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**An analysis of the procedure and authority for enforcing a decree through arrest and detention in a civil prison, in light of Article 21 of the Indian Constitution.**

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**AUTHOR'S NAME – Kunishka Sharma, BBA LLB, Third Year.**

**INSTITUTION NAME – University School of Law and Legal studies, Guru Gobind Singh Indraprastha University, New Delhi.**

**ABSTRACT :**

The Civil Procedure Code is a procedural legislation determining the civil rights and liabilities of the litigants. A civil court adjudicates the issue in form of an order/ decree. However, the final operation of the decree takes place upon execution. The individual who is the beneficiary of a decree is referred to as the decree-holder and the opposite party is the judgment debtor. If a judgment debtor doesn't follow the court's order against him, he or she may be arrested and imprisoned for the purpose of carrying out the decree. This is a remedial provision that seeks to safeguard the decree-holder. This paper explains the nuances of the arrest and detention provisions for the purpose of executing a decree under the Civil Provision Code in relation to the Indian Constitution.

**INTRODUCTION :**

A process for handling a civil disagreement<sup>1</sup> and starting a civil lawsuit is provided by the Code of Civil Procedure (hereinafter referred to as CPC). The decree-holder may file for execution at the execution court<sup>2</sup> once the Court of First Instance issues a final decree, whether on confirmation by the appellate court, the revisional court, or in other circumstances. There is no definition of "execution" in the code. In plain English, it refers to the implementation of the decision of the Court of Justice via means of the legal system. A decree may be carried out in a variety of ways under Order XXI, according to CPC. The CPC provision and the court's discretion<sup>3</sup> govern the type of execution that can be carried out; the Decree-Holder cannot order the court of law to do so. A type of execution authorized by Sections 51 to 59 and Rules 30 to 41 of Order XXI is the arrest and custody of the Judgment Debtor in a Civil Prison. It is a corrective provision by Nature. In terms of restrictions and the state's ability to enforce them, this article aims to evaluate and clarify the constitutional aspect of legislation relating to the civil arrest and imprisonment of judgment debtors.

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<sup>1</sup> Civil Procedure Code, 1908, Section 9, No. 5, Acts of Parliament, 1908 (India).

<sup>2</sup> Civil Procedure Code, 1908, Order XXI, No. 5, Acts of Parliament, 1908 (India).

<sup>3</sup> Umakant v Renwick & Co Ltd, AIR 1953 Cal 717.

### **Arrest and Detention: Meaning**

An arrest is when someone is apprehended and brought into custody (for criminal safety or control), generally due to the fact they're suspected of or visible committing a crime. The man or woman may be interrogated and/or charged after being taken into custody. An arrest is an exercise inside the crook justice device and is completed as soon as a courtroom warrant is issued.

Detention is the process of restricting a person's freedom or liberty by lawfully detaining him/her. An arrest may or may not have preceded or followed the process of detention. No one "*should be subjected to arbitrary arrest, detention, or exile*," according to Article 9<sup>4</sup> . of the International Declaration of Human Rights. During international conflicts, detainee care is governed by the Fourth Geneva Convention.

### **Execution of Money Decrees :**

The modalities for executing a decree for the payment of money are provided in Order XXI Rules 37 to 40 of CPC<sup>5</sup>. The court stated in Raman Tech and Process Engineering Company v. Solanki Trading<sup>6</sup> that "Any decree for the payment of money, including a decree for the payment of money as an alternative, to some relief, may be executed by detention in the civil prison of the judgment debtor, or by the attachment and sale of his property, or by both".<sup>7</sup>

The only option available in the event that a decree for the restoration of conjugal rights needs to be enforced is the attachment of the judgment debtor's property. The court stated in Subrata Roy Sahara v. Union of India<sup>8</sup> that "Remaining in jail would not erase the liability to pay," and that it is important to consider the rationale for sending a person to prison as a system, instrument, or method for the pride of legal responsibility. Forcing compliance most effectively involves arrest and detention. Only by making a genuine payment can the legal obligation to pay be removed. This provision is identical to sections 125 to 128 given in the Code of Criminal Procedure<sup>9</sup> which deal with the maintenance proceedings. The liability of the person comes to

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<sup>4</sup> UN General Assembly, Universal Declaration of Human Rights, 10 Dec 1948, Article 9, available from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>5</sup> C. K. Takwani, CIVIL PROCEDURE WITH LIMITATION ACT 1963, 333 (7th edn. 2013 reprinted 2015).

<sup>6</sup> Raman Tech and Process Engineering Company v. Solanki Trading, (2008) 2 SCC 302.

<sup>7</sup> Lawinsider\ <https://www.lawinsider.in/columns/execution-petition-process-to-execute-decree>\ Last Visited 01\04\2023

<sup>8</sup> Subrata Roy Sahara v. Union of India (2014) 8 SCC 470.

<sup>9</sup> Code of Criminal Procedure, Sec 125-127, No. 2, Acts of Parliament, 1974 (India).

end only when he makes complete payment within due time and his prison time would not compensate for his liability.

Order XXI, rule 37<sup>10</sup> is based on the principle of Natural Justice. This clause requires the court to send the judgment debtor a show cause notice, asking him to appear before the court and provide sufficient justifications as to why he shouldn't be jailed for the default committed.<sup>11</sup> However, the need of providing notice may be waived if the court determines, based on affidavits or other evidence, that the consequences of prolonging the arrest or imprisonment could result in the judgment debtor evading justice. If the defendant does not appear in court after receiving notice, a warrant for their arrest will be issued.

Order XXI Rule 40<sup>12</sup> works in consonance with the abovementioned rule. It states that after the judgment debtor appears in court pursuant to Rule 37, the decree-holder will have the opportunity to present all the evidence in support of his application. Based on this, the judgment debtor will have the opportunity to refute all of the decree-evidence holders and present sufficient justifications for not having the debtor committed to prison. In the case of *Mayadhar Boi v. Moti Dibya*<sup>13</sup>, it was noted that if a money decree is not paid within thirty days of the court's order, the court will request that the judgment bearer disclose details of his assets. If the judgment holder refuses, the court would issue a fine.

Section 51, on the other hand, specifies that the court, upon the application of the decree-holder, directs the enforcement of the decree by arrest and detention<sup>14</sup>, but that this should not go beyond the time limit provided in Section 58 of the CPC<sup>15</sup>, i.e., six weeks in the case of the decretal sum exceeding two thousand rupees but not exceeding five thousand rupees, and duration not extending three months in the case of payment of a decretal amount not extending five thousand rupees.

The proviso to Section 58 further specifies requirements for the judgment debtor's early realization and guarantees that a rearrest cannot occur on the same grounds. Section 58(2), on the other hand, makes clear that this clause does not relieve the judgment debtor of his obligations and duty to pay the whole sum.

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<sup>10</sup> Civil Procedure Code, 1908, Order XXI Rule 37, No. 5, Acts of Parliament, 1908 (India).

<sup>11</sup> Ayush Verma\ Arrest And Detention Under CPC\ ipleaders powered by LawSikho\ (April. 01, 2023, 7:29 PM), <https://blog.ipleaders.in/arrest-and-detention>.

<sup>12</sup> Civil Procedure Code, 1908, Order XXI Rule 40, No. 5, Acts of Parliament, 1908 (India).

<sup>13</sup> *Mayadhar Boi v. Moti Dibya*, (2012) 1 SCC 273.

<sup>14</sup> Civil Procedure Code, 1908, Section 51, No. 5, Acts of Parliament, 1908 (India).

<sup>15</sup> Civil Procedure Code, 1908, Section 58, No. 5, Acts of Parliament, 1908 (India).

According to the proviso to section 51, an arrest and detention order cannot be made to carry out a money judgment until the judgment debtor has had a fair opportunity to explain why the outstanding amount is due and why he should not be sent to prison, and those explanations have been recorded in writing. -

(a) That the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree;

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) That the judgment-debtor has, or has had since the date of the decree. The means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) That the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

This proviso provides protection to genuine and indigent judgment debtors who default in paying the specified amount. It puts an obligation on the court to check the necessary circumstances and then pass an order. This clause is mandatory in nature, and the court cannot issue an arrest warrant until it is satisfied that the judgment debtor should be committed to jail for one of the grounds stated therein.<sup>16</sup>

### **Exemption from arrest and detention :**

The following people are immune from being detained in the civil prison and being arrested:

1. Women<sup>17</sup>
2. In case a matter is pending, the pleaders, mukhtars, revenue agents, and witnesses act in obedience to a summon<sup>18</sup>.
3. Judicial officers are exempt from arrest when entering, conducting, or leaving their court<sup>19</sup>.

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<sup>16</sup> Parmanandaswami v Shunmugam Pillai AIR 1949 Mad 822.

<sup>17</sup> Civil Procedure Code, 1908, Section 56, No. 5, Acts of Parliament, 1908 (India).

<sup>18</sup> Civil Procedure Code, 1908, Section 135 (2), No. 5, Acts of Parliament, 1908 (India).

<sup>19</sup> Civil Procedure Code, 1908, Section 135 (1), No. 5, Acts of Parliament, 1908 (India).

4. Category of people, whose arrest could be attended with danger or inconvenience to the general public<sup>20</sup>.
5. In cases where the decretal sum is less than or equal to Rs. 2,000<sup>21</sup>.
6. A person who is a member of the Legislative Assembly of a State, the Legislative Council of a State, or the Legislative Assembly of a Union territory must not be subject to arrest or detention<sup>22</sup>.

### **Constitutionality of the procedural provisions of arrest and detention :**

The constitutionality of the provisions of Arrest and detention has been broadly challenged on the grounds of Article 21 of the Indian Constitution<sup>23</sup> and Article 11 of the International Covenant on Civil and Political Rights<sup>24</sup> (ICCPR) which imprisonment just because a decree debt has not been paid.

The case of Jolly George Varghese and another V. The Bank of Cochin<sup>25</sup> was a landmark judgment in this aspect wherein the Hon'ble Supreme Court observed that a harmonious construction needs to be built between section 51 of the Civil Procedure Code and Article 11 of the ICCPR. Further, it expanded the scope of protection provided by Article 21 of the Indian Constitution to include both those arrested in connection with criminal investigations and those arrested as part of the execution of a money decree under Order XXI, Rule 37 of the C.P.C.

It was decided that the State must only imprison people in accordance with laws that are fair, just, and reasonable in terms of their procedural requirements, as required by the high value of human dignity and the worth of the human person enshrined in Article 21 read with Articles 14<sup>26</sup> and 19<sup>27</sup>. It is abhorrent to throw someone in jail because of their financial hardship and ensuing inability to fulfill their contractual obligations. The court is obligated to undertake an inquiry as to whether a person has the capacity to pay back the sum or not. If he does not, then he cannot be arrested or detained in prison.

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<sup>20</sup> Civil Procedure Code, 1908, Section 55 (2), No. 5, Acts of Parliament, 1908 (India).

<sup>21</sup> Civil Procedure Code, 1908, Section 58(1A), No. 5, Acts of Parliament, 1908 (India).

<sup>22</sup> Civil Procedure Code, 1908, Section 135A, No. 5, Acts of Parliament, 1908 (India).

<sup>23</sup> INDIA CONST. art 21.

<sup>24</sup> UN General Assembly, International Covenant on Civil and Political Rights, art. 11, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>. [accessed 5 April 2023]

<sup>25</sup> Jolly George Varghese and another v. The Bank of Cochin (1980)2 SCC 360.

<sup>26</sup> INDIA CONST. art 14.

<sup>27</sup> INDIA CONST. art 19.

A similar view was taken by the Kerala High Court judgment in *Xavier v. Canara Bank Ltd.*<sup>28</sup> wherein the court faced the same issues and observed that there shouldn't be any active refusal from the side of the Judgment-debtor to pay the due amount when he has the resources to pay. This wouldn't be violative of Article 11 of the ICCPR.

Furthermore, the decree-holder is required under Order XXI Rule 39 Sub-rule 1 to pay the judgment debtor's subsistence allowance while they are housed in a civil prison. This incorporates two aspects:

1. Arrest procedures are started at the expense of the decree-holder as soon as the judgment debtor disregards the notice the court issued for them.
2. From the time of his arrest until the time he is presented before the court, the decree-holder is required to pay the subsistence allowance that the court deems appropriate.<sup>29</sup>

The sub-rule 2<sup>30</sup> also includes justification for the constitutional aspect, which states:

1. The decree holder must pay the subsistence allowance set by the court in order to keep the judgment debtor in a civil prison.
2. The payment of a daily allowance by the decree-holder determines how long the judgment-holder will remain imprisoned.
3. The subsistence payment<sup>31</sup> paid by the decree-holder pursuant to a court order is set forth in the state government's scales. When there is no allowance mentioned in Section 57 of the CPC, the court will determine it based on the class of the judgment holder.

This amply supports the claim made in Article 21 of the Indian Constitution that the court determines the sustenance allowance in accordance with the minimum standards. Also, it is crucial to remember that India has ratified the UDHR<sup>32</sup>, ICCPR<sup>33</sup>, ICESCR<sup>34</sup>, and other treaties

<sup>28</sup> *Xavier v. Canara Bank Ltd*, 1969 SCC OnLine Ker 147.

<sup>29</sup> Civil Procedure Code, 1908, Order XXI Rule 39(1), No. 5, Acts of Parliament, 1908 (India).

<sup>30</sup> Civil Procedure Code, 1908, Order XXI Rule 39(2), No. 5, Acts of Parliament, 1908 (India).

<sup>31</sup> On fixing of subsistence allowance, PRS India provides: 'the Planning Commission filed an affidavit in the Supreme Court updating the official poverty line to Rs 965 per month in urban areas and Rs 781 in rural areas. This works out to Rs 32 and Rs 26 per day, respectively.' available at: <https://prsindia.org/theprsblog/how-is-the-poverty-line-measured#:~:text=Last%20week%2C%20the%20Planning%20Commission,Rs%2026%20per%20day%2C%20respectively.> [Accessed 5 April 2023].

<sup>32</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [accessed 5 April 2023].

<sup>33</sup> *Supra* Note 15.

<sup>34</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> [accessed 5 April 2023].

that have been made statutory legislation under section 2(f)<sup>35</sup> of the Protection of Human Rights Act 1993.

If we contemplate this whole process briefly, it can be inferred that it is in consonance with the constitutional provisions. The execution doesn't depend solely upon the decree-holder rather it gives the judgment debtor an equal opportunity to state sufficient causes for non-payment of the debt. In case the court isn't satisfied by the reasons given by the judgment debtor then it can order arrest where the subsistence allowance will be fully paid by the decree-holder according to the basic minimum prescribed standards. Without the payment of the allowance, the court will not order arrest which renders protection to the judgment holder and ensures the basic standards of living that every citizen deserves. Additionally, the proviso to sub-regulation (5) of rule 39 to Order XXI affirms this by stating that the judgment debtor is not limited to the allowance costs that he has covered on his own. The values and principles of morality and wealthy humanity are enhanced by this provision. Nonetheless, the judgment debtor will be given a grace period if the court sides with him. The analysis of the judgments also clearly highlights that the main aim of the provision is to balance the rights of both the judgment debtor and the decree-holder, thus this nowhere hinders the constitutionality of the arrest and detention provisions.

### **CONCLUSION :**

The subject of whether an arrest should remain a legal method of execution was covered in the 54th Law Commission Report (1973)<sup>36</sup>, with a focus on the clauses of the International Covenant on Civil and Political Rights that forbid incarceration for the simple breach of a contract. It looked at a number of laws in the US and England and found that as they are not just based on contract fulfillment, the provisions relating to arrest and detention do not violate the International Covenant.

To sum up, the primary goal of arresting or detaining a judgment debtor is not to punish him but rather to protect the decree holder's rights and convince him that the decision is in his favor. Thus this is an enabling provision inserted to also protect the honest debtors by giving them a chance to be heard and state reasonable causes of default and ensure proper justice, equity, and conscience.

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<sup>35</sup> Protection of Human Rights Act, 1993, Section 2(f) 32, No. 10, Acts of Parliament, 1993 (India).

<sup>36</sup> Law Commission of India, The Code of Civil Procedure, 1908, Report No. 54 (May 14 1973), available at: [https://lawcommissionofindia.nic.in/cat\\_code\\_of\\_civil\\_procedure/](https://lawcommissionofindia.nic.in/cat_code_of_civil_procedure/). [5 April 2023, 9.00 PM].



