *Manubhai Ratilal Patel through Ushaben versus State of Gujarat and others*,¹ Hon'ble Supreme Court concluded in para No.32 of its judgment as under :- “.....It is well accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in the cases of *B.R. Rao (supra)* and *Kanu Sanyal (supra)*, the court is required to scrutinise the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted”

ADM Jabalpur Case – Adm Jabalpur vs Shivkant Shukla²

ADM Jabalpur Case, famously known as the Habeas Corpus Case, can be traced back to the time of the ‘Emergency’ in India. In *ADM Jabalpur vs Shivkant Shukla* case, the apex court of India, the Supreme Court, held the Constitution above individual security and liberty. The ADM Jabalpur Case judgment received tremendous criticism. This is viewed as the darkest judgment by the Supreme Court because it threatened the fundamentals of Indian democracy. In a bench of five judges of the high court, only Justice Hans Raj Khanna opposed the ADM Jabalpur Case.

The Supreme Court’s verdict in the ADM Jabalpur Case had far-reaching implications, shaping the understanding of fundamental rights and the role of the judiciary in safeguarding them. This article delves into the importance of the Adm Jabalpur vs Shivkant Shukla Case and analyzes its impact.

Mira Boro vs. Token Boro and others, 2013

In *Mira Boro vs. Token Boro and others*, (2013) the petitioner Smt. Mira Boro had filed a petition under Section 97 of the CrPC before the Court of the Chief Judicial Magistrate, Sonitpur. A search warrant was issued against her husband Shri Champak Boro as well as her in-laws. This was filed as he wanted the custody of her two minor children who were wrongfully confined by the respondents. The petition mentioned that the marriage of the petitioner was solemnised in the year 2008 as per the Hindu rites and customs. They had two children, who are the corpus in the current case. After years of marriage, the petitioner was subjected to cruelty and physical as well as mental harassment in demand for money. One fine day, at midnight, the revision petitioners and her husband bashed her out of her matrimonial home and snatched back the custody of her minor children. On receipt of the above petition, the Chief Judicial Magistrate inquired into the complaint and recorded the statements given by the petitioner. And after being satisfied in the case of wrongful confinement, he issued a search warrant to recover the minor children and produce them before the courts. Hence, it was an example of a case filed under Section 97 of the CrPC as a remedy to unlawful detention of her minors.

¹ 2013 (1) SCC 314

² AIR 1976 SC 1207

Sunil Batra v. Delhi Administration,³

In the case of *Sunil Batra vs. Delhi Administration (1978)*, the petitioner, who was convicted with a death sentence had sent a letter to one of the judges of his court wherein he complained about the torture which he and other inmates were facing by the police authorities. This letter was later converted into a writ of Habeas Corpus. The Apex Court took into consideration the case and held the superintendent liable for the incident even if he was not directly involved. The Court also made a list of directives that were expected to be judiciously enforced.

CHAPTER -3 WHAT DOES SECTION 97 CRPC STATE

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 authorities⁴.

In the case of *Jay Engineering Works vs. The State of West Bengal (1968)*⁵, 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.

Section 97 of the Code of Criminal Procedure (CrPC) empowers a court to issue a warrant for the arrest of a person who has evaded arrest or who is concealing themselves to avoid lawful apprehension. The circumstances under which a court may issue a warrant under Section 97 include:

1. Non-appearance before the court: If a person fails to appear before the court in response to a summons or notice issued by the court, and there are reasonable grounds to believe that the person is evading arrest to avoid facing legal proceedings, the court may issue a warrant for their arrest.
2. Concealment or absconding: If there are sufficient grounds to believe that a person against whom a warrant or summons has been issued is hiding or absconding to evade arrest, the court may issue a warrant under Section 97 to compel their apprehension.

³(1978) 4 SCC 409

⁴ Written by Lokender Bhardwaj Advocate, District Bar Association, Gurgaon, Haryana, India

⁵ AIR1968CAL407

3. Commission of a cognizable offence: If a person is suspected or accused of committing a cognizable offence, and there are reasonable grounds to believe that they are evading arrest or concealing themselves, the court may issue a warrant to facilitate their arrest and ensure their appearance before the court for legal proceedings.

4. Violation of bail conditions: If a person who has been released on bail fails to comply with the conditions of bail or absconds to avoid trial or punishment, the court may issue a warrant under Section 97 to secure their arrest and bring them before the court.

5. Preventing further offences: If there are reasonable grounds to believe that the person's arrest is necessary to prevent them from committing further offences or interfering with the course of justice, the court may issue a warrant under Section 97 to ensure their apprehension and subsequent legal action.

Overall, Section 97 of the CrPC provides a mechanism for the court to ensure the enforcement of its orders and the appearance of persons before it for legal proceedings. The issuance of a warrant under this provision is based on the principle of upholding the rule of law and ensuring the administration of justice.

CHAPTER -4

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 file a complaint 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.

Section 97 of the Code of Criminal Procedure (CrPC) allows a court to issue a warrant for the arrest of an individual who is evading lawful apprehension. While Section 97 serves the purpose of ensuring the enforcement of court orders and the administration of justice, its compatibility with the principles of habeas corpus and individual rights is subject to evaluation.

1. Presumption of Innocence: One of the fundamental principles of criminal law is the presumption of innocence until proven guilty. Section 97 allows for the arrest of individuals based on suspicion or allegations, which may undermine this principle. However, the issuance of a warrant under Section 97 is subject to the court's satisfaction regarding the necessity of arrest, which provides some safeguard against arbitrary detention.

2. Right to Liberty: The right to liberty is a fundamental human right protected by various international human rights instruments and enshrined in many national constitutions. Section 97 authorizes the deprivation of liberty through arrest, which must be justified by reasonable grounds to believe that the individual is evading lawful apprehension. However, there is a risk of abuse or misuse of this provision leading to arbitrary detention, infringing upon the individual's right to liberty.

3. **Right to Fair Trial:** Every individual has the right to a fair trial, which includes the right to be present during legal proceedings. Section 97 facilitates the enforcement of court orders and ensures the appearance of individuals before the court, thereby upholding the right to fair trial. However, if the arrest under Section 97 is based on unfounded allegations or lacks proper legal basis, it may lead to unfair treatment and denial of the right to fair trial.

4. **Habeas Corpus:** Habeas corpus is a legal remedy that safeguards against unlawful or arbitrary detention by requiring the detaining authority to justify the legality of the detention. Section 97, while authorizing arrest, does not provide the individual with an immediate opportunity to challenge the legality of their detention. However, once arrested, the individual can seek recourse through habeas corpus petitions to challenge the lawfulness of their detention.

CHAPTER -5 CONCLUSION

While Section 97 serves the legitimate purpose of ensuring the enforcement of court orders and maintaining law and order, its compatibility with the principles of habeas corpus and individual rights depends on its application. Proper safeguards and procedural guarantees must be in place to prevent arbitrary or unjustified arrests and to uphold the rights of individuals, including the right to liberty and fair trial.

Invoking habeas corpus in cases involving Section 97 proceedings can be subject to several limitations and challenges, which may impede the effectiveness of this legal remedy. Some of the key limitations and challenges include:

1. ****Procedural Complexity**:** Habeas corpus proceedings can be legally and procedurally complex. Individuals seeking relief through habeas corpus petitions must navigate intricate legal procedures and meet specific evidentiary requirements. This complexity can deter individuals from effectively invoking habeas corpus, particularly if they lack legal representation or resources to pursue legal remedies.

2. ****Burden of Proof**:** In habeas corpus proceedings, the burden of proof typically rests on the petitioner to demonstrate that their detention is unlawful or arbitrary. In cases involving Section 97 proceedings, where the individual has been arrested pursuant to a warrant issued by a court, proving the illegality of detention can be challenging. The petitioner must present compelling evidence to rebut the presumption of regularity attached to court orders, which can be difficult, especially if the arrest was based on valid grounds.

3. ****Judicial Discretion**:** Courts exercise considerable discretion in habeas corpus cases, and their decisions may be influenced by various factors, including legal precedent, statutory interpretation, and judicial reasoning. In cases involving Section 97 proceedings, courts may be hesitant to interfere with the enforcement of court orders or police actions unless there is clear evidence of abuse of power or violation of fundamental rights. This judicial discretion can limit the success of habeas corpus petitions.

4. **Limited Scope of Review**: Habeas corpus proceedings typically focus on the legality of detention and may not encompass broader issues related to the underlying charges or allegations against the petitioner. In cases involving Section 97 proceedings, the scope of review may be limited to examining whether the arrest warrant was issued in accordance with procedural requirements and whether there are grounds to challenge the legality of detention. This limited scope may restrict the relief available to petitioners seeking habeas corpus remedies.

5. **Resource Constraints**: Individuals seeking habeas corpus relief may face resource constraints, including financial limitations and limited access to legal representation. Legal proceedings can be costly and time-consuming, and individuals without adequate resources may struggle to pursue habeas corpus petitions effectively. Moreover, the lack of legal aid or support services can further exacerbate the challenges faced by petitioners in navigating the legal process.

Overall, while habeas corpus remains a vital safeguard against unlawful or arbitrary detention, its effectiveness in cases involving Section 97 proceedings may be hindered by procedural complexities, evidentiary burdens, judicial discretion, limited scope of review, and resource constraints. Addressing these limitations and challenges requires comprehensive legal reforms, improved access to justice, and enhanced protection of individual rights within the criminal justice system.

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. Upholding habeas corpus as a fundamental right is paramount for ensuring the rule of law and safeguarding individual liberties in any democratic society. Habeas corpus, often referred to as the "great writ of liberty," serves as a crucial legal remedy to protect individuals from arbitrary or unlawful detention by the state. Its significance lies in several key aspects:

1. **Protection of Individual Liberty**: Habeas corpus serves as a bulwark against government overreach and abuse of power by providing individuals with a means to challenge the lawfulness of their detention. By allowing individuals to seek judicial review of their confinement, habeas corpus ensures that no person can be deprived of their liberty without due process of law.

2. **Preservation of Due Process**: Habeas corpus is closely tied to the principle of due process, which requires that legal proceedings be fair, impartial, and conducted in accordance with established rules and procedures. By enabling individuals to challenge the legality of their detention before an independent judiciary, habeas corpus helps safeguard the integrity of the legal system and ensures that justice is administered fairly.

3. ****Prevention of Arbitrary State Action****: Habeas corpus acts as a check on government authority by requiring state officials to justify the basis for depriving an individual of their liberty. This prevents arbitrary or unfounded detentions and helps maintain the balance of power between the state and the individual. Without habeas corpus, governments could arbitrarily imprison individuals without accountability or recourse.

4. ****Promotion of Judicial Review****: Habeas corpus promotes the principle of judicial review, which is essential for maintaining the separation of powers and ensuring accountability within the government. By allowing courts to review the legality of executive actions, including arrests and detentions, habeas corpus reinforces the judiciary's role as a guardian of constitutional rights and the rule of law.

5. ****Enhancement of Public Confidence****: Upholding habeas corpus instills public confidence in the legal system and government institutions. Knowing that individuals have the right to challenge their detention through habeas corpus proceedings reinforces trust in the fairness and impartiality of the judiciary and reinforces the principle that no one is above the law.

In essence, habeas corpus serves as a cornerstone of democratic governance and the rule of law. Its preservation is essential for protecting individual liberties, ensuring accountability within the government, and upholding the fundamental principles of justice and fairness in society.