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# Procedural Safeguards in Executing a Decree by Arrest and Detention in the Context of Art. 21 of the Constitution of India

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DEVANSH AGARWAL<sup>1</sup>

## ABSTRACT

*The terms like “Arrest” or “Detention” usually comes into play whenever an individual is suspected of committing a criminal offence which is to be proved beyond a reasonable doubt in the court of law. However, as per Indian Law “Arrest” and “Detention” have proved to be an effective mode of enforcing a decree of a Civil Court. This mode of execution may be exercised at the sole discretion of the Decree-Holder only. If the Judgement-Debtor refuses to comply with the decree or even tries to operate in the grey area, then the Decree-Holder after crossing his T’s and dotting his I’s can enforce the decree through “Arrest”. However, the Court cannot just order arrest for mere inability to pay on the part of the Judgement-Debtor, the Court has to record reasons before ordering any arrest. This paper deals with the procedural and Constitutional aspects of “Arrest” and “Detention” as a mode of execution of a decree.*

## I. INTRODUCTION

One of the modes of executing a decree is arrest and detention of the judgment-debtor in a civil prison<sup>2</sup>. Execution of decree and order is the most important aspect in attaining the final relief claimed in civil litigation. The decree-holder has an option to choose a mode for executing his decree and, normally, a court of law in the absence of special circumstances, cannot compel him to invoke a particular mode of execution<sup>3</sup>. The term “execution” has not been defined in The Code Of Civil Procedure, 1908. In its widest sense, the expression signifies the enforcement of decrees<sup>4</sup> and orders<sup>5</sup> by the process of the Court, so as to enable the decree-holder to realize the fruits of the decree.

**Provisions dealing with the present topic under The Code of Civil Procedure are:**

**Sections of The Code of Civil Procedure, 1908:**

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<sup>1</sup> Author is a student at Bennett University, Greater Noida, India.

<sup>2</sup> Section 51 (c) of The Code Of Civil Procedure, 1908.

<sup>3</sup> C.K. Takwani, Civil Procedure, 8<sup>th</sup> edition, p. 646..

<sup>4</sup> Section 2 (2) of The Code Of Civil Procedure, 1908.

<sup>5</sup> Section 2 (14) of The Code Of Civil Procedure, 1908.

- **Sec 55:** Arrest and Detention.
- **Sec 56:** Prohibition of Arrest and Detention of women in the execution of a decree for money.
- **Sec 57:** Subsistence Allowance.
- **Sec 58:** Detention and release
- **Sec 59:** Release on the ground of illness.

### **Order XXI: Execution of Decree and Order:**

#### **1. Mode Of Execution:**

- **Rule 30:** Decree for payment of money.
- **Rule 31:** Decree for specific movable property.
- **Rule 32:** Decree for specific performance for restitution of conjugal rights, or for an injunction.
- **Rule 33:** Discretion of Court in executing decrees for restitution of conjugal rights.
- **Rule 34:** Decree for the execution of document, or endorsement of a negotiable instrument.
- **Rule 35:** Decree for immovable property.
- **Rule 36:** Decree for delivery of immovable property when in occupancy of a tenant.

#### **2. Arrest And Detention In The Civil Prison**

- **Rule 37:** Discretionary power to permit judgment debtor to show cause against detention in prison.
- **Rule 38:** Warrant for arrest to direct judgment-debtor to be brought up.
- **Rule 39:** Subsistence allowance.
- **Rule 40:** Proceedings on the appearance of judgment-debtor in obedience to notice or after arrest.

The code has various modes of executing decree and one such mode is Arrest and Detention which is provided in The Code Of Civil Procedure, 1908. Now under this Substantive provisions deal with rights and liabilities of the decree-holder which are specified from

Section 55 to Section 59 of The Code Of Civil Procedure, 1908. And the judgment-debtor and procedural provisions are specified from Rule 30 to Rule 41 of Order XXI of The Code of Civil Procedure, 1908.

## **II. WHEN ARREST AND DETENTION MAY BE MADE**

As per Rule 30 and Rule 32 of Order XXI of The Code Of Civil Procedure, 1908. In a case where the decree is for the payment of money, the decree can be executed by the arrest and detention of the judgement-debtor<sup>6</sup>. Similarly, in case of a decree for specific performance for a contract or for an injunction, a judgment-debtor can be arrested and detained<sup>7</sup>. Now in the case where the decree is against a corporation, the decree can be executed with the leave of the court by detention in the civil prison of its directors and other officers.<sup>8</sup>

## **III. WHO CANNOT BE ARRESTED?**

There are certain classes of people that are exempted from arrested or detained which is provided in The Code of Civil Procedure, 1908:

- A woman<sup>9</sup>.
- A legal representative of deceased Judgment-debtor<sup>10</sup>.
- Judicial Officers, while going to, presiding in, or returning from their courts<sup>11</sup>.
- The parties, their pleaders, mukhtars, revenue agents and recognised agents and their witnesses acting in obedience to a summons, while going to, or attending or returning from the court<sup>12</sup>.
- Members of Legislative bodies<sup>13</sup>.
- Any person or class of persons, whose arrest, according to the State Government, might be attended with danger or inconvenience to the public<sup>14</sup>.
- A judgment debtor, where the decretal amount does not exceed rupees two thousand not exceed<sup>15</sup>.

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<sup>6</sup> Rule 30, Order XXI of The Code Of Civil Procedure, 1908.

<sup>7</sup> Rule 32, Order XXI of The Code Of Civil Procedure, 1908.

<sup>8</sup> Rule 32, Order XXI of The Code Of Civil Procedure, 1908.

<sup>9</sup> Section 56 of The Code Of Civil Procedure, 1908.

<sup>10</sup> Section 50 and 52 of The Code Of Civil Procedure, 1908.

<sup>11</sup> Section 135 (1) of The Code Of Civil Procedure, 1908.

<sup>12</sup> Section 135 (2) of The Code Of Civil Procedure, 1908.

<sup>13</sup> Section 135 A of The Code Of Civil Procedure, 1908.

<sup>14</sup> Section 55 (2) of The Code Of Civil Procedure, 1908.

<sup>15</sup> Section 58 (1) (a) of The Code Of Civil Procedure, 1908.

#### **IV. PROCEDURE TO EXECUTE DECREE UNDER THE CODE OF CIVIL PROCEDURE, 1908**

The Code Of Civil Procedure, 1908 provides for a different mode to execute the decree out of which arrest and detention of the judgment debtor in civil prison are one. Now under this, a judgment-debtor may be arrested at any point of time on any day in the execution of a decree. After the arrest has been made the person should be brought before the court within 24 hours.

- In **Khatri(II) vs. The State of Bihar**, the Supreme Court has advised the state and its police authorities to ensure that this constitutional and legal requirement to produce an arrested person before a judicial magistrate within 24 hours of the arrest be carefully observed<sup>16</sup>.

If a police officer fails to produce an arrested person before a magistrate within 24 hours of the arrest, he shall be held guilty of wrongful detention.

- In **Poovan vs. Inspector Of Police** it was held that whenever a complaint is received by the magistrate that a person is arrested within his jurisdiction but has not been produced before him within 24 hours or a complaint has made to him that a person is being detained within his jurisdiction beyond 24 hours of his arrest, he should call upon the police officer concerned to state whether the mentioned allegations are true or not and if the officer denies the arrest, then the magistrate can make an inquiry into the issue and pass appropriate orders<sup>17</sup>.

For the purpose of making an arrest, no residence may be entered after the sunset or before the sunrise. In addition to this if the judgment debtor denies authorities to enter the property and he is present in the property then the authorities may break the door open<sup>18</sup>.

If any Pardanashin women who are not a judgement-debtor are present on the property while the authorities are have come to arrest the judgment-debtor, then the authorities will provide sufficient time to the Pardanashin women to withdraw therefrom.<sup>19</sup>

If the decretal amount is not exceeding rupees two thousand then not detention order shall be passed against the judgement-debtor<sup>20</sup>. No judgement-debtor may be arrested unless and until the decree-holder pays the subsequent allowance to the court as fixed by the court<sup>21</sup>. As the

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<sup>16</sup> Khatri(II) vs. State of Bihar

<sup>17</sup> Poovan vs. Inspector Of Police

<sup>18</sup> Section 55 of The Code Of Civil Procedure, 1908.

<sup>19</sup> Section 55 of The Code Of Civil Procedure, 1908.

<sup>20</sup> Section 58 (1) (a) of The Code Of Civil Procedure, 1908.

<sup>21</sup> Rule 39, Order XXI of The Code Of Civil Procedure,1908.

judgement debtor pays the decretal amount and cost of arrest to the officer, then he should be released at once.

When an application for the purpose of arrest or detention of the judgement-debtor is filed, then the burden of proof lies on the decree-holder and this burden is quite heavy to prove that the circumstance present at that point exists in Section 51 of the Code Of Civil Procedure, 1908<sup>22</sup>. Along with the application, an affidavit is to be filed stating the grounds on which the arrest or detention is sought<sup>23</sup>.

It is the duty of the court to record the reasons on which the judgement debtor is sent to the civil prison. In absence of such reasons, the order is liable to set aside. In the case where the judgement-debtor is a woman<sup>24</sup>, minor, or a legal representative of the deceased judgment-debtor<sup>25</sup> cannot be arrested or detained in case of decree for money.

- In **S. Ismail and another Vs Agraseni Chit Funds Pvt., Ltd.**, 2004(5) ALD 138, the High Court held that “ the executing Court shall follow the procedure prescribed under rule 40 of Order XXI and it cannot straight away order the arrest under rule 37 of Order XXI of the Code Of Civil Procedure, 1908<sup>26</sup>.

## V. NOTICE

When the decree is for payment of money and an application is made for arrest and detention of the judgement-debtor then the court instead of issuing a warrant sends a notice to appear and show cause why he shouldn't be sent to the civil prison in execution of a decree.<sup>27</sup>

The Provision of issuing notice and affording an opportunity to the judgment-debtor, to show cause recognizes a rule of natural justice that no person should be condemned unheard. The high value of human dignity and the worth of the human person enshrined in Article 21 read with Article 14 and Article 19 must always be kept in mind.<sup>28</sup>

The judgement debtor appears before the court in obedience to such notice, and if the court is satisfied that he is unable to pay the decretal amount, the court may reject the application for arrest<sup>29</sup>. On the other hand, if the court is not satisfied then the court may subject to the provision of the code and make an order of detention.

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<sup>22</sup> I.K Merchants Ltd. Vs Indra Prakash, AIR 1973 CAL 306.

<sup>23</sup> Rule 11 A, Order XXI of The Code Of Civil Procedure, 1908.

<sup>24</sup> Section 56 of The Code Of Civil Procedure, 1908.

<sup>25</sup> Section 50 and 52 of The Code Of Civil Procedure, 1908.

<sup>26</sup> S. Ismail and another Vs Agraseni Chit Funds Pvt., Ltd., 2004(5) ALD 138

<sup>27</sup> Rule 37 (1) , Order XXI of The Code Of Civil Procedure, 1908.

<sup>28</sup> Jolly George Varghese vs The Bank Of Cochin, 1983 4 SCC 360.

<sup>29</sup> Jolly George Varghese vs The Bank Of Cochin, 1983 4 SCC 360.

- In **Goparaju Venkata Satyanarayana Vs Pallapragada Naga Venkata Subramanyamurthy**, 2006 (4) ALD 98, the High Court held that “appearance of the Judgement-debtor” means his physical appearance before the Executing Court on the day directed by the Court enabling the Decree-holder to conduct the means enquiry in the presence of Judgement-debtor<sup>30</sup>.

- In **kasi Subbaiah Mudali Vs Kasi Veeraswamy Mudali**, 2002 (3) ALT, 240, the High Court held that “according to Rule 37”, which mandates that once the Judgement-debtor appears before the court in obedience to the notice or brought before it on being arrested, the Court shall proceed to hear the Judgement-debtor and take all evidence in the presence of the judgment debtor. The Judgement-debtor shall be provided with a fair opportunity of showing cause as to why he should not be committed to civil prison. Rule 40 visualizes almost an uninterrupted enquiry in the matter. This is the reason why it provides for detention of the Judgement-debtor in the custody of an officer of the Court or releasing on furnishing security pending the conclusion of the enquiry under sub-rule (1) Any order of arrest to be made after the conclusion of the enquiry under sub-rule (1) of Rule, 40, is once again subject to Section 51 THE CODE OF CIVIL PROCEDURE, 1908<sup>31</sup>.

- In **Subrata Roy Sahara vs. Union Of India**, the Supreme Court held that the order of detention imposed after providing adequate opportunity as legal and valid<sup>32</sup>.

- However, In **Badrachalam Satyanarayana Vs Lotla Varalaxmi**, 2004 (1) Andhra Weekly Reports 565, the Hon’ble High Court held that “opportunity of hearing of the Judgment-debtor is vital before ordering the arrest. In the abovementioned case, the executing Court passed an order at the stage under Order XXI rule 37; “ Judgment-debtor called absent. No evidence is contemplated before arrest. Hence arrest Judgment-debtor. In the said circumstances our Hon’ble held that “the above-said order is patently erroneous because the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment debtor an opportunity of showing cause as to why he should not be committed to civil prison. Without following this procedure, the Court has simply mentioned that no evidence is required to be received before arrest. The order of arrest was held to be invalid and does not stand for scrutiny in the light of the failure of the executing Court to follow the procedure indicated in Rules 40 of Order XXI.

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<sup>30</sup> Goparaju Venkata Satyanarayana Vs Pallapragada Naga Venkata Subramanyamurthy, 2006 (4) ALD 98

<sup>31</sup> kasi Subbaiah Mudali Vs Kasi Veeraswamy Mudali, 2002 (3) ALT, 240,

<sup>32</sup> Subrata Roy Sahara vs. Union Of India, 2014 8 SCC 470

## VI. POWER AND DUTY OF COURT

The provisions relating to the arrest and detention of the judgment-debtor protects and safeguards the interest of the decree-holder.<sup>33</sup> If the judgment debtor has the means to pay and still refuses or neglects to honour his obligations, he can be sent to civil prison. Mere omission to pay, however, cannot result in arrest or detention of the judgment-debtor. Before ordering detention, the court must be satisfied that there was an element of mala fide or bad faith, “not mere omission to pay but an attitude of refusal on-demand verging on disowning of the obligation under the decree”<sup>34</sup>.

- In **Kovvuri Mallikarjuna Reddy Vs Kota Shankara Rao**, 2003 (6) ALD (NOC) 112<sup>35</sup> the High Court held that “a simple default of the Judgment-debtor is not enough. There must be some element of bad faith beyond mere indifference to paying some deliberate or recusant disposition in the past or alternatively, current means to pay the decree or a substantial part of it. Section 51 THE CODE OF CIVIL PROCEDURE, 1908 emphasized the need to establish not mere omission to pay but an attitude of refusal as a demand verging on dishonest disowning of the obligation under the decree.

- In **P. Subba Rayadu Vs Kattamuri Sri Krishna** 2008(4) ALD 454, the High Court gave clarification regarding how to assess the means of the Judgment-debtor as follows: “Explanation to Section 51 THE CODE OF CIVIL PROCEDURE, 1908, while defining the power of the Executing Court, explains that “in the calculation of the means of the judgment debtor for the purposes of clause (b), there shall be left out of an account of any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree. It is thus clear that while assessing the means of the Judgment-debtor for the purpose of execution of a decree by committing the Judgment-debtor to the civil prison, the property which is exempted from attachment under any law or custom has the force of law cannot be taken into consideration. The section has specifically exempted some items like houses of an agriculturist, wages of labourer or a domestic servant etc., Those items of property even if possessed by the Judgment-debtor, they cannot be treated as means to enable him to pay the decree debt.”<sup>36</sup>

### Recording of Reasons

The court is required to record reasons for its satisfaction for the detention of the judgement

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<sup>33</sup> Amulya Chandra vs. Pashupati Nath, AIR 1951 Cal 48 (FB)

<sup>34</sup> Krishna Iyer, J. in Jolly George Varghese vs The Bank Of Cochin, 1983 4 SCC 360.

<sup>35</sup> Kovvuri Mallikarjuna Reddy Vs Kota Shankara Rao, 2003 (6) ALD (NOC) 112

<sup>36</sup> P. Subba Rayadu Vs Kattamuri Sri Krishna 2008(4) ALD 454

debtor. Recording of reasons is mandatory. Reasons should be recorded every time and in every proceeding in which the judgment-debtor is ordered to be detained.<sup>37</sup>

### **Period of Detention**

The period of detention of the judgment-debtor in civil prison shall be

- up to three months, where the decretal amount exceeds rupees five thousand<sup>38</sup>.
- up to six weeks, where the decretal amount exceeds rupees two thousand but does not exceed rupees five thousand<sup>39</sup>.
- Where the decretal amount does not exceed rupees two thousand, no detention can be ordered<sup>40</sup>.

### **Release of Judgment-Debtor**

A judgment-debtor may be released in the following instances<sup>41</sup> :

- On the amount mentioned in the warrant being paid.
- On the decree against him being otherwise fully satisfied.
- On the request of the decree-holder.
- On the omission by the decree-holder to pay subsistence allowance (such release, however, does not discharge the judgment-debtor from his debt, but he cannot be rearrested on the same ground).
- On the ground of illness.<sup>42</sup>

### **Re-Arrest of Judgment-Debtor**

- A judgment debtor once released cannot be re-arrested in the execution of the same decree<sup>43</sup>.
- If the judgment-debtor is released by the mistake of the jail authorities then a re-arrest can be made<sup>44</sup>.
- The judgment-debtor cannot be sent to jail due to non-payment of subsistence allowance by the decree-holder, then his re-arrest will be lawful<sup>45</sup>.

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<sup>37</sup> P.G Ranganatha vs Mayavaram Financial Corpn. AIR 1974 MAD I.

<sup>38</sup> Section 58 (1) of The Code Of Civil Procedure, 1908.

<sup>39</sup> Section 58 (1) of The Code Of Civil Procedure, 1908.

<sup>40</sup> Section 58 (1) (a) of The Code Of Civil Procedure, 1908.

<sup>41</sup> Proviso Section 58 (1) of The Code Of Civil Procedure, 1908.

<sup>42</sup> Section 59 of The Code Of Civil Procedure, 1908.

<sup>43</sup> M.H Aquill vs. Union Bank of India, AIR 1985 kant 120:ILR 1984 2 Kant 171

<sup>44</sup> Kesar Singh vs. Karam Chand, AIR 1937 Lah 253

- The judgement debtor does not debar his re-arrest if he is released on the ground of illness. The total period of actual detention, however, cannot exceed the maximum prescribed in the code<sup>46</sup>.

## VII. IN CONTEXT OF CONSTITUTIONAL ASPECTS

**Article 14: Equality before law:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India<sup>47</sup>.

- The constitution under Article 14 guarantees the right to equality before the law. The Code of Criminal Procedure also provides that for a trial to be fair, the proceedings must take place in an open court. The aim of this provision is to ensure that convictions are not given in secret and the proceedings must take place with ordinary citizens. In some special cases, the trials may consist of a camera that may record the proceedings.

- In the leading case of **Kishore Singh Ravinder Dev v. The State of Rajasthan**, it was said that the laws of India such as Constitutional, Evidentiary and procedural have made elaborate provisions for safeguarding the rights of the accused with the view to protect his (accused) dignity as a human being and giving him benefits of a just, fair and impartial trial.<sup>48</sup>

**Article 20: Protection in respect of conviction for offences:** No person accused of any offence shall be compelled to be a witness against himself.<sup>49</sup>

- The constitution Of India provides every person with a right to remain silent whenever a person is arrested he cannot be forced to make any sort of statement against himself during the course of the investigation.

- In the case of **Nandini Sathpathy vs P.L.Dani**, no one can forcibly extract statements from the accused, who has the right to keep silent during the course of an investigation. By the administration of these tests, forcible intrusion into one's mind is being restored, thereby nullifying the validity and legitimacy of the Right to Silence. In 2010 The Supreme court made the narco-analysis, brain mapping and lie detector test a violation of Article 20(3).<sup>50</sup>

**Article 21: Protection of life and personal liberty:** No person shall be deprived of his life or personal liberty except according to procedure established by law<sup>51</sup>.

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<sup>45</sup> Malli K. Dhanalakshmi vs. Malli Krishnamurthi, AIR 1951 Mad 756: 1951 I MLJ 515: 1951 MWN 220

<sup>46</sup> Malli K. Dhanalakshmi vs. Malli Krishnamurthi, AIR 1951 Mad 756: 1951 I MLJ 515: 1951 MWN 220

<sup>47</sup> Article 14 of the Constitution of India

<sup>48</sup> Kishore Singh Ravinder Dev v. State of Rajasthan

<sup>49</sup> Article 20: Protection in respect of conviction for offences

<sup>50</sup> Nandini Sathpathy vs P.L.Dani

<sup>51</sup> Article 21 of the Constitution of India

- **In Khatri(II) vs. The State of Bihar**, the Supreme Court has held that the state is under a constitutional mandate (implicit in Article 21) to provide free legal aid to an indigent accused person, and the constitutional obligation to provide free legal aid does not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate, as also when remanded from time to time. However, this constitutional right of an indigent accused to get free legal aid may prove to be illusory unless he is promptly and duly informed about it by the court when he is produced before it. The Supreme Court has therefore cast a duty on all magistrates and courts to inform the indigent accused about his right to get free legal aid<sup>52</sup>.

- **In Suk Das v. Union Territory of Arunachal Pradesh**, wherein it has been categorically laid down that this constitutional right cannot be denied if the accused failed to apply for it. It's clear that unless refused, failure to provide free legal aid to an indigent accused would vitiate the trial entailing setting aside of the conviction and sentence<sup>53</sup>.

Article 21 of the Indian constitution deals with the right to life and liberty, we can clearly say that Article 21 can be read with **Article 9(1) of the International Covenant on Civil and Political Rights** in the context of the Right to life and liberty provided in international law which reads as follows:

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

As to the principle of legality, the Human Rights Committee has held that “it is violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation”, in other words, the grounds for arrest and detention must be “established by law”<sup>54</sup>. In a case where a person was arrested without a warrant, which was issued more than three days later, contrary to the domestic law that lays down that a warrant must be issued within 72 hours after arrest, the Committee concluded that article 9(1) had been violated because the author had been “deprived of his liberty in violation of a procedure as established by law”<sup>55</sup>. In other words, remand in custody pursuant to lawful arrest must not only be “lawful” but also “reasonable” and “necessary” in all the circumstances for the

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<sup>52</sup> Khatri(II) vs. State of Bihar

<sup>53</sup> Suk Das v. Union Territory of Arunachal Pradesh

<sup>54</sup> Communicaton No. 702/1996, C. McLawrence v. Jamaica (Views adopted on 18 July 1997), in UN doc. GAOR, A/52/40 (vol. II), pp. 230-231, para. 5.5.

<sup>55</sup> Communication No. 770/1997, Gridin v. Russian Federation (Views adopted on 20 July 2000), in UN doc. GAOR, A/55/40 (vol. II), p. 175, para. 8.1.

aforementioned purposes. It is for the State party concerned to show that these factors are present in the particular case<sup>56</sup>.

- A leading case which deals with both article 21 of the Indian Constitution and Article 11 of the International Covenant On Civil And Political Rights, In **Jolly George Varghese and another Vs The bank of Cochin, 1980 (2) SCC 360** the Hon'ble Supreme Court of India held that "if the judgment debtor bona fide is unable to pay off his debts, an order for his detention in prison and execution of the decree against his person would be violative of Article 21 of the Constitution of India and also the spirit of Article 11 of the International Covenant on Civil and Political Rights. The executing Court is required to enquire into the present financial position and ability of the judgment debtor to satisfy the debt. There shall be an element of dishonesty or bad faith in liquidating the liability for such an extreme measure<sup>57</sup>.

**Article 22: Protection against arrest and detention in certain cases:** (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.<sup>58</sup>

Article 22(1) of the Constitution of India read with section 50 (3) of the Code Of Civil Procedure provides that any person who is arrested has the right to consult a lawyer of his own free choice. Further, as has been held by the Supreme Court that state is under a constitutional mandate (implicit in article 21) to provide free legal aid to an indigent accused person, and the constitutional obligation to provide free legal aid does not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate, as also when remanded from time to time. It has been held by the Supreme Court that non-compliance with this requirement and failure to inform the accused of this right would nullify the trial.

- In order to have transparency in the accused- police relations the Supreme Court in **Joginder Kumar v. The State of U.P** held that right of an arrested person upon request, to have someone informed about his arrest and right to consult privately with lawyers are inherent in Articles 21 and 22 of the Constitution. The Supreme Court observed that no arrest can be made because it is lawful for the Police officer to do so. The existence of the power to

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<sup>56</sup> Communication No. 305/1988, H. van Alphen v. the Netherlands (Views adopted on 23 July 1990), in UN doc. GAOR, A/45/40 (vol. II), p. 115, para. 5.8; emphasis added.

<sup>57</sup> Jolly George Varghese and another Vs The bank of Cochin, 1980 (2) SCC 360

<sup>58</sup> Article 22(1) of the Constitution of India

arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause immense harm to the reputation and self-esteem of a person. No arrest should be made by Police Officer without a reasonable ground reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect an arrest<sup>59</sup>.

## VIII. CONCLUSION

There are various Procedural safeguards provided by the Constitution of India in relation to Arrest and Detention such as:

- Right to remain silent.
- Right to know the ground of arrest.
- Right to be presented before the magistrate within 24 hours.
- Right to a fair trial.
- Right to consult a Lawyer.
- Right to free legal aid.

Now, in spite of having all such safeguards right to arrest given to the police is misused by the police in order to extract information from the person arrested. In the present day context, every person desires instant results. The process of execution of decree should be accelerated in order to dispose of cases which have been going on for years, simultaneous execution against person and property by the way of arrest and detention might result in speedy disposal of cases resulting in satisfaction of the decree.

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<sup>59</sup> Joginder Kumar v. State of U.P

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