

Statutory Safeguards Against Unlawful Detention : A Critical Analysis of Section 97 CrPC and Section 100 BNSS in India

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Abstract: Unlawful detention remains one of the gravest violations of personal liberty under the Indian Constitution. While constitutional remedies such as the writ of habeas corpus provide extraordinary relief, statutory provisions offer immediate, localized mechanisms to protect individuals against wrongful confinement. This paper critically examines Section 97 of the Code of Criminal Procedure, 1973 (CrPC), and its successor, Section 100 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Both provisions empower magistrates to issue search warrants for the rescue of unlawfully confined persons. Through doctrinal analysis, comparative evaluation, and contextual application, this study highlights the role, function, and limitations of these statutory remedies. It argues that while the provisions remain largely identical across CrPC and BNSS, their practical enforcement is crucial to bridging the gap between law on paper and liberty in practice.

Keywords: Unlawful detention; Habeas corpus; CrPC; BNSS; Magistrate powers; Personal liberty; Judicial oversight; Police accountability.

Introduction - The protection of personal liberty is a cornerstone of constitutional democracy. In India, Articles 21 and 22 of the Constitution guarantee safeguards against arbitrary arrest and detention.¹ While habeas corpus remains the extraordinary constitutional remedy, statutory provisions such as Section 97 CrPC and Section 100 BNSS provide immediate, practical relief at the local level.²

Statutory Remedy: Section 97 CrPC and Section 100 BNSS

Section 97 of the CrPC³ and its re-enactment as Section 100 BNSS⁴ empower District Magistrates, Sub-divisional Magistrates, and First-Class Magistrates to issue search warrants when they have "reason to believe" that a person is unlawfully confined. These provisions serve as a statutory safeguard against arbitrary deprivation of liberty, functioning as an alternative or supplementary measure to habeas corpus.⁵

Role for Protection from Unlawful Detention: The statutory mechanism ensures:

- Judicial Oversight:** Magistrates act as the first line of protection against unlawful confinement.⁶
- Immediate Relief:** Search warrants enable swift rescue and production of the detainee before the court.
- Accessibility:** Unlike habeas corpus petitions in higher courts, these remedies are available locally, reducing procedural barriers.
- Extension Beyond Private Custody:** Though often used in family or custody disputes, the provisions extend

to arbitrary detention by police, thereby reinforcing accountability.⁷

Key Features and Differences (CrPC vs. BNSS)

- Continuity:** Section 100 BNSS is a verbatim re-enactment of Section 97 CrPC.⁸
- Renumbering:** The BNSS merely renumbers the provision without substantive change.
- Preservation of Safeguards:** The transition from CrPC to BNSS maintains the same procedural mechanism, reflecting legislative intent to preserve this fundamental safeguard.

How to Use for Protection: Individuals or their representatives may file an application before the Magistrate with supporting facts. Upon satisfaction, the Magistrate issues a search warrant, directing police to locate and produce the confined person. If detention is found unlawful, immediate release is ordered.⁹ This process is quicker and more accessible than pursuing habeas corpus in higher courts.¹⁰

Role and Function: The statutory provisions serve multiple functions:

- Magisterial Power:** Empowering local judicial authorities to intervene in cases of unlawful confinement.
- Reason to Believe:** Ensuring judicial discretion is exercised based on credible grounds.
- Search and Rescue:** Mandating police intervention under judicial order.
- Safeguard Against State Action:** Requiring

justification for deprivation of liberty before a court.

5. Alternative to Habeas Corpus: Providing a preliminary remedy that complements constitutional safeguards.¹¹

Critical Analysis: While the provisions are robust in theory, their practical enforcement faces challenges:

1. Awareness Gap: Citizens often remain unaware of these remedies.

2. Judicial Vigilance: Magistrates must exercise discretion diligently to prevent misuse.

3. Police¹² Compliance: Effective implementation depends on police cooperation with search warrants.

4. Overlap with Habeas Corpus: Though supplementary, the statutory remedy must not be undermined by preference for higher court petitions.¹³

Conclusion and Suggestions : Section 97 CrPC and Section 100 BNSS represent vital statutory safeguards against unlawful detention. Their continuity across legislative frameworks underscores their importance in protecting liberty. However, effective implementation requires:

1. Awareness campaigns to inform citizens of these remedies.
2. Judicial training to ensure vigilant application of “reason to believe.”
3. Strengthened police accountability for compliance with search warrants.
4. Integration of statutory remedies with broader human rights frameworks.

By reinforcing these mechanisms, India can ensure that liberty is not merely a constitutional promise but a lived reality, safeguarded at every level of the justice system.¹⁴

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